Present : Ennis and Garvin JJ.

1921.

KANAPATHIPILLAI *v.* KANNAKAI *et al.*

13—D. C. Jaffna, 13,085.

Appeal—Security for costs—Bond executed before Justice of the Peace—Bond invalid—Appeal not perfected.

A bond hypothecating immovable proverty as security for costs of appeal, executed before a Justice of the Peace, was held not to have been properly executed, and the appeal was held not to have been perfected.

THE facts appear from the judgment.

H. J. C. Pereira, K.C. (with him *J. Joseph*), for plaintiff.

Croos-Dabrera (with him *Spencer Rajaratnam*), for defendants, respondents.

November 3, 1921. ENNIS J.—

In this case a preliminary objection has been raised that the security bond is not properly executed. The bond is by way of mortgage of immovable property, and has been executed before a Justice of the Peace. It does not therefore comply with the requirements of Ordinance No. 7 of 1840 or the amending Ordinance No. 17 of 1852 as regards the manner in which it was executed.

It was contended that the case of *Queen's Advocate v. Thamba Pulle*[1] established the principle that judicial hypothec did not fall within the provisions of Ordinance No. 7 of 1840.

In my opinion that case did not go so far, because it expressly stated that a bond signed before the Secretary of the Court fulfilled the requirements of certain rules and orders which were then in

[1] *3 Lor. 302.*

1921.

ENNIS J.

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force, and which had received statutory recognition after the Ordinance No. 7 of 1840 came into operation.

The matter was considered in the case of *Mohammado Thamby v. Pathumma*,[1] and there a bond signed before the Secretary of the Court was allowed as a special exception on the authority of *Queen's Advocate v. Thamba Pulle* (*supra*), but in a later case *Fernando v. Fernando*[2] the same Bench declined to extend the exception to cover a case in which a proctor acting on behalf of his client executed a bond in his own office and afterwards filed it in Court. The Court expressed the opinion that such a contention would be departing from the principle of the exception and establishing a dangerous practice. I am entirely in accord with that view, and I am, therefore, of opinion that the preliminary objection in this case is good.

I would, therefore, dismiss the appeal, with costs.

GARVIN A.J.—I entirely agree.

Appeal dismissed.