

Sept. 2, 1910 Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice.

THE KING v. FERNANDO.

D. C. (Crim.), Chilaw, 2,993.

*Notary authorized in writing to dispense with search for prior registration—  
Deed drawn up by one notary and tendered for registration by  
another notary—No note of prior registration made on the deed—  
Notary who drew up the deed not guilty of offence under s. 29 (16)  
of Ordinance No. 1 of 1907.*

Where parties to a transaction affecting land authorized a notary in writing to dispense with the search for prior registration, and the notary drew up the deed and did not note on the deed prior registration, and the deed was not tendered for registration by him,—

*Held*, that the notary had not committed an offence under section 29 (16) of Ordinance No. 1 of 1907.

The concluding words of the proviso to section 29, sub-section (16), of Ordinance No. 1 of 1907, refers only to the notary by whom a deed is tendered for registration.

**T**HE facts are set out in the judgment.

*Sampayo, K.C.* (with him *Wadsworth*), for the appellant.

*Van Langenberg*, for the respondent.

*Cur. adv. vult.*

September 2, 1910. HUTCHINSON C.J.—

The appellant is a notary practising in Chilaw. In March, 1909, he attested the execution of a deed relating to three lands. The parties to it authorized him in writing to dispense with any search

for prior registrations; and it seems that, in reliance on that authority, he made no such search, and made no note on the deed of any prior registration, and delivered the deed to the parties. Afterwards the deed was presented by another notary for registration; it was then found that there had been a prior deed registered relating to one of the lands; and the Registrar-General then caused this prosecution to be instituted, charging the appellant with an offence under section 29 of Ordinance No. 1 of 1907, in neglecting to write at the head of the deed attested by him, before it was tendered for registration, the reference to the registration of the prior deed affecting one of the lands.

Sept. 2, 1910

HUTCHINSON  
C.J.King v.  
Fernando

The defence is that the facts as stated above disclose no offence. The District Court thought that the section is obscurely worded, but that on its true interpretation the appellant's omission was an offence.

Section 29 (16) enacts that before any deed or instrument affecting land is drawn by a notary, he shall search or cause to be searched the registers in the land registry to ascertain the state of the title, and whether any prior deed affecting the land has been registered, and that if any such prior deed is registered, he shall make a note of it in ink at the head of the deed: " Provided that if the parties to the transaction authorize the notary in writing to dispense with the search, the search shall not be compulsory, but he shall, before the deed or instrument is tendered for registration, write at the head thereof the reference to the previous registration, if any. "

When the notary has been duly authorized to dispense with the search, and accordingly draws the deed without searching the registers, he has committed no offence. And as he cannot know what prior registrations there are (if any) without a search being made, he does not make a note of them on the deed. If the deed is then executed or acknowledged before him, he attests it. So far he has committed no offence. He then delivers it to his client; and still there is no offence. It is not a rare thing for deeds relating to land to be never registered, or only registered some months or years after their execution; and the non-registration is no offence. If however the client or some one else, after a long or short interval, tenders the deed to be registered, does the notary who drew it thereupon become guilty of an offence? Does the sending of the deed to be registered without his knowledge convert his previously lawful conduct into an offence? The law says that before it is tendered for registration " he " shall note the prior registration on it; and grammatically " he " means the notary who draws the deed, not the notary who attests it or who tenders it for registration. But how can he do that if he does not know that it is going to be registered? It would be comparatively simple if the law required that the notary who draws a deed (and this sub-section only speaks

Sept. 2, 1910

HUTCHINSON  
C.J.

King v.  
Fernando

of the man who draws a deed, not of him who attests it) should himself procure it to be registered; although even then it would seem strange to say expressly that he need not search, and yet that he must note on the deed something which he can only learn by searching. But the law does not require him to get the deed registered; and in the present case the notary who drew it did not tender it for registration. It is one of the cases in which the Legislature has not clearly and unmistakably expressed its intention, and we ought, if we can, to give such a meaning to the enactment as will not cause a result which we feel sure could not have been intended; and I would do this by interpreting the concluding words of the proviso to refer only to the notary by whom a deed is tendered for registration. I would accordingly hold that no offence was committed, and set aside the conviction.

*Appeal allowed.*

