

RAMAN CHETTY v. MARIHAMY.

D. C., Chilaw, 2,035.

1900.

July 3.

*Appeal—Application for leave to appeal—Lapse of time—Civil Procedure Code, s. 765.*

Where a defendant tendered security for costs of appeal on the last day allowed for perfecting security and such security was rejected, and the defendant did not satisfy the Supreme Court that she was prevented by unavoidable causes from complying with the provisions of sections 754 and 756 of the Civil Procedure Code, and that she had good grounds for appealing, *held*, that she was not entitled under section 765 to have leave to appeal notwithstanding lapse of time.

DEFENDANT desiring to appeal tendered security on the last day allowed for perfecting security. The plaintiff showed cause against such security being accepted, and the District Judge upheld the objection. The defendant being unable to tender other security in time, the appeal fell through.

*Schneider*, for defendant, moved the Supreme Court for leave to appeal, notwithstanding lapse of time.

BONSER, C.J.—

This is an application by a defendant, against whom judgment has gone, to be allowed to appeal notwithstanding lapse of time. It appears that the would-be appellant tendered security which was objected to by the respondent's proctor, and the Court upheld the objection. The day on which the tender was made was the very last day allowed for the purpose of perfecting security, and the would-be appellant had therefore no time to tender other security. No appeal was lodged against the refusal of the Court to accept the security, and we must assume that the Court was justified in its refusal. That being so, it seems to me that the defendant has not complied with the first of the conditions contained in section 765 of the Civil Procedure Code as necessary

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for the granting of the application. She has not satisfied the Supreme Court that she was prevented by causes beyond her control from complying with the rules in respect of security.

And it seems to me that she has also not complied with the second of the conditions, namely, that she had good ground for appealing. The question in this action has reference to certain payments which she alleged she had made to the plaintiff and his clerk, and which the plaintiff and his clerk denied were made. There was great conflict of evidence in this matter, and the judge took a strong view of the case and said that he had no hesitation in disbelieving the defendant and her son, and that he was of opinion that the defendant and her son had conspired together to defraud the plaintiff. I listened attentively to what Mr. Schneider had to say, and he certainly did not satisfy me that the petitioner had good ground for appealing. The application will be disallowed.

MONCREIFF, J.—Concurred.

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