1902.
October 28.

THE KING *v.* SENEVIRATNE.

D. C., Matara, 9,769.

Notary Public—Original and duplicate of deeds—Neglect to state in the attestation clause the erasures, &c., made in the duplicate of the deed—Ordinance No. 21 of 1900, s. 3 (22).

It being provided in sub-section 22 of section 3 of Ordinance No. 21 of 1900 that it is the duty of a notary to state "definitely the erasures, alterations, or interpolations which have been made in such deed."—

Held, that the term "such deed" applies to not only the original but also the duplicate, and that the notary is responsible for any omission in the duplicate of the formalities required by sub-section 22, just as he would be for a similar omission in the original.

THE indictment charged the accused as follows: "That on or about 5th March, 1901, at Matara, you, being a notary practising at Matara, did neglect to state definitely in the attestation of deed No. 1,393 attested by you, the erasures, alterations, and interpolations which had been made in that deed, and you have thereby committed an offence punishable under section 3 of Ordinance No. 21 of 1900."

It appeared at the trial that the "original" deed given to the grantee bore no erasures, but the "duplicate" sent by the accused to the office of the Registrar of Lands contained certain erasures and alterations, such, for instance, as *dakunata* erased and *basnairata* inserted. These alterations were simply initialled. They were not stated in the attestation clause of either the original or the duplicate. It was the duty of the notary, under sub-section 22, to state "definitely the erasures, alterations, or interpolations which have been made in such deed."

The District Judge (Mr. W. E. Thorpe) acquitted the accused, on the ground that the term "deed" in sub-section 22 did not include the duplicate, and errors in the duplicate were not contemplated by that section of the Ordinance.

The Attorney-General appealed.

Rámanáthan, S.-G., for appellant.—The Ordinance clearly contemplates "copies" or "parts" of a deed. Sub-section 30 of section 26 of the principal Ordinance No. 2 of 1877, as amended by Ordinance No. 21 of 1900, refers to the "copy" of the deed in the notary's protocol and to its "original". Sub-section 23 refers to "deed or instrument," and the form of attestation therein given refers to "the original of this instrument" and the "duplicate." Another term for the duplicate is "counterpart." The proviso at

1902.
October 28.

p. 33 of Vol. III of the Revised Edition of 1900 runs as follows: "The stamp duty hereby chargeable on such instrument shall be chargeable on the duplicate or counterpart thereof instead of on the original instrument." And sub-section 13 speaks of any duplicate or other part of the deed. In sub-section 30 occurs the expression "original deed or instrument," and in sub-section 31 "the duplicate deed." And in the table of fees set forth in the schedule B to the principal Ordinance No. 2 of 1877 we have the expression "attesting in duplicate any deed or instrument." It is therefore clear that the term "deed" applies to both the original and duplicate, which are parts or copies of the one deed of the grantor. Under sub-section 21 it is the notary's duty to attest every deed, and under sub-section 22 "to state in such attestation definitely the erasures, alterations, or interpolations which have been made in such deed." Sub-section 23 contains the form of attestation with the new certificate introduced by Ordinance No. 21 of 1900: "I further certify and attest that in line ——— the word ——— was erased, and in line ——— the word ——— was altered to the word ———, and in lines ——— the word ——— was interpolated, before the foregoing instrument was read," &c. If erasures exist in the duplicate deed, the attestation clause of that instrument at least should certify as to those erasures.

Bawa, for respondent, referred to sub-sections 18 and 22, and contended that where the Legislature meant to speak of duplicates only, it said so expressly, and that the term "deed" in sub-section 22 did not apply to the duplicate of the deed.

Cur. adv. vult.

28th October, 1902. MONCREIFF, A.C.J.—

The accused was charged with neglecting to state definitely in the attestation of deed No. 1,393 attested by him the erasures alterations, and interpolations which had been made in that deed, an offence punishable under section 3 of Ordinance No. 21 of 1900. The District Judge acquitted him, and the Attorney-General has appealed on behalf of the Crown.

The deed in respect of which the charge is made was a duplicate. It is the duty of the notary to hand the original deed to the party interested. It is his duty also, under Ordinance No. 21 of 1900, section 3, sub-section 26, to send to the Registrar of Lands of the district in which he resides the duplicate of the original; and further it is his duty to make a protocol draft, which he retains. It appears that in this case there were no erasures, alterations, or interpolations in the original, but there were some in the duplicate, which were initialled, but were not definitely stated in the attestation.

1902.
October 28.
—
MONCREIFF, A.C.J.

The Attorney-General says that they should have been so stated. The respondent says that that was not necessary, and he draws attention to sub-sections 21 and 22 of section 3 of the Ordinance. By section 21 the notary is required to "attest every deed or instrument which shall be executed or acknowledged before him, and shall sign and seal such attestation." Then, by section 22 (*g*), he is required to state in the attestation definitely therasures, alterations, or interpolations which have been made in such deeds. The respondent says that these provisions refer to the deed, and not to the duplicate.

The Solicitor-General contested that view, and referred to sub-section 13, which enjoins the notary not to allow certain things to be done, amongst others the acknowledgment of any such deed or instrument, or any duplicate or other part thereof, before the whole deed is written or engrossed, &c., from which he infers that the duplicate is part of the deed. Then he referred to the Stamp Ordinance, No. 3 of 1890, schedule B, part 1, where the stamp duty chargeable on such instrument is set down as "chargeable on the duplicate or counterpart thereof instead of on the original instrument." And, thirdly, he drew attention to schedule B of Ordinance No. 2 of 1877, which relates to the notary's fees, where the words are "for attesting in duplicate any deed or instrument not drawn by the notary himself." I think the Solicitor-General is right on that point. Not only is the duplicate referred to in sub-section 13 of section 3 of Ordinance No. 21 of 1900 as part of the deed or instrument, but the fee chargeable in respect of a particular duplicate is set down in the Ordinance of 1877 as being chargeable for attesting "in duplicate" the deed itself. The meaning of this is that when the duplicate is attested it is really the deed, or part of the deed, which is being attested in duplicate. Now, the definition of a duplicate is "an original instrument repeated; a document which is the same as another in all essential particulars, and differing from a mere copy in having all the validity of an original." That is the definition given in Webster. The counterpart, according to the same authority, is "the part which answers or corresponds to another; as the several copies or parts of an indenture."

I am of opinion that this document, in spite of its shortcomings, is a duplicate, because it is the same as the original deed in its essential particulars. I believe it has been held by this Court that a deed, whether original or duplicate, is valid without an attestation. It is also plain to me from the phrases used in the schedule of the Notaries' Ordinance, No. 2 of 1877, that a duplicate must be attested; that, therefore, the provisions of sub-sections 21

and 22 of section 3 of the Notaries' Ordinance, No. 21 of 1900, must necessarily apply to duplicates as well as to originals; and that, consequently, the notary is responsible for any omission in the duplicate of the formalities required by sub-section 22, just as he would be for a similar omission in the original.

1902.
October 28.
MONCREIFF, A.C.J.

In effect, I think that the provisions of sub-section 22 apply to the duplicate, and, inasmuch as the duplicate contains a number of erasures which are not definitely stated in the attestation, an offence under this section has been committed.

The acquittal is set aside, and the accused fined Re. 1.