[FULL BENCH.]

1920.

Present : Bertram C.J., De Sampayo J., and Schneider A.J.

VICTORIA *v.* THE ATTORNEY-GENERAL.

100—D. C. Kurunegala, 1,807.

Stamp duty—Ordinance No. 22 of 1909—Ordinance No. 32 of 1919—Must every copy of order nisi *be stamped ?—Translation of order* nisi*—Summons—Duplicate in Sinhalese and Tamil.*

Every copy of an order *nisi* for service on respondents must be stamped, and must be in the English language.

The summons served upon defendants should be in the English language, and should not be merely a translation.

THE appellant applied for letters of administration to the estate of one Ekanayaka Mudiyanselage Ausadahamy of Uhuniya.

Under section 531 of the Civil Procedure Code the appellant applied to have copies of the order *nisi* served on the respondents through the Court on affixing class stamps to the original copy of the order *nisi*, and not to the copies or their translations intended for service or for publication.

The learned District Judge (M. S. Shresta, Esq.) made the following order :—

The point for decision is whether every copy of an order *nisi* should be stamped, and whether a translation of it should also be stamped.

The Stamp Ordinance, No. 22 of 1909, provided that the following should be stamped : " Copy of decree *nisi*, order *nisi*, or interlocutory order without reference to number, copy of decree absolute, or any other decree." Section 3 (1) of the amending Ordinance, No. 32 of 1919, substitutes for these words the following : " Every decree *nisi*, order *nisi*, interlocutory order and decree absolute, and all other decrees, and each and every copy thereof." Though the wording is not quite happy, I think there can be no doubt that it was intended that every copy of an order *nisi* and every translation of it should be stamped. A translation is not the same thing as a copy, but it is obvious that it was not mentioned in the amending section referred to, because section 31, which requires the service of the order *nisi*, does not expressly mention that a translation of the order *nisi*, should be served on respondents whose language is not English. And, evidently, translations of the order *nisi* served on such respondents by analogy to summonses, translations of which are to be served under section 55 of the Civil Procedure Code on defendants whose language is not English. And it is to be noted that section 49 of the Code requires that with the plaint should be submitted as many copies as there are defendants, each, in the case of Sinhalese, Tamil, or Moor defendants, translated into

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the language of the defendant for whom it is destined. A translation is, therefore, according to this section a copy translated into the language of the defendant.

So far as I can see, a translation of an order *nisi* is served on a Sinhalese, Tamil, or Moor in view of the provisions contained in sections 49 and 55 of the Code. If sections 49 and 55 do not apply to an order *nisi*, a copy in English of the order *nisi* has to be served on each respondent. If these sections do apply to an order *nisi*, a translation served on a respondent must be considered a copy for the reasons already given.

So far as copies of the order *nisi* obtained for advertising it under section 532 of the Code are concerned, they need not, in my opinion, be stamped in view of the decision of the Supreme Court in *The Attorney-General v. Pedru*,[1] that the duty of advertising an order *nisi* is cast on the Court.

My order therefore is that all copies of the order *nisi*, including translations, should be stamped, excepting such copies of translations as are furnished for the purpose of advertising the order *nisi*.

Croos-Dabrera, for appellant.—Section 356 of the Code says that the procedure hereinbefore provided for the service of summons should be followed in the case of service of orders of Court. Section 379 says that all orders in applications by way of summary procedure should be served "subject to the rules hereinbefore prescribed for service of summons." An order *nisi* in a testamentary case is an order in an application by way of summary procedure. Under section 55 of the Code it is necessary that a translation should be served if the defendant does not understand English. This is the practice in all the Courts of the Island, and there is judicial decision in support of it. (*Marku v. Dalukathu.*[2]) There is no provision for the service of both a copy and translation. Section 59 says that service shall be made by delivering a duplicate, which means either a copy or translation. The majority of the people of this country do not understand English, and to hold that it is not necessary to serve a translation would work great hardship. Under the Criminal Procedure Code (section 44), what is required is either to serve a copy or a translation of summons or other process. Since the passing of the Civil Procedure Code, duplicate has been always understood to mean either a copy or translation.

The amendment introduced by Ordinance No. 32 of 1919 says that every copy of an order *nisi* must be stamped. Copy does not mean translation. An Ordinance imposing a burden, like the Stamp Ordinance, must be strictly construed, and as favourably as possible to the subject. *Re Estate of Margaret Wernham*;[3] *Donough on the Indian Stamp Act.*

Garvin, S.-G. (with him *Dias, C.C.*), for Crown, respondent.—The procedure regarding service of summons is to be found in section 59 and the subsequent sections. Section 59 requires only a duplicate

[1] *(1912) 15 N. L. R. 388.*
[2] *(1891) 9 S. C. C. 119.*
[3] *(1898) 4 N. L. R. 236.*

to be served. Duplicate cannot mean translation. There is nothing in section 55 which requires a translation to be served. The words " each translated to the language of the defendant " refer only to copies of plaint or concise statements. The presence of the words " attached thereto " shows that the summons is not to be translated. In *Marku v. Dalukathu* [1] the question does not seem to have been fully considered. In the case of *Perera v. James*,[2] it would appear that a translation was insisted on in addition to the copy. The matter must be considered *de novo*. The practice of serving a translation is not warranted by the provisions of section 55. English is the language of the Court, and an important document such as a process of Court should be served in the language of the Court. There is no guarantee that the translation served is always the correct one. The person served can always get it translated. [SCHNEIDER A.J.—The phrase " copy or concise statement " is a clerical error for " copies or concise statements," which is to be found at the beginning of the section.] This explains the presence of the word " each." Even in section 49 the phrase " copy or concise statement " is in the plural. The reference is to copies or concise statements of plaint. It is translations of these which have to be attached to the summons.

Croos-Dabrera, in reply.—There has been a *cursus curiæ* with regard to this practice, which has been confirmed by judicial authority and Courts should be slow in disturbing it. It is not always possible for a person who does not understand English to get an order of Court translated into his own language. It is the duty of the Court to see that the translations issued are correct. There is a special officer appointed for this purpose.

September 16, 1920. BERTRAM C.J.—

This is a case which arises out of an amendment of the Stamp Ordinance, which was effected by section 6 of Ordinance No. 32 of 1919. An earlier Ordinance of the same year, No. 10 of 1919, had substituted a new schedule B for the old schedule B of the Stamp Ordinance, No. 22 of 1909. In that revised schedule there was a duty on copies of decrees *nisi* or orders *nisi*. The words were " copy of decree *nisi*, order *nisi*, or interlocutory order without reference to number." By section 6 of Ordinance No. 32 of 1919 the following words were substituted: " every decree *nisi*, order *nisi*, interlocutory order, and decree absolute, and all other decrees and each and every copy thereof."

Under the old practice it appears that only the original copy first issued by the Court was stamped. The other copies were made by the party responsible for service, and it was thought not necessary to stamp them. The emphatic words " each and every

[1] *(1891) 9 S. C. C. 119.*

[2] *(1908) A. C. R. 122.*

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copy thereof" have made the matter clear, and it is not now seriously argued that all these copies do not require stamping. It appears, however, from the evidence taken in this Court that according to the existing practice the documents presented for the purpose of the service of orders *nisi* in testamentary cases are sometimes copies of the English original, and sometimes, when the respondent is understood to be a Sinhalese-speaking person or a Tamil-speaking person, they are Sinhalese or Tamil translations.

Mr. Croos-Dabrera, who appears for the appellant, contends that this is in fact the correct procedure; that these translations are copies within the meaning of the Civil Procedure Code, but are not copies within the meaning of the Stamp Ordinance, and that, consequently, service of an order *nisi* upon an English-speaking respondent involves the payment of a stamp duty, but service of the same order upon a Sinhalese- or Tamil-speaking respondent does not. His contention thus involves a double anomaly. The same word means different things in two connected Ordinances, and the process of the Court in the very same proceeding involves a stamp in one case, but not in another.

The Solicitor-General, on the other hand, maintains that this practice is erroneous; that the document served must in all cases be a copy of the original order; that that copy, like the original order itself, must be in the English language; and that the process thus in all cases involves the payment of a stamp duty. I think the Solicitor-General is right. The material sections of the Code are sections 531, 530, 377, 379, 356, 55, and 59. Section 531 says that the order *nisi* shall be served upon the respondent and such other persons as the Court shall think fit to direct. Section 530 indicates that a testamentary action is to be considered as an action under summary procedure. Section 377 refers to orders *nisi* under such procedure. Section 379 declares that, in the case of orders *nisi*, the service is to be service of a copy, and that this copy is to be served in the same manner and subject to the rules hereinbefore prescribed for the service of a summons in a regular action. The Solicitor-General maintains that the rules referred to are those found in section 59 and the following sections, a part of the Code which is in fact headed with the word "service." He maintains that, in order to ascertain how the copy of the order *nisi* is to be served, we need not look any further, and in particular, that we need not pay attention to section 55, upon which Mr. Croos-Dabrera mainly relies.

There is a great deal to be said for this contention. But I am, nevertheless, disposed to think that section 55 is one of the sections which section 379 was intended to bring into operation for the purpose of an order *nisi*. There are certain provisions in that section which I think require to be looked at. At any rate, I will consider the question from the point of view that section 55 is, in

fact, embodied for that purpose. Let us assume then that, in order to ascertain the manner in which a copy of the order *nisi* is to be served, we must examine the provisions relating to summonses in that section. Mr. Croos-Dabrera maintains that in the case of a Sinhalese-speaking or Tamil-speaking defendant the summons must be in the language of the person for whom it is destined. The Solicitor-General wholly traverses that contention. If we look at the initial words of the section, it appears that the Court is to order summons to issue in a form prescribed by the schedule. That form is in English. There is nothing in those initial words to declare that the summons has to be translated. If that was the intention of the section, the words " translated into the language of the defendant " or similar words ought to have appeared after the word " summons " and before " in form No. 15." But no such words appear. It is suggested, however, that we shall find the necessary words to give effect to Mr. Croos-Dabrera's contention in a subsequent sentence. That sentence says :-" the summons, together with such copy or concise statement, each translated into the language of the defendant, attached thereto, shall be delivered under a precept from the Court to the Fiscal." The important words in this sentence are " each translated into the language of the defendant," and the question is, To what do these words relate ? Are they connected with the word " summons," or are they not ? It is important to note that these words are in the form of parenthesis, marked off at either end by commas, and they are enclosed in a clause which is complete in itself. The words " attached thereto " can only be read with the words " such copy or concise statement." Grammatically speaking, therefore, it is not possible to connect the words " each translated into the language of the defendant " with the word " summons." The word " each " no doubt presents some difficulty. It appears that it would be more correct if instead of " each " we had the word " either, " and this apparent looseness of construction has suggested that the words " attached thereto " might be considered as displaced, and that they might be read as though they followed immediately upon the words " concise statement."

This is rather a violent suggestion. My brother Schneider, on the other hand, has pointed to what is obviously the correct explanation of the difficulty in these words. These words " each translated into the language of the defendant " are obviously modelled upon similar words in section 49. They there refer to a word in the plural—the word " copies "—" copies, each translated into the language of the defendant," and in section 55 that same expression also appears in the plural in the initial sentence " the copies or concise statements required by section 49." Later in the section, however, probably by a clerical error, the words are in the singular—" copy or concise statement." The accompanying phrase " each

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translated into the language of the defendant," which was originally applicable to an expression in the plural, has nevertheless remained. This expression is thus an incongruity. I think it is quite clear that this suggestion is the right one, and that the sentence need present no further difficulty. The phrase must therefore be construed, subject to that explanation, in its grammatical sense. It can have no connection with the word " summons."

It appears, therefore, that the intention of section 55 was that the summons served upon the defendant should always be a reproduction of the original summons issued by the Court, and that like that summons it should be in the English language. It is a formal document easily translatable, and as the Solicitor-General says, the balance of convenience is probably in favour of the defendant being served with a document in the precise terms for which the Court is responsible, and not with a translation of those terms made out by no responsible person. Under section 59 the summons is to be served by tendering a duplicate. The summons itself is issued in the English language, and I think it is clearly intended that the duplicate should be in the English language as well. It is quite true that under section 44 of the Criminal Procedure Code, where the summons is spoken of as being in duplicate, it is contemplated that one of the duplicates may be in another language. That arises on the express terms of that section. I do not think that the word " duplicate " in section 59 should be construed in any other than in its natural sense.

These seem to be the principles applicable to the question. But the matter has come before this Court on previous occasions in a series of cases which are conflicting. The first is *Marku v. Dalukathu.*[1] There the Court expressed the opinion that the summons delivered to the Fiscal in the case of a Tamil-speaking defendant should not be in the English language, but in the language of that defendant. For the reasons I have explained, it appears to me that that opinion, which was delivered apparently not upon a very full consideration of the matter, ought not to be followed. The next case is *Perera v. Jansz.*[2] The opinion expressed in that case was inconsistent with that expressed in the case just cited. It was here held that section 55 required that a translation of the summons in the defendant's language should be served as well as the summons itself. This view of the matter cannot, in my opinion, be a correct one. In my opinion, we ought to decline to follow both of these mutually conflicting decisions. There is a third case which ought to be mentioned, *Leno Hamy v. Nonno.*[3] That case relates, not to the " summons," but to the " copy of the plaint or concise statement " which in section 55 must accompany the summons. The Court there expressed the opinion that section 55 required that the

[1] *(1891) 9 S. C. C. 119.*
[2] *(1908) 4 A. C. R. 122.*
[3] *(1913) 17 N. L. R. 378.*

accompanying documents should comprise, not only a copy of the plaint or concise statement in the original, but also a translation of the plaint or concise statement. It is not necessary for us for the purposes of this case to express any opinion upon that view of the matter. But I think it is a view which may subsequently require further consideration.

The question arose in this case owing to the fact that, as there was some delay in the payment of stamp duty, the Secretary had to calculate the stamp duty. The matter was brought before the District Judge, and the District Judge expressed the opinion by his order that both the English copies and the translations which it was proposed to serve should bear a like stamp. That order appears to have been made upon a misconception. The order should be, that in all cases copies for service should be in the language of the original order, and that they should all alike bear the stamp prescribed by law. The appeal, therefore, in my opinion, should be dismissed, but the order should be varied. There will be no order as to costs, as the Crown does not press for them.

DE SAMPAYO J.—I entirely agree.

SCHNEIDER A.J.—I agree.

Appeal dismissed.