

1937

*Present : Abrahams C.J.*POLICE SERGEANT *v.* CHIANG, FONG CHING.573—*P. C. Nuwara Eliya, 11,999.**Dentistry for gain—Performing dental service—Fitting artificial teeth—  
Ordinance No. 26 of 1927, s. 51 (b and c).*

The act of taking an impression of a person's mouth and making artificial teeth on the strength of that impression and of fitting the teeth when completed into the mouth amounts to practising dentistry and to performing a dental service.

*Ruben v. Sheenhye (36 N. L. R. 205) referred to.*

**A**PPEAL from an acquittal from the Police Court of Nuwara Eliya.

*T. S. Fernando, C.C., for the complainant, appellant.*

No appearance for the accused, respondent.

October 11, 1937. ABRAHAMS C.J.—

This is an appeal by leave of the Attorney-General against an order of the Police Magistrate of Nuwara Eliya acquitting the respondent of the offence of having practised dentistry for gain and of performing a dental service for gain in breach of section 51 (b) and section 51 (c) of Ordinance No. 26 of 1927. The case against the respondent was that one Godahewa required two artificial teeth and went to the respondent's place to obtain them. The respondent took the measurement of his mouth by giving him some wax which he bit and handed back. When

Godahewa came the next day the respondent produced two artificial teeth, and placed them in Godahewa's mouth. On Godahewa saying that the teeth did not fit, the respondent put his hand into his mouth, shook the teeth and took them away to alter. The respondent performed a similar service for one R. L. Daniel who required one artificial tooth. The shape and measurement of Daniel's mouth was obtained from a wax impression. The tooth was supplied the next day and Daniel found it was uncomfortable. Both patients paid a few rupees to the respondent.

After hearing the case for the prosecution the learned Magistrate discharged the accused as in his opinion what was done by the respondent did not amount to "dental service". He said that "the accused constructs artificial teeth to order. He allows the buyer to supply him with the measurement of his mouth taken in and then manufactures the teeth to that measurement, later delivering them to the buyer for a small sum of money". The Magistrate went on to say that he did not think such a process came within the term "dental service" contained in the Ordinance and which seems to contemplate some action taken with regard to the living person, his teeth or his gums.

In my opinion the learned Magistrate was quite wrong. He appears to assume that the taking of the impression of the mouth and fitting—in false teeth made in accordance with that impression is a purely mechanical process. I think it is very much more than that. A number of things have to be considered in addition to the merely making of the teeth. It is essential that they should be constructed with due allowance for the contraction of the gums and also with due consideration to the presence or otherwise of other teeth in their proximity. It is just as important that artificial teeth should fit perfectly as that an offending tooth should be cleaned, filled or extracted.

The learned Magistrate observed that he had been guided by the remarks of Mr. Justice Akbar in the case of *Ruben v. Sheenhye*.<sup>1</sup> An examination of that case satisfies me that the learned Magistrate has misread it. The accused there was acquitted on the facts, the learned Magistrate having some doubts as to whether the accused was even responsible for the supply of the artificial teeth and further he was of the opinion that there was no reliable evidence to prove that what had been done had been done for gain. On the question of the meaning of "dental service" the learned Judge was of the opinion that the expression would cover a case of some service which included the fitting of the artificial teeth in the gap in the mouth of the person for whom the service was performed in addition to actually fitting the teeth into position in the gap. If I may say so, I respectfully agree. Further, there are certain South African Cases which interpret the expression "practising as a dentist" to include the performance of such a service as is alleged in the case before me. I need only cite one—*Rex v. Vlotman, Rex v. Koonin*.<sup>2</sup> The judgment of Mr. Justice Hopley is most interesting and illuminating.

It is clear therefore that the Magistrate was wrong in stopping the case where he did. It is, in my opinion, an undesirable thing for the Court to stop a case on an intricate point of law without calling upon the

<sup>1</sup> 36 N. L. R. 205.

<sup>2</sup> *South African Law Reports, (1911) C. P. D. 879.*

defence. Had he not done so, the whole question both of fact —and of law could have been settled by me here and now. As it is, the case must be remitted for a completely new hearing before another Magistrate, who will of course bear in mind this ruling that to take an impression of a person's mouth and to make artificial teeth on the strength of that impression and to fit those teeth into the mouth when completed amounts both to practising dentistry and to performing a dental service. The question of fact for him to decide will be whether this was what the respondent actually did and if he did so whether he actually performed such a service for gain.

I quash the order of acquittal and remit the case to be re-tried in accordance with my directions above.

*Set aside.*

---