

1922.

Present : *Dr. Sampayo J.*THE KING *v.* SANTHERESEKERA.83—*P. C. Kurunegala, 13,625.*

*Medical practitioner—Ordinance No. 2 of 1905—Ayurvedic physician—Advertisement of medicine—Use of the term “doctor” in advertisement—Use of stethoscope.*

Accused, an Ayurvedic physician, examined patients with a stethoscope and advertised an Ayurvedic medicine in a newspaper and signed the advertisement “Dr. Santheresekera,” and gave his address as the “Ayurvedic Medical Hall, Kurunegala.”

*Held*, that accused had not committed any offence under section 19 of Ordinance No. 2 of 1905 either by using the stethoscope in his practice or by advertising himself as a “doctor.”

THE facts appear from the judgment.

*H. J. C. Pereira, K.C.* (with him *Croos-Dabrera*), for appellant.

March 8, 1922. *DR. SAMPAYO J.*—

In this case one M. A. Santheresekera has been charged with having committed a breach of two provisions of the Medical Practitioners Ordinance, No. 2 of 1905. On the first count he is charged with having treated and examined patients with the stethoscope in breach of section 19, sub-section (b), of the Ordinance. That section provides that any person, not having been registered under the Ordinance, subject to the exception in the next following section contained, who practises for gain, or professes to practice or publishes his name as practising medicine or surgery, shall be guilty of an offence. The exception mentioned in the next following section is that nothing in this Ordinance shall be taken to limit the right of any person to practise medicine or surgery according to native methods, provided that he does not take or use any name or title calculated to induce the public to believe that he is qualified to practise medicine and surgery according to modern scientific methods. The second charge against the accused is that in breach of sub-section (a) of the same section he advertised his business and used the title “Dr.” Now, as regards the use of the stethoscope, the evidence is that a man named Simon Silva, who was suffering from malaria, went to the medical hall run by the accused in the town of Kurunegala. He was examined by the accused with a stethoscope, and was given a mixture in a bottle which is proved on analysis to contain magnesium sulphate, quinine, and gentian. It depends on circumstances whether the use of the stethoscope by itself proves that the man did practise medicine according to modern scientific methods. No doubt the stethoscope is an invention of European scientists, but the use

1922.

DE SAMPAYO  
J.*The King v.  
Santherese-  
sekera*

of it by other persons who practise any native system does not necessarily mean that they profess to practise medicine according to modern scientific methods. As regards the mixture that was given, the ingredients, though described in the case in English terms, probably correspond with drugs and substances known to the native system. I do not think really there was sufficient ground for the charge under section 19 (b). As regards the other charge, it is solely based on an advertisement which the accused had published in one of the Colombo newspapers. It is an advertisement of a medicine styled "Ayurvedic Datusthamba Vateekawa," and it is signed by "Dr. M. A. Santhereseekera," address being given as the "Ayurvedic Medical Hall, Kurunegala." The description which is objected to in this prosecution is the use of the word "Dr." by the accused. I have recently had to deal with a case where the same word had been used, and I there came to the conclusion that the word, generally speaking, denoted that a person who styles himself a "Dr.," or is called a "Dr.," is a qualified man possessing a diploma or certificate from a University or College which teaches the modern scientific methods. But there is something more to be considered in the present case. The very name of the medicine which was advertised is an Ayurvedic medicine, and underneath the name of the accused, as I have already stated, is given his address, which is also descriptive of his business as an Ayurvedic physician. It is not proved in the case that the accused called himself a "Dr." in any other connection than the advertisement in question. In my opinion the advertisement should be read as a whole, and so read I do not think it would convey, to an ordinary person of intelligence, that the advertiser took a title which would convey to him the idea that the latter professed to practise medicine according to modern scientific methods. The word "Ayurvedic" is well understood in Ceylon; it necessarily means an Eastern system. In the context in which the word "Dr." appears in this advertisement, it could not certainly be taken to mean anything more than that the advertiser wished to describe himself as a medical practitioner, which apparently he was, but a practitioner according to the Ayurvedic system. I do not think it is worth the while of the police to bring this prosecution against the accused, unless there was something more than is disclosed in this case as regards the accused's conduct towards the public. All that I can find in these proceedings is that the medicine that he advertised was for a number of ailments and infirmities which to make public is undesirable, but for that publication the newspaper which contained the advertisement is as much to blame as the advertiser himself. I must, however, administer a serious warning to the accused that if he commits a breach of the provisions of this Ordinance he would be effectively dealt with.

The present conviction is set aside.

*Set aside.*