

R. v. FAIZ BUKSH.

[Criminal Jurisdiction (Corrie, C.J.) March 5, 1945.]

Perjury—Evidence of statements made on oath—whether evidence as to English translation admissible.

In a trial for perjury alleged to have been committed during a criminal trial, the shorthand reporter was called by the prosecution to give evidence (refreshing her memory from her notes) as to statements made by the accused in his evidence at the trial. Objection was taken by counsel for the defence on the ingenious ground that this was hearsay since it was only the shorthand reporter's evidence as to what was said to the Court in English by the Court Interpreter—and although the accused was present at the time he could not understand English. The Court Interpreter was called to give evidence that he had interpreted faithfully what the accused had said but was not asked to recall his evidence in detail.

HELD.—The English translation must be regarded for all purposes as representing the evidence given.

Obiter Dictum.—In the case of a statement made to a police officer only the constable who makes the translation can verify the statement.

[**EDITORIAL NOTE.**—Perjury is defined by s. 102 of the Penal Code, Cap. 5.]

Cases referred to :—

R. v. Boagh Singh [1913] (Can) 14 Dig. 264 para. 2,677 note (a).

RULING ON AN OBJECTION TO THE ADMISSIBILITY of evidence taken in the course of a trial for perjury. The argument fully appears from the judgment.

E. M. Prichard for the Crown.

T. R. Sharma for the prisoner.

CORRIE, C. J.—Crown Counsel has just cited authority as against your objection, Mr. Sharma—the Canadian case of *R. v. Boagh Singh* and during the interval I have had an opportunity of considering the point you have raised. The conclusion I have come to is that, on principle, quite apart from authority, your objection must be overruled.

You are objecting that the witness can only testify as to the English translation of the evidence that the accused gave at the trial of Nasrudin, and that such translation is hearsay. The English translation, however, was made by the official interpreter as part of the regular procedure of this Court. It was made in open Court; it was subject to challenge as to its correctness on the part of the defence; and it was, in fact, the English translation of the evidence of the various witnesses, and the English translation alone, which formed the basis of the judgment of the Court. It seems to me that the translation so accepted and so used must be regarded for all purposes as representing the evidence that was given.

The position is clearly distinct from that in which a person makes a statement to a police constable, who translates it to some other person, who writes it down in a different language. In that case only the constable who makes the translation can verify the statement. Here, as I have said, the position is quite distinct.

The objection is over-ruled.

in re THE WILL OF JAIMAL DECEASED. BATTAN SINGH AND OR *v.* AMIRCHAND AND OR.

[Probate Jurisdiction (Corrie, C.J.) June 1, 1945.]

Testamentary capacity—testator alleged to be of unsound mind, memory or understanding at time of execution—evidence that testator was of sound mind at time of giving instructions for preparation of the will—how far proof of unsound mind at time of execution is relevant.

The deceased Jaimal gave instructions to a solicitor's clerk for the preparation of a will on 31st March 1944. He executed this will on 3rd April 1944 and died on 4th April, 1944. There was then in existence an earlier will dated 25th February, 1944 and the plaintiffs as executors of the earlier will claimed that the Court should pronounce against the will dated 3rd April, 1944, and decree probate of the will dated 25th February, 1944. The solicitor's clerk who received instructions from the deceased on 31st March 1944 gave evidence suggesting that on that occasion the deceased's memory was not defective. The solicitor and others present on 3rd April 1944 when the will was executed gave evidence as to his condition at that time.

HELD.—Following *Parker v. Felgate*, it being found that at the time of giving instructions for preparation of his will deceased was of sound mind, memory and understanding it is unnecessary to decide the precise condition of his memory at the time of execution of the will if he clearly understood the provisions of the will he was executing and made it clear that they were in accordance with his wishes.

[**EDITORIAL NOTE.**—This judgment is the subject of an appeal (pending) to the Privy Council.]

Cases referred to : —

(1) *Parker v. Felgate* [1883] 8 P.D. 171 ; 52 L.J.P. 95 ; 47 J.P. 808 ; 44 Dig. 251.

(2) *Perera and ors v. Perera and or* [1901] A.C. 354 ; 70 L.J.P.C. 46 ; 84 L.T. 371 ; 17 T.L.R. 389 ; Dig. Supp. Vol. 33 case 264a.

ACTION for probate. The facts appear from the judgment.

D. M. N. McFarlane and *N. S. Chalmers*, for Battan Singh, Walaiti Ram and Khazan Singh executors of the will of 25th February 1944, plaintiffs.