

## WIJESINGHE MAHANAMAHEWA AND ANOTHER

v.

## AUSTIN CANTER

COURT OF APPEAL.

T. D. G. DE ALWIS, J. AND DHEERARATNE, J.  
C.A. 70/77.- D.C. MOUNT LAVINIA 77483/M.  
FEBRUARY 5, 6 AND 11, 1986.

*Copyright—System of Sinhala shorthand—Rival systems (Canter system and Wijaya system)—Infringement—Copyright Act of 1911.*

The plaintiff (Austin Canter) formulated a system of Sinhala shorthand (Canter system) based on the Gregg system of shorthand in six works (X1 to X6) published between 1952 to 1964. The 1st defendant Wijesinghe Mahanamahewa put forward a system of Sinhala shorthand (Wijaya system) (Y1) also based on the Gregg system which he published in 1967. Although the 1st defendant adapted the Gregg signs and a few signs used by the plaintiff, Y1 did not merely consist of those signs only. It also contained a wealth of other information regarding shorthand. The plaintiff sued the defendant for infringement of copyright by publishing substantially the plaintiff's shorthand system.

**Held—**

Whether a reproduction is substantial must be decided by its quality rather than its quantity. The reproduction of a part which by itself has no originality will not be a substantial part of the copyright and therefore will not be protected.

Copyrights are not concerned with the originality of ideas but with the expression of thought.

**Held further—**

(1) The 1st respondent had adapted the entire Gregg symbols which the plaintiff had himself copied from Gregg. They could not therefore form a substantial part of plaintiff's works, owing to their lack of originality.

(2) The symbols used by the 1st defendant which are similar to the symbols used by the plaintiff are so small in number, that they cannot be said to form a substantial part of the plaintiff's works.

As the 1st defendant had not reproduced a substantial part of the plaintiff's works there could not be any infringement of the plaintiff's copyright.

**Cases referred to:**

- (1) *Pitman v. Hyne*—(1884-1885) TLR Vol. 1, p. 39.
- (2) *Mac Millan & Co., Ltd. v. Cooper*—(1923-1924) TLR 186, 190.
- (3) *University of London Press Ltd. v. University Tutorial Press Ltd.*—[1916] 2 Ch.D. 601, 608, 609.
- (4) *Warwick Film Productions Ltd. v. Eisinger and Others*—[1967] 3 All ER 367.
- (5) *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd.*—[1964] 1 All ER 481.

APPEAL from judgment of the District Judge of Colombo.

*H. W. Jayewardene, O.C.* with *Luxman Perera* and *Miss T. Keenawinna* for defendant-appellant.

*J. Herath* for plaintiff-respondent.

*Cur. adv. vult.*

April 4, 1986.

**DHEERARATNE, J.**

This is an appeal made by the defendants from the judgment of the District Court, awarding damages for the plaintiff against them, for infringement of copyrights of the plaintiff, pertaining to a system of Sinhala shorthand.

For the proper appreciation of the facts involved in this case, it would not be out of place, to begin by stating what shorthand is, and making a brief reference to its history. Shorthand is a system of writing rapidly, by substituting characters, symbols or abbreviations for letters, words and phrases. This art is not of recent origin. It is said to have existed in ancient Greece and Egypt. In the 1st century B.C. in Rome, Marcus Tullius Tiro, devised a system with which he took down the speeches of Cicero. This system, known as Tironian, is said to

have been employed by others to record the proceedings of the Roman Senate. However, the origin of modern shorthand, is traced to England, where a number of different systems thrived, at least from the 16th century A.D. The best known English systems are, the Pitman system, introduced by Issac Pitman in 1837, and the Gregg system, introduced by John Robert Gregg in 1888. Gregg took his system to the U.S.A. in 1893. The basic difference in these two systems is this. The Pitman system is based strictly on phonetic principles, with characters or symbols representing each sound or combination of sounds, while the Gregg system is based purely on linguistic principles, with characters or symbols representing the letters of the English alphabet. Gregg characters are not shaded and may be written on unruled paper, as the position in relation to the line of writing, is not significant. (New Standard Encyclopaedia 1981). These two English systems, in course of time, spread to many other countries and languages.

With the impending switch over of government business to Sinhala in Sri Lanka, a number of enterprising men proficient in Sinhala, embarked on evolving Sinhala shorthand systems. One was the plaintiff Austin Canter, another was the 1st defendant Wijesinghe Mahanamahewa. That the government of the day too evinced an interest in this direction, is seen by the fact that the Sinhala shorthand systems came within the purview of two government committees of inquiry, one headed by Sir Arthur Wijewardene in 1952, and another headed by Dr. Nandadeva Wijesekera in 1964. Both the plaintiff and the 1st defendant claim to have appeared before these committees and presented their respective shorthand systems. Nothing is known as to what transpired before the Wijewardene Committee, because its report was not produced at the trial. However, the 1st defendant annexed to his pleadings and produced at the trial, the report of the Wijesekera Committee, which had been published as a sessional paper in 1969. It is relevant to note that before the Wijesekera Committee, eight persons had presented their shorthand systems. Out of these eight, four persons including the plaintiff and the 1st defendant, had based theirs on the Gregg system.

The plaintiff had been a Sinhala teacher, whose knowledge of English, in his own admission, did not go beyond the alphabet. He studied Sinhala shorthand by himself, evolved a system, and became a teacher in Sinhala stenography. He had been lecturing in Sinhala

shorthand at the government technical colleges since 1956. There are six published works in Sinhala shorthand to his credit. They are "Canter Laghulekhanaya" (Canter's Shorthand) 1952, produced marked X1; "Canter Wega Pada Hana Mala" (Canter's Speed Shorthand Series) 1954, produced marked X2; "Gregg Hela Pada Hana Puhunuwa" (Gregg Sinhala Shorthand Exercise) 1957, produced marked X3; "Canter Hela Pada Raliya" (Canter's Sinhala Shorthand Series) 1960, produced marked X5; "Gregg Kramayen Sinhala Laguhulekhana Guru Rukula" (Sinhala Shorthand in Gregg System—Handbook for Teachers) 1962, produced marked X64; and "Wega Rukula or Hela Pada Hana" (Speed Aid or Sinhala Shorthand) 1964, produced marked X6. Of these books X1, X2, X5 and X6 make no reference to Gregg. In X3 the title itself suggests that the book is on the Gregg system, while in X4, in the preface, the plaintiff acknowledges that the 'Canter system' is based on the Gregg system. But, unlike the Gregg system, the Canter system, although having its origin in the former, is essentially written on ruled paper.

The 1st defendant Wijesinghe Mahanamahewa, had been an English stenographer since 1952, using the Gregg system. While studying English stenography in 1948, he got himself interested in Sinhala stenography. Thereafter he devised a system of Sinhala shorthand called the 'Wijaya system' based on Gregg. In 1967, he published his book on Sinhala shorthand called 'Wijaya Laghulekhana Sangrahaya' (Wijaya's Compendium of Shorthand) produced marked 1D3, in Roneoed Form and offered it for sale. In 1D3, the preface refers to the fact that his shorthand system is based on Gregg. In 1968, he negotiated with the 2nd defendant company, to publish his book in printed form. This was done in 1972 (produced marked Y1). This is where the trouble arose.

The plaintiff filed this action on 14.11.1972, alleging that his copyrights have been infringed by the defendants. By para. 5 of the plaint, the plaintiff averred that he is the author of X1 to X6. By para. 6, he averred that those books were composed and compiled by him largely based on the forms used in the Gregg system. Para. 7 reads that the plaintiff is presently engaged in teaching students of the Sri Lanka Technical College in a shorthand system known as the "Canter Shorthand System", which had been recognized in Sri Lanka from about the year 1951 and the plaintiff claims that he is the "proprietor" of the copyrights to 'Canter's Shorthand System in Sinhala'. Para. 8

reads that without the plaintiff's consent and authority, on or about 1972, the 1st and 2nd defendants reproduced and published the book called "Wijaya Laguhulekhana Sangrahaya" (Wijaya's Compendium of Shorthand) marked Y 1. Para. 9 reads that in Y 1, the defendant claims that his work is based on the Gregg English shorthand system. Para. 10 reads that the defendants have infringed the plaintiff's copyright in 'Canter's Sinhala Shorthand System' by reproducing and or publishing substantially the plaintiff's Sinhala Shorthand system. Para. 11, which is quite significant, states that the plaintiff annexes to his plaint marked A, (later produced marked X 10) a document showing in the columns reading from left to right:-

- (1) Letters of the English alphabet used in Gregg's shorthand system;
- (2) Signs of the Gregg shorthand system representing such letters of the English alphabet;
- (3) Letters of the English alphabet selected by the plaintiff and used in the plaintiff's system;
- (4) The signs adapted by the plaintiff from the Gregg shorthand system to represent the said letters in the Sinhala alphabet;
- (5) The letters of the Sinhala alphabet chosen by the 1st defendant;
- (6) Gregg's shorthand forms claimed to have been chosen by the 1st defendant to represent the said letters of the Sinhala alphabet;
- (7) Signs adapted by the plaintiff for frequent usage; and
- (8) Signs adapted by the 1st defendant for frequent usage.

Para. 12 reads that "the said infringement" by the 1st and 2nd defendants of the plaintiff's copyrights, has caused the plaintiff irreparable and irremediable loss, damage and injury.

The defendants in their joint answer admitted the authorship of the plaintiff's books XI to X6. While denying any infringement of copyrights, it was averred that after much research, the 1st defendant

himself had evolved a system of shorthand based on the Gregg system. The defendants appended to their answer, a copy of the report of the Wijesekera Committee published in 1969, in which reference is made both to the plaintiff's system and the 1st defendant's system.

The case proceeded to trial on the following main issues:—

- (1) Is the plaintiff the author of a Sinhala shorthand system based on the Gregg system as pleaded in para. 6?
- (2) Have the defendants by publishing Y1 infringed the plaintiff's copyright in the said Sinhala shorthand system by reproducing and publishing substantially the plaintiff's Sinhala shorthand system?
- (4) Do the systems employed by the plaintiff and the 1st defendant have a common source in the English Gregg system?
- (5) Is the plaintiff's action prescribed in law?
- (7) Is the plaintiff's Sinhala shorthand system entitled in law to a copyright?

The learned trial judge gave judgment for the plaintiff as prayed for, answering issues No. 1, 2, 4 and 7 in the affirmative and issue No. 5 in the negative.

The law relating to copyright in force at the time this action was filed, was the Copyright Act 1911 of England. In terms of section 1 of that Act, what is susceptible of copyrights, as far as it applies to the facts of this case, is an "original literary work." The Act confers upon the owner of the copyright of a literary work, *inter alia*, exclusive right to produce or reproduce the work or any substantial part thereof. Section 10 of the Act provides that an action in respect of an infringement shall not be commenced after the expiration of 3 years next after the infringement.

Learned counsel for the defendant-appellants contended, assuming that the plaintiff owns any copyright, the action is prescribed in law, because Y1 was originally published in 1967 as 1D3 and offered for sale. As to whether 1D3 was actually published in 1967, we do not have the benefit of any positive finding of the learned trial judge. Assuming that it was published in roneoed form, printing and

publishing the book in 1972, would in my opinion, be a different act of infringement, which could give rise to another cause of action and I find it difficult to persuade myself to think otherwise.

Before I proceed to deal with the other submissions made by the learned counsel for the defendant-appellants, it is necessary to discern the real complaint of the plaintiff, regarding the act of infringement alleged to have been committed by the defendants. It appears to me that the gravamen of the plaintiff's complaint is contained in the document X10, filed along with the plaint. A close scrutiny of this document would reveal the following matters:—

- (a) Symbols used by Gregg for some letters of the English alphabet have been used by the plaintiff for the corresponding letters of the Sinhala alphabet. The 1st defendant has done the same;
- (b) For Sinhala vowels 'අ', 'ආ', 'ඈ' and 'ඉ' the plaintiff has used a variation of Gregg's symbol used to indicate the letter 'A'. The 1st defendant's symbols used to indicate these 4 Sinhala vowels are quite similar;
- (c) For the Sinhala consonant 'ඞ' the plaintiff has used the Gregg sign for the letter 'f', the letter 'f', having no equivalent sound in Sinhala. The defendant has done the same;
- (d) For the Sinhala letter 'ඊ' the plaintiff has used the symbol employed by Gregg for the letter 'V'. So has the 1st defendant.
- (e) For the Sinhala letter 'උ' the plaintiff has devised a symbol and the 1st defendant has used the same;
- (f) For the sign used in the Sinhala language to indicate that a consonant is not followed by a vowel sound (හල් කිරීම) the plaintiff has adapted a certain sign. The 1st defendant has used the same.

It could be seen that the similarities enumerated in (a), (b) and (d) could be the result of two persons adapting Gregg signs. But it appears to me, that similarities in (c), (e) and (f) cannot certainly be due to any coincidence. In fact, although the 1st defendant denied copying any symbols from the plaintiff's works, he frankly admitted that he purchased a copy of XI in 1952. Perhaps, this may account for the similarities in (c) (e) and (f).

I would now refer to the plaintiff's evidence on this matter:

- Q – What is your complaint?
- A – That the system of the 1st defendant has been selected on the same strokes put by me.
- Q – In respect of the existing Gregg system signs which you have used for the Sinhala alphabet he has used the identical signs?
- A – Yes, these new signs which I say I invented for the first time in respect of certain letters of the Sinhala alphabet have been used by the 1st defendant.
- Q – Have you shown the similarities in columns 5 and 6 (of X10)?
- A – Yes.
- Q – How many signs has the defendant copied?
- A – Eight. What I have taken from the Gregg system, the defendant has copied it entirely. Eight of my special signs have been copied by him.

Again, in answer to court, the plaintiff has given the following evidence:

- Q – Has the defendant used any signs other than Gregg signs and your signs?
- A – He has used entire Gregg signs.
- Q – Are there signs of his own which are not found in your work or in Gregg system?
- A – No, what I say is that he has no right to use the Gregg system because I have obtained the rights. He has no right to use my symbols and signs.

The plaintiff, as stated earlier, was one of the persons who appeared before the Wijesekera Committee in 1964. This committee was appointed to report on the suitability of various shorthand systems, and its report as stated earlier, was published only in 1969. The plaintiff stated in court, that until 1972, when he found a reference to that report in the preface to Y1, he was unaware that this report had been published and that he made no attempt to find out the



findings of the committee earlier. This appears to me to be strange conduct on the part of a person who appeared before that committee, to seek the advancement of his own shorthand system. The reason for this denial of the knowledge of the report, is probably due to the fact that the report makes pointed reference to the existence of four systems of Sinhala shorthand based on Gregg. These systems are given side by side, in tables published in the report. One cannot but observe the striking similarities between the signs used by the plaintiff and the defendant, when one refers to those tables. In court, the plaintiff was vehement in his denial that he knew of the existence of any other Sinhala shorthand systems based on Gregg, until he read the report of the Wijesekera Committee in October 1972. Surprisingly, this is what the plaintiff had chosen to say in his preface to X4 published in 1964; literally translated into English it reads—

“This book is a general aid to fashion in a uniform style, the knowledge of those who have already learnt and those learning Sinhala shorthand based on the Gregg system. It will generally serve anybody who has learnt Sinhala shorthand based on the Gregg system. It is a treasure trove to those who follow the ‘Canter’ and other systems which are considered to be based on the Gregg system and which are being currently practised in the country.”

It appears from the evidence of the plaintiff that by the letter produced marked X8 dated 22.06.1954, he got authority from McGraw-Hill Book Co. of New York, to “adapt and translate Gregg system of shorthand into Sinhala language for Ceylon.” It has not been established by the production of that letter that McGraw-Hill Co. has any copyrights to the Gregg system and that the plaintiff got any assignment of those copyrights. Even if it is established that McGraw-Hill Book Co. did have any copyrights, X8 would in my opinion, only serve to make the plaintiff a licensee to use the copyrights, the ownership of the copyrights remaining with McGraw-Hill Book Co. I am in agreement with the learned counsel for the defendant-appellants that the learned trial judge was in error when he stated in his judgment that—

“if in fact it was the plaintiff who first adapted the English Gregg system of shorthand for the Sinhala language as claimed by him, then there is no reason why the system should not be entitled to copyright, particularly as he has obtained the exclusive right to adapt the Gregg system.”

Of course, one cannot deny that there can exist a copyright in a system of shorthand. It was so decided in the case of *Pitman v. Hynes*(1). But, the system must be shown to exist in any work or works, for otherwise, it would take more the guise of a 'patent' rather than a copyright.

I will now examine whether the plaintiff has established any claim to copyrights in his books X1 to X6. Learned counsel for the defendant-appellants contends that these books cannot attract copyrights as they are not 'original literary works' because they are plagiarized and further no skill or labour has been employed by the plaintiff to produce them. It is apposite to quote in this connection the observations of Lord Atkinson in *MacMillan and Co., Ltd. v. Cooper*(2):

"What is the precise amount of knowledge, labour, judgment or literary skill or taste which the author of any book or other compilation must bestow upon its composition in order to acquire copyrights within the meaning of the Copyright Act of 1911, cannot be defined in precise terms. In every case it must depend largely on special facts of that case, and in each case be very much a question of degree."

As regards the requirement of originality, it appears to me that copyrights are not concerned with the originality of ideas, but with the expression of thought. In the case of *University of London Press Ltd. v. University Tutorial Press Ltd.*(3) Peterson, J. said:

"In my view the words 'literary work' cover work which is expressed in print or writing irrespective of the question whether the quality or the style is high. The word 'literary' seems to be used in a sense somewhat similar to the use of the word 'literature' in political or electioneering literature and refers to printed matter. Papers set by examiners are in my opinion 'literary work' within the meaning of the Act.

Assuming they are 'literary work', the question is whether they are original. The word original does not in this connection mean that the work must be the expression of original or inventive thought. Copyrights are not concerned with the originality of ideas, but with the expression of thought and, in the case of 'literary works' with the expression of thought in print or writing. The originality which is

required relates to expression of thought. But the Act does not require that the expression must be in original or novel form, but that work must not be copied from another work, that it shall originate from the author."

Copinger on the Law of Copyrights (7th edition) at page 52 states:

"It is submitted that copyright can be claimed in a work which is a piracy of another copyright work, provided that the piracy is not a slavish copy, or possibly obtained by fraud."

If one were to examine plaintiff's works X1 to X6, one would find that they do not merely contain the characters or symbols representing the alphabet taken from Gregg. They contain a wealth of other material, like rules of shorthand, characters or symbols for various chosen words, phrases and idioms and the like. I have no doubt that the plaintiff has used in abundance his knowledge, labour, judgment and skill to produce his books X1 to X6. Copying from Gregg the symbols representing the alphabet, does not to my mind, make the plaintiff's works piratical, lacking in originality, and thereby destitute of any copyrights.

The next question to be decided is whether the defendants have infringed the copyrights of the plaintiff by "reproducing the work or any substantial part thereof in any material form whatsoever," within the meaning of the Copyright Act. The complaint of the plaintiff as could be seen from the plaint and his evidence, is that the 1st defendant has reproduced the same characters or signs, which he, the plaintiff adapted from Gregg and eight signs he designed himself. I lay emphasis on this fact, because, learned counsel for the plaintiff—respondent drew our attention to certain passages in the cross—examination of the 1st defendant, indicating that some rules of writing shorthand, containing in Y1, appear to be similar to those containing in X1 to X6. This was certainly not the case of the plaintiff, either in his plaint or his evidence, and therefore, I am not inclined to attach much importance to those similarities. Although the 1st defendant has adapted the Gregg signs and a few signs used by the plaintiff, Y1 does not merely consist of those signs only. It also contains a wealth of other information regarding shorthand.

Learned counsel for the defendant—appellants contends that what has been reproduced by the 1st defendant does not form a substantial part of the plaintiff's copyright works. Learned counsel for the

defendant-appellants placed strong reliance in this connection, on the case of *Warwick Film Productions Ltd. v. Eisinger and Others* (4). The facts of that case show a marked similarity to the facts of the instant case. I will briefly refer to the facts of that case. In 1911 or 1912 a book based on the well-known three trials in which Oscar Wilde figured, was published by an anonymous author, who obviously had access to shorthand notes of the three court proceedings. This book was entitled 'Three Times Tried'. In 1948 the famous biographer Montgomery Hyde, published his book 'The Trials of Oscar Wilde'. The account of the trial proceedings in Hyde's book was substantially drawn from 'Three Times Tried', but certain portions were Hyde's own contribution. Two companies contemporaneously ventured to produce two separate films based on the tragedy of Oscar Wilde. The plaintiff company which produced one film, had obtained an exclusive licence of certain rights of copyrights in Hyde's book. In addition, the plaintiff company claimed copyright in 'Three Times Tried', which claim, it failed to prove at the trial. The script for the 2nd film was written by the 1st defendant Eisinger, who admitted that parts of speeches of counsel, words of judges, questions to and answers of Oscar Wilde were reproduced from Hyde's book. This case was decided on the English Copyright Act of 1956 in which too, the words "reproduction of a substantial part" appear, as in the 1911 Act. At page 385, Plowman, J. said:

"the question is whether the defendant's film reproduces a substantial part of Hyde's book, not whether the reproduced part of the Hyde's book forms a substantial part of the defendant's film."

Then, Plowman, J. proceeded to quote the following words of Lord Pearce in *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd.* (5):

"Whether a part is substantial must be decided by its quality rather than its quantity. The reproduction of a part which by itself has no originality will not be a substantial part of the copyright and therefore will not be protected. For that which will not attract copyright except by reason of its collocation, will, when robbed of that collocation, not be a substantial part of the copyright and therefore the courts will not hold its reproduction to be an infringement."

Plowman, J. continued—

“Let me try to apply that statement to the facts of the present case. Mr. Hyde copied ‘Three Times Tried’. The result is reflected in his book in two ways.

- (i) edited copying; and (ii) unedited copying.

As regards Mr. Hyde’s edited copying, Mr. Eisinger himself copied only to the very limited extent which I have already indicated. Such copying taken by itself, does not, in my judgment, constitute an infringement of copyright. As regards Mr. Hyde’s unedited copying, it had no originality and it attracted copyright, as a part of the whole book, only by reason of its collocation. When robbed of that collocation it does not, in my judgment, represent a substantial part of the copyright and so does not involve an infringement of copyright.”

With the principles enunciated by Plowman, J. in mind, if I may go back to the case of the plaintiff, it would appear that—

- (i) The 1st defendant has adapted the entire Gregg symbols which the plaintiff had himself copied from Gregg. They could not form a substantial part of the plaintiff’s works, due to their lack of originality.
- (ii) The symbols used by the 1st defendant which are similar to the symbols used by the plaintiff are so small in number, that they cannot be said to form a substantial part of the plaintiff’s works.

It would then appear that the 1st defendant’s book Y1, has not reproduced a substantial part of the plaintiff’s works, and therefore, there could not be any infringement of the plaintiff’s copyrights.

For these reasons, I would allow the appeal, set aside the judgment of the learned District Judge and dismiss the plaintiff’s action, with costs below and costs of this court fixed at Rs. 525.

T. D. G. DE ALWIS, J. — I agree.

*Appeal allowed.*