

Present : Dalton J.

PATE *et al.* v. MACK.

245—C. R. Colombo. 22,816.

Prescription—Account by veterinarians—Book debt—Ordinance No. 22 of 1871, s. 9.

Where in an account rendered by a veterinary hospital an inclusive charge was made, in which the fees for professional services were merged,—

Held, that such an account would fall within the category of a book debt in terms of section 9 of the Prescription Ordinance.

A PPEAL from a judgment of the Commissioner of Requests, Colombo. The plaintiffs, carrying on business in partnership as veterinarians and shoeing smiths, sought to recover from the defendant a sum of Rs. 24.98, being the value of professional services rendered and the cost of treatment of a dog. It appeared to be the practice to make an inclusive daily charge for each animal—a charge including professional attendance, medicine, diet, kennelling, and other services. The accounts were sent out monthly. The only question was whether the sum due from the defendant was a book debt within the meaning of section 9 of the Prescription Ordinance, 1871, the defendant pleading the benefit of that section. The learned Commissioner dismissed the plaintiffs' action.

H. V. Perera, for plaintiffs, appellant.

B. L. Pereira (with *F. C. Loos*), for defendant, respondent.

June 22, 1926. DALTON J.—

The plaintiffs—three persons carrying on business in partnership under the name of T. A. Pate & Co.—sought to recover from the defendant the sum of Rs. 24.98, stated to be the value of professional services rendered and cost of treatment of a dog belonging to the defendant. The only question for decision is whether or not the sum is a "book debt" within the meaning of section 9 of the Prescription Ordinance, 1871, the defendant pleading the benefit of that section. The liability arose on October 11, 1923, and the plaint was filed on June 5, 1925.

Only one member of the partnership is a veterinary surgeon. In addition to that one member's general practice as such, the partnership described as "Veterinarians and Shoeing Smiths" carries on a veterinary hospital in Colombo, which the evidence shows has accommodation for 60 animals. Account books are kept, as would be expected, in respect of the charges for each animal. It appears to be the usual practice to make an inclusive daily charge for each

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animal in the hospital—a charge including professional attendance, medicine, diet, kennelling, and other services. Such charges, however, as operation fees, chloroform fees, and dressing fees, are no part of the inclusive charge. There are no such charges in this case, but the account shows that they are separately rendered when there are any. The fees of the professional member of the partnership, however, he admits cannot be separated in the account in this case sent to the defendant from all the other charges. The accounts are sent out monthly, and the accounts state that after one month ten per cent. interest is charged.

The question to be answered is whether this sum is a “ book debt ” within the meaning of section 9. From the context, I think it is clear that the book debt in contemplation is one arising in connection with a shop, trade, or business carried on by the party concerned, and would not include a debt which consisted of fees due to a professional man. Mr. R. L. Pereira states he is not prepared to question this. I think the decision of Greiner J. in *Alvapillai v. Sadayar*¹ and *Gunesekere v. Ratnaike*,² the former by analogy, and the latter more directly, support this view. Mr. H. V. Perera, however, for the appellants, contends that the plaintiffs’ business is not really a trade or business such as is contemplated by section 9, in that it necessarily requires professional skill, and cannot be classed with any of the cases for which section 9 provides. I am unable to agree with him. I do not suggest that professional skill is not required in a veterinary hospital, but in this case the veterinary surgeon admits he cannot say what part of the sum charged represents his own professional services. An inclusive fee has been charged for the benefit of the business carried on by the partnership, into which the fees for professional services have become merged. That inclusive fee, it is admitted, includes diet and medicine.

In the *Official Receiver v. Tailby*,³ a case dealing with an assignment of property and book debts, Lord Esher gives a definition of what he conceives “ book debts ” to include. He says—

“ The expression ‘ book debts ’ is not in itself vague. It means debts arising in a trade or business in which it is usual to keep books, not necessarily those actually put into books, but those which ought to be booked in ordinary course.”

It seems to me that the plaintiffs were carrying on a business in which this debt was booked in the ordinary course. It is in my opinion a book debt within the meaning of section 9, and hence it is prescribed.

The appeal must, therefore, be dismissed, with costs.

Appeal dismissed.

¹ *Bal. 143.*

² *1 Cey. L. Rec. 264.*

³ *56 L. J. Q. B. 30.*