

Present : Dalton J. and Akbar A.J.

1925.

SILVA v. SILVA and KING.

56—D. C. Colombo, 10,899.

*Privy Council—Application for conditional leave—Several respondents—
Separate security for costs—Ordinance No. 31 of 1909, Rule 3 (a).*

In an application for conditional leave to appeal to the Privy Council the Supreme Court has no power to order that the costs of several respondents should be separately secured.

A PPLICATION for conditional leave to appeal to the Privy Council from a judgment of the Supreme Court.

J. S. Jayewardene (with him *Arulanandan*), for applicant.

Croos Da Brera, for first defendant, respondent.

Choksy, for second defendant, respondent.

November 30, 1925. DALTON J.—

This is an application in Supreme Court case No. 56, D.C., Colombo, No. 10,899 for conditional leave to appeal to the Privy Council from a judgment given by this Court on October 28, 1925. The judgment appealed from is a final judgment of the Court within the terms of rule 1 (a) of Ordinance No. 31 of 1909, and it is also in respect of a matter amounting to, or of the value of, Rs. 5,000 and upwards. The plaintiff, who is the appellant, is consequently entitled as of right to appeal. It has been urged however, by the respondents, of whom there are two, the first defendant and the co-defendant in the original action, that they are entitled to security for costs under the provisions of rule 3 (a) of Ordinance No. 31 of 1909, each in a sum of Rs. 3,000 for the due prosecution of the appeal and for the payment of all such costs that may become payable to the respondents in the event of the appellant not obtaining an order for final leave to appeal or of the appeal being dismissed or, of the Privy Council ordering the appellant to pay the respondents' costs of appeal. The question to be decided is whether or not under that rule this Court can order security to be given by the appellant for each respondent in a sum not exceeding Rs. 3,000. The point has been decided before in this Court, and we have been referred to the case of *Costa v. Silva*¹ which came before Wood Renton C.J. and Shaw J. In that case an earlier decision

¹ (1915) 18 N. L. R. 281.

1925.

DALTON J.

*Silva v. Silva
and King*

of Lascelles C.J. was also referred to. That later case does not appear to have been reported, but from the extract which is cited by Wood Renton C.J. in the 18 N. L. R. case it would appear that Lascelles C.J. refused to accede to the application of the respondents that they should have separate security, on the ground that in that particular case there was no difference between the cases of the respondents ; in other words that in substance their cases were one and the same. In *Costa v. Silva (supra)* the decision appears to go beyond that. It is true that Wood Renton C.J. does say in the course of his judgment that the respondents there were all in the same interest, but he deals specifically with the question as to whether the language of the rule 3 (a) allowed this Court to order separate security when there was more than one respondent. In his view, and Mr. Justice Shaw agrees with him, the language of the rule does not support the view that the costs of several respondents should be separately secured. He points out a case in which a hardship might arise to appellants should such an interpretation be placed upon the rule. He specifically refers to a partition case. It is in my opinion possible also to refer to a case of hardship which might arise on the opposite construction of the rule, but, as I said in the course of the argument, we have to interpret the rule as it stands, and we cannot give effect to hardships which might arise should we come to the conclusion that the rule must be interpreted in one particular way. In spite of hardships which might arise, it seems to me that the language of the rule is definite. Further, neither counsel has been able to refer to any case whatsoever in which any other view of the language set out in the rule has been accepted. They are unable to refer to any case at all in which separate security has been given when there are more than one respondent. We have been referred to the provisions of section 756 of the Civil Procedure Code which deals with security for costs of the appeal from lower courts to this Court, but in that section there is no limit up to which security may be given, and I do not think any argument based upon the provisions of that section is of any assistance in interpreting the provisions of rule 3 of the Schedule of the Ordinance dealing with appeals to His Majesty in Council.

I would, therefore, follow the decision of *Costa v. Silva (supra)*, with which I may say, I respectfully agree, with regard to the language of the rule, and I would, therefore, order that security be given by the appellant in a sum not exceeding Rs. 3,000 in favour of the respondents.

The appellant is, in my opinion, entitled to the costs of the application.

AKBAR A.J.—I agree.

Application allowed.