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Re JAYAWARDANA.

Notary Public—Conduct of—Inquiry under s. 18 of Ordinance No. 2 of 1877 as amended by s. 2 of Ordinance No. 21 of 1900—" Offence "—" Or otherwise "—Application for writ of prohibition.

Where an information was laid under section 18 of the Ordinance No. 2 of 1877 (section 2 of Ordinance No. 21 of 1900) before a District Judge that a notary public had been concerned in several criminal cases, that he was not possessed of property, that he had writs out against him, that he was keeping himself in concealment, and that he made a false affidavit in a case in which he was defendant, and when the Judge was proceeding to inquire under section 18 into the matters alleged in the information,—

Held, on an application to the Supreme Court for a writ of prohibition against him, that such matters could not be the subject of inquiry under section 18, that the allegation that the notary was concerned in criminal cases, that he was not possessed of property, that there were writs of execution against him, and that he was keeping himself in concealment, were not " offences " against any statute or other law of Ceylon; and that though giving false evidence before a competent Court was an offence against the Penal Code, yet it was not intended by the Legislature to give to the officers named in section 18 power to inquire into such offences committed by notaries outside the sphere of their duties.

Per MONCREIFF, J.—When information is received by the persons mentioned in the section that the notary has committed an offence those persons may then proceed to inquire into the " matter " of the offence. They are not to adjudicate upon the offence itself, but to investigate the material from which it springs; and then, according as they find certain elements, a report may be made to the Governor, who is empowered, with the advice of the Executive Council, to cancel the notary's warrant or to suspend him.

The action which is to follow the inquiry is dependent upon whether the inquiry shows (1) gross misconduct on the part of the notary in discharging his duties, or (2) incapacity to discharge them with advantage to the public.

The inquiry would not be directed to the criminal aspect of the notary's conduct, but to the " matter of the alleged offence " with a view to seeing whether the notary has misconducted himself in respect of his duties.

THIS was an application to the Supreme Court by one Mr. Jayawardana, a notary public, for a writ of prohibition against the District Judge of Negombo forbidding him to inquire into the matter contained in an information received from the Assistant Government Agent of Chilaw against Mr. Jayawardana, under section 18 of the Ordinance No. 2 of 1877 (section 2 of Ordinance No. 21 of 1900), which runs as follows:—

" (1) On information received by the Registrar-General, or by the Government Agent, Assistant Government Agent, District Judge, or Commissioner of Requests, within whose local jurisdiction any notary resides, that an offence has been committed by the notary,

it shall be lawful for such Registrar-General, Government Agent, Assistant Government Agent, District Judge, or Commissioner of Requests to inquire into the matter of the alleged offence, and upon proof to his satisfaction of gross misconduct in the discharge of the duties of his office by such notary, or of such notary having proved himself to be incapable of discharging them with advantage to the public, or of his having so conducted himself by repeated breaches of any of the rules contained in or made under this Ordinance, or otherwise, that he ought not to be any longer entrusted with the performance of the said duties, to report the same in writing, together with the evidence taken by such Registrar-General, Government Agent, Assistant Government Agent, District Judge, or Commissioner of Requests, to the Governor; and thereupon it shall be lawful for the Governor, with the advice of the Executive Council, to cancel the warrant granted to such notary, or to suspend him from his office for such period as the Governor, with the like advice, may think fit.

"(2) For the purposes of such inquiry the Registrar-General, Government Agent, Assistant Government Agent, District Judge or Commissioner of Requests shall have power to require the attendance before himself of the notary and of any witness, and the production of any document that such inquiring officer may deem material, and to examine such witness on oath or affirmation, and to examine such notary without oath or affirmation; and any person required to attend or to produce a document as aforesaid, who shall without reasonable cause fail to comply with such requirement, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rupees. No statement made by such notary at any such inquiry shall be used in any prosecution for violation of or for disregard or neglect to observe any of the rules and regulations contained in section 26.

"(3) In no case, however, shall the inquiry referred to in (1) be held by the person who shall give information of the commission of such offence."

The information received by the District Judge was as follows:—

"I, Bertram Hill, Assistant Government Agent, Chilaw, lay the following information against A. W. Jayawardana, Notary Public of Chilaw, under section 2 of Ordinance No. 21 of 1900:—

"1. The Notary Jayawardana has been concerned directly or indirectly in several criminal cases, most of which refer to some land dispute. The cases are Police Court 21,079, 16,366, 14,093, 14,094, 20,839, and 20,871, and District Court Criminal 2,566 and 2,569, and other more recent cases the numbers of which can be ascertained from the Police Magistrate.

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"2. He has five unsettled writs out against him, amounting to Rs. 8,000, which he has made no attempt to settle, and he is reported to be possessed of no property.

"3. There is now a writ out against his person, the execution of which he evades by keeping himself shut up in his house and verandah during the daytime.

"4. In D. C., Colombo, 19,178, he was sued for the recovery of Rs. 4,000 and interest due on a promissory note granted by him; he put in an affidavit dated December, 1902, in which he denied making the notes and receiving any consideration, and he filed answer to the same effect, but in February, 1904, he consented to judgment in terms of the prayer of the plaint. It is in this case in which a writ has been issued against his person. It is maintained that the statements in the affidavit are false, and he made them knowing them to be false.

"5. I pray that the said notary may be summoned before the Court and inquiry be held.

"6. Copy of this information is annexed for service on the respondent.

"BERTRAM HILL,
"Assistant Government Agent."

Dornhorst, K.C. (with him *Van Langenberg*) appeared in support of the application for the writ of prohibition.

Râmanâthan, S.-G., was heard on behalf of the Assistant Government Agent.

Cur. adv. vult.

21st March, 1905. LAYARD, C.J.—(after setting forth the above information) said:—

The first three paragraphs of the information disclose no offence against any statute law or any other law, but the fourth paragraph discloses an offence punishable under the provisions of the Ceylon Penal Code, and not an offence against any provisions of the Ordinance No. 2 of 1877.

By the 17th section of the Ordinance No. 2 of 1877, amongst other things, it is enacted that any notary who has been convicted of any crime or offence which renders him, in the opinion of the Governor, with the advice of the Executive Council, unfit to be entrusted with any responsible office, or of any crime or offence punishable under section 29 of the Ordinance No. 2 of 1877, shall become disqualified for the said office of notary, and his warrant may be thereupon cancelled.

It is clear from the above that if a notary is convicted of giving false evidence before a competent Court having jurisdiction, his warrant can be cancelled. The question in this case is whether

where it is alleged that a notary has given false evidence, the matter can be the subject of inquiry under section 18 of Ordinance No. 2 of 1877 (see section 2 of Ordinance No. 21 of 1900). That section runs as follows:—

" (1) On information received by the Registrar-General or by the Government Agent, Assistant Government Agent, District Judge, or Commissioner of Requests, within whose local jurisdiction any notary resides, that an offence has been committed by the notary, it shall be lawful for such Registrar-General, Government Agent, Assistant Government Agent, District Judge, or Commissioner of Requests to inquire into the matter of the alleged offence, and upon proof to his satisfaction of gross misconduct in the discharge of the duties of his office by such notary, or of such notary having proved himself to be incapable of discharging them with advantage to the public, or of his having so conducted himself by repeated breaches of any of the rules contained in or made under this Ordinance, or otherwise, that he ought not to be any longer entrusted with the performance of the said duties, to report the same in writing, together with the evidence taken by such Registrar-General, Government Agent, Assistant Government Agent, District Judge, or Commissioner of Requests, to the Governor; and thereupon it shall be lawful for the Governor, with the advice of the Executive Council, to cancel the warrant granted to such notary, or to suspend him from his office for such period as the Governor, with the like advice, may think fit.

" (2) For the purposes of such inquiry the Registrar-General, Government Agent, Assistant Government Agent, District Judge, or Commissioner of Requests shall have power to require the attendance before himself of the notary and of any witness, and the production of any document that such inquiring officer may deem material, and to examine such witness on oath or affirmation, and to examine such notary without oath or affirmation; and any person required to attend or to produce a document as aforesaid, who shall without reasonable cause fail to comply with such requirement, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rupees. No statement made by such notary at any such inquiry shall be used in any prosecution for violation of or for disregard or neglect to observe any of the rules and regulations contained in section 26.

" (3) In no case, however, shall the inquiry referred to in (1) be held by the person who shall give information of the commission of such offence. "

It is first to be noted in respect of that section the inquiry is limited to an " offence " committed by the notary; section 17

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referred to " crime or offence; " the word " crime " has been left out in the subsequent section in 1900. At the time of passing of the Ordinance No. 2 of 1877 the Penal Code had not been enacted, and the Criminal Law of England was in force here by user, there being no express enactment bringing it into force in the Island. Of course the English Law draws a distinction between a crime and an offence which our Courts never, as far as I can gather, recognized. It is difficult to ascertain why the Legislature in 1877 used the alternative words " crime " or " offence " in section 17, because as I understand the word " crime " in its ordinary sense means merely an infraction of law, and " offence " means a crime, *i.e.*, an infraction of law. I do not think anything is to be gathered from the ommission of the word " crime " in 1900 from the new section 18. We must look to that section itself to see whether the Legislature intended to include in the term " offence " all infractions of the law, including offences punishable under the Penal Code. If the word " offence " stood alone in that section, it would clearly to my mind be extensive enough to include all infractions of the law. The context, however, seems to me to show that the Legislature was not using the word " offence " in its general sense. for it enacts that it shall be lawful for the several persons specified in the section on receiving information that an offence has been committed by a notary to inquire into the matter of the alleged offence. Then it goes on to show what must be proved or established against the notary. It is remarkable that if it was the intention of the Legislature to create a right of inquiry into a criminal offence punishable under the Penal Code, such as giving false evidence in a matter entirely outside the discharge of his duties as a notary, it should lay in the first instance such importance upon the inquirer being satisfied of there being gross misconduct in the discharge of the duties of his office by the accused notary; of the accused notary having proved himself incapable of discharging his duties with advantage to the public or of his having so conducted himself by repeated breaches of any of the rules contained in the Ordinance that he ought not to be any longer entrusted with the performance of such duties.

It is suggested that the general words " or otherwise " which occur after the words " or of his having conducted himself by repeated breaches of any rules contained in or made under this Ordinance, " and before the words " that he ought not to be any longer entrusted with the performance of the said duties," read with the words immediately following them, show that the scope of the inquiry might be in respect of offences other than those previously specifically defined viz., which relate to misconduct

in discharge of the duties of a notary. That would not be in accordance with the ordinary canon of construction of statutes. I think that the words " or otherwise that he ought not to be any longer entrusted with the performance of the said duties " only means " or in other respects in a similar manner, *i.e.*, by misconduct in the discharge of the duties of his office, has shown that he ought no longer to be entrusted with the performance of such duties." If it was intended to cover the case where a notary has committed an offence under the Penal Code, one would have expected the draftsman would have put that as the first alternative the inquirer had to be satisfied of.

The Solicitor-General says that the provisions of section 18 are so wide that if in the course of inquiry into an offence or complaint which was not established the inquirer is satisfied that the notary complained of is a drunkard, and so reported, the notary's warrant could be cancelled under this section. I cannot believe that it could have been the intention of the Legislature where the charge in respect of the alleged offence failed, that the notary could be dealt with for some misconduct outside his duties as a notary.

Another clear indication of what the Legislature intended is to be gathered from the final words of sub-section 2 of section 18, which runs as follows:—

" No statement made by such notary at any such inquiry shall be used in any prosecution for violation of or for disregard or neglect to observe any of the rules and regulations contained in section 26. "

The object of that provision is obvious, that no statement at any such inquiry might imperil a notary by being used against him in a criminal prosecution in respect of the offence being inquired into under section 18. In ordinary criminal cases an accused is not bound to give any evidence or to make any statement, but sub-section 2 provides that a notary may be examined by the inquirer, whether the notary wishes to or not. The result of such examination might imperil him if it could be available as evidence against him at any criminal trial. The Legislature consequently stepped in and said any statement made in such inquiry by the notary cannot be used against him when prosecuted for breach of the rules and regulations contained in section 26. It limits it to a prosecution in respect of these rules and regulations, and does not refer to prosecution for offences under the general law, and why? I can suggest only one answer to the query, because the Legislature intended that the offences to be inquired into under section 18 were only such as related to the misconduct of the notary in discharge of the duties of his office, and nothing in the

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examination by the inquirer could be pertinent to general offences other than such as related to the discharge of the duties of his office, and the notary would not be imperilled by any statement in such examination in which he might have admitted having committed one of such general offences.

Lastly, it appears to me that in view of section 17 the Legislature must have thought that for offences punishable under the Penal Code or any statutory law other than the Ordinance No. 2 of 1877 an ordinary prosecution could be instituted, and the notary if convicted could be dealt with under that section and could not have intended to provide another tribunal to ascertain or inquire whether the notary had committed any such offence when the ordinary Courts of law were open and capable of investigating such offences, nor could it have been intended by the Legislature to render a notary alleged to have committed such an offence liable to be examined by an inquirer under section 18 of Ordinance No. 2 of 1877, whereby he might be entrapped into giving an answer which might be used against him in a subsequent criminal prosecution.

For the above reasons I think the District Judge of Negombo has no jurisdiction to enter into the inquiry, and should be prohibited from inquiring into the matter of the complaint of the District Judge of Chilaw above referred to.

Let the writ of prohibition issue.

MONCREIFF, J.—

Ordinance No. 21 of 1900 substituted a new section for section 18 of Ordinance No. 2 of 1877. The question is mainly what the words " or otherwise " occurring in that section mean. They are to be found in the old section in the Ordinance of 1877, but the new Ordinance has introduced reference to a matter which is not to be found in the old Ordinance. When information is received by the persons mentioned in the section that the notary has committed an offence, those persons may then proceed to inquire into the " matter " of the offence. They are not to adjudicate upon the offence itself, but to investigate the material from which it springs; and then, according as they find certain elements, a report may be made to the Governor, who is empowered, with the advice of the Executive Council, to cancel the notary's warrant or to suspend him. We can only surmise as to the reason for reference to offences or the meaning the word was intended to convey. Section 17 dealt with the case in which the notary was convicted of a crime or offence, and it might be thought that the following section was intended to deal with the case in which there was no conviction and to give the authorities an independent and summary power of dealing with an undesirable notary.

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The word " offence " was applied in England to summary cases in which a penalty might be inflicted, but I imagine that in Ceylon it naturally applies to something which is punishable under the Penal Code or some other provision of the law in force in Ceylon.

Section 18 empowers the persons mentioned in the section, and the Governor, with the advice of the Executive Council, to take certain action. The action which is to follow the inquiry is dependent upon whether the inquiry shows (1) gross misconduct on the part of the notary in discharging his duties, or (2) incapacity to discharge them with advantage to the public, or (3), to quote the words of the section, his having " so conducted himself by repeated breaches of any of the rules contained in or made under this Ordinance or othewise, that he ought not to be any longer entrusted with the performance of the said duties."

It is true there is a rule to the effect that a general expression is to be confined by the words which immediately surround it, but as Lord Justice Bowen says in *Skinner & Co. v. Shew & Co.*, *L. R. (1893) 1 ch. 413*, the rule or maxim of common sense is subject to the exception that the general expressions are to be construed generally when it appears from a wider inspection of the matters legislated upon that such was the intention of the Legislature. The question here is whether the words " or otherwise " are wide enough to include a false statement made or sanctioned by a notary in a case unconnected with his duties as a notary.

I feel the force of the observation that the points to which inquiry is directed have no reference to crime, but I should conjecture that the insertion of the word " offence " in section 18 was meant to establish a correlation between that section and section 17. The latter section gives power to deal with the notary on conviction. I should surmise that section 18 was meant to give similar powers where for some reason there has been no conviction. Action under section 17 is started by conviction, but it is only undertaken on the footing that the conviction renders the convicted person unfit to be a notary. So in section 18 the inquiry would not be directed to the criminal aspect of the notary's conduct, but to the " matter of the alleged offence, " with a view to seeing whether the notary has misconducted himself in respect of his duties.

I am not convinced from a wider inspection of these provisions that in using the words " or otherwise " the Legislature meant to extend the inquiry beyond the professional conduct of the notary. They occur in the section in the Ordinance of 1877, where there is no reference to an offence, and I agree that the writ should go, because it is not clear that in this Ordinance the words had reference to a criminal offence, and it seems certain that they had no such reference in the Ordinance of 1877.