Present: Bertram C.J.

THE KING *v.* RATNAM *et al.*

177—D. C. (Crim.) Negombo, 3,351.

Medical Registration Ordinance, ss. 19 and 20—Practising for gain—Dispenser giving advice free—Burden of proof that a person is a vedarala.

The accused opened a pharmacy at Minuwangoda and stocked it with drugs such as would be used in a dispensary. He examined a carter who came to the establishment with injuries in his leg, dressed the wounds, and charged Rs. 2. It was further proved that at other dates villagers came in and informed the accused the nature of their ailments, were examined, received advice, and were given drugs in accordance with that advice, for which they paid various small sums.

Held, that the accused had committed an offence under section 19 of Ordinance No. 2 of 1905.

The burden of proving that the accused came within section 20 of the Ordinance (was a vedarala) was on the accused.

"Even if a dispenser was to put up a notice at his dispensary "advice gratis," and if upon that advice, for which no special charge was made, he sold medicines and made a profit out of the medicines so sold, he would be practising for gain within the meaning of the Ordinance."

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THE facts appear from the judgment.

Jansz, C.C., for the Crown.—The accused pleaded that they came under the exception in section 20 of Ordinance No. 2 of 1905. The burden of proving that they came under this exception is on them. Evdence Ordinance, section 105. *The Mudaliyar, Pitigal Korale North v. Kiri Banda.*[1]

It has been proved that the accused did more than dispense medicine on prescriptions.

J. Joseph (with him *Spencer Rajaratnam*), for the respondents.—The only fact proved against the accused is that they had dressed the wounds of a carter.

The essence of the offence under the Ordinance is that a separate value must be set upon the personal skill of the practitioner. It is not proved that the accused charged for their advice to villagers.

November 27, 1919. BERTRAM C.J.—

This is an appeal by the Crown against the judgment of the District Court of Negombo. It is conceded by the defence that the judgment cannot be supported on the grounds put forward by the learned District Judge. The charge is an offence under section 19 of Ordinance No. 2 of 1905. The accused were charged with practising medicine for gain without being registered under the Ordinance. It was proved that they had opened an establishment in the village or town of Minuwangoda under the name of "The Indian Pharmacy," and that for the purpose of that establishment they had obtained from some of the principal establishments in Colombo a selection of the ordinary drugs used at pharmacies, and the offence charged against them would appear to be in connection with drugs of the character so obtained.

The learned Judge took the view that it was for the Crown to show that this establishment did not come within section 20, that is to say, that the persons carrying on were not practising medicine according to native methods. In other words, that it was for the Crown to prove that the accused persons were not practising as vederalas.

It is unnecessary fully to discuss this contention. It is clear from section 105 of the Evidence Ordinance, No. 14 of 1895, that it is for the accused to prove the existence of any circumstance on which they rely to bring themselves within the benefit of section 20. But even if this were not the case, the very circumstances themselves show that this case is not within the exception. A Court is always entitled to take into consideration the ordinary knowledge of educated men. It is obvious, without any argument, that the

[1] *(1909) 12 N. L. R. 304.*

persons who were selling or dispensing the drugs enumerated in their various orders to Messrs. Cargills and Apothecaries were not practising as vederalas.

I come, therefore, to consider the question on the facts. The evidence shows that the two accused in this case are persons who obtained experience in a doctor's dispensary, and that they have established in the village what is in effect a dispensary of their own. It was stocked with such drugs as would be used in a dispensary, and these drugs were ordered in considerable quantities obviously with a view to their being dispensed in smaller quantities. The pharmacy was not an ordinary chemist's shop stocked with patent medicines and drugs made up for sale. It also appears that the inhabitants of the place were seen from time to time proceeding to the establishment and bringing away medicines. Now, of course, the medicines might have been medicines obtained upon the prescription of medical practitioners. It was quite possible that the business carried on at this pharmacy—had the evidence gone no further than this—was of persons dispensing medicines upon such prescription.

But in this particular case charged in the indictment, what happened was that a carter who had sustained an accident came into the pharmacy with injuries to his leg. The first accused examined the injuries and dressed the wounds, and charged the carter Rs. 2. It is further proved that at other dates villagers came in and informed the accused of the nature of their ailments, were examined, received advice, and were given drugs in accordance with that advice, for which they paid various small sums. The evidence relating to these subsequent dates is only evidence of system. But it throws light upon what happened on March 28. The only conclusion I can draw from these facts is that the accused were carrying on a dispensary in the village, at which they examined patients, to whom they sold drugs in accordance with what they considered the requirements of the patients.

In my opinion this was contrary to the policy of the Ordinance, and is the very state of affairs which section 19 was passed to meet.

Mr. Joseph, in the argument he has submitted, has maintained that it is of the essence of the offence that a separate value should be set upon the personal skill of the practitioner. I am not able to take that view. It seems to me that, even if a dispenser was to put up a notice at his dispensary "advice gratis," and, if upon that advice, for which no special charge was made, he sold medicines and made a profit out of the medicines so sold, he would be practising for gain within the meaning of the Ordinance. It is, of course, not possible for a person who carries on a chemist's business to refuse from time to time to give incidental advice to customers seeking it. It is possible that in tendering that advice he does commit a technical

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offence. The Legislature has made it a penal offence to practise medicine for gain. It has not provided for cases in which chemists give such incidental advice. I should be sorry that anything that I have said would prevent qualified chemists from giving from time to time few words of advice to their customers on simple matters known to ordinary qualified chemists. But here we have something more than that. The evidence discloses a definite case of a dispensary carried on for gain. I have no doubt that the accused in so carrying it on did not intend to break the law. But if they were allowed to maintain an establishment of this sort, the policy of the Ordinance would be defeated. I think it is necessary that a small fine should be imposed as a warning. I, therefore, reverse the judgment of the learned District Judge. I amend the indictment, restore it to its original form, convict the accused, and sentence the elder, the first accused, to a fine of Rs. 20, and the second accused to a nominal fine of Re. 1. It is understood that these fines are imposed as a warning, and that if the accused still persist in carrying on a business of this nature, the case will be one calling for more severe penalties.

Judgment set aside, and accused convicted.