Present : Bertram C.J. and Schneider A.J. 1920.

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74—D. C. Hatton, 3 (Special).

Notary authorized to practise in the judicial district of Kandy—Exclusive of Nuwara Eliya-Hatton division from Kandy District—Right of notary to practise in Nuwara Eliya-Hatton division without getting his warrant altered.

A notary was authorized by his warrant in 1907 to practise his profession throughout the (judicial) district of Kandy. In 1909, by Proclamation, the Nuwara Eliya-Hatton division was excluded from the judicial district of Kandy. The Registrar-General was advised by Government that the creation of the new district did not interfere with the vested rights of notaries.

Held, that the notary was not entitled under his warrant to practise in the judicial district of Nuwara Eliya-Hatton.

BERTRAM C.J.—If the notary wishes to preserve the area of his original practice, his proper course is to apply to the Governor, under section 11 of Notaries Ordinance, to change the area specified in his warrant and to grant him a new warrant.

THE facts appear from the judgment.

Keuneman, for appellant.

September 6, 1920. BERTRAM C.J.—

This is an appeal from an order of the District Judge of Nuwara Eliya, confirming a refusal of the Secretary of the Court to issue to a notary a certificate under section 25 of the Notaries Ordinance, No. 1

[1] *(1918) 20 N. L. R. 332.*

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of 1907, to the effect that he is duly authorized to practise as a notary within the jurisdiction of the Nuwara Eliya-Hatton District Court.

The notary in question is Mr. Nigel I. Lee, who, besides being a notary, is a proctor belonging to the firm of Messrs. Liesching & Lee of Kandy. Certificates were refused to both Mr. Liesching and Mr. Lee, and the learned District Judge confirmed the refusal in both cases, but it is only in the case of Mr. Lee that an appeal is taken.

The ground for the refusal is that Mr. Lee has not complied with the provisions of section 12 of the Ordinance, which requires a notary before commencing to practise to make and sign a declaration before the District Judge having jurisdiction over the area specified in his warrant, to execute a security bond before such Judge, and to file in the District Court " of such district " an attested copy of his warrant.

Before considering the facts of the case, it will be convenient to examine the general scheme of the Ordinance. Throughout the Ordinance there is a close connection between the notaries, whose practice the Ordinance authorizes, and the various District Courts of the Island. By rule 1 in Schedule B " Every person (other than an advocate or proctor of the Supreme Court) who shall intend to apply for admission as a notary shall give at least three months' notice of his intention to the District Judge of the district and the Government Agent of the province in which he resides and in which he intends to practise." On obtaining a warrant he must comply with the formalities of section 12 already referred to. Upon compliance with those formalities he is entitled to be enrolled as a notary in a book kept for that purpose in the District Court. (See section 16.) By section 17 (1) a list of all persons authorized to act as notaries within any district must be kept at all times posted at the District Court-house of the district for general information. By section 20 the District Judge, within whose jurisdiction a notary resides, is given jurisdiction to inquire into offences of misconduct of notaries, and to report to the Governor on the subject. Every year a notary must obtain from the Secretary of the District Court a certificate that he is entitled to practise within the jurisdiction of the Court. (See section 25.) The District Court has thus a general supervision over notaries authorized to practise in its district. The warrant issued by the Governor to the notary need not authorize him to practise in any particular judicial district. By section 3 it must specify the area within which the person appointed is authorized to practise. This area need not include the whole of a judicial district, it may comprise more than one judicial district or portions of more than one judicial district, but, nevertheless, it is clearly the intention of the Ordinance that, where a notary is appointed with authority to practise in any area within the jurisdiction of the

District Court, he shall before practising in that area take steps to enrol himself as a notary at that District Court.

To come now to the facts of the present case, Mr. Lee was appointed a notary under a repealed Ordinance, No. 2 of 1877. But any rights which he had under that Ordinance are preserved to him by section 5 of the Interpretation Ordinance, No. 21 of 1901. By sub-section 3 of that section it is laid down that a repeal does not affect any right acquired under the repealed law. Mr. Lee, therefore, has all rights he enjoys under the repealed Ordinance. There is, however, no substantial difference between the rights of a proctor and notary under the repealed Ordinance and his rights under the present Ordinance.

Mr. Lee's warrant was issued to him on January 29, 1907, and it purported to give him authority "to be and act as notary public at Kandy and throughout the District of Kandy?" The first question we have to ask ourselves is, Within what area this warrant authorized Mr. Lee to practise?

Does the expression "District of Kandy" refer to the revenue district of Kandy, or to the judicial district of Kandy? Revenue districts and judicial districts are not necessarily identical. In view of the relation between notaries and District Courts, to which I have drawn attention above, I have no doubt that the expression means the judicial district of Kandy. On April 29, 1909, a Proclamation was issued (see *Gazette* No. 6,307) establishing a District Court to be holden in the towns of Nuwara Eliya and Hatton in the district of Nuwara Eliya. The effect of this Proclamation was to exclude the Nuwara Eliya-Hatton judicial divisions from the Kandy judicial district. What effect did this Proclamation have upon Mr. Lee's rights? It is contended by Mr. Keuneman that under his warrant, Mr. Lee had a vested right to practise in the whole of the area which was, in fact, comprised in the Kandy District at the date of his warrant, notwithstanding any alteration that might be made in the limits of that district. This is the supposition on which the practice has, in fact, proceeded. From correspondence which was laid before the District Judge it appears that the Registrar-General was advised that the creation of a new District Court of Nuwara Eliya did not interfere with the vested rights of notaries under their warrants to practise in what was, before the change, the judicial district of Kandy. I am sorry to disturb an existing practice, but I regret that I cannot read the warrant in this way. The area defined in the warrant may be defined either by actual metes and bounds or by reference to boundaries recognized for some other purpose. When the Governor authorized Mr. Lee to practise in the judicial district of Kandy, I read this authority as permitting Mr. Lee to practise within the limits of that district as they may from time to time be defined by law. If any portion of an adjoining judicial district were added to the judicial district of Kandy, I

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consider Mr. Lee would be entitled to practise within the area so annexed, and, similarly, if the judicial district of Kandy were restricted, I take it that the area of Mr. Lee's practice must be restricted also. If a notary in the situation of the appellant wishes to preserve the area of his original practice, it seems to me that his proper course is to apply to the Governor under section 11 of the Ordinance to "change the area specified in his warrant, and to grant him a new warrant." If the effect of the new warrant is to authorize him to practise within the jurisdiction of two District Courts, then, under section 12, he ought to file his warrant in all the District Courts of the area in which he is authorized to practise. I consider that in section 12 the expression "District Judge," though used in the singular, must, under paragraph 23 of section 3 of the Interpretation Ordinance, be held to include the plural, and that the expression "before commencing to practise" must, with reference to any particular judicial district, be considered as meaning "before commencing to practise in that District."

I am, therefore, of opinion that the order of the Secretary (without the qualification directed by the District Judge) must be confirmed, and that the appeal must be dismissed.

SCHNEIDER A.J.—I agree.

Appeal dismissed.