BASNAYAKE HAMINE et al. v. PATHIRATNE.

73—D. C. (Inty.) Colombo, 52,525.

Appeal—Security for costs—Formal tender on date specified in notice not made—Civil Procedure Code, s. 756.

The appellant did not " forthwith " give notice to the respondent that he would on a specified day tender security as directed by the Court. Instead of this, he gave the respondent notice that he was paying a certain sum into Court as security. On the date fixed in the notice, the appellant did not make formal tender.

Held, that the provisions of section 756 were not complied with. The appeal was struck out.

E. W. Perera, for the appellant.

M. W. H. de Silva, for the respondent.

October 11, 1921. BERTRAM C.J.—

In this case we are in a position of being compelled to enforce a preliminary objection under section 756 of the Civil Procedure Code. Our previous decisions have pointed out that we have no alternative, but to construe the terms of this section rigorously. The appellant in this case did not forthwith give notice to the respondent that he

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BERTRAM C.J.

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Basnayake Hamine v. Pathirasne

would on a day to be specified in the notice tender security as directed by the Court. Instead of this, he gave the respondent notice that he was paying a certain sum into Court as security. No doubt this would have been quite as useful to the respondent, but it was not what the Code requires. The appellant appears to have anticipated that the respondent would consent to this deposit, and that this notice would be accepted as the notice required by the section. But this did not happen. The respondent struck out the words " I consent," and substituted the words " received notice." On this being done, the appellant ought to have made a formal tender on the date fixed in the notice. He omitted to do this, and must unfortunately suffer for the omission. The preliminary objection must, therefore, be allowed, with costs, and the appeal struck out.

DE SAMPAYO J.—I agree.

Appeal dismissed.