

1909,
February 2.

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice.

DIAS v. RAJAPAKSE.

P. C., Negombo, 10,942.

Notary—Practising without obtaining certificate—Annual certificate, sufficiency of—Ordinance No. 2 of 1877, ss. 22 and 24.

A notary who obtains his certificate before March 1 in each year, that is, in each calendar year during which he acts as a notary, complies with the provisions of section 22 of Ordinance No. 2 of 1877, and is not liable to the penalty enacted by section 24 of the said Ordinance.

APPEAL by the Attorney-General from an acquittal in a prosecution under section 24 of Ordinance No. 2 of 1877 (Notaries' Ordinance).

Walter Pereira, K.C., S.-G., for the Crown.

F. M. de Saram, for the accused, respondent.

Cur. adv. vult.

February 2, 1909. HUTCHINSON C.J.—

This is an appeal by the Attorney-General against an acquittal. The charge against the respondent was that he acted as a notary without having previously obtained for the year 1907 the yearly certificate required by section 22 of Ordinance No. 2 of 1877, and that he thereby committed an offence under section 24 of the Ordinance. He took out a certificate under the Ordinance on February 22, 1906, and another on February 27, 1907. On February 25, 1907, he attested a deed as notary ; and that is the offence with which he was charged, the prosecution contending that a certificate comes into force on the day on which it is granted, and is in force only for one year from that date, and that the certificate of 1906 expired on February 21, 1907. When he was called upon by the Registrar-General for an explanation, he maintained that there was no irregularity, because the certificate granted in any year is in force until March 1 of the following year. The Magistrate held that by taking out his certificate in 1906 and 1907 before March 1, the respondent had complied with the requirements of the Ordinance. The Ordinance enacts (section 22) that it shall be the duty of every Secretary of a District Court in his district to grant to any person entitled to practise as a notary in the district who shall apply for it a certificate that he is a notary, and duly authorized to practise as such in the district. " All such certificates shall be applied for and granted on or before March 1 in every year, and shall be in force for one year and no

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longer." Provided that if a certificate is not applied for within the time limited, and it is shown that the default was not due to the negligence of the notary, the certificate may be issued notwithstanding the delay. The certificate is to be in the form in the schedule to the Ordinance, and (section 24) if any person acts as a notary "without having obtained such certificate as aforesaid," he is liable to a fine "for every deed or instrument executed or acknowledged before him as such notary whilst he shall have been without such certificate." Every person, therefore, who has been appointed by the Governor to practise as a notary has to take out a certificate on or before March 1 every year. The penalty in section 24 is for acting as a notary "without having obtained such certificate as aforesaid." And in my opinion the ruling of the Magistrate was right, that a notary who obtains his certificate before March 1 in each year, that is, in each calendar year during which he acts as a notary, has complied with the law, and is not liable to the penalty. If that opinion is correct, it is not necessary to trouble ourselves to try to discover what the Legislature meant by saying that a certificate is to be in force for one year and no longer; but as that question was argued before me, I will say that I think the word "year" in that connection means the period from January 1 to December 31. "Year" is ambiguous. It might mean the period from January 1 to December 31, as it obviously does in the same sentence in the phrase "before March 1 in every year." Or it might mean, as the Solicitor-General contends that it does, twelve calendar months from the date of the certificate. Neither the form of the certificate nor anything else in the Ordinance makes the matter quite clear. There is the same ambiguity in Ordinance No. 12 of 1848, which requires proctors to take out yearly certificates. There are other laws requiring yearly certificates or licenses to be taken out, in which the dates of the coming into force and expiration of the certificate or license are clearly defined; for example, the yearly license required by section 9 of Ordinance No. 12 of 1891 is to be in force from its date to June 30 in the following year; by the law in England a solicitor's certificate must be taken out before December 16, and relates back to and is dated November 16; and by the law in Ireland also the dates of its commencement and expiration are clearly defined (29 and 30 Vict. C. 84, section 42). But it cannot be said that in the Ordinance with which we are now dealing the Legislature has expressed its intention plainly.

The Solicitor-General points out that if a certificate is to be in force from January 1 to December 31 of the year in which it is granted, there may be, and usually will be, an interval between January 1 and the date of the certificate, and that certificate will thus cover a period before its date. But that does not seem to me a serious objection, since the same thing is expressly enacted in the case of both English and Irish solicitors. On the other hand, as the

1909. Ordinance provides for the issue of certificates in certain cases after
February 2: March 1 (and there is evidence in this case of another Negombo
HUTCHINSON notary who took his certificate on June 12, 1907), if the construction
C.J. put on the Ordinance by the prosecution is right, a notary who got
his certificate on June 12, 1907, and then in accordance with the
law got another in January or February, 1908, would have, until
June 11, 1908, two certificates in force at the same time. And if one
asks what was the object of enacting that all certificates must be
granted on or before a certain date in each year, the most likely
answer that occurs to me is that it was thought to be convenient
that all certificates should expire on the same date. In my opinion
the Magistrate dismissed this charge rightly and on the right ground,
and I dismiss the appeal.

Appeal dismissed.

