

1936

Present : Akbar and Koch JJ.

IN THE MATTER OF AN APPLICATION OF ALBERT GODAMUNE,
PROCTOR, SUPREME COURT, FOR THE ANNUAL CERTIFICATE
TO PRACTISE AS NOTARY.

*Notaries Ordinance—Failure to apply for annual certificate within time—
Refusal of District Judge to issue certificate—No appeal—Ordinance
No. 1 of 1907, s. 25 (2).*

No appeal lies to the Supreme Court from a decision of the District Judge under section 25 (2) of the Notaries Ordinance, refusing to issue the annual certificate to a Notary, who had failed to apply for it within the time provided by the Ordinance.

A PPEAL from an order of the District Judge of Kandy.

Rajapakse, for the appellant.

Basnayake, C.C., appears as *amicus curiae*, on notice.

Cur. adv. vult.

May 14, 1936. AKBAR J.—

This is an appeal by a Notary under section 27 of the Notaries Ordinance, No. 1 of 1907, from an order made by the District Judge in the following circumstances. Under section 25 of the Ordinance it is the duty of the Secretary of a District Court on the application of a person entitled to practise as a Notary within the jurisdiction of that Court to issue to him a certificate authorizing him to practise as such. Under section 26 of Ordinance No. 1 of 1907, as amended by Ordinance No. 10 of 1934, for the purpose of obtaining this certificate the Notary has to sign a declaration containing certain items of information. By sub-section (2) of section 25 the power of the Secretary to issue the certificate is limited by the condition that the application has to be made before the 1st day of March in that year. In the appeal now before me the Notary applied 20 days after the due date, namely, on March 20, 1936. Power is given to the District Judge, under the proviso to sub-section (2) of section 25, when the certificate is not applied for within the time limited by the Ordinance, to inquire into the matter and, if it were shown to his satisfaction that such default was not due to any negligence on the part of the Notary, the District Judge may direct the Secretary to issue the required certificate notwithstanding such delay. This apparently took place in the lower Court because the District Judge inquired into the matter, recorded the evidence of the Notary, and by the order dated April 2, 1936, refused to allow the certificate. The appeal is from this order.

Unfortunately for the powers of this Court to entertain such an appeal we have to look to the words of section 27. Section 27 is clear that the right of appeal is given to a Notary only in cases where the proceedings began by the Secretary refusing or declining to issue a certificate and it does not apply to a case like this where the Secretary has no power at all to have anything to do with the matter until the District Judge had made his order under the proviso to sub-section (2) of that section. This

seems to be quite clear because the Advocates who appeared for the two appellants have admitted that there seems to be no right of appeal in such circumstances. Owing to the doubt that we had as to the correct interpretation of this section, in the absence of authority on the point, we noticed the Attorney-General and Mr. Basnayake, Crown Counsel, who kindly argued the matter as *amicus curiae*, has taken the same view. He has further referred us to the case of *Sangarapillai v. The Chairman, Municipal Council, Colombo*¹, where the Supreme Court in a similar case held that it had no right to entertain an appeal where that power was not expressly given by Statute.

In these circumstances the appeal will have to be dismissed.

KOCH J.—I agree.

Appeal dismissed.
