

1899.
October 8.

QUEEN v. WERASINHE.

D. C., Galle, 12,746.

Notaries Ordinance, 1877, s. 26 (14)— Attesting mortgage bond without endeavouring to ascertain prior deed affecting the land.

Under sub-section 14 of section 26 of the Ordinance No. 2 of 1877, it is sufficient if a notary ascertains that a prior deed has been registered and inserts the registration number thereof in his deed.

Where he has personal knowledge of the registration of a prior deed, it is no part of his duty to search the register so as to acquaint himself with the actual state of the grantor's title.

Queen v. Abrew, 3 N. L. R. 206, distinguished.

THE Registrar of Lands, Galle, charged the accused, a notary public, under sub-section 14 of section 26 of Ordinance No. 2 of 1877, with attesting a certain deed affecting an interest in land without endeavouring, before attestation, to ascertain whether any prior deed affecting any interest in such land had been registered.

The deed in question was a mortgage bond granted by one Gunawardane to Silva. It was proved that if the notary had inquired at the Registrar's Office he would have found that the mortgagor had divested himself of his title to the land before the execution of the mortgage. The Registrar deposed as

follows:—"There is no fee for ascertaining prior registration; but there is a fee for searching for prior encumbrances. If accused had applied for prior registration of land, he would have been given any folio and volume of the prior registration and nothing more. But if he had applied for previous encumbrances, he would have been given the folio and volume of prior encumbrances and particulars of all deeds registered touching the land."

1899.
*Sept. 27 and
October 3.*

The accused explained that the mortgagor produced the Crown grant in his favour, and from it he (the accused) took over the number of the volume and folio of prior registration and inserted it in the mortgage deed; that, as neither the mortgagor nor mortgagee desired him to search for prior encumbrances, he did not think it was legally necessary to search for them.

The District Judge acquitted the accused, holding that he had complied with the concluding words of sub-section 14, which was as follows: "If any such prior deed has been to his (the notary's) knowledge registered, he shall insert at the head of the deed attested by him the number of the registration volume and the page of the folio in which the registration of such prior deed has been entered."

The Attorney-General appealed. The case was argued on the 27th September, 1899.

Ramanathan, S.-G.—The mortgagor had no right to the land when he executed the mortgage bond, and the accused notary failed to acquaint himself with the true state of the mortgagor's title at the date of the execution of the deed, for if he had done so he would not have attested the deed. Two distinct duties are imposed on a notary by sub-section 14 of section 26 of Ordinance No. 2 of 1877, viz., (1) to search the register of any prior deed affecting any interest in the land, and (2) to insert the number and page of the folio, if any such deeds have been to his knowledge registered. If a notary learns of the registration of a deed from sources other than actual search in the register, the notary is not relieved from the duty of actually searching in the register, D. C., Galle, 12,610 (3 N. L. R. 206).

No appearance for accused, respondent.

Cur. adv. vult.

3rd October, 1899. LAWRIE, A.C.J.—

I understand the facts to be that in April, 1899, A. P. Jeronis de Vos Goonewardene went to the office of the appellant, a notary public, and showed a Crown grant in his favour dated

1890.
Sept. 27 and
October 3.

LAWRIE,
A.C.J.

23rd July, registered 21st August, 1890. At the request of Goonewardene the notary drew up and attested a mortgage over the land in favour of Charles de Silva, and he inserted at the head of the mortgage deed attested by him the number of the registration volume and the page of the folio in which the registration of the Crown grant had been entered.

The notary was afterwards tried in the District Court of Galle on an indictment charging him with having neglected to endeavour to ascertain whether any prior deed affecting the land had been registered, and had thereby committed an offence punishable under sub-section 14 of section 26 of the Notaries' Ordinance, No. 2 of 1877.

The learned District Judge acquitted the accused notary, holding that he had committed no offence. The Attorney-General has appealed.

I agree with the District Judge. D. C., Galle, 12,610, reported in *3 N. L. R. 206*, differed in essential particulars from the present case. There a notary was satisfied with the assurance of the man who came to execute a deed, that he was entitled to land by inheritance. The notary there made no endeavour to ascertain whether any prior deed affecting the land had been registered, and *BONSER, C.J.*, held that the notary had committed a breach of the 14th sub-section of section 26 of the Notaries' Ordinance. The *CHIEF JUSTICE* said there:—" Unless a notary has personal knowledge (which in some cases he may have) of the state of the title, it is his duty either to attend the Registrar's Office in person to search the register or to employ some one else to do it for him." Here the notary had personal knowledge of the title, because he had before him a registered Crown grant, which was sufficient proof that in 1890 the land belonged to the proposed mortgagor.

It seems to me that he obeyed the 14th sub-section, when he inserted at the head of the deed attested by him the number of the registration volume and page of the folio in which the registration of such prior deed had been entered.

I agree with the *CHIEF JUSTICE* in the advice he gives in his judgment, which ought to be followed by all notaries. But I cannot set aside this acquittal, and find this notary guilty unless the statutory offence has been committed. In my opinion, as the Ordinance stands, if a notary ascertains that a prior deed has been registered, and if he inserts the registration number in his deed, he does all that the Ordinance required him to do.