

1940

Present: Wijeyewardene J.

SAMARASINGHE v. DALPATADU.

385—M. C. Panadure, 6,029.

Notaries Ordinance—Conviction under rule 25, s. 30—Charge under proviso (a), s. 30—Plea of autrefois convict—Interpretation Ordinance, s. 9—Criminal Procedure Code, s. 330.

The conviction of a Notary under rule 25 of section 30 of the Notaries Ordinance for failure to transmit duplicate of deeds to the Registrar of Lands is no bar to a subsequent charge against him for failure to comply with a written notice to transmit such deeds within a stated time under section 30, proviso (a) of the Ordinance.

A PPEAL from a conviction by the Magistrate of Panadure.

Dodwell Goonawardana, for appellant.—Section 330 of the Criminal Procedure Code makes it quite clear that a person cannot be charged for the same offence twice over.

If he is, he can claim the benefit of *autrefois convict*. The second conviction on the same facts is obnoxious to section 9 of the Interpretation Ordinance.

“For an act or omission which constitutes an offence under two or more laws the offender is liable to be prosecuted and punished under either of these laws, but shall not be liable to be punished twice for the same offence.”

¹ (1895) 2 Ch. 273.

² (1911) 36 Bom. 77.

³ (1897) 2 Ch. 534.

This is not a continuing offence for the Legislature must expressly state it is a continuing offence. There must be a conviction for an offence before the offender is convicted for continuing in committing the same offence.

The offence constituted under proviso A of section 30 of the Notaries Ordinance is alternative to the offence under the main proviso of section 30.

If the Registrar-General does not prosecute the Notary in the first instance he could give him notice under section 30 (a) and then enter a prosecution, but once he has been prosecuted and convicted no second prosecution could be launched.

The main Notaries Ordinance, No. 1 of 1907, was amended by Ordinance No. 27 of 1909, and Ordinance No. 10 of 1934.

Section 20 of the last amending Ordinance penalized a Notary who was convicted of three offences and he could be removed from the office of Notary. This meant three distinct offences and not three punishments for the same offence. Counsel cited *Wijesuriya v. Dalpatadu*¹.

Nihal Gunasekera, C.C., for respondent.—The offence constituted under section 30, proviso (a) of the Notaries Ordinance is not alternative to the offence under the main provisions of section 30 for a violation of rule 25 of the section. Proviso (a) was added by Ordinance No. 10 of 1934 the object of which was to make effective provision to check slackness and dishonesty on the part of Notaries and to provide for a more expeditious method for dealing with Notaries who do not forward their duplicates—*vide* Objects and Reasons appended to the Draft Ordinance (*Government Gazette* No. 7,995 of August 4, 1933).

Section 9 of the Interpretation Ordinance does not apply because the ingredients of the two offences are different. The plea of *autrefois convict* cannot be maintained—*vide* Criminal Procedure Code, section 330 (1) and (3).

Cur. adv. vult.

July 24, 1940. WIJEYEWARDENE J.—

The accused appellant, a Notary Public, was charged in M. C., Panadure, No. 3,826, for failing to transmit to the Registrar of Lands on or before April 15, 1939, the duplicates of deeds attested by him in March, 1939, in breach of rule 25 of section 30 of the Notaries Ordinance (Legislative Enactments, Vol. III, Chap. 91). He pleaded guilty and was fined Rs. 50 on November 25, 1939. Thereafter the Registrar-General served a written notice on him in terms of proviso (a) of section 30 of the Ordinance calling upon him to comply with the requirements of rule 25 of section 30 on or before December 18, 1939. On the failure of the Notary to comply with the terms of the notice, the present proceedings were instituted against him. The Magistrate found the accused guilty and fined him Rs. 100.

The Counsel for the accused-appellant contended that the conviction was bad on the following grounds:—

- (1) The appellant was entitled to the benefit of the plea of *autrefois convict*.

- (2) That the conviction was obnoxious to the provisions of section 9 of the Interpretation Ordinance (Legislative Enactments, Vol. I, Chap. 2).
- (3) The offence constituted under proviso (a) of section 30 of the Notaries Ordinance is alternative to the offence under the main provisions of section 30.

The first point raised by the appellant's Counsel ignores the clear provisions of sub-sections (1) and (3) of section 330 of the Criminal Procedure Code. The accused was charged in M. C., Panadure, No. 3,826, for the failure to deliver the duplicates before April 15, 1939. As a consequence of his failure and after the termination of the proceedings in the earlier case, the Registrar-General sent him the notice referred to by me. He is now charged for refusing to comply with the terms of that notice. Section 330 of the Criminal Procedure Code states clearly that a person could be charged a second time in such circumstances (see illustration (c)).

The second argument urged on behalf of the appellant is based on section 9 of the Interpretation Ordinance which enacts:—

“When any act or omission constitutes an offence under two or more laws . . . the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of these laws, but shall not be liable to be punished twice for the same offence”.

As pointed out by me earlier it is not the same act or omission which constitutes the offences under the main provisions of section 30 of the Notaries Ordinance and under proviso (a) of section 30. Moreover, there is clear indication of an intention that a Notary should become liable to be punished for both offences as will be seen when I deal with the third point raised by the appellant's Counsel. I hold that section 6 of the Interpretation Ordinance is no bar to the present proceedings (*vide 19 New Law Reports, 142*).

The argument of the appellant's Counsel on the third point may be summarized as follows:—When a Notary commits a breach of rule 25, the Registrar-General should decide whether he would prosecute the peccant Notary or would give him further time for the transmission of the duplicates. If the Registrar-General does not prosecute the Notary in the first instance, he could give the Notary notice under section 30, proviso (a), and then enter a prosecution under that proviso if the Notary fails to comply with the notice. If he chooses to prosecute the Notary in the first instance, he cannot subsequently give the Notary a notice under section 30, proviso (a), and then initiate further proceedings against the Notary for non-compliance with the terms of the notice. Otherwise the proviso (a) would have the effect of making rule 25 more stringent. But it has been held in *Wijesuriya (Registrar of Lands) v. Dalpadathu (Notary Public)*¹, that the Legislature amended the Notaries Ordinance by the addition of proviso (a) in order to give the power to the Registrar-General to grant an indulgence to Notaries deserving of such indulgence.

¹ 9 Ceylon Law Weekly 73.

For a proper consideration of this argument it is necessary to examine fully the legislation on the subject.

Section 29 of the Notaries Ordinance, No. 1 of 1907. as originally passed reads :—

It is and shall be the duty of every Notary strictly to observe and act in conformity with the following rules and regulations: that is to say (1) to (23)

(24) He shall deliver or transmit to the Registrar of Lands the following documents, so that they shall reach the Registrar on or before the fifteenth day of every month, viz., the duplicate of every deed or instrument attested by him during the preceding month.

(25)–(35)

And if any Notary shall act in violation of any of the rules he shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding two hundred rupees, in addition to any civil liability he may incur thereby.

It will be noted that the corresponding provisions in Chapter 91 of the Legislative Enactments are section 30 and rule 25.

The Ordinance as originally passed enacted further by section 20 (corresponding to section 20 of Chapter 91 of the Legislative Enactments)—

“It shall be the duty of the District Judge within whose jurisdiction a Notary resides. upon being satisfied. after due inquiry, that such Notary—

(a)

(b)

(c) Has so conducted himself by any repeated breaches of any of the rules made by or under this Ordinance that he ought not to be any longer entrusted with the performance of the said duties; or

(d)

to report the same in writing to the Governor with the evidence taken at inquiry”.

It appears to have been felt shortly after the passing of the Ordinance that the Registrar-General should be given a discretion not to prosecute for breaches of rules in such cases where he thought fit not to enter a prosecution. Accordingly the Legislature passed Ordinance No. 27 of 1909 which by section 2 enacted—

“When the Registrar-General has reasonable grounds for believing that any Notary has committed a breach of any of the rules the Registrar-General may, if he thinks fit, instead of instituting criminal proceedings against such Notary accept from him such sum of money as he may consider proper in composition of the offence. When the Registrar-General has accepted any sum of money from any Notary in composition of any alleged offence criminal proceedings shall not be taken, or if already taken shall not be continued in respect of such offence”.

This enactment appears in Chapter 91 of the Legislative Enactments as section 30, proviso (d).

The Notaries Ordinance was further amended by Ordinance No. 10 of 1934. A study of its provisions makes it abundantly clear that the object of that amending Ordinance was—as stated in the Objects and Reasons annexed to the Draft Bill (*vide Government Gazette* No. 7,995, August 4, 1933, page 637)—to make more effective provision for checking slackness and dishonesty on the part of Notaries and for a more expeditious and summary way of dealing with Notaries who do not forward their duplicates. This Ordinance amended *inter alia*—

- (a) Section 20 (1) (c) of the Notaries Ordinance by the addition at the end of the words “has been convicted three times or oftener for a violation, disregard or neglect to observe the provisions of rule No. 24 in section 29 ; or
- (b) By the insertion at the end, but immediately before the first proviso of section 29 of the Notaries Ordinance of the words :
 “Provided that where any Notary shall act in violation of or shall disregard or neglect to observe the provision of rule 24, the Registrar-General may by a written notice served on him personally or sent by registered post call upon such Notary to comply with the requirements of the said rule within such further time as he may specify for such purpose, and any Notary who fails to comply with the terms of such notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred rupees.”

These amendments appear in Chapter 91 of the Legislative Enactments as section 20 (1) (d) and section 30, proviso (a).

A study of the main Ordinance and the two amending Ordinances mentioned by me leads me to the following conclusions:—The Legislature regarded a breach of rule 25 prescribed by section 30, Chapter 91, as a more serious offence than the breaches of most of the other rules. Ordinance No. 10 of 1934 amended section 20 of the Notaries Ordinance so as to make three convictions for a breach of rule 25 a sufficient ground for an inquiry by the District Judge while in the case of other rules the District Judge had to be satisfied that by repeated breaches the Notary has shown himself to be a person who should no longer be entrusted with the performance of his duties. There is, if I may say so, good reason for taking such a view of the importance of rule 25. In a large number of cases a breach of rule 25 is occasioned by the Notary misappropriating the money paid to him for stamps and thus experiencing a difficulty in sending on the due date the duplicates which have to be stamped.

The Legislature did not amend section 30 of Chapter 91 by the addition of proviso (a) because it wanted to give relief to some deserving Notaries against the hardship that may be caused to them by a prosecution for breach of rule 25 and therefore empower the Registrar-General to grant an indulgence to the Notaries deserving that indulgence. The Registrar-General had that power given to him by Ordinance No. 27 of 1909 which gave him the right to exercise his discretion in the case of the breach of any rule and decide to accept a money payment in composition

of any offence instead of prosecuting the Notary in the Magistrate's Court (*vide* proviso (d) of section 30 of Chapter 91). There was no need therefore to give the Registrar-General any authority in 1934 to relax the stringency of the rule. The proviso (a) to section 30 was introduced in 1934 to enable the Registrar-General to bring pressure to bear on the Notary to deliver to him the deeds which he has failed to deliver on the due date according to rule 25. Moreover, it would hardly be an indulgence to give a deserving Notary a short extension of time and then prosecute him for non-compliance when he would be liable to a fine of Rs. 500 whereas if he had been prosecuted without being favoured with such an indulgence the maximum fine that could have been imposed on him would have been Rs. 200.

I think therefore that section 30, proviso (a), enables the Registrar-General to give a notice to a Notary though he has been convicted for a breach of rule 25 and then proceed to prosecute him again if he fails to comply with the terms of the notice. It is of course a power which the Registrar-General may or may not exercise according to his discretion.

I hold therefore against the appellant and dismiss the appeal.

Affirmed.
