

1958

Present : Basnayake, C.J., and Sansoni, J.KASTURIARACHCHI, Appellant, and PINI *et al.*, Respondents*S. C. 330—D. C. Kegalle, 8468**Appeal—Security for costs of appeal—Acceptance thereof—Omission of Court to record fact of acceptance—Effect—Civil Procedure Code, s. 756.*

When security for costs of appeal is accepted in terms of section 756 of the Civil Procedure Code, there is no requirement that the fact of such acceptance should be expressly recorded by the Court though it is both prudent and desirable that it should be done.

A P P E A L from a judgment of the District Court, Kegalle.

N. E. Weerasooria, Q.C., with *K. Herat*, for Plaintiffs-Appellants.

C. R. Gunaratne, for 1st, 3rd, 4th and 5th Defendants-Respondents.

July 17, 1958. BASNAYAKE, C.J.—

Learned counsel for the respondents takes a preliminary objection to the hearing of this appeal on the ground that the requirements of section 756 of the Civil Procedure Code have not been complied with as the court has made no order accepting the security for costs tendered by the appellants. The relevant journal entry of the 14th of May 1956 reads as follows :—

- “ 1. Notice of security served on the 1st defendant.
 She is present.
 Bond filed.
 Issue notice of appeal returnable 28.5.56.
2. Messrs Aturupana and Jayawardene, Proctors for plaintiffs move for a Deposit Note for Rs. 150 being the sum the appellants want to hypothecate as security for costs of 1, 3, 4 and 5 defendants. Issue D/N accordingly.”

Section 756 provides among other matters that when a petition of appeal has been received by the court of first instance “ the petitioner shall give notice to the respondent that he will tender security as hereinafter directed for the respondent’s costs of appeal, and will deposit a sufficient sum of money to cover the expenses of serving notice of appeal on the respondent. And on such day the respondent shall be heard to show cause if any against such security being accepted. And in the event of such security being accepted and also the deposit made within such period, then the court shall immediately issue notice of appeal together with a copy of the petition of appeal”

In the instant case the bond was perfected as required by the section and the learned trial Judge made order that notice of appeal should be issued. The fact that the court issued notice of appeal is an indication that the security was accepted though the order did not state it in so many words. The action the Court is required to take is to issue notice of appeal and the event on which that action is to be taken is the acceptance of the security. It is reasonable to infer that the Judge would not have issued the notice of appeal unless the security was accepted. There is no requirement that the fact of the acceptance of the security should be recorded though it is both prudent and desirable that it should be done. The omission to do so does not amount to a failure to observe the requirements of section 756.

In our opinion there has been no failure to comply with section 756 of the Civil Procedure Code and we accordingly overrule the preliminary objection.

SANSONI, J.—I agree.

Preliminary objection overruled.
