

1930

*Present : Maartensz A.J.*

MUTTETUGAMA v. DHARMA-  
RATNA.

440—*P. C. Kalutara*, 36,775.

*Apothecary—Permitted to practise medicine—  
Use of the title “ Doctor ”—Ordinance  
No. 26 of 1927, s. 41 (a).*

A Government apothecary, who is permitted to practise medicine and surgery under the Medical Ordinance, No. 26 of 1927, commits a breach of section 41 (a) of the Ordinance by using the title “ Doctor ”.

**A** PPEAL from a conviction by the Police Magistrate of Kalutara.

*N. E. Weerasooria*, for accused, appellant.

August 6, 1930. MAARTENSZ A.J.—

The complaint against the accused in this case is that he described himself as

“ Doctor ”, thereby implying a qualification to practise medicine or surgery by modern scientific methods, implying or tending to the belief that he was a medical practitioner registered under the Ordinance. It has been established that the accused has not the necessary qualification to make that implication and that he is not a medical practitioner registered under the Ordinance.

Two subsidiary questions were argued in support of the appeal by the accused : (1) that he was entitled to plead *autre fois acquit*, as he had been previously acquitted in case No. 30,159 of the Police Court of Kalutara, where he was charged with a similar offence. This contention cannot be upheld, for the offence is a continuing one, and the offence with which the accused was charged in this case though a similar offence was not the same offence ; (2) that the accused was by reason of the provisions of sub-section (b) of section 41 coupled with section 43 of the Medical Ordinance, No. 26 of 1927, entitled to use a name implying a qualification to practise medicine or surgery by modern scientific methods. I do not think this contention is a tenable one, for, in my opinion sub-section (b) only entitles a Government apothecary to practise medicine and surgery for gain without making himself liable to the penalty prescribed for a breach of section 41, but does not entitle him to describe himself by a title referred to in sub-section (a).

The main question for decision is whether the use of the term “ Doctor ” by itself is a breach of section 41 (a). The term “ Doctor ” is not limited to doctors of medicine, but in this Island it is generally used to describe persons qualified to practise medicine or surgery by modern scientific methods ; besides, the accused has not denied the implication of the use of the description “ Doctor ” by him, and it is in evidence that he used it on a board put up in front of his house coupled with his name and the letters L. M. B. after his name, and beneath this

description there are the words “ Pharmacy and Surgery ” in English, Sinhalese, and Tamil. Whatever argument may have been adduced that the word “ Doctor ” does not necessarily mean a person qualified to practise medicine and surgery, that argument cannot be put forward in a case where the word is used as descriptive of a man keeping a pharmacy and surgery. De Sampayo J. in the case of the *King v. Sandrasekera*<sup>1</sup> refers to an unreported judgment of his that cannot be traced, as he gives no reference, in which he said he came to the conclusion that the word “ Doctor ” generally denotes a person possessing a diploma or certificate from a university or College which teaches the modern scientific methods. This decision confirms my opinion regarding the use of the word “ Doctor ” in this case.

*Appeal dismissed.*

