

1913.

Present: De Sampayo A.J.

HUYBERTZ *v.* SILVA

449—C. R. Ratnapura, 12,892.

"Medical Officer"—Provincial Surgeon is not "medical officer" within meaning of "General Orders"—Charge for Consultation—Attendance on Government servant.

A Provincial Surgeon is not included in the term "medical officer" as used in the "General Order" which prescribes the fees which a medical officer may charge for attendance on Government servants.

The General Order does not prescribe a rate for consultations.

If a doctor attends at the request of another doctor, even though the regular attendant may not be present, he is a consultant, and entitled to his fees as such.

THE facts are set out in the judgment.

V. Grenier, for the appellant.

No appearance for the respondent.

December 11, 1913. DE SAMPAYO A.J.—

The plaintiff, who at the time of the action was Provincial Surgeon of the Province of Sabaragamuwa, sues the defendant, who was a Sub-Inspector of Police stationed at Ratnapura, for medical fees due in respect of the defendant's child. It seems the child was seriously ill with convulsions and had been attended by Dr. Nair, who was at the time the Assistant District Medical Officer of Ratnapura. The plaintiff was called in in consultation on January 10, and he also paid ten more visits between January 10 and January 17, and he now claims Rs. 231 as consultation fees at the rate of Rs. 21 a visit. The defence is that after the first day the plaintiff took entire charge of the case, and, therefore, was not entitled to anything more than the ordinary fees for medical attendance, and also that, the defendant being a Government servant, the defendant and his family were entitled to medical attendance at the rate of Rs. 2.50 for the first visit, and at the rate of Re. 1.50 for every subsequent visit. The Commissioner upheld the defence in both these respects, and in the result gave judgment for the plaintiff only for the sum of Rs. 37.50, which the defendant was willing to pay and had brought into Court. Whether the plaintiff was only a consultant, or after the first visit took charge of the case, is a question of fact. The Commissioner has held that he took charge of the case himself, for the reason that Dr. Nair was not present at the subsequent visits. I do not myself think that this is a crucial test. If a doctor attends at the request of another doctor,

even though the regular attendant may not be present, I should say the doctor so called in must be considered to be a consultant, and entitled to his fees as such. The actual evidence given by the plaintiff is not disbelieved, and I find from it that the plaintiff was asked by Dr. Nair to continue to visit the patient. This is probable, because Dr. Nair, in consequence of his official duties, is said to have been absent from his station a good deal. As a matter of fact, it is admitted that he was away from Ratnapura on the 12th, 14th, and 16th January. Another notable fact is that Dr. Nair admits that he occasionally attended the patient since the plaintiff was first called in, thus showing that the plaintiff had not taken complete charge of the case. Assuming, then, that the plaintiff was consultant throughout the days in question, the next point is whether he is entitled to charge more than the rate chargeable to Government servants by the General Orders mentioned in the case. It seems to me that the General Orders referred to are confined, so far as free attendance or attendance on limited fees is concerned, to "medical officers," which appears to be a technical term in the Department and to exclude such officers as the Provincial Surgeons. I find, from reference to the Civil List which discloses the internal organization of the Department, that Provincial Surgeons stand by themselves, and that the officers called "medical officers" occupy a different position and are classified according to certain grades, so that when the General Orders in question relating to fees speak of "medical officers," I am inclined to hold that Provincial Surgeons are not included in the term. Moreover, as the Commissioner himself notes, the rule regards medical attendance only, and there is nothing concerning consultation. Considering the reason of the concession granted to Government servants in the General Orders, it seems to me that consultations were intentionally excluded from the Orders.

Coming now to the question of the rate which should be allowed, there was no agreement between the parties, except that the plaintiff when asked by the defendant on one occasion what he would charge remarked that his bill would be heavy. It is, however, open to the Court to fix what is reasonable. One medical witness called in the case considered that Rs. 10.50 as consulting fee was not unreasonable, and the Commissioner himself allows for the first visit a sum of Rs. 21, which the defendant was willing to pay, although he thinks that Rs. 10.50 would have been sufficient. I think a fair amount would be Rs. 115.50, being the aggregate of the fees at the uniform rate of Rs. 10.50 a visit. I accordingly alter the judgment and enter judgment for that amount in favour of the plaintiff.

As regards costs, I would order that each party bear his own costs in the Court of Requests, but would allow the plaintiff the costs of appeal.

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