1937 *Present* : **Moseley J. and Fernando A.J.**

## KOWLA UMMA *v.* MOHIDEEN.

*99—D. C. Colombo, 3,962.*

*Foreign judgment—Action on the judgment of an Indian Court—Proof of copy —Seal of Court or signature of Judge—Evidence Ordinance, ss. 74, 76, and 77.*

**Where, in an action brought in Ceylon on the judgment of an Indian Court it is sought to produce in evidence a copy of the judgment,—**

***Held*, that the copy produced must either be sealed with the seal of the Court or be signed by the Judge, who must attach to his signature a statement in writing to the effect that the Court has no seal.**

APPEAL from a judgment of the District Judge of Colombo.

*N. Nadarajah* (with him *S. Mahadeva*), for defendant, appellant.

*A. L. J. Croos Da Brera*, for plaintiffs, respondents.

*Cur. adv. vult.*

November 2, 1937. MOSELEY J.—

The plaintiffs obtained judgment against one Thana Mohamed in the Subordinate Court of Tuticorin on November 29, 1928, for Rs. 1,100 together with interest and costs. The defendant died in 1929 and this action was brought in 1935 in the District Court of Colombo against the executrix of his estate for the amount due under the said judgment. The parties went to trial on certain issues, all of which were answered in favour of the plaintiffs for whom judgment was given. Against that judgment the defendant appeals on several grounds, of which, in view of the order which we propose to make, I need only refer to one. That ground of appeal is that the judgment of the Subordinate Court of Tuticorin, marked P 1 in the proceedings, was wrongly admitted in evidence as it was not duly proved.

[1] *31 N. L. R. 184.*

The learned District Judge held that it could not be disputed that judgment had gone aganst the defendant in the Subordinate Court of Tuticorin; that P 1 was a duly certified copy of the judgment of that Court and was therefore admissible in evidence under sections 74 and 76 of the Evidence Ordinance (No. 14 of 1895).

Now, section 74 of that Ordinance defines what are public documents, among which, according to sub-section (1) (c), are documents forming the Acts or records of the Acts of public officers, legislative, judicial, and executive, whether of the Colony, or of any other part of His Majesty's dominions, or of a foreign country. Section 76, the aid of which was invoked by the District Judge, and, together with section 77, by counsel for the respondents, before us, provides for the certification of public documents, but the wording of the section makes it quite clear that the only public documents contemplated are the Acts or records of the Acts of public officers of the Colony. That this is so is evident at the outset where the section imposes a duty upon a public officer to give a copy, on payment of fees, of a public document wihch he has in his custody. The section obviously cannot impose a duty on a public officer other than of the Colony. Any virtue therefore with which the section subsequently clothes such a document is limited to public documents of the Colony. In my view, the District Judge was wrong in holding that the document was admissible under sections 74 and 76. Section 77 merely provides for the production of certified copies in proof of the contents of such public documents.

The certification of public documents of this nature of a "foreign country" is provided for by section 78 (6), but this obviously is not intended to apply to public documents of any other part of His Majesty's dominions, since the section requires certification under the seal of "a notary public or of a British consul or diplomatic agent". It seems therefore that the section which provides for the admission of a document of this nature, if properly certified, is section 82. This section is as follows:—

> "82. When any document is produced before any Court purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of justice in England or Ireland without proof of the seal, or stamp, or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims.
>
> "And the document shall be admissible for the same purpose for which it would be admissible in England or Ireland".

It is necessary therefore to consider what documents, by the law in force in England or Ireland, would be admissible in the Courts of those countries without proof of the seal, or stamp, or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed. Judicial proceedings of colonial Courts may be proved in any Court of justice in England by an authenticated copy of such judgment (*Halsbury, vol. XIII., p. 664*). Section 7 of the Evidence

Act, 1851, provides that the authenticated copy of the judgment of a Court of any British Colony must purport either to be sealed with the seal of the Court to which the original document belongs, or if the Court has no seal, to be signed by the Judge or one of the Judges of the Court who must attach to his signature a statement in writing on the copy that the Court has no seal. Therefore before a judgment of an Indian Court can be received in evidence in a Court of the Island, it must satisfy one or other of those requirements.

The document in question, P 1, does in fact bear a seal on the reverse side, but it is not the seal of the Subordinate Court of Tuticorin. It also bears the words "True copy. (Signed illegibly) Superintendent of Copyists". Thus neither of the alternative requirements has been fulfilled. The judgment was therefore, in my view, wrongly admitted in evidence.

It would seem to be due to an oversight on the part of the Indian Court that the plaintiffs were not furnished with a document which could be proved in the Courts of the Island. It would fall somewhat hardly on them if their action were to be dismissed. I think that the proper order would be to allow the appeal with costs here and in the District Court, to set aside the judgment of that Court and send the case back for trial before another Judge. In these circumstances, it is unnecessary to advert to the other grounds of appeal.

FERNANDO A.J.—I agree.

*Case remitted.*