1956 *Present :* Sinnetamby, J.

A. J. H. A. WADOOD, Appellant, *and* M. J. S. COORAY (Chief Preventive Officer, Excise Striking Force), Respondent

S. C. 620—M. C., Avissawella, 19,917

Excise Ordinance (Cap. 42)—Section 55—Ayurvedic physician—Is he a "medical practitioner" ?—Medical Ordinance, No. 2 of 1905—Indigenous Medical Ordinance, No. 17 of 1941.

A qualified ayurvedic physician duly registered as a general practitioner in the Register kept by the Board of Indigenous Medicine is a medical practitioner within the meaning of section 55 of the Excise Ordinance.

APPEAL from a judgment of the Magistrate's Court, Avissawella.

H. W. Jayewardene, Q.C., with *A. C. M. Uvais*, for the accused-appellant.

K. V. S. Shanmuganathan, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

[1] *(1956) 57 N. L. R. 510.*

November 9, 1956. SINNETAMBY, J.—

The accused-appellant was charged with manufacturing an excisable article without proper authority in breach of section 14 (*a*) of the Excise Ordinance and with possessing an excisable article consisting of over 108 gallons of liquor which was alleged to be unlawfully manufactured in breach of section 44 of the Excise Ordinance. The learned magistrate convicted him on both counts and sentenced him to pay a fine of Rs. 1,000 on each count. This appeal is against the conviction and sentence.

It would appear that the accused is an ayurvedic physician duly qualified to practice as such, having passed the examination held by the College of Indigenous Medicine. He has been duly registered as a general practitioner in the Register kept by the Board of Indigenous Medicine. The facts are not disputed. The accused admits that he did manufacture the liquid in question which, however, he says is a tonic manufactured according to particulars given in a standard book on ayurvedic medicine called "Aristaya Prakaraya" published by Dr. Jayasekera which is prescribed as a textbook in the College of Indigenous Medicine. The tonic is intended for abdominal troubles. The quantity of alcohol according to the Government Analyst is very small, much less than in such imported tonics as Waterbury's Compound, Ferelex and Vitamin B Complex. This is in itself a fact which supports the attitude taken up by the defence, namely, that section 55 of the Excise Ordinance is applicable and that the possession and manufacture was in respect of a bona fide medicated article for medicinal purposes by a medical practitioner. The learned magistrate has come to the conclusion that the article was not a bona fide medicated article but, in my view, he is mistaken and I think this matter is concluded by the fact that the tonic in question was manufactured in accordance with details given in a book dealing with the composition of ayurvedic medicines which is recognised and used as a standard book by the College of Indigenous Medicine. Despite, therefore, the various reasons the magistrate adduced in justifying the conclusion he reached that the article in question was not a bona fide medicated article for medicinal purposes, the fact that it was manufactured in accordance with particulars contained in such a book confirms me in the view I take, namely, that it was a bona fide medicated article. The accused's evidence that it was so manufactured stands uncontradicted. Furthermore, it is in evidence that he was once before charged for a similar offence in respect of manufacturing the same article and acquitted. This fact shows the bona fide of the accused.

The only question that therefore now arises is whether the possession and manufacture was that of a medical practitioner. The Crown relied upon the case reported in *17 N. L. R. 321* (*Amerasekera v. Lebbe*)[1] in support of its contention that the accused was not a medical practitioner within the meaning of section 55 of the Excise Ordinance [2]. In that case the majority of the Court held that the vedarala was not a medical practitioner within the meaning of that term as used in section 55 of the Excise

[1] (*1914*) *17 N. L. R. 321.*

[2] *Excise Ordinance* (*Cap. 42*).

Ordinance. It must, however, be remembered that vedaralas, though they practised eastern medicine, were not required to undergo any system of training, not required to pass an examination, and not required to be registered as vedaralas. But in the case of an ayurvedic physician like the accused in this case he has first to qualify before he can practise and he has also to be registered : on him are conferred certain privileges by the Ordinance creating the Board of Indigenous Medicine, and his certificates in regard to the health of a person are required to be accepted as evidence in Courts of Law. Learned Crown Council referred to a passage in *Maxwell* [1] to the effect that terms used in a statute are to be read in their meaning at the date of the passing of the Act. He argued that the only kind of medical practitioner, recognised when the Excise Ordinance was passed were those who were registered under the Medical Ordinance then in force, viz., No. 2 of 1905 [2]. But it has been held this doctrine of " contemporanea expositio " cannot be applied in construing Acts which are comparatively modern (vide *Assheton Smith v. Owen*)[3].

The case of a qualified ayurvedic physician holding a diploma of the College of Indigenous Medicine is in my view different to that of a vedarala. *Having regard to the fact that the State by registration regards them* as qualified practitioners entitled to practise medicine and confers on them the privileges enumerated in section 10 of the Ordinance (No. 17 of 1941)[4], I fail to see how it can be contended that they do not come within the meaning of the general term " medical practitioner " as used in section 55 of the Excise Ordinance. In my opinion the accused has established facts which bring him within the exception created by section 55 of the Excise Ordinance and he is entitled to be acquitted. I accordingly set aside the conviction and sentence and acquit the accused-appellant.

Appeal allowed.