

*Forthwith—Order by Judge that cash be given as security.*

*Elliott, K.C. (with him Fonseka), for defendant, appellant.*

*M. W. H. de Silva, for plaintiff, respondent.*

November 3, 1921. ENNIS J.—

In this case a preliminary objection has been raised that the notice of tender of security, required by section 756 of the Civil Procedure Code to be given "forthwith," was not so given, and that the appeal should, therefore, be held to have abated.

It appears that in the Court below the same objection was taken, and the case of *Fernando v. Nikulan Appu*, (1922) 22 N. L. R. 1, was cited. On the authority of that case, the appeal should have abated then and there, but the learned Judge appears to have made an order that in place of the security offered cash should be deposited. The appellant deposited cash, and it appears that the respondent had finally to move that the appeal should be forwarded to this Court.

In my opinion the objection taken is good, and I would accordingly dismiss the appeal, with costs.

GARVIN A.J.—I agree.

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