

1932

*Present : Driberg and Akbar JJ.*EMMANUEL *v.* RATNASINGHAM.

190—D. C. (Inty.) Jaffna, 5,870.

Appeal—Petition of appeal signed by appellant—Not drawn by Secretary of Court—Irregularity—Civil Procedure Code, s. 755.

Where a petition of appeal was signed by the appellant but was not taken down by the Secretary of the Court in terms of section 755 of the Civil Procedure Code.—

Held, that the petition was irregular.

A PPEAL from an order of the District Judge of Jaffna.

N. K. Choksy, for plaintiff, appellant.

Navaratnam, for defendant, respondent.

July 14, 1932. DRIEBERG J.—

This is an appeal by one of two joint administrators. The petition of appeal is signed by the appellant; it has not been drawn or signed by an advocate or pactor, nor has it been taken down in writing by the Secretary of the District Court as required by section 755 of the Civil Procedure Code. The appellant, when the petition was drawn and presented, was the Secretary of the District Court of Kurunegala. The circumstance that he is himself a Secretary of a District Court is no reason for departing from the provisions of the Code in this matter. We have been referred to some earlier decisions of this Court where a strict compliance with these provisions in the case of an appeal in person was not demanded, but the trend of recent decisions is otherwise (128, D. C. Colombo No. 30,075, S. C. M. of September 29, 1930).*

The appeal is dismissed with costs but the right is reserved to the appellant to move in revision if he is so advised.

AKBAR J.—I agree.

* 128—D. C. Colombo, 30,075.

AKBAR J.—

A preliminary objection has been taken by counsel for the respondent on the ground that the petition of appeal does not comply with the provisions of section 755 of the Civil Procedure Code. The trend of the decisions of this Court is that the objection is a good one—see in particular the case of *Anthonisz v. Derolis*. This case I understand was followed by the Supreme Court on June 6, 1930, in S. C. No. 53, D. C. Galle, No. 25,738. I understand from my brother Jaywardene that he too made a similar order last week. In this state of the authorities the appeal must be dismissed with costs, but the right is reserved to the appellant to move in revision if he is so advised.

JAYWARDENE J.—I agree.