

Present: Jayewardene A.J.

1924.

REX v. SEENYTAMBY.

117—D. C. (Crim.), Batticaloa.

Notary—Fixing of stamps—Duplicate sent to Registrar—Wilfully false statement—Attestation clause—Ordinance No. 1 of 1907, s. 33 (d).

Where a notary, who attested a deed stated in the attestation clause, as required by law, that stamps of the value of Rs. 42 were affixed to the duplicate deed, and where on receipt of the duplicate by the Registrar of Lands it was ascertained that only one stamp of the value of Rs. 2 was affixed to it.

Held, that the notary was guilty of having knowingly and wilfully made a false statement in the attestation to the deed within the meaning of section 33 (d) of the Notaries Ordinance.

A PPEAL by a notary from a conviction under section 33 of the Notaries Ordinance, No. 1 of 1907. He was charged on three counts: first, with having permitted or suffered one A. C. Joseph to execute before him a deed No. 1,977 dated February 23, 1923, which was insufficiently stamped in breach of rule 6 of section 29 of the Ordinance; secondly, with having, in respect of the said deed, neglected to state the correct number and value of the stamps affixed to the duplicate deed; thirdly, with having in violation of section 33 (d) of the Ordinance, knowingly and wilfully made a false statement in the attestation to the same deed No. 1,977 executed before him, namely—that five stamps of the value of Rs. 42 were affixed to the duplicate deed, while in fact only one stamp of the value of Rs. 2 was affixed. To counts one and two the accused pleaded guilty, but to the third count he pleaded not guilty. The District Judge convicted him on the third count also, and sentenced him to six months' rigorous imprisonment.

The evidence disclosed that the accused attested the deed in question on February 23, 1923, and stated in the attestation clause that five stamps of the value of Rs. 42 were affixed to the duplicate deed. On receipt of the duplicate by the Registrar of Lands, it was discovered that only one stamp of the value of Rs. 2 had been affixed. It was urged on behalf of the accused that he had followed a practice in vogue among notaries of not observing the rule which requires notaries to stamp deeds before they are executed by the parties. It was alleged that notaries were in the habit of fixing stamps on the duplicates just before they are sent to the Registrar of Lands, for which purpose a period of time extending to the 15th day of the following month was allowed. By an oversight the clerk

1924. had failed to affix the necessary stamps before the duplicate of the deed was forwarded. It was contended on behalf of the accused
Rex v. that there was no proof that he made the false statement "knowingly and wilfully."
Seenytamby

E. W. Jayewardene, K.C. (with him *H. V. Perera*), for appellant.

Vernon Grenier, C.C., for respondent.

December 17, 1924. JAYEWARDENE A.J.—

This is an appeal by a notary who has been convicted under section 33 of the Notaries Ordinance, 1907, for knowingly and wilfully making a false statement in his attestation to a deed, and sentenced to six months' rigorous imprisonment. He was charged on three counts; first, with having permitted or suffered one A. C. Joseph to execute before him a deed No. 1,977 dated February 23, 1923, which was insufficiently stamped in breach of rule 6 of section 29 of the Notaries Ordinance; secondly, with having, in respect of the said deed, neglected to state the correct number and value of the stamps affixed to the duplicate deed, offences punishable under section 29 of the Notaries Ordinance, No. 1 of 1907; thirdly, with having in violation of section 33 (d) of the Notaries Ordinance knowingly and wilfully made a false statement in the attestation to the same deed No. 1,977 executed before him, to wit: that five stamps of the value of Rs. 42 were affixed to the duplicate of the said deed, while, in fact, only one stamp of the value of Rs. 2 was affixed thereto, an offence punishable under section 33 of the Ordinance with imprisonment. To counts one and two the accused pleaded guilty, but to the third count he pleaded not guilty. After trial the learned District Judge found the accused guilty on the third count also, and sentenced him to pay a fine of Rs. 100 or three months' simple imprisonment on the first count. He passed no sentence on the second count, as that count and the third covered the same facts. On the third count he imposed the sentence I have stated above.

On appeal it is contended for the accused that his conviction on the third count is wrong, as there is no proof that he made the false statement "knowingly and wilfully." The result of the evidence appears to be this: Deed No. 1,977 was executed before the accused by one A. C. Joseph on February 23, 1923. The accused attested the deed, and in his attestation clause he has stated as required by law, that five stamps of the value of Rs. 42 were affixed to the duplicate of the deed. This duplicate was forwarded to the Registrar of Lands of the district. On receipt of the duplicate, it was discovered by the Registrar that only one stamp of the value of Rs. 2 had been affixed to it, and not five stamps of the value of Rs. 42 as stated in the attestation.

Now under section 29 (6) of the Notaries Ordinance, 1907, a notary "shall not require, permit, or suffer any person to execute or acknowledge before him any deed or instrument which is insufficiently stamped," and under (7) of the same section "he shall at the time of the execution or acknowledgment of every deed or instrument before him cancel the stamps thereon by writing or marking in ink on or across each stamp his name or initials, together with the true date of his so writing or marking, and shall write upon each stamp with ink the number of the deed or instrument to which such stamp is affixed."

1924.
JAYEWAR-
DENE A.J.
—
Rex v.
Seenyamby

The accused has violated both these rules. It is clear that he allowed the deed to be executed when it was insufficiently stamped, or, I should say, when it was not stamped at all, and at the time of the execution of the deed he did not cancel the stamps as required by rule (7), and in fact could not have done so.

So that the statement in the attestation in this respect is clearly false. Again section 29 (19) requires a notary to attest without delay every deed executed before him and to seal such attestation. In such attestation he is required to state *inter alia* (f) "the number and value of the stamps affixed to such deed or instrument and to the duplicate thereof and the name of the person by whom the stamps were supplied."

Section 33 creates certain offences and by sub-section (e) a notary "who shall knowingly or wilfully make any false statement in the attestation in any deed executed or acknowledged before him shall be guilty of an offence, and shall be liable on conviction thereof to imprisonment, simple or rigorous, for any period not exceeding five years without the option of a fine."

Did the accused in making the false statement in question, do so knowingly or wilfully? The accused did not give evidence, and no satisfactory explanation has been offered as to how the misstatement came to be made, except the suggestion that the accused was misled by his clerk. It is, however, urged for the accused, and the learned District Judge says that he has been "the victim of a vicious practice." I have no doubt that the accused has followed a practice which, although it is directly opposed to the requirements of the Notaries Ordinance, has been in vogue among notaries all over the Island. The rule requiring notaries to stamp deeds before they are executed by the parties is not observed. Notaries have to send to the Registrar of Lands the duplicates of the deeds attested by them during the month with a list before the 15th of the following month, and notaries have taken advantage of this interval of time to affix stamps to their duplicates, just before they are sent to the Registrar of Lands.

This practice as I said is in the teeth of the provisions of the Ordinance which are clear and unambiguous. This is the practice the accused followed, but by some oversight he or his clerk failed

1924.
JAYEWAR-
DENE A.J.
Res v.
Seenyamby

to affix the necessary stamps before the duplicate of the deed was forwarded, and so the falsity of the statement in the attestation was discovered. The admission that the accused had been following this practice involves the admission that he has been systematically and deliberately making false statements in his attestations.

In the circumstances there can be no doubt that he made the false statement on the attestation in question "knowingly and wilfully." I do not think that there is any room for the argument that his statement was made accidentally or through inadvertence. The accused is therefore guilty of the offence laid in the third count of the indictment. The fact that the accused has been "the victim of a vicious practice" is a circumstance which should be taken into consideration in awarding punishment. The practice is one which has been followed by many reputable notaries, and the accused evidently learnt it from his own master. It is not suggested that the accused, who is said to be in a good way of business, has acted fraudulently or dishonestly. He has paid the deficiency. Under section 33 imprisonment, rigorous or simple, must be imposed. But, I think that a term of six months' rigorous imprisonment in the circumstances of the case is too severe. I would alter the sentence to one day's simple imprisonment, or imprisonment till the rising of the Court. As no fine can be imposed under section 33, I would impose a fine of Rs. 50 on the second count, or in default six weeks' simple imprisonment. I trust that this case will bring home to notaries the necessity of strictly observing the rules enacted in their Ordinance.

They will now understand, if they had not understood before, that the requirements of rules six and seven and nineteen are meant to be obeyed and not disregarded, and that the "vicious practice" which has led to the accused being placed in the dock must now cease.

Sentence varied.