GOPAL IYER *v.* SINGER SEWING MACHINE COMPANY

195—D. C. Colombo, 47,267.

F. M. de Saram, for the appellant.

Arulanandan, for the respondent.

July 31, 1918. BERTRAM C.J.—

This is a question as to the merits of which different views may be taken. One may or may not sympathize with a litigant in the position of Mr. de Saram's client. But what this Court has to do is to construe the terms of the Civil Procedure Code, and construe them on a matter in which it is necessary to interpret the Code with strictness and exactitude. All limitations of rights of suit must be so construed. It would be impossible to apply what are called broad canons of interpretations to provisions of the law, the object of which is to draw a definite line.

Mr. de Saram has asked us to re-consider this matter, and has put forward two points. The first point is, that the words " tender security " in section 756 of the Code merely mean " propose " or " proffer security," and that the phrase " security being accepted " merely means " security being approved." On his view of the case it would be the duty of the Court, immediately security was approved, to issue notice of appeal, and ultimately to forward the petition of appeal to the Supreme Court, but not so to forward it, unless the security which had been approved had by that time been actually perfected. I think it is quite impossible to suppose that the framers of the Code intended such a course of events. I do not think they intended the District Court should set in motion the preliminaries to an appeal until the security for the appeal had been actually perfected. The Code does not say that " in the event of such tender being accepted," but " in the event of such security being accepted," and I think that the words " accepted " and " given " must be construed as having reference to the same event; must point to something contemporaneous.

[1] *2 C. L. R. 17.* [2] *(1912) 16 N. L. R. 159.* [3] *2 Leader L. R. 100.*

If Mr. de Saram's view of the case is right, it would be possible for a notice of appeal to be issued, and for the case not to be forwarded to the Supreme Court for an indefinite period. Such a position shows that the contention would lead to an unworkable result. This is the first point.

With regard to the second point, he argues that his client has complied with the words of section 757 of the Code, because by the deposit of the money in the kachcheri, in pursuance of an arrangement between the parties, there was, in fact, a consensual hypothecation of the money. But that is not sufficient. Section 757 requires that there should be a hypothecation by bond. It is perfectly true that there is a bond collateral to the deposit. But that bond does not hypothecate anything. Mr. de Saram suggested that this case should be referred to the Full Court. But the whole question has been reviewed in a recent case, which was considered by two Judges, and which, I believe, has been followed by all the Judges of this Court, and which is in accordance with the previous decisions of this Court. In the circumstances, I do not see that any good end would be served by acceding to the application. I am, therefore, of opinion that, in this case, the security for appeal has not been perfected, and that the appeal must be dismissed, with costs.

ENNIS J.—I agree.