1939 *Present :* **de Kretser J.**

DE SILVA *v.* FRANCINAHAMINE.

42—C. R. Galle, 18,130.

Notice of security for respondents' costs—Service on Proctor—Notice sufficient—Civil Procedure Code, s. 756.

The service of notice of tender of security for costs of appeal on the respondents' Proctor is sufficient compliance with the requirements of section 756 of the Civil Procedure Code.

Perera v. Hendrick (1 A. C. R. 25) followed.

APPEAL from a judgment of the Commissioner of Requests, Galle.

R. C. Fonseka, for plaintiffs, appellants.

C. S. Barr Kumarakulasingham, for defendants, respondents.

Cur. adv. vult.

May 26, 1939. DE KRETSER J.—

A preliminary objection is taken on behalf of the respondents, and the objection is that notice of security tendered was given to the Proctors of the contesting parties and not to the parties themselves. The notice so tendered was duly accepted by the Proctors and there is no evidence of any objection by them to this procedure. The security has been duly accepted. The way in which the objection has been urged is this :—Section 756 requires notice to be given to the respondents. Then the provisions of Chapter 23 relating to the service of process are invoked, and particularly section 356, which says : " The enactments of the sections of this Ordinance from section 59 to section 70, both inclusive, relative to the service of such summons shall apply, so far as practicable, to the service of such processes, notices and orders ". Chapter 8, in which occur sections 59 and 70, is devoted to the issue and service of summons, the Code drawing a distinction between summons and other process. In the case of summons it is required that a duplicate of summons should be tendered to the party affected, and substituted service of summons is allowed only when a service of summons in this way is not practicable. Section 64 makes an exception in favour of cases in which a defendant has an agent appointed under section 30 empowered to accept service or a Proctor holding a warrant of attorney under section 31.

It is argued therefore that notice should be served personally on the parties and not on the Proctors since they were not persons contemplated by section 64. So far the argument would be sound but for the fact that section 64 is dealing with the service of *summons*. We are now concerned with notices. Sections 59 to 70 are only made available in so far as they are practicable, but we have the express provision of section 29 that any process served on the Proctor of any party relative to the action or appeal shall be as effectual for all purposes as if the same had been given to, or served on, the party in person. This means that summons cannot be served on a Proctor unless he came within the class contemplated by sections 30 and 31, but once a Proctor has been appointed process may be served on him.

It should be noted, as I said before, that the Code distinguishes between summons and process. The provisions of sections 59 to 70 therefore cannot apply to such a case as this and the objection must therefore fail. Even if there was substance in the objection I should have given relief under section 756, as neither the parties nor their Proctors objected to the procedure adopted and no damage has been caused. I am indebted to Mr. L. A. Rajapakse for referring me to the case of *Perera v. Hendrick*[1], in which it was held that service of notice upon respondents' Proctor of an application for leave to appeal would be a sufficient service.

Objection overruled.

[1] *1 A. C. R. p. 25.*