

1913.

Present: Pereira J. and Ennis J.

LENO HAMY *et al.* v. NONNO *et al.*

80—D. C. Kalutara, 3,684.

*Several defendants who are not conversant with the English language—
Copy of plaint or concise statement of its contents with translations
ought to be served on defendants.*

In a case in which there are several defendants who are not conversant with the English language, the requirements of section 55 of the Civil Procedure Code will not be complied with unless not only a translation of the plaint or of a concise statement of its contents, but a copy of the plaint or a concise statement of its contents as well, is served on each defendant.

As regards serving concise statements of the contents of plaints instead of copies, the discretion of the proctor concerned should not be too narrowly scrutinized, as he has to steer clear of courses that might lead to fatal objections to his proceedings. When the averments in the plaint are such that a concise statement is not likely to give the defendants sufficient notice of all the rights and interests involved in the action, a full copy of the plaint should be served on the defendants.

¹ (1881) 4 S. C. C. 140.

² (1883) 5 S. C. C. 174.

³ (1888) 8 S. C. C. 133.

⁴ (1895) I. L. R. 20 Bom. 697.

⁵ (1897) I. L. R. 25 Cal. 29.

THE facts appear from the judgment.

F. J. de Saram, for appellant.

Elliott and B. F. de Silva, for respondents.

Cur. adv. vult.

July 29, 1913. PEREIRA J.—

This is an appeal from the order of the District Judge dated the 13th May, 1913, which, although it deals, *inter alia*, with the respondent's right to take out a writ against the plaintiff, I can only look upon as an order under section 214 of the Civil Procedure Code in review of the Secretary's taxation of the bill of costs tendered by the respondent against his own clients, the appellants, and I shall deal with it only as such. It was strenuously pressed by the respondent's counsel that the taxation dealt with was the taxation of a bill against the defendants in the case. On a careful examination of the proceedings I find that that is not so at all. On the 13th July, 1911, the respondent filed what he termed the "plaintiff's bill of costs payable by the parties *pro rata*," and moved for notice of taxation on the defendants. Eventually that bill was taxed at Rs. 8,178.35. The plaintiffs personally were no parties to that taxation. The proctor professed to act for them, but their interests were not independently watched or protected, and in view, especially, of the provisions of section 215 of the Civil Procedure Code, I do not think that the taxation of that bill gave the proctor any claim or right as against his own clients, the plaintiffs. But that is not the bill that we are now concerned with. On the 19th December, 1912, the respondent filed his bill of costs payable by his own clients (the plaintiffs) and moved for notice of taxation on them. Thereafter the proxy given by the appellants in favour of the respondent was cancelled, and the appellants secured the services of another proctor, and in his presence the bill was taxed. It is this taxation that was revised by the District Judge, and in respect of which the order appealed from was made. Inasmuch as the appellants had more than a month's notice of the taxation as required by section 215 of the Code, the taxation was in order, and the question is whether the objections to the items in the bill pressed by the appellants are sound. The objections involve two questions, and our decision on those two questions will practically decide this appeal. The two questions are, (1) whether, under section 55 of the Civil Procedure Code, in a case in which there are several defendants who are not conversant with the English language, a copy of the plaint or a concise statement of its contents and also a translation of such copy or concise statement should be served on each defendant; and (2) whether in this case the respondent should have applied to the Court under section 49 of the Code to file concise statements instead

1913.

Leno Hamy
v. Nonno

1913.

PEREIRA J.

*Leno Hamy
v. Nonno*

of copies of the plaint for service on the defendants. As regards the first question, I have no hesitation in answering it in the affirmative. Words cannot be plainer than those used in section 49 and 55. Section 49 requires the plaintiff, when his plaint is admitted, "to present as many copies, on unstamped paper, of the plaint as there are defendants." Section 55 begins with the words, "Upon the plaint being filed, and the copies or concise statements required by section 49 presented, the Court shall order a summons," &c. And, later, the same section provides, "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 of the Fiscal," &c. The case of *Marku v. Dalukatu* was cited to us from the *Supreme Court Circular, vol. IX., p. 119*. In that case it appears that it was held that under section 55 of the Civil Procedure Code, in the case of a defendant whose language was Tamil, it was sufficient if a translation only of the summons was issued for service on him, but the case is hardly an authority on the interpretation to be placed on the words used in the section with reference to copies of plaints and concise statements. The word "plaint" is not used in the section. The word used is "copy," so that it is clear that the translation referred to is not a translation of the "plaint" but of the "copy," that is to say, of the copy (or copies to the number of the defendants in the case) required to be handed in under section 49. I think that this interpretation is in accordance with the long-established practice of the Courts of the Island. It was certainly agreed in the Court below that such was the practice of the District Court of Kalutara. As regards the second question mentioned above, the proctor had to exercise his judgment in conducting his case. He had to steer clear of courses that might lead to fatal objections to his proceedings. This is an action for the partition of a large number of lands, and the rights and title of the different parties had to be clearly set forth in the plaint. I have read the plaint, and I am not prepared to say that it admits of being reduced to such a concise statement as can give sufficient notice to the defendants of the rights and interests claimed by each party to the case.

For the reasons given above, in so far as the order appealed from allows the contested items in the bill of costs, I would affirm it with costs. The question whether the respondent is entitled to take out a writ in this case against the plaintiff, or whether he should proceed as provided for in section 215 of the Civil Procedure Code, should, I think, be reserved for decision on such further application as either party might be advised to make.

ENNIS J.—Agreed.

Affirmed.