

## PERERA v. LOGUS.

51—D. C. Colombo, 83.

*Notice—Waiver.**E. W. Jayawardene*, for the appellant.*E. W. Perera*, for the respondent.

October 11, 1921. BERTRAM C.J.—

This is a case very similar to the case which we have decided to-day, namely, 73 D. C. (Inty.) Colombo, 52,525. A preliminary objection is taken that the provisions of section 756 of the Civil Procedure Code have not been complied with. The appellant did not give notice to the respondent that he would on a day to be specified in the notice tender security. Instead of that, he sent in a notice that he moved to deposit in Court a sum of Rs. 50 as security for the respondent's costs in appeal. The first defendant on receiving this notice struck out the words "I consent," and substituted the words "received notice." If he had stopped there, his case would have been exactly on all fours with the case previously mentioned. But he went further. It would seem that, though the first defendant was the only defendant who was made a respondent to the appeal, there were other defendants who were interested. The proctor, for the first defendant, desired to make it clear that any money deposited for costs must be deposited in respect of his client's costs, independently of the other defendants. He, therefore, added these words: "and ask for Rs. 50 to be deposited as the first defendant-respondent's costs." The proctor, for the fifth and sixth defendants, was, apparently, shown this notice and the endorsement by the proctor, for the first defendant, and he added a further endorsement: "I have no objection, D. A. Dissanayake." In pursuance of this requirement, the security bond was drawn up in which the first defendant was mentioned as respondent, and the amount deposited was duly hypothecated.

It seems to me that, under these circumstances, the proctor, for the first defendant, did something more than give a formal acknowledgment. He made a requirement. That requirement was accepted, and in view of this arrangement it seems to me that he impliedly waived his right to insist upon the condition to which he now appeals. That such a waiver can be made is shown by the Full Court decision in *Ukkawa v. Alluta Rubber and Produce Co., Ltd.*, (1915) 18 N. L. E. 341.

I think, therefore, that the preliminary objection must be disallowed.

DE SAMPAYO J.—I agree.