1898.
August 15.

QUEEN *v.* DE ABREW.

D. C. (Criminal), Galle, 12,610.

Duty of notary before attesting a deed—Search for registration of prior deed and noting such registration in the deed attested—Ordinances No. 2 of 1877 and No. 14 of 1891.

Unless a notary has personal knowledge of the state of title in regard to a land affected by a deed which he is about to attest, he should, before attesting it, search the register at the Land Registry, either personally or by agent, to ascertain whether any prior deed affecting such land has been registered.

A statement made to the notary by the grantor that there was no such deed is not sufficient.

THIS was a prosecution under sub-section (14) of section 26 of the Ordinance No. 2 of 1877 and section 24 of the Ordinance No. 14 of 1891 against the accused, who was a notary public, for failing to ascertain, before attesting deed No. 2,836, whether any prior deed affecting the land dealt with under deed No. 2,836 had been registered, and for failing to note the number of the registration volume and the page of the folio in which the previous deeds affecting the said land had been registered. The District Judge found the accused guilty, and sentenced him to pay a fine of Rs. 5, "in that he, being a notary public ..... attested a "deed bearing No. 2,836 affecting the land Ratweheraowita "..... and did not before attesting the said deed endeavour to "ascertain whether any prior deed affecting such land had been "registered, and to note on the said deed the number of the "registration volume and the page of the folio in which such "prior deed affecting the land had been registered."

The accused appealed.

De Vos, for appellant.

Chitty, C.C., for respondent.

15th August, 1898. BONSER, C.J.—

In this case the appellant, who is a notary, has been convicted for that he did not, before attesting a certain deed, "endeavour to "ascertain whether any prior deed affecting such land had been "registered." The conviction proceeds "and to note on the said "deed ..... the number of the registration volume and the page

" of the folio on which such prior deed affecting the said land had " been registered, in breach of sub-section 14 of section 26 of " Ordinance No. 2 of 1877 and section 24 of Ordinance No. 14 of " 1891" ; but in my opinion the words after " registered" down to the second " registered" should be omitted, and also the words " section 24 of Ordinance No. 14 of 1891." For although it appears that a prior deed affecting the land had, in fact, been registered, it was not proved that that deed came to the appellant's knowledge. Therefore he was under no obligation to note the number.

It is said, on his behalf, that the evidence showed that he did endeavour to ascertain whether any prior deed affecting the land had been registered. His own account of what he did was this : " When I executed deed 2,836 I asked transferror how he became " entitled to the interest he conveyed, and he said by right of " inheritance. I did not ask him whether there was any prior " deed for that share of the land. As he said he was entitled to " that share by inheritance, I concluded there was no deed in " existence touching that share." Certainly this was a remarkable statement for a man to make, who has been a proctor for forty-nine years and a notary for twenty-five years. One would think that he had never heard of a man dying without paying off his mortgage debts. It is quite clear that he did not, in any proper sense of the word, " endeavour " to ascertain whether there was any prior deed. Even if he had asked the vendor whether there were any prior deeds, I do not think that that would have been any compliance with the requirements of the Ordinance. The words " endeavour " to ascertain " mean that he is to do all that is reasonably necessary in order to ascertain. The Ordinance itself, in the table of notaries' fees, indicates what is the proper method of endeavouring the ascertain whether there are any such prior deeds, for there is an allowance of Re. 1 for attendance at the registrar's office, or writing a letter for the purpose of ascertaining the existence of encumbrances. My opinion is, that 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. The appeal is dismissed.