Present: Pereira J. and De Sampayo A.J. **1914.**

GUNERIS *v.* KARUNARATNE.

228—D. C. Negombo, 9,696.

Omission on the part of notary to search for registration of seizures before drawing up conveyance—Action for damages against notary.

Where a notary follows a general practice and makes a mistake regarding the strict requirements of the law as to which there is a reasonable doubt, or where he commits an error of judgment, he is not guilty of such negligence as would make him liable in damages to his client.

Defendant, a notary, was sued by plaintiff for damages sustained by him by reason of omission on the part of defendant to search for registrations of seizures before drawing a conveyance of a certain parcel of land in plaintiff's favour.

Held, per PEREIRA J.—That under section 29 (16*a*) of the Notaries Ordinance, 1907, it was the duty of a notary, before a deed or instrument affecting land or other immovable property was drawn by him, to search or cause to be searched the registers in the Land Registry, to ascertain, *inter alia*, whether there were registrations of seizures (in execution) of the property dealt with by the deed or instrument, but that in the present case the defendant was not

liable, because the evidence showed that the omission to search the registers for registrations of seizures was due to an error of judgment.

Per De Sampayo A.J.—The defendant was not bound to search for registrations of seizures under section 29 (16a) of the Notaries Ordinance, 1907.

IN this action the plaintiff sued the defendant, who is a notary, to recover a sum of Rs. 1,000 as damages for drawing a deed of transfer, No. 44 of October 18, 1912, in his (plaintiff's) favour without properly searching for encumbrances, with the result that a duly registered seizure of one-third of the property transferred existing at the execution of the transfer deed was not discovered, and this transfer deed was rendered void to such extent, and plaintiff lost title to one-third of this land sold to him. The plaintiff alleged that the loss of the one-third share was due to the defendant's negligence. The defendant filed answer denying liability.

The learned District Judge after trial dismissed plaintiff's action with costs.

The plaintiff appealed.

A. St. V. Jayewardene, for the plaintiff, appellant.—Th notary did not search for registrations of seizures. It was necessary to have searched that register as well to find out the state of the vendor's title. Section 29 (16a) of the Notaries Ordinance, 1907, requires the notary to ascertain the state of the vendor's title. Seizure is an encumbrance; under the Civil Procedure Code all alienations by the debtor pending the seizure are void, as against claims enforceble under the seizure. The notary was guilty of negligence for not making the search, and he is liable in damages, as this was a gross neglect of duty. The section of the Notaries Ordinance made his duty very clear. If there was a wrong practice, it should not be allowed to over-ride the law.

Counsel cited *3 Nathan, p. 1747, paras. 1706, 1709; Williams on Vendors and Purchasers 579, 604; 25 Halsbury 357; Ramanathan (1820) 4; Van Zyl's Judicial Practice 735; 4 C. P. 13; 7 L. T. R. 781; 21 L. J. Q. B. 292.*

Bawa, K.C. (with him *Samarawickreme* and *Dias*), for the respondent (not called upon).

Cur. adv. vult.

September 3, 1914. Pereira J.—

The primary question in this case is whether the defendant can be said to be guilty of negligence in omitting to search for registrations of seizures in execution of the property sold to the plaintiff on the deed attested by him, that is to say, deed No. 44 of the 18th October, 1912. I think it is clear law that a notary, like a solicitor, is not liable to his client in damage for loss caused to him by an error of

judgment on the part of the notary, nor would he be chargeable with negligence if he make a mistake on a point of law or practice as to which there was reasonable doubt. (See *Kemp v. Burt*,[1] *Elkington v. Holland*.[2]) In the present case it is contended that it was the defendant's duty to search for registrations of seizures under section 29 (16*a*) of the Notaries Ordinance, 1907. I am in entire agreement with the counsel for the appellant here. The section referred to provides that before any deed or instrument (other than a will or codicil) affecting any interest in land or other immovable property 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 in regard to such land, and whether any prior deed affecting any interest in such land has been registered. It has been said that the provision really means that the object of the search should be no more than to ascertain whether there are registered deeds relating to the land. This construction would be tantamount to sweeping away from the section the words " to ascertain the state of title in regard to such land. " These words did not occur in the old Notaries Ordinance, and they have been advisedly inserted in the new to enlarge the scope of the section, and there is no reason that I can think of why they should be given no meaning or effect. Rules of sound construction require that effect should be given, wherever possible, to every word of a legislative enactment. Now, a seizure in execution of a parcel of land, especially a registered seizure, is undoubtedly an encumbrance on the land, and therefore a search to ascertain the state of the title must necessarily involve a search for registrations of seizures. At the same time there can be no question that the section of the Ordinance is very unhappily expressed. Had it been proved by the appellant that the section was generally understood to mean that registrations of seizures should be searched for, I should not have hesitated to condemn the defendant in damages; but the evidence is all the other way. The defendant himself has pledged his word to the effect that the words " state of title " he understood to mean " claim of title or legal title, " whatever that may mean. It is manifest that he intended to convey that he did not understand the expression to indicate the necessity for a search of registrations of seizures, and I think that, in view of the unsatisfactory way in which the provision of the Ordinance is expressed, he may well be excused if he did not. There is then the evidence of D. C. Jayasundere, the daybook clerk of the Registrar's office, Negombo, who speaks of the practice among notaries as to searches in the Registrar's office. He says that the register of seizures is not searched by notaries. In these circumstances, I am not prepared to say that the defendant can be deemed to have been guilty of negligence, and I would dismiss the appeal with costs.

[1] *4 Barn. & Adolp. 442*

[2] *9 M. & W. 659.*

1914.

Gunaris v. Karunaratne

DE SAMPAYO A.J.—

I entertain some doubt as to whether rule 16 under section 29 of the Notaries Ordinance, No. 1 of 1907, whatever its intention might be, has effectively imposed on notaries the duty of searching the register of seizures. Reading as a whole the two paragraphs and the proviso comprising rule 16, I am inclined to think that a notary is thereby only required to search for prior deeds, if any, relating to the land for which he is instructed to draw a deed himself. It is true that the rule says that he shall search the registers in the Land Registry "to ascertain the state of the title in regard to such land." But these words are inaptly wedged in among provisions having to do purely with the register of deeds, and I find it difficult to understand them in the sense that it is the general duty of a notary as such to examine the title. He may indeed do so, apart from the rules in the Notaries Ordinance, if he is requested by his client, and the schedule of fees in the Ordinance authorizes a fee to be charged for examining, at the request of any party, the title of any property to be transferred, &c. But if he is not so requested, the notary is not, in my opinion, bound to satisfy himself as to title, and if not, why should he search for such encumbrances as seizures, which are only relevant to the examination of the title? I hesitate to hold that the words above quoted have a larger signification than that the notary is required to ascertain the state of the title in so far as it is disclosed by registered deeds, which belong to the special province of notaries. The practice officially recognized is in accordance with this view, and, on the principle that use is the best interpreter of laws, appears to me to throw considerable light on the meaning of the rule. For it is proved by the officer of the Registrar's Department, who was called as a witness, that, when a notary makes an application to search the registers, he searches, and can only search, the register of deeds, and that for the purpose of searching the register of seizures a special application must be made, and, as the District Judge observes, the printed forms for "application for search" issued by the Registrar-General's Department bear out that evidence. It is, however, not necessary for the purposes of this appeal to decide the question; it is sufficient to say that even if rule 16 imposes on a notary the absolute duty of searching the register of seizures, the defendant in this particular case has not been proved to have been guilty of such negligence as would entitle the plaintiff to maintain an action against him for damages. I also share the suspicion expressed by the District Judge that the plaintiff's claim is not *bona fide*, that he has really suffered no damage, and that this action is engineered by parties who are not before the Court. I agree that the appeal should be dismissed with costs.

Appeal dismissed.

Present: Wood Renton C.J.

1914.

In re——, a Proctor.

Contempt of Court—Impertinent language used in the petition of appeal.

A proctor for an accused made use of the following words in the petition of appeal:—

" The Judge was wrong in rushing to the conclusion " ; " the Judge seems to have been waiting for an opportunity, which, according to him, is rare, to convict a process server " ; " in his hurry to convict the accused."

***Held*, that the proctor was guilty of contempt of Court.**

IN this matter the following rule was served on the defendant:—

Upon reading the petition of appeal of Romel Ludowyke, the accused-appellant in District Court, Chilaw, case No. 3,128, appearing by——, his proctor, it is ordered that the said —— do appear in person before this Honourable Court at Hulftsdorp on Monday, the Second day of November, 1914, at 11 o'clock in the forenoon, and show cause why he should not be punished for an offence of contempt of the said District Court of Chilaw, in that he, the said——, made in the said petition of appeal the following statements:—

(1) " The accused-appellant submits that the learned District Judge was wrong in rushing to the conclusion that the two forms that the proctor had in his hand were two blank forms signed by the Fiscal's Marshal;

(2) " The District Judge has rushed to a conclusion which has prejudiced his mind entirely against the accused-appellant;

(3) " The learned District Judge also seems to have been waiting for an opportunity, which, according to him, is rare, to convict a process server;

(4) " The learned District Judge in his hurry to convict the accused-appellant has blundered in passing sentence under each of the sections 179, 190, and 196 of the Penal Code ";

and did thereby convey offensive and improper insinuations in disrespect of the authority of the said District Court of Chilaw.

It is further ordered that this rule be served by the Fiscal of the North-Western Province.

The defendant tendered an apology.

Bawa, K.C. (with him *A. St. V. Jayewardene* and *C. H. Z Fernando*), for the proctor, tendered an affidavit explaining the circumstances, and withdrew unreservedly the words referred to.

Obeyesekere, C.C. in support of the rule.

1914.

November 2, 1914. WOOD RENTON C.J.—

Mr.————: you have clearly committed a contempt of the authority of the District Court, and all that I have to do is to consider how far the circumstances stated in your affidavit, together with your letter of apology to the Additional District Judge, can be held to extenuate it. I can readily see that you may have felt serious vexation at the conclusion which you considered that the District Judge had too hastily drawn from the presence of the two blank forms in your hand. But you were entirely wrong in the method in which you sought redress. All courts of justice are liable to make mistakes, and no Judge, least of all a Judge who, so far as I can gather from the record, tried the case in question with conspicuous fairness, would have hesitated to correct at once and unreservedly any error of fact into which he had been betrayed. Nothing would have been easier for you than to have moved him in open Court, to have called his attention to the mistake which you thought that he had committed, and to have asked him to rectify it. You took, however, a different course, and you not merely made use of language which was disrespectful and contemptuous in regard to the District Judge, but did so with a certain degree of deliberation, which I cannot altogether exclude from consideration. This is not a case of a hasty word or a hasty letter uttered or written and despatched and then at once regretted. It is a legal document, drafted, typed, and handed in to the District Court for transmission to the Court of Appeal. Moreover, the document itself discloses what I must call a descending scale of impertinence. It proceeds from the veiled impertinence of the first two paragraphs to the open impertinence of the suggestion that the District Judge had been " in a hurry to convict the accused. " I have tried to place before my own mind in dealing with this case, and to place before you, the considerations that strike me as being relevant on both sides. I make full allowance for your momentary irritation, and take the utmost account of your apology to this Court and to the District Judge. But the offence is one which cannot be altogether excused. Although you have been for some years in practice, and I have no reason to doubt that you have deserved what you say has been the feeling of the various courts of justice before which you have appeared towards you, you are still a young practitioner, and I wish to impress upon you as earnestly and soberly as I can that the use of language of this kind is cowardly, is demoralizing to the practitioner who stoops to make use of it, and is utterly inconsistent with the attitude of respect and reserve which ought to subsist, and which must subsist, between every Judge and the lawyers who practise before him. With these words I convict you, on what is practically, although not technically, your own plea, of contempt of Court, and impose a nominal punishment of a fine of Rs. 75.