

MISSIE NONA v. PEDRIC *et al.*

66—D. C. Kalutara, 9,182.

*Notice of tender of security—Costs of appeal.*

*Wijemanne*, for the appellants.

*H. V. Perera*, for the respondents.

October 28, 1921. BERTRAM C.J.—

This is another technical objection under section 756 of the Civil Procedure Code. Notice of tendering security was not given "forthwith," but was given at least a day, or, perhaps, two days later. While we can allow latitude in cases where our decision in *Fernando v. Nikulan Appu*, (1922) 22 N. L. R. 1, has not reached the parties affected, I fear it must be considered that in this case a sufficient interval had passed for this purpose. Further, no date was fixed in the only notice which is filed for objections to be lodged by the respondent. In a case decided yesterday, we upheld both these technical objections as good, and we must, unfortunately, take the same course to-day.

Mr. H. V. Perera, on the question of costs, has drawn our attention to the case of *Silva v. Appuhamy*, (1921) 2 N. L. R. 106, and has said that this distinguishes the earlier case of *Kangany v. Ramasamy Rajah*, (1920) 7 C. W. R. 234. I do not think that the former case (*Silva v. Appuhamy* (*supra*)) in any way derogates from the effect of the other. In *Silva v. Appuhamy* (*supra*) the defect was one which could only be discovered by an investigation of the record which the Court declared the respondent was under no obligation to make. In *Kangany v. Ramasamy Rajah* (*supra*) the defect was one which would, *ipso facto*, be brought to the notice of the respondent by his receipt of the notice of appeal. The same is true of the present case, and I think we should follow *Kangany v. Ramasamy Rajah* (*supra*) and dismiss the appeal, making no order as to costs.

DE SAMPAYO J.—I agree.