THE QUEEN *v.* GUNATILLEKE.

1885.
May 21.

D. C. (Criminal), Kandy, 8,191.

Ordinance No. 2 of 1877, s. 26, sub-sections 9, 10, and 13—Attesting unstamped deed—Sealing necessary to complete attestation—Statement in attestation as to stamp.

A notary who attests a deed which by law ought to be stamped, but which bears no stamp, is guilty, under sub-section 13 of section 26 of Ordinance No. 2 of 1877, of attesting a deed insufficiently stamped.

The attestation of a deed by a notary is not complete when he has merely signed it, without sealing it.

So, where a notary merely signed the attestation clause in a deed insufficiently stamped, and stated in the clause that the duplicate bore a stamp of 25 cents, whereas it bore no stamp at all, *held*, that he had not made himself obnoxious to sub-section 13 of section 26 of Ordinance No. 2 of 1877 for attesting a deed insufficiently stamped, nor to sub-section 10 for making a false statement as to the stamp required to be affixed to the duplicate.

THE accused, a notary public, was charged in one indictment (1) with having, in breach of sub-section 13 of section 26 of Ordinance No. 2 of 1877, attested a deed insufficiently stamped; (2) with having, in breach of sub-section 9, permitted one Kalu Banda to sign his name to the duplicate of deed No. 2,991 executed before the accused before the whole of such deed had been written; and (3) with having, in breach of sub-section 10, stated in his attestation of the said deed that its duplicate bore a stamp of 25 cents, whereas no stamp whatever was affixed to it. The accused was found to have merely signed, but not sealed, the attestation of the deed in question; and the deed, in fact, was unstamped. The learned District Judge, being of opinion that the attestation of an unstamped deed could not be said to be the attestation of a

1885. *May 21.*

deed insufficiently stamped, acquitted the accused on the first count. On the second count he held that the incomplete document (marked B 1 in the proceedings) signed by Kalu Banda was not the duplicate but the protocol copy of the deed in question, and that sub-section 9 did not apply to such copy, and acquitted the accused. On the third count, too, he acquitted the accused, being of opinion that while sub-section 10 gave certain directions to notaries as to attestation of deeds, it did not make the non-compliance with those directions penal.

On appeal by the Attorney-General.

Ferdinands, S.-G., for the Crown.

21st May, 1885. LAWRIE, J.—

I concur in the verdict, though not in the reasons given for it. The first charge is that the accused attested a deed No. 2,991 liable to stamp duty, which deed was then insufficiently stamped, in breach of the 13th sub-section of the 26th clause of the Ordinance No. 2 of 1877.

I am unable to follow the reasoning of the learned District Judge with regard to the Ordinance No. 17 of 1852, and as to protocols.

He deals with the case as if B 1 were the documents which the accused is charged with having illegally attested, but B 1 is not attested at all. It was B which the accused handed to the Registrar as the duplicate.

It bore no stamp. The learned District Judge holds that a deed which by law ought to be stamped, and which bears no stamp, cannot be said to be insufficiently stamped. I do not agree with that opinion.

If a five-cents stamp would have been insufficient, no stamp at all would be still more insufficient.

If it be the duplicate of the original deed No. 2,991, the accused was by the Ordinance prohibited from attesting it, because it was insufficiently stamped.

The essence of the offence is that the accused attested this insufficiently stamped deed.

The attestation is signed, but it is not sealed. A notary's seal is all over the world as important a part of the attestation as the signature.

Sealing an attestation is required by our Ordinance No. 2 of 1877, section 26, sub-section 10. The duplicate had not been delivered, it remained in the possession of the notary, and until he sealed it and officially transmitted it to the Registrar, he was not too late to put on the requisite stamp.

1885.
May 21.
LAWRIE, J.

The notary was called on to give up the duplicate before the term allowed by the Ordinance, and he had still time both to affix the stamp and to attest the deed fully.

The attestation was not complete, therefore he did not commit the offence of attesting an insufficiently stamped deed.

The second charge is that he permitted Kalu Banda, the grantor of the deed No. 2,991, to sign the duplicate before the whole of it had been written.

The learned District Judge has acquitted the accused because the incomplete deed which Kalu Banda signed is not proved to have been the duplicate but the protocol copy. By the 9th sub-section it is equally criminal to permit a party to a deed to sign a protocol, draft, or minute before the whole shall have been written, as it is to permit him to sign the original or the duplicate. I am of opinion that the protocol copy B 1 is sufficiently complete to fulfil the requirements of the 12th sub-section, which requires a notary to keep a draft, minute, or copy. Certainly B 1 omits the sentence "to possess from this day the said portion of land un- "disturbedly for ever doing whatever they may please. I have "in witness whereof caused this bill of sale to be written, and "I have set my signature to two of the same tenor as these presents "at Panwila on the 24th day of November, 1884," but the deed of sale was complete without these words. A copy of the whole of the original deed need not be kept in the protocol book, but "a draft or minute" only. I think this copy is a sufficient protocol, draft, or minute, though it is incomplete.

The third charge is that the accused falsely stated in his attestation that the duplicate bore a stamp of 25 cents. The attestation was not sealed and was not complete, and I cannot assume that the accused would not have completed the attestation before affixing the requisite stamp.

For these reasons I am of opinion that the accused was rightly acquitted.