1922.

*Present :* De Sampayo and Porter JJ.

MENDIS *v.* JINADASSA *et al.*

*468—D. C. Nuwara Eliya, 569.*

*Appeal—Security for costs—Money deposited—No bond hypothecating money—Civil Procedure Code, ss. 756 and 757—Ordinance No. 42 of 1921—Power of Supreme Court to grant relief—Cure of defects.*

The appellant deposited a sum of money as security for costs of appeal, but did not execute a bond hypothecating it. In appeal it was contended for the respondent that Ordinance No. 42 of 1921 did not give the Supreme Court power to grant relief, as the Ordinance had no reference to section 757 which lays down the form in which security should be given.

*Held*, that the Supreme Court had power to grant relief. The appellant was directed to hypothecate the money before the hearing of the appeal.

THE facts appear from the judgment.

*Jayawardene, K.C.* (with him *Arulanandam* and *C. W. Perera*) for the appellant.

*Suntheram* (with him *R. C. Fonseka*), for the respondent.

June 22, 1922. DE SAMPAYO J.—

We have to deal with a preliminary objection, taken on behalf of the respondent, to the appeal being entertained. When the objection was first taken on a previous occasion, it did not appear clearly that the money, which was intended to be the security tendered

had been deposited, or that it had been hypothecated by a bond. Accordingly we thought it right to refer the matter to the District Judge, who was asked to inform this Court whether the deposit was in fact made, and whether it had been hypothecated by a bond. The District Judge has now informed this Court that the deposit was in fact made, but that there was no bond executed hypothecating it. Counsel for the respondent still presses the objection, notwithstanding the provisions of the amending Ordinance No. 42 of 1921. His point is that the Ordinance amended the provisions of section 756 giving this Court power to grant relief in case of defects or irregularities committed under section 756, but that it had no reference to section 757, which lays down the form in which the security should be given. I think this is taking a too narrow view of the remedial legislation enacted by the Ordinance No. 42 of 1921. Section 756 provides for security tendered being "accepted." When the rest of the section is read with the expression "accepted," it appears clear that "acceptance" really implies "completion" of the security within the time limit, namely, twenty days. It cannot be completed unless the bond provided for in section 756 is executed. Therefore, when the new Ordinance gives this Court power in the case of any mistake, omission, or defect on the part of an appellant in complying with the provisions of section 756 to grant relief, it must be taken to have intended to apply the provisions to any omission or defect in connection with the bond. I do not think such an extensive interpretation, if it is to be so called, is unjust or unfair when the object of the entire legislation is taken into consideration. If some of the previous decisions are to be taken as a guide, it would appear that the suggestion I have just made is correct, that defects such as these are really omissions to comply with section 756. For instance in *Wickremaratne v. Fernando* [1] where the facts are entirely similar to those we have here, that is to say, the deposit of the money had been made, but no bond had been executed hypothecating the amount, this Court dealt with the matter as one coming under section 756. I think, therefore, that we ought to apply the provisions of the new Ordinance, as it is very plain that the omission to comply with the requirement of hypothecation by a bond was not a deliberate omission, but due clearly to an oversight, and no prejudice will be caused to the respondent if we say that the amount be now hypothecated by a bond. I would, therefore, in the exercise of the power vested in us by the new Ordinance, direct that the appellant do now hypothecate the sum deposited by a bond in due form. When this has been done, the appeal might be listed for argument. There will be no order as to the costs of this objection.

PORTER J.—I agree.

*Objection overruled.*

[1] *(1918) 20 N. L. R. 279.*