

1932

*Present : Garvin S.P.J. and Drieberg J.*DIAS *v.* PALANIAPPA CHETTIAR.

151—D. C. (Inty.) Galle, 626.

*Appeal—Insolvency—Failure to apply for typewritten copies—No ground for dismissal of appeal—Civil Appellate Rule 3 (1).*

Rule 3 (1) of the Civil Appellate Rules, which requires an appellant to apply for typewritten copies has no application to appeals in insolvency proceedings.

There is now no law regulating appeals in insolvency proceedings.

**A** PPEAL from an order of the District Judge of Galle.

*Nadarajah*, for appellant.

November 15, 1932. DRIEBERG J.—

This is an appeal by a creditor from an order granting the insolvent a certificate of insolvency. The petition of appeal was filed on July 18, 1932. The appeal was listed before us for dismissal on the ground that the appellant had failed to apply within time for typewritten copies of the record for the use of the Judges as required by the Civil Appellate Rules of January 16, 1914.

Rules 3 (1) requires that the application should be made "within the time limited by law for the completion of the security for costs of appeal". The last day for completing security, if security had to be given, was July 29 ; the application was made on August 18.

It has however been held by a Bench of five Judges that the provisions of section 756 of the Civil Procedure Code and the connected sections do not apply to appeals in insolvency proceedings, and that an appellant therefore need not give security for costs of appeal, *In re Goonewardene*.<sup>1</sup> Mr. Nadarajah rightly contended that in these circumstances there is no time fixed by rule 3 (1), for the point of time specified, namely, the time for completion of security, does not occur.

The ground of decision in *In re Goonewardene* (*supra*) is that insolvency proceedings do not come within the description of actions, of regular or summary procedure, to which alone the provisions of the Civil Procedure Code regarding appeals apply. This was recognized as far back as 1895 in the case of *M. L. M. Abdul Azeez*<sup>2</sup> and the case of *Hayman Thornhill*.<sup>3</sup> Certain later decisions made it necessary to have an authoritative decision and the case, *In re Goonewardene*, was therefore submitted for decision by a Full Bench. The effect of that decision, in my opinion is that there is now no law regulating appeals in insolvency proceedings.

This appeal will be listed for argument.

GARVIN S.P.J.—I agree.

