

THE  
NEW LAW REPORTS OF CEYLON.

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Present : Bertram C. J. and Shaw J.

1920.

FERNANDO *et al.* v. NIKULAN APPU *et al.*

47—D. C. Chilaw, 5,136.

*Appeal—Notice as to tender of security—Must be filed forthwith—Meaning of “forthwith”—Civil Procedure Code, s. 756.*

Under section 756 of the Civil Procedure Code notice as to tender of security must be filed forthwith, *i.e.*, should be filed on the same day as the receipt of the petition of appeal is verified or can reasonably be verified.

(1) Where an enactment directs that a thing shall be done “forthwith,” the word is to be construed as meaning “in a reasonable time.” What is reasonable must depend upon the circumstances of each case.

(2) But the word “reasonable” is to be interpreted, not as meaning reasonable from the point of view of its effect upon the person to whom or in relation to whom the act is to be done, but reasonable from the point of view of the person who is called upon to do it. The person who is to do the act must do it “as soon as he reasonably can.”

(3) When the act is one which in its nature can be done without any delay at all, and there are no special circumstances occasioning delay, the act must be done at once. In such a case, all that it is necessary to inquire is whether the act was done “without any delay that could possibly be avoided.”

(4) This is particularly the case when the act to be done is closely connected with another act which it follows, so that in the intention of the Legislature they are one continuous act.

THE facts appear from the judgment.

A. *St. V. Jayawardene*, for appellants.—Section 756 of the Civil Procedure Code requires that security should be given within twenty days. In this case security has been given within the time prescribed by law. The failure to give notice of security forthwith

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as required by the section is not, therefore, a fatal irregularity. The requirement is directory. There is no suggestion that the respondents have suffered in any way by reason of the failure to give notice forthwith. The objection is a highly technical one.

*E. W. Jayawardene*, (with him *Croos-Dabrera*), for the respondents.—The terms of the section are clear. Notice must be given forthwith. The petition of appeal was accepted on the 5th, and notice was issued on the 7th. "Forthwith" means immediately, without any delay. There has been a delay of two days in this case. The word "forthwith" occurs in connection with appeals under the English Bankruptcy Rules, 1870. It has been held in several English cases that this word means that the act required should be done without any delay. *Regina v. Price*,<sup>1</sup> *Ex parte Lamb*,<sup>2</sup> *In re Vitoria*,<sup>3</sup> *Ex parte Sillence*,<sup>4</sup> *Ex parte Donnithorne*,<sup>5</sup> *Re Green*,<sup>6</sup> *Keith v. National Telephone Co.*,<sup>7</sup> *R. v. Berkshire Justices*.<sup>8</sup> The word "forthwith" has received judicial interpretation in Ceylon in connection with the Labour Ordinance. "Forthwith" was held to mean "without any delay that could possibly be avoided." *Soysa v. Anglo-Ceylon and General Estates Co.*<sup>9</sup> The provisions of section 756 of the Code should be construed "with strictness and exactitude." *Iyer v. Singer Sewing Machine Co.*<sup>10</sup>

*A. St. V. Jayawardene*, in reply, referred to *R. v. Worcestershire Justices*,<sup>11</sup> *Staunton v. Wood*,<sup>12</sup> and *Peris v. Silva*.<sup>13</sup> It does not appear when the petition of appeal was accepted by the Judge. The delay in question is not unreasonable, this is the first time an objection of this kind is taken. The provision is not "imperative."

*Cur. adv. vult.*

August 6, 1920. BERTRAM C.J.—

The question that arises in this case is as to the proper interpretation of the word "forthwith" in section 756 of the Civil Procedure Code.

Section 754 requires that a petition of appeal shall be presented to the District Court within ten days. If it is presented in time, the Court must receive it. By section 756 it is provided that when the petition has been received, the petitioner shall forthwith give notice to the respondent that he will on a day specified in the notice, and within twenty days from the date of the judgment, tender security for the costs of appeal. On the appointed day the respondent is to be heard to show cause, if any, against such security being accepted.

<sup>1</sup> (1853) 8 Moore P. C. 203.

<sup>2</sup> (1881) 19 Ch. D. 169.

<sup>3</sup> (1894) 1 Q. B. 259.

<sup>4</sup> (1877) 7 Ch. D. 238.

<sup>5</sup> (1879) 40 L. T. 660.

<sup>6</sup> (1879) 40 L. T. 660.

<sup>7</sup> (1894) 2 Ch. 147.

<sup>8</sup> (1878) 4 Q. B. D. 469.

<sup>9</sup> (1916) 19 N. L. R. 374.

<sup>10</sup> (1918) 20 N. L. R. 280.

<sup>11</sup> (1839) 7 Dowl. 789.

<sup>12</sup> (1861) 16 Q. B. 638.

<sup>13</sup> (1905) 3 Bal. 165.

In this case the respondent did show cause. The cause was that the notice was not given forthwith upon receipt of the petition. An interval of two days, so it was urged, had, in fact, elapsed. The petition was tendered on February 5, 1920. The notice was filed on February 7, 1920. If the petitioner is to be allowed any latitude at all, no one can say that the delay was an immoderate one. But the question is as to the meaning of "forthwith," and whether it does allow any latitude.

This word has been interpreted in a series of English judgments, and the principle evolved in those judgments has been applied to rules of a character very similar to those now under discussion, namely, rules 143 and 144 of the Bankruptcy Rules, 1870. The most important of those cases are the following: *Regina v. Price*,<sup>1</sup> *Ex parte Lamb*,<sup>2</sup> and *In re Vitoria*.<sup>3</sup> There is also a local authority, in which the principles of these cases are applied, namely, *Soysa v. Anglo-Ceylon and General Estates Co.*<sup>4</sup>

The principles which these cases have established are the following:—

(1) Where an enactment directs that a thing shall be done "forthwith," the word is to be construed as meaning "in a reasonable time." What is reasonable must depend upon the circumstances of each case. (See in particular *Ex parte Lamb*.<sup>2</sup>)

(2) But the word "reasonable" is to be interpreted, not as meaning reasonable from the point of view of its effect upon the person to whom or in relation to whom the act is to be done, but reasonable from the point of view of the person who is called upon to do it. The person who is to do the act must do it "as soon as he reasonably can." (See in particular *Regina v. Price*.<sup>1</sup>)

(3) Where the act is one which in its nature can be done without any delay at all, and there are no special circumstances occasioning delay, the act must be done at once. In such a case, all that it is necessary to inquire is whether the act was done "without any delay that could possibly be avoided." (See *per* Wood Renton J. in *Soysa v. Anglo-Ceylon and General Estates Co.*<sup>4</sup>)

(4) This is particularly the case when the act to be done is closely connected with another act, which it follows, so that in the intention of the Legislature they are one continuous act. (See *per* Lush L.J. in *Ex parte Lamb*.<sup>2</sup>)

With regard to the enactment we are now considering, there is one circumstance that must be noted. The notice must follow forthwith, not upon the presentation of the petition, but upon its receipt. The receipt is the act of the Court, and before receiving the petition the Court must verify the fact that the petition is in time. It is not for the Court to communicate the receipt to the petitioner. It is for the petitioner to ascertain whether his petition

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has been received or not. In this case it is not clear at what precise time the Judge "received" the petition. He may well have done so at the end of the day on the conclusion of the Court. On this supposition the petitioner could have ascertained the fact of the receipt next day, and could on the same day have filed his notice. He did not do so till the day after. The delay is thus reduced to a delay of one day. It appears that hitherto the word "forthwith" has not been in practice strictly construed. I am prepared to take this circumstance into account in considering whether in this particular case the delay has been explained. In all the circumstances I am not prepared to declare that the delay of one day prevents us from holding that the notice was given "forthwith" within the meaning of the section.

I think, however, that, as a general rule, it is the intention of the section that the notice should be filed on the same day as the receipt is verified or can reasonably be verified. It is important that this principle should be observed, all the more so as delays may interpose themselves between the filing of the notice in Court and its actual delivery by the Fiscal's officer.

In my opinion the appeal should be allowed, with costs here and below.

SHAW J.—I agree.

*Appeal allowed.*