

ALIA MARIKKAR v. BAWA et al.

1921.

97—D. C. Galle, 18,033.

*Forthwith—Objection to be stated in Court.*

H. J. C. Pereira, K.C. (with him E. G. P. Jayatileke), for appellant.

Soerisz, for the respondents.

October 21, 1921. BERTRAM C.J.—

In my opinion this appeal must be allowed. The learned Judge has thought it right to rescind his own order on the ground that it was *ex parte*. But it appears from a careful examination of the journal entries that the order was not made *ex parte*. With regard to the first defendant, there is no question that notice was duly served. With regard to the second, it is admitted that notice was served upon the second defendant's proctor. This is good service under section 29 of the Code, and this is not disputed. But it appears that the proctor had an objection to the validity of the notice, on the ground that it was not issued "forthwith" as required by section 756 of the Civil Procedure Code. He stated this objection to the process server. But, if he wished to rely upon the objection, he should have stated it in Court. It is not for the person who received the notice to decide whether the service is good. It is for the Court, before whom he is served to appear, to decide the question. There being good service on both defendants, the order made by the District Judge was not *ex parte*. The present order, therefore, was made by an oversight. It may be that when the appeal comes on for hearing, the question will arise with regard to the word "forthwith." But that question is not before us in this interlocutory appeal.

I would allow the appeal, with costs.

DE SAMPAYO J.—I agree.