

1955

*Present: Sansoni, J.***CAREEM, Appellant, and UVAIS, Respondent***S. C. 82—C. R. Colombo, 53,187**Appeal—Security for costs of appeal—Deposit of sum of money—Requirement of hypothecation—Civil Procedure Code, s. 757.*

When money is deposited in Court as security for costs of appeal in terms of section 757 of the Civil Procedure Code, failure to hypothecate the money is a fatal irregularity.

APPPEAL from a judgment of the Court of Requests, Colombo.

H. W. Tambiah, with *M. S. M. Nazem*, for the defendant appellant.

G. P. J. Kurukulasuriya, for the plaintiff respondent.

September 2, 1955. SANSONI, J.—

A preliminary objection has been raised to the hearing of this appeal. It is pointed out that the bond does not provide for hypothecation of the money deposited in Court as security for the costs of appeal as required by section 757 of the Code. Dr. Thambiah points out that the error is due to the appellant's Proctor having been ill. I find, however, that the appellant's Proctor has signed the bond and it is therefore not open to the appellant to say that the bond was executed when he was not able to contact his legal adviser. Whether the respondent will suffer prejudice as a result of this defect in the bond can only be decided when one knows whether other claims by creditors to the money in deposit will be put forward or not. As matters stand, the money in deposit has not been hypothecated in favour of the respondent and he therefore has no preferent right to this money. I must uphold the preliminary objection and reject this appeal with costs.

Appeal rejected.
