

Present : Ennis J. and Shaw J.

1918.

WICKREMARATNE *v.* FERNANDO.

121—D. C. Colombo, 44,863.

Appeal—Money deposited in Court for respondent's costs of appeal—No hypothecation—Civil Procedure Code, s. 757.

The appellant moved to deposit in Court a sum of Rs. 75 as security for the respondent's costs in appeal, and the proctor for respondent consented. The appellant's bond did not purport to be a hypothecation of the amount deposited; the form for a surety bond was filled up by the appellant as a personal undertaking to pay a sum of Rs. 75.

Held, that the appeal was not duly perfected.

THE facts appear in the judgment.

Bawa, K.C., and *J. S. Jayawardene*, for the appellant.

A. St. V. Jayawardene and *Keuneman*, for respondent.

July 10, 1918. ENNIS J.—

A preliminary objection has been taken to this appeal on the ground that the money deposited in Court had not been hypothecated. It appears that on March 14 the appellant moved to deposit in Court a sum of Rs. 75, being security for the plaintiff-respondent's costs in appeal, and the proctor for the respondent consented. The money was paid into the kachcheri on March 18, and notified to the Court on March 19. On March 20 a bond was filled. This bond does not purport to be a hypothecation of the amount deposited. The form for a surety bond has been taken and filled up by the appellant, as a personal undertaking to pay a sum of Rs. 75, and is nothing more. In a series of cases it has been held that the provisions of section 756 must be strictly complied with (see

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Kandappen v. Elliott,¹ *Charles v. Jandris*,² and *Gunatileke v. Punchihamy*³). The last of these cases seems to have been one very similar to the present, where a sum of money was tendered as security for the respondent's costs in appeal, but no bond hypothecating the money was executed, as required by section 757. There an inquiry was made as to whether the execution of the bond had been dispensed with, with a view to ascertaining whether there had been a waiver of the requirements of section 756, and it has been suggested in the present case that the respondent, by consenting to the appellant's motion of March 14, waived the execution of a bond hypothecating the amount. I am unable to see how this contention can hold good, because it appears that on March 14 the cash had not been paid into Court, and the consent could only be a consent to the security being perfected on the lines indicated, namely, by a subsequent deposit and hypothecation, as provided in section 757. In my opinion, the objection is good, and the appeal abates. The respondent is entitled to the costs of this appeal.

SHAW J.—I agree.

Objection upheld.