

1958

*Present : Basnayake, C.J., and de Silva, J.*PATHINAYAKE, Appellant, *and* KANNANGARA, Respondent*S. C. 115—D. C. (Inty.) Galle, 4,124**Appeal—Security for costs of appeal—Deposit of cash—Omission to hypothecate by bond—Rectification—Civil Procedure Code, ss. 756 (3), 757.*

Where an appellant deposited a sum of money as security for costs of appeal but omitted to hypothecate it by bond—

Held, that an opportunity should be given under section 756 (3) of the Civil Procedure Code to rectify the omission.

APPEAL from an order of the District Court, Galle.

A. L. Jayasuriya, for Intervenant-Appellant.

M. Rafeek, with *A. Mansoor*, for Plaintiff-Respondent.

February 27, 1958. BASNAYAKE, C.J.—

Learned counsel for the respondent raises a preliminary objection to the hearing of this appeal on the ground that the bond furnished by the appellant does not hypothecate the money deposited by him to cover the costs of appeal. His submission is that a clause which is essential in a bond of this nature to prevent the security for costs being seized by other creditors is omitted from this bond. He submits that there should be a clause to the following effect :—

“ For securing the payment of the said sum of . . . I do hereby mortgage and hypothecate as a primary mortgage the sum of . . . deposited to the credit of this case as aforesaid at the Galle Kachcheri on . . . ”

We have examined the bond and find that it is defective in the respect pointed out by learned counsel for the respondent, who asks that the appeal be rejected. Learned counsel for the appellant submits that this is a case in which he should be given an opportunity, under section 756 (3) of the Civil Procedure Code, of complying with the provisions of the Code. We think this is eminently a case in which that opportunity should be granted, subject to the payment of the costs of the respondent, which we fix at Rs. 52.50. The record should go back to the original court so that the appellant may furnish a bond in the proper form.

DE SILVA, J.—I agree.

Record sent back.