

1921.

OBEYESEKERA v. EUWARDIAS *et al.*

104—C, R. Galle, 11,792.

*Notice as to tender of security—Forthwith.**J. S. Jayawardene*, for appellant.*Keuneman*, for respondent.

September 1, 1921. DE SAMPAYO J.—

Objection is taken on behalf of the respondent to this appeal being entertained at all. The petition of appeal was filed on January 20, 1921, and the notice as to the tendering of security was not taken out till January 25. I think the rule laid down in *Fernando v. Nikulan Appu*, (1922) 22 N. L. R. 1, is applicable to the present case, and it must be held that the appellant had failed to give notice "forthwith" as required by section 756 of the Civil Procedure Code. The security was accepted on January 26, but notice of appeal which is required by the same section to be given "immediately" was not taken out till February 11. For a similar reason the notice given was too late. I am obliged to uphold the objection, whatever my own opinion might be, as I am bound by the decision quoted. The appeal is dismissed, with costs.

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Section 756 of the Civil Procedure Code was amended by Ordinance No. 42 of 1921 by the addition of the following paragraph:—

"In the case of any mistake, omission, or defect on the part of any appellant in complying with the provisions of this section, the Supreme Court, if it should be of opinion that the respondent has not been materially prejudiced, may grant relief on such terms as it may deem expedient."

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