

1932

Present: Dalton J.

WICKREMANAYAKE v. PERERA.

314—P. C. Colombo, 36,020.

Notaries Ordinance—Failure to renew certificate—Acting as Notary before renewal—Certificate obtained under proviso has no retrospective effect—Ordinance No. 1 of 1907, s. 25.

Where a notary, who had renewed his certificate on October 14, 1931, had acted as a notary on October 2 and 6.

Held that that he was rightly convicted of having acted a notary without obtaining a certificate.

A certificate obtained under the proviso to section 25 of the Notaries Ordinance has no retrospective effect.

A PPEAL from a conviction by the Police Magistrate of Colombo.

R. C. Fonseka, for accused, appellant.

Wendt, C.C., for Crown, plaintiff, respondent.

July 28, 1932. DALTON J.—

The appellant, a proctor and notary, has been convicted on two counts on charges of having acted as a notary without having obtained a certificate for the year 1931 as required by section 25 of Ordinance No. 1 of 1907. The dates of the alleged offences were October 2 and October 6, 1931. The prosecution was duly authorized by the Registrar-General. The evidence shows that the appellant renewed his certificate on October 14. The defence put forward in reply to the charges is that the certificate, under the provisions of section 25, is retrospective. The Magistrate was unable to agree with that contention, and in my opinion he was correct in his interpretation of the section.

It is conceded that no decided case to support the argument put forward on behalf of the appellant can be found, but I was referred to *Dias v. Rajapakse*¹. It is suggested by counsel for appellant that the case to some extent supports his argument, but I regret I cannot agree with him. If it can be said to have any bearing on the point now raised, it seems to me to be rather against his contention.

Section 25 of the Ordinance allows two months' grace in obtaining a yearly certificate, but proceedings could be taken in respect of any act done by the notary as notary within these two months, if the certificate for the year be not applied for and granted by March 1. I am unable to agree that a certificate obtained under the further provision in the section has any retrospective effect. To interpret the section in such a way would be to read into it something which to my mind is not there. If, however, the circumstances that give rise to the delay are put before the Court, there is no reason why they should not be taken into consideration in deciding what sentence should be passed.

In this case appellant has been sentenced to pay a fine of Rs. 50 on each count, or in default to undergo six weeks' simple imprisonment. It is most important in the interests of the public that the provisions of

¹ 12 N. L. R. 38.

the Ordinance should be strictly observed. The duties devolving on notaries are most responsible and many of their clients have necessarily to put implicit faith in them for the due and proper performance of the work entrusted to them. The appellant is, in addition, a proctor. I see no reason to interfere with the sentences passed in this case. It is represented to me, however, by his counsel that there are eleven other cases pending in the Police Court against the appellant, waiting decision in this appeal. Counsel has given voice to the fear that, in the event of this appeal being upheld, appellant may be fined Rs. 50 in respect of each charge in those eleven cases, which he states cover thirty-five deeds attested by appellant prior to the obtaining of his certificate or licence. I can only express the opinion that, unless there are circumstances in those cases which this case now before me has not brought to light, the Magistrate is hardly likely to do that.

This appeal is dismissed and the conviction affirmed.

Affirmed.
