Present: Wood Renton C.J. and De Sampayo J. 1916.

ABEYESEKERA *v.* ALAHAKOON *et al.*

333—D. C. Galle, 13,755.

Application for stay of execution pending appeal to the Privy Council.

In deciding whether an application for a stay of execution pending appeal to the Privy Council should be allowed or refused, the Supreme Court is not entitled to go into the merits of the case, or to dispose of them on any assumption that the decisions of the Supreme Court and the District Court are correct.

The Supreme Court allowed the judgment-creditor to execute his judgment, on his giving security by way of a mortgage of immovable property of the full value of the judgment debt for the due performance of the order made by His Majesty in Council.

THE facts appear from the judgment.

Hayley, for applicants.

Elliott, for respondents.

October 26, 1916. WOOD RENTON C.J.—

This is an application for final leave to appeal to the Privy Council from a decision of the Supreme Court affirming the judgment of the District Court in this action, coupled with a further application under rule 8 of the rules scheduled to the Appeals (Privy Council) Ordinance, 1909,[1] for stay of execution, upon the appellants giving sufficient security for the due performance of such order as His Majesty in Council may ultimately make after the appeal has been heard by the Judicial Committee. No exception can be taken to final leave to appeal being granted. But the respondents' counsel invited us to act under rule 7 of the scheduled rules, and to allow the judgment in respondents' favour to be executed upon good and sufficient security being furnished by his clients for the restitution of the proceeds of their judgment, if the appeal should succeed in the Privy Council. The grounds on which this application was based were that the appeal involves only questions of fact in regard to which there have already been two concurrent judgments in his Colony; that the appellants' counsel in the Supreme Court, after having read the judgment of the District Court, and upon an intimation by the Bench that it would be difficult to persuade this

[1] *No. 31 of 1909.*

1916.

WOOD RENTON C.J.

Abeyesekera v. Alahakoon

Court that it was wrong, did not proceed further with the appeal; that the appellants are wealthy, and the respondents are comparatively poor; and that the sum of money at stake, namely, Rs. 15,000, with interest, was of comparatively little importance to the unsuccessful, but of great importance to the successful, litigants. He expressed his readiness, if his application were allowed, to give a personal bond with one surety for the full amount of the judgment debt. The appellants' counsel on the other side stated that if a stay of execution were granted, his clients would grant a mortgage for the value of the entire amount involved in the action. It appears that some of the appellants' property has already been seized in execution of a writ issued by the District Court, and that its sale is now pending.

I do not think that, for the purposes of such applications as those with which we have here to do, we are entitled to go into the merits of the case, or to dispose of them on any assumption that the decisions of the Supreme Court and the District Court are correct. It appears to me that rule 7 of the scheduled rules rather favours the view that in such a case as this execution of the respondents' judgment should be sanctioned. Rule 8 is merely a proviso to rule 7. I do not, however, think that a mere personal bond with or without a surety can be described as " good and sufficient " security within the meaning of the former rule. The application for final leave to appeal to the Privy Council must be allowed. But I would dismiss the appellants' application for a stay of execution, and would direct that the judgment in the respondents' favour should be carried into effect upon their giving security for the due performance of any order ultimately made in the case by His Majesty in Council, by way of a mortgage of immovable property of the full value of the judgment debt, either by themselves or by a surety on their behalf.

In view of the fact that, although we have dismissed the appellants' application for stay of execution, we have not allowed execution to issue on the terms proposed by the respondents' counsel, I would make no order as to costs.

DE SAMPAYO J.—I agree.