A concise handbook of the laws relating to medical men / by James Greenwood ; together with a preface and a chapter on the law relating to lunacy practice by L.S. Forbes-Winslow.

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LAWS RELATING TO MEDICAL MEN

GREENWOOD

51

A CONCISE HANDBOOK

OF THE

LAWS RELATING TO MEDICAL MEN.

A CONCISE HANDBOOK

OF THE

LAWS RELATING TO MEDICAL MEN.

BY

JAMES GREENWOOD,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

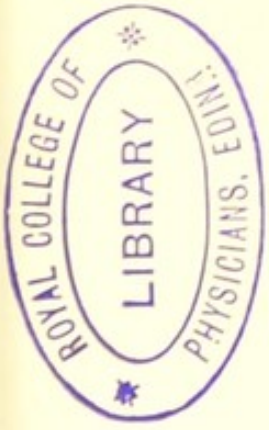
TOGETHER WITH A PREFACE AND A CHAPTER ON THE

LAW RELATING TO LUNACY PRACTICE

BY

L. S. FORBES-WINSLOW, M.R.C.P., Lond., M.B.,
D.C.L., Oxon.

'A short and plain epitome containing the most material heads.'
LOCKE.



LONDON:
BAILLIÈRE, TINDALL, AND COX,
20, KING WILLIAM STREET, STRAND.
1882.

To

JONATHAN HUTCHINSON, F.R.S.,

SENIOR SURGEON TO THE LONDON HOSPITAL.

TABLE OF CASES CITED.

TABLE OF REPORTS QUOTED.

Ad. & E.	Adolphus and Ellis.
B. & C.	Barnwell and Cresswell.
B. & S.	Best and Smith.
Bing.	Bingham.
C. & K.	Carrington and Kirwen.
C. & M.	Carrington and Marshman.
C. & P.	Carrington and Payne.
C. B.	Common Bench Reports.
C. B. N. S.	Common Bench Reports (New Series).
Cox, C. C.	Cox's Criminal Cases.
Dowl. & L.	Dowling and Loundes.
East	East.
E. & B.	Ellis and Blackburn.
F. & F.	Foster and Finlason.
How. St. Tr.	Howell's State Trials.
H. & C.	Hurlstone and Coltman's.
Ir. Com. L. R.	Irish Common Law Reports.
J. & H.	Johnson and Hemming.
Jur.	Jurist Reports.
L. J. Ex.	Law Journal Reports, Exchequer Division.
L. R.	Law Reports.
L. T.	Law Times Reports.
L. J. Q. B.	Law Journal Reports, Queen's Bench Division.
L. J. M. C.	Law Journal, Magistrates' Cases.
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L. R. Exch. - - - - -	Law Reports, Exchequer Division.
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McC. & Rob. - - - - -	McClean and Robinson.
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PREFACE.

At the request of the Author of this book, I have consented to write a short preface. The subjects which he has chosen are of the greatest interest to members of the medical profession in all its branches. The volume has been compiled with great accuracy, and a careful *résumé* of the chief Acts of Parliament are given in the various chapters. The chapters speak for themselves, and must be read to be properly understood and appreciated. The subject is one about which little if anything has been previously written—I mean so as to have been prominently brought before the medical world in a comprehensive manner. I fully believe that the book will prove a very valuable addition to medical literature as well as useful from a medico-legal point of view. At the present day, when medicine and law are frequently so closely allied, such a treatise as the present will be welcomed by the departments both of science and law. Medical men so frequently run great danger and risk of becoming seriously involved, in consequence of an imperfect

knowledge of the law relating to their various professional callings, that I am sure the present volume will prove a *desideratum*, and one long felt; and there is but little doubt that it will meet with the success it so well deserves.

L. S. FORBES WINSLOW, D.C.L., M.B., ETC.

23, CAVENDISH SQUARE,
May, 1882.

THE

LAWS RELATING TO MEDICAL MEN.

CHAPTER I.

PRELIMINARY.

From a very early date[1] the necessity for placing the practitioners of medicine and surgery under some kind of legal restraint is to be noticed, for in the ninth chapter of the statute book of the third year of Henry VIII. appears an 'Act for the Appointing of Physicians and Surgeons,'[2] which, after reciting the great experience and knowledge that is necessary for the proper practice of the arts of medicine and surgery, deplores that they daily are now exercised by a great multitude of ignorant persons, of whom the greater part have no manner of insight into the same, nor in any other kind of learning; that even common artificers, smiths, weavers and women[3] do boldly and

[1] See Appendix B.

[2] Appendix C.

[3] The earliest Bill restraining women from practising physic was introduced in the year 1422, but it seems never to have become law. See Appendix B.

accustomably take upon themselves great cures and things of much difficulty, in the which they partly use sorcery and witchcraft, partly apply such medicines unto the disease as be very noisome, and nothing meet therefore, to the high displeasure of God, great infamy to the faculty, and the grievous hurt, damage, and destruction of many of the King's liege people, most especially of them that cannot discern the learned from the unlearned; and continues, 'be it therefore enacted, that no person within the City of London, nor within seven miles of the same, take upon himself to exercise and occupy as a physician or surgeon, except he be first examined, approved, and admitted by the Bishop of *London*, or by the Dean of '*Paul's*' for the time being, calling to him or them four doctors of physic, and for surgery other expert persons in that faculty; and for the first examination, such as they shall think convenient, and afterwards always four of them that have been so approved; upon the pain of forfeiture of five pounds for every month that they do occupy as physicians or surgeons not admitted or examined after the tenour of this Act.' The statute further provides that no person out of the City of London, and a seven mile radius thereof, shall practise as a physician or surgeon in any diocese within the realm, except he be first examined and approved by the Bishop of that diocese, or his Vicar-General similarly assisted, saving always the privileges of the Universities of Oxford and Cambridge.

A few years later, however, the superintendence of

the Bishops was taken away by a Royal Charter, dated September the 28th, 1518, which incorporated the College of Physicians.[1] This incorporation of the Royal College of Physicians was mainly obtained through the instrumentality of one Thomas Linacre, a noted physician of the time, by his influence and friendship with the then all-potent Cardinal Wolsey. The charter, after expressing the King's hope that those men who profess physic, rather from the greed of gain than in good faith, to the great hurt and damage of credulous people, may be checked, and ignorant and rash practitioners punished, then proceeded to incorporate John Chambre, Thomas Linacre, Ferdinand de Victoria, Nicholas Halsewell, John Francis, and Robert Yaxley, and all men of the same faculty in the City of London, as a perpetual community, with power to choose each year a president, to make bye-laws and regulations for government of the college and all men of the faculty of physic in the City of London, and within seven miles of the same, and to choose annually four censors, to have correction of physicians within such limits, and of their medicines, and to punish the guilty by fine and imprisonment. The charter also provided that no person should be at liberty to practise physic within that radius, except he be licensed by the college, under a penalty of five pounds per month. All persons were likewise forbidden to practise beyond the seven

[1] *College of Physicians* v. *Levett.* 1 Ld. Raym., 472; see Appendix D.

mile radius, unless they were first examined and approved by the president aud three of the elects, and had become graduates of Oxford and Cambridge. The charter of the college has been subsequently confirmed and enlarged by various statutes, namely, 32 Hen. VIII. c. 4; 1 Mary ss. 2, c. 9; 15 Jas. I., and 15 Car. II., by which last-mentioned Act also many important privileges and immunities were secured.

Passing on to modern times, after observing the incorporation of the Royal College of Physicians of Edinburgh by Charles II. in 1681, and the King and Queen's College of Physicians in Ireland by William and Mary in 1692, the next important step of the Legislature affecting the profession was the 17 & 18 Vict. c. 114, commonly called the University of London Medical Graduates Act, 1854, passed upon the incorporation of that University, and which extended all the rights enjoyed by the graduates of the Universities of Oxford and Cambridge in respect to the practice of physic to the graduates of the London University.

In the year 1858 the Medical Act,[1] an enactment of very great importance, became law. It established the General Council of Medical Education and Registration of the United Kingdom, and regulated the qualifications of practitioners in medicine and surgery. The General Council of Medical Education was in the

[1] 21 & 22 Vict. c. 90.

year 1862 incorporated by Act of Parliament[1] with a perpetual succession, a common seal, and a capacity to hold lands, etc., for the purposes of the Medical Act. In this Council is vested the right of printing, publishing, and selling the *British Pharmacopœia*.

The Medical Act was amended by 22 Vict. c. 21, and the Medical Act Amendment Act of 1860;[2] and also in the same year by 23 & 24 Vict. c. 66, which related to the granting of new charters to the Royal Colleges of Physicians in England, Scotland, and Ireland. In the year 1868 an Act[3] was passed to amend the law relating to Medical Practitioners in the Colonies. This statute repealed the thirty-first section of the Medical Act, 1858, and enacted in its stead that every Colonial Legislature shall have full power, from time to time, to make laws for the purpose of enforcing the registration, within its jurisdiction, of persons who have been registered under the Medical Act, 1858, anything in that Act to the contrary notwithstanding. But this law does not apply to the Channel Islands, nor to the Isle of Man. By the Stamp Duties Act, 1859,[4] the stamp duty of £15 previously required for a license to practise as a physician in Great Britian or Ireland is repealed.

The various schools of anatomy in the United Kingdom are regulated by an enactment[5] made for

[1] 25 & 26 Vict. c. 91.
[2] 53 Vict. c. 7.
[3] 31 & 32 Vict. c. 29.
[4] 22 & 23 Vict. c. 36.
[5] 2 & 3 Will. IV. c. 75. See Appendix A.

the above purpose in the year 1832. This statute empowers the Chief Secretary of State for the Home Department in Great Britain, and the Chief Secretary for Ireland, to grant licenses for the practice of anatomy in their respective countries, to any fellow or member of any college of Physicians, or surgeons, or to any graduate, or licentiate in medicine, or to any person lawfully qualified to practise medicine in any part of the United Kingdom, or to any professor or teacher of anatomy, medicine, or surgery, or to any student attending any school of anatomy, on application from such party for such purpose, countersigned by two Justices of the Peace acting for the county, city, borough, or place wherein such party resides, certifying that to their knowledge or belief such party, so applying, is about to carry on the practice of anatomy. Regulations are also made for the annual appointment, by the Chief Secretaries, of inspectors of the various schools of anatomy, and for a quarterly return to the said Secretaries of the name, age, sex, etc., as far as may be known, of every subject removed for the purposes of anatomical dissection and examination during the preceding quarter. Other sections of the Act provide for the sale and supply of human bodies, and for the subsequent removal and burial of the same. An offence under the provisions of this Act is a misdemeanour, subject to imprisonment for three months, or fine of £50, at the discretion of the court.

It would be as well here to mention that under the

recent Cruelty to Animals Act,[1] passed in 1876, vivisecting and all painful experiments on dogs and other animals are prohibited, with a few exceptions for scientific purposes, under a penalty of £50 for the first offence, and a further penalty of £100, or three months' imprisonment, for any subsequent offence; but this restriction does not apply to experiments performed by lecturers and others with the aid of anæsthetics, provided *urari* be not the anæsthetic employed.

[1] 39 & 40 Vict. c. 77. See Appendix A.

CHAPTER II.

THE LAW RELATING TO REGISTRATION.

As has already been remarked, the present system of Registration was established under the Medical Act of 1858 (to be subsequently referred to as the Medical Act, or simply the Act), by the constitution and incorporation of the General Council of Medical Education.

The chief object of registering is, as stated in the preamble of the Act itself, to enable persons requiring medical aid to distinguish the properly qualified from the unqualified practitioner. Properly qualified medical practitioners are those persons only who have been registered by the General Medical Council in pursuance with this Act. Though a medical man possess every title and qualification which any university, college, or society can confer, unless his name be duly entered on the Medical Register, he cannot recover any fees or charges. Every person is entitled to be registered who possesses one or more of the following qualifications: Fellow, Member, Licentiate, or extra-Licentiate of the Royal College of Physicians of London; Fellow, Member, or Licentiate of the Royal College of

Physicians of Edinburgh; Fellow or Licentiate of the King and Queen's College of Physicians of Ireland; Fellow, or Member, or Licentiate in Midwifery of the Royal College of Surgeons of England; Fellow or Licentiate of the Royal College of Surgeons of Edinburgh; Fellow or Licentiate of the Faculty of Physicians and Surgeons of Glasgow; Fellow or Licentiate of the Royal College of Surgeons in Ireland; Licentiate of the Apothecaries' Society of London; Licentiate of the Apothecaries' Hall, Dublin; Doctor, or Bachelor, or Licentiate of Medicine of any university of the United Kingdom; Licentiate in Surgery of any university in Ireland, legally authorised to grant a license in surgery; Doctor of Medicine, by doctorate granted prior to August 2nd, 1858, by the Archbishop of Canterbury; Doctor of Medicine of any foreign or colonial university or college, practising as a physician in the United Kingdom before October 1st, 1858, who produces certificates to the satisfaction of the Council of his having taken such degree after regular examination, or who satisfies the Council that there is sufficient reason for admitting him to be registered. Persons who were actually in practice in England before August 1st, 1815, are entitled to be registered on payment of a fee fixed by the Council, and on making a declaration to that effect.

These persons, and some few others not enumerated, such as those who held medical or surgical appointments in the army, navy, or militia, or under the East India Company, or in certain other branches of the

public service on or before October 1st, 1858, are entitled to be registered on payment of a fee not exceeding £2, in respect of qualifications obtained before January 1st, 1859, and not exceeding £5 in respect of qualifications obtained on or after that date. Any person who obtains a degree or qualifications other than the degree or qualification in respect of which he is registered can have such degree or additional qualification registered on payment of a fee of five shillings, but he is bound to satisfy the registrar by proper evidence that he is entitled to such qualification.

Any appeal from the registrar's decision may be decided by the General Council or by the Council for England, Scotland, or Ireland, as the case may be; and any entry which may be proved to have been fraudulently or incorrectly made, may be erased from the register by order in writing of the General Council, or branch Council. When the registrar of a branch Council inserts, and afterwards by order of such branch Council, and without notice to the party registered, strikes out of the register the description of a qualification which the evidence produced to the registrar did not show that he had obtained, the court will not compel the re-insertion of such description.

Any duly registered medical practitioner is entitled to demand and recover in action at law, with full costs of suit, reasonable charges for professional aid, advice, and visits, and the cost of any medicines or other medical or surgical appliances rendered or supplied by him to his patients, and no person is entitled

to recover such charges, unless he can prove at the trial that he is so registered, though when he gave his professional attendance he may have been unregistered. A copy of the Medical Register is evidence that the persons named therein are registered, and the absence of a name from the register is evidence, until the contrary be proved, that such person is not registered.

A person falsely pretending to possess any one or more of the qualifications necessary for registration under the Act, is liable to a penalty of £20. And any person procuring, or attempting to procure, registration by false pretences, or any person aiding him therein, is guilty of a misdemeanour, and liable, on conviction, to imprisonment for twelve months.

Moreover, it may be remarked, that by the twenty-ninth section[1] of the Medical Act, it is provided, if any registered medical practitioner shall be convicted, in England or Ireland, of any felony or misdemeanour, or in Scotland of any crime or offence, or shall, after due inquiry, be judged by the General Medical Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the registrar; and it was held in the case of *La Merte*,[1] that the General

[1] This section applies to acts committed before as well as after registration. See *R.* v. *The General Council, etc.*, 30 L. J., Q. B. 201.

[2] 33 L. J., Q. B. 69.

Medical Council are thereby constituted the sole judges of whether a medical man has been guilty of infamous conduct in a professional respect, either before or after registration, and the Court will not interfere when the Council have found anyone guilty, after due inquiry. They are, however, bound to allow the accused prisoner an opportunity of defending himself, and it is the custom to let him appear by attorney, but not by counsel. When any name has been removed from the register, the General Medical Council send an intimation of the fact to the various colleges and medical and surgical bodies, accompanied by a request that such person should not be admitted to examination for a new qualification without their consent and authority.

It is further provided by the twenty-eighth section of the Medical Act, that, if any of the recognised colleges, or medical, or surgical bodies, at any time exercise any power they possess by law, of striking off from the list of such college or body the name of any one of their members, such college or body shall signify to the General Medical Council the name of the member so struck off; and the Council may, if they see fit, erase forthwith from the register the qualification derived from such college or body, in respect of which such member was registered. But the name of no person may be removed from the register on the ground of his having adopted any theory of medicine or surgery.

Every Colonial Legislature has full power to make

laws for the purpose of enforcing the registration within its jurisdiction of medical practitioners, including persons who have been registered under the Medical Act; but any person who has been duly registered under that Act is entitled to be registered in any colony, upon payment of the fees required for such registration, and on proof, in such manner as the Colonial Legislature may direct, of his registration under the said Act. The term colony does not include the Channel Islands, or the Isle of Man.

The General Medical Council is empowered to require, from time to time, of the several colleges and bodies authorised to grant registerable qualifications, information as to the courses of study and examinations to be gone through to obtain their respective qualifications, and the ages at which such courses of study and examination are required to be gone through and such qualifications are conferred, and generally as to the requisites for obtaining such qualifications. Any member or members of the General Council, or any person or persons deputed by such Council, or branch Council, may attend and be present at the examinations. Whenever it appears to the General Council that the course of study and examinations to be gone through, in order to obtain any such qualification from any College or body, are not sufficient to secure the possession by persons obtaining the qualification, of the requisite knowledge and skill for the efficient practice of their profession, and General Council may represent the same to the Privy Council. Where-

on the Privy Council may, if it see fit, order that any qualifications granted by such college or body, from that time forth, shall not be registerable. It is permitted for her Majesty, however, with the advice of the Privy Council, when it appears upon further representation from the General Medical Council, or otherwise, that such college or body has made effectual provision, to the satisfaction of the Council, for the improvement of the course of study or examinations or the method of conducting such examinations, to revoke the order. After the time mentioned in any order in Council, withdrawing the right to be registered, in regard to any particular qualification granted by the college or body to which the order relates, no person is entitled to be registered in respect of such qualification; and the revocation of any such order does not entitle a person to be registered in respect of any qualification granted before such revocation. And whenever it appears to the General Medical Council that an attempt has been, or is being made, by any body entitled to grant qualifications, to impose upon any person offering himself for examination, an obligation to adopt, or refrain from adopting, the practice of any particular theory of medicine or surgery as a condition of admitting him to examination, or of granting a certificate, the Council may represent the same to the Privy Council. The Privy Council will, upon any such representation, issue an injunction to such body, directing them to abstain from the practice; and in the event of their not complying, order that

such body shall cease to have the power of conferring any right to be registered, so long as they continue the practice.

By a recent statute,[1] the powers of every body entitled under the Medical Act to grant qualifications for registration, extend to the granting of any qualification for registration granted by such body to all persons *without distinction of sex;* but nothing contained in the Act renders compulsory the exercise of such powers, and no person, who but for this would not have been entitled to be registered, is, by reason of such registration, entitled to take any part in the government, management, or proceedings of the universities or corporations mentioned in the Medical Act.

Also, by another statute of the same year, the Medical Practitioners' Act, 1876, all persons who have obtained from any university of the United Kingdom, legally authorised to confer the degree of Bachelor in Surgery, shall be permitted and empowered to register it as a qualification under the Medical Act, anything contained in the Act to the contrary notwithstanding.

Lastly, it should be noted that chemists and druggists and dentists are in no way affected by the Medical Act.

In concluding this subject, a case may be quoted with advantage, to show how, in spite of all the efforts of the Legislation to prevent unregistered persons from practising, the law is still in a manner powerless to save the public from the chicaneries and impostures of

[1] 39 & 40 Vict. c. 41, s. 1.

quacks, whose only recommendation may be some foreign and worthless diploma.

The case alluded to is that of *Carpenter* v. *Hamilton* which occurred about two years ago, and is reported in the thirty-seventh volume of the new series of the *Law Times*, page 157. Here a man named John Hamilton, the same the author of certain infamous pamphlets, with which, at times, the streets of the metropolis have been flooded, was charged, under section 40 of the Medical Act, 1858, for wilfully and falsely pretending to be a doctor of medicine, and thereby implying that he was registered under the Act and recognised by law as a physician. The respondent kept a shop, where he dispensed medicine and gave advice; he had a diploma in the window, in which he was described as 'John Hamilton, Doctor of Medicine of the Metropolitan Medical College of New York,' and so he held himself out to the world. The magistrate reported that it was not satisfactorily proved that he was not entitled so to describe himself, and dismissed the complaint. It was held afterwards on appeal before Baron Cleasby and Justice Hawkins, that the decision of the magistrate was right, as the only evidence of any false pretence was that the respondent pretended to be what he really was, and the question was one of fact for the magistrate's decision rather than one of law for the Court.

The British Pharmacopœia.[1]—Though a notice of

[1] 'The British Pharmacopœia,' published under the authority of the Medical Acts, is intended to afford to medical men and

this volume is, perhaps, scarcely appropriate under the head of 'Registration,' yet, as the superintendence of its publication constitutes one of the numerous duties of the General Medical Council, it may be here alluded to. By section fifty-four of the Medical Act, it was ordered that the General Medical Council should cause to be printed and published, under their authority, a book containing a list of medicines and compounds, and the manner of preparing them, together with the true weights and measures by which they must be prepared and mixed, and certain other matters relating generally thereto, and called the 'British Pharmacopœia'; the amendment, alteration and republication thereof to be vested in the Council. This Pharmacopœia has now been substituted for all purposes, throughout the United Kingdom, for the Pharmacopœias formerly issued by the Royal College of Physicians of London, the Royal College of Physicians of Edinburgh, and the King and Queen's Colleges of Physicians in Ireland; and all statutes, orders in Council, or customs relating to the old Pharmacopœias are now deemed to refer to the 'British Pharmacopœia.' By a later statute[1] it is enacted that any person compounding any medicines of the 'British Pharma-

those engaged in the preparation of medicines throughout the British Empire, one uniform standard and guide, whereby the nature and composition of substances to be used in medicine may be ascertained and determined.

[1] 31 & 32 Vict. c. 121, s. 15.

copœia,' except according to the direction and *formulæ* of the said Pharmacopœia, shall be liable to a penalty of £5 for every such offence, which may be recovered by the Registrar of the Pharmaceutical Society of Great Britain, in the name, and by the authority, of the Society.

CHAPTER III.

THE LAW RELATING TO PHYSICIANS.

In this and the ensuing chapters it is designed first to discuss the law in those particulars where it separately regards the several branches of the Medical Profession—viz., physicians, surgeons, apothecaries, dentists, and chemists and druggists, following afterwards with some other points of general interest. And first as to physicians. The derivation of the name is from the Greek φύσις, *nature*. A physician may be briefly defined as a person who gives directions for the treatment, and prescribes medicines for the cure, of diseases.

The history of the foundation and incorporation of the Royal College of Physicians and its later progress having been already referred to, a glance at that of the two sister colleges of Edinburgh and Ireland will be not inappropriate. The Faculty of Physicians and Surgeons of Glasgow, which was incorporated by charter of James VI. of Scotland in 1599, subsequently ratified in 1672, is notwithstanding its title a corporation of surgeons only, and its registered fellows and licentiates entitled merely to practise surgery and pharmacy. The Royal College of Physicians of Edin-

burgh was, after several earlier and futile endeavours, incorporated, as has been already stated, by a charter of Charles II. in 1681, and ratified by an Act of the Scottish Parliament passed June 16th, 1685. Amongst other regulations, the charter imposed penalties on persons practising medicine within the jurisdiction of the College, without its license or diploma, and conferred on the College the power of fining and punishing unlicensed practitioners, and of examining the medicines kept in all apothecaries' shops within its jurisdiction, and destroying such as were found to be adulterated or of inferior quality. These exclusive rights having long been virtually abandoned, the propriety of petitioning for a new charter was much discussed, and in the year 1845 a draft prepared, but no decisive steps taken till after the passing of the Medical Act. In 1861, however, the present charter was obtained from her Majesty, the name of the 'Royal College of Physicians of Edinburgh' being expressly retained by desire of the College, in preference to that of the 'Royal College of Physicians of Scotland,' a change authorised by the provisions of the Medical Act. This charter constitutes the College a body corporate, with power to grant licenses, to censure, suspend or depose any fellow, member or licentiate who has obtained admission by false pretences, or violated any of the by-laws, and to make regulations, bye-laws, etc., for the governance and direction of the College.

Reverting now to the King and Queen's College of

Physicians in Ireland, the foundation dates from the year 1654, at which period a body was formed in connection with the University of Dublin, under the title of the 'President and Fraternity of Physicians,' and in 1667 incorporated by a charter of Charles II. as the 'President and Fellows of the College of Physicians in Dublin,' enjoying the same general powers as were held by the London College, with entire control of the practice of physic in Dublin and seven miles round. This was amended in 1692, and a new charter granted the same year by William and Mary, under which, with certain subsequent changes introduced by the Medical and other Acts[1] prior to it, the College is now governed. The jurisdiction of the College was also considerably amplified and extended; its name being altered to that it now bears as a delicate compliment to the reigning monarchs.

With this brief survey, dismissing the historical view of the matter, a most important question arises for discussion: Can a physician recover his fees in a court of law? This is a point which has been often raised, and concerning it, until within the last few years, much ambiguity and perplexity has been felt. There can be no doubt that before the passing of the Medical Act, physicians were looked upon in the eyes of the law as holding a position analogous to that occupied by barristers—namely, they were presumed to attend patients solely for an honorarium, and were, therefore, unable to re-

[1] 1 Geo. III. c. 14 (Irish); 30 Geo. III. c. 45, s. 11 (Irish); and 21 & 22 Vict. c. 90, s. 51.

cover their money in an action. The case of *Chorley* v. *Bolcott*[1] decided this.

The question as regards barristers was, once and for all, settled in the celebrated action of *Kennedy* v. *Broun*, which involved fees, etc., to the extent of £20,000, and deserves attention, inasmuch as it is one of the only cases of the kind that have been brought to trial. It will be found fully reported in the thirteenth volume of the New Series of the Common Bench Reports, page 677. The trial and appeal occupied a long period of time, but it was finally held by Chief Justice Cockburn that a barrister's fee is purely an honorarium, he being at law incapable of contracting in the matter of his advocacy, and such a contract void from the beginning; that to allow a barrister to recover his fee would be contrary to public policy, and such is the force of this rule that it must countervail any express contract for remuneration, as no contract can have efficacy where there is a total incapacity of contracting.

In the case of a physician, also, until the action of *Gibbon* v. *Budd*[2] was decided, the law had been the same, although not so stringently laid down. Before this important decision, the presumption of law was always that he acted only with a view to an honorary reward. Held in *Poucher* v. *Norman*[3] by Chief Baron Alexander. And a physician who dispensed his own medicines could not recover for them, even though the physic were supplied to his own patients. This was

[1] 4 T. R. 317. [2] 2 H. & C. 92. [3] 3 B. & C. 745.

ruled in *Allison* v. *Haydon*.[1] But a physician, it will be found, by a reference to the case of *Veitch* v. *Russell*[2] was entitled to recover if he could prove an actual contract for remuneration; or, if he acted as a surgeon as well as a physician, he could recover for services rendered in the latter capacity, although not in the former. Since the passing of the Medical Act, however, a physician who is registered thereunder, and who is not prohibited by the by-laws[3] of any College of Physicians from suing for his fees, can successfully maintain an action in all cases. The leading case of *Gibbon* v. *Budd*, which has been previously alluded to, was an action brought against the executors of one Henry Budd, deceased, for money payable for work and attendance on the deceased by the plaintiff, a Mr. Septimus Gibbon, who was a member of the Royal College of Physicians of London, and duly registered under the provisions of the Medical Act. The amount claimed was twenty-one guineas, for twenty professional visits during the year 1861. In defence it was alleged that either the visits had never been paid, or, if the visits were paid, they were purely of a friendly character and not professional. Secondly, it was contended by the defendant's counsel that even if the jury should be satisfied that the alleged visits were professional visits, yet there being no express contract the action would not lie.

[1] 4 Bing. 619. [2] 3 Q. B. 928.

[3] When the by-laws enact that no *fellow* shall be entitled to sue, this restriction will not affect *members* or *licentiates*.

The jury found a verdict for the plaintiff for the sum claimed, but leave was given by the court to enter a non-suit on the point of law. The case being argued in the following Hilary Term before Mr. Justice Bramwell, he held that a physician, registered under the Medical Act, who is not prohibited by any by-law of his college, can recover without an express contract, the presumption being not, as formerly, that he attended the patient for an honorarium, but for fees, *the right to which could be enforced by an action!*

It need scarcely be remarked that a physician who is unregistered can maintain no action for professional advice or attendance in any court of law. The mere production in court of a diploma of doctor of medicine, under the seal of one of the universities, is not in itself evidence of the person possessing that degree, it being requisite, in the case of an original, to prove that the seal is that of the university, and, in the case of a copy, that it has been compared with the original. Diplomas conferring degrees and honours, and certificates from medical institutions and practitioners did not pass to the provisional assignee under 1 & 2 Vict. c. 110, s. 37, nor do they to the trustee under the present Bankruptcy Act[1] of 1869.

It should be here noticed that if surgery be one of the subjects for the qualification of members, and presumably also of *licentiate*, of any College of Physicians, he can charge for services rendered in a surgical as well as those rendered in a medical capacity.

[1] 32 & 33 Vict. c. 71.

By the Medical Act, the Royal College of Physicians of London has power to grant licenses, without restricting their licentiates from compounding and supplying, for profit, the medicines which they prescribe, and it is not an invasion of the rights of the Society of Apothecaries for such licentiates so to compound and supply medicines. This was decided as far back as the year 1861, in the case of the *Attorney-General* v. *Royal College of Physicians*.[1] But, on the other hand, for a licentiate of the Apothecaries' Company to attend a patient and make up and administer proper medicines to him, without having a license from the College of Physicians, or the prescription of a physician, or demanding and taking any fee for his *advice*, does not infringe the privileges of the Royal College of Physicians, nor amount to a practising of physic within the 14th and 15th of Henry VIII.

In bringing this chapter to a conclusion, it may be remarked that the following are amongst the by-laws and regulations of the College of Physicians, some of which, it is to be regretted, are occasionally forgotten by practising members of the profession, perhaps because strict obedience to these regulations cannot be enforced at law.

In the first place, no fellow of the College of Physicians of London is to be entitled to sue for professional aid rendered by him, and this regulation holds good at law.[2] No fellow is at liberty to divulge

[1] 30 L. J. ch. 757 and 1 Jo. & H. 561.

[2] 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

any of the proceedings of the meetings held for election of censors, or other college officials; or of fellows or members of the College; or of any meeting the proceedings of which he is required to keep secret. So also it is forbidden for any fellow or member of the College to officiously, or under cover of a benevolent purpose, offer medical aid to, or prescribe for, any patient whom he knows to be under the care of another legally qualified medical man; and it is equally forbidden for any fellow or member to be engaged in trade, or dispense medicines, or make any *engagement with a chemist* for the supply of medicines. So with regard to fellows, members and licentiates, it is forbidden to assume the title of doctor of medicine, or to use any rank, title or distinction, implying that he is a graduate in medicine of a university, unless he be a graduate of a university. And *licentiates* are prohibited from compounding or dispensing medicines, except for those patients under their own immediate care.

So, again, if two or more physicians, fellows, or members of the College be called in consultation, they should confer together with the utmost forbearance, and neither of them prescribe, or even suggest, in the presence of the patient, or the patient's attendants, any opinion as to what ought to be done, before the method of treatment has been determined by the consultation of himself and his colleagues; and it is the duty of the physician first called to a patient, to write the prescription for the medicines agreed upon, and to

sign the initials of the physician or physicians called in consultation, he placing his own initials last. If any difference of opinion should arise, the greatest moderation and forbearance must be observed, and the fact of such difference of opinion is to be communicated to the patient or the attendants by the physician who was first in attendance, in order that it may distress the patient and his friends as little as possible.

By the authority of their charter, as well as under the provisions of the Medical Act, the College may, in punishment of any unprofessional or dishonourable conduct on the part either of its fellows, members, or licentiates, after having thoroughly investigated the case, reprimand or impose a fine not exceeding £10; or if the offence be of a very gross or criminal nature, such offender may be expelled the College, and his name expunged from the lists of fellows, members, or licentiates, as the case may be. It would be perhaps advisable, and certainly tend to increase the dignity of the profession, if the College were to exercise the powers which it undoubtedly possesses in this matter a little more energetically. For although any serious dereliction of professional duty seldom escapes notice and due punishment, yet many minor offences, notwithstanding the fact that they are great breaches of professional decorum, are allowed to pass without reprimand or reproof. As an example of this may be mentioned a growing tendency in the lower grades of the profession towards advertising by means of circulars, cards, and the like. The practice cannot be too

strongly reprehended, and it is to be hoped that before long the College will take the initiative in stamping out what must so tend to degrade medical men in the eyes of the world and of kindred professions. On this subject of medical advertisements the late Lord Cockburn spoke very strongly in the celebrated case of *Hunter* v. *Sharp*,[1] and with an excerpt from his remarks the chapter may well be concluded. 'I hope,' he said, 'the time is far distant when any member of a liberal profession in this country, publishing a treatise on any branch of science, shall descend to this. If it were open to professional men to advertise themselves thus, the dignity and honour of a noble profession would be tarnished and soiled. A lawyer so doing would be scouted from his profession; what difference is there in this respect between the professions of medicine and of law? They are sister professions equally amenable to the same rules of professional etiquette, and therefore I must say I hope it will never be deemed consistent with professional honour to resort to such practices.

[1] 4 F. & F., 1003.

CHAPTER IV.

THE LAW RELATING TO SURGEONS.[1]

During the early period of the Middle Ages, the practice of surgery in England, and, indeed, throughout the whole of Europe, was almost exclusively confined to the monks and clergy. But in the year 1163, a decree having been ordained by the Council of Tours, which prohibited the clergy from undertaking any 'bloody operation,' the practice gradually fell into the hands of the barbers, who had previously been the accustomed assistants of these monkish practitioners. Later on, by members of this class, with few exceptions, were performed all surgical operations, and so lucrative did the calling become, and of such importance to its professors, that in the year 1461 the freemen of the Mystery and Faculty of Barbers practising Surgery, or as they were commonly designated, barber-surgeons, were incorporated by letters patent of King Edward IV. as 'The Company of the Barbers, in London,' and no person was afterwards permitted to practise who had not previously been admitted a freeman of the company.

[1] The old form of this word is *chirurgeon*, a word derived from the Greek χείρ, hand, and ἔργον, work.

Side by side with these barber-surgeons, however, arose another body of men who restricted themselves solely to the practice of surgery, so that at the beginning of the reign of Henry VIII. there existed two separate and distinct companies of surgeons in London. About the year 1540, these two companies were by Act of Parliament[1] amalgamated under the general designation of 'The Masters of the Mystery and Commonalty of the Barbers and Surgeons of London.' By this Act all the privileges of the Barbers' Company were transferred to the united body; and about a century later, in the reign of Charles I., these and other privileges, which they then enjoyed, were confirmed, ratified, and ensured by that King's royal letters patent.

The union of these two companies was dissolved in the year 1745, and a distinct company of surgeons incorporated by the name of 'The Master, Governors, and Commonalty of the Art and Science of Surgeons of London.' By this statute all the franchises, rights, etc., of the united company were granted to the new company of surgeons, together with the right of exclusive practice in London, and within a radius of seven miles.

The company was incorporated by a charter of George III. in 1800, under the title of 'The Royal College of Surgeons in London,' whilst it received, at the same time, new privileges.

In the year 1822, changes were made in the con-

[1] 32 Hen. VIII. c. 42. See Appendix E.

stitution of the College by George IV., and in 1843, further changes by a charter of Queen Victoria, and the name altered to 'The Royal College of Surgeons of England,' which it still enjoys. Ten years later, by a second charter, her Majesty gave power to the College to appoint a Board of Examiners in Midwifery; and finally, in 1859, granted a third charter, supplementing the Medical Act of the preceding year, which has enabled the Council to appoint Examiners in Dentistry, and to give diplomas of fitness to practise in that branch of the surgical art.

The College of Surgeons of Edinburgh dates from about 1505, but its first incorporation under the name of the 'Royal College of Surgeons of Edinburgh' was by a charter of George III., in the year 1778. This charter being surrendered in 1851, a second was granted by her gracious Majesty. Under its provisions the connection of the surgeons with the incorporated trades and municipal authorities of the city became discontinued, and many alterations were made in the constitution of the College. This charter is the one still in force. A peculiar advantage, owing to the verbal construction of their respective charters, possessed by this College, and by the Faculty of Physicians and Surgeons of Glasgow, over the English and Irish Colleges of Surgeons, is found in the circumstance that their fellows and licentiates are entitled to practise pharmacy as well as surgery, and to sue for fees and charges in both branches of the profession. The Faculty of Physicians and Surgeons of Glasgow

was first incorporated by a charter of James VI. in the year 1599, which charter received its ratification by an Act of the Scottish Parliament in 1672. The charter remains in force at the present time, though its provisions are slightly modified by the 13 & 14 Vict. c. 20, an Act which became law in the year 1850. The rights and immunities enjoyed by the College are in most respects similar to those of the College of Surgeons of Edinburgh.

The Royal College of Surgeons in Ireland owes its foundation and incorporation to letters patent of George III., granted in 1784. It has no exclusive privileges, but formerly under the 36 Geo. III. c. 9 (Irish Statutes), its members could alone be appointed surgeons to a country infirmary. This exclusive privilege lasted until 1876, when it was taken away by the Medical Practitioners' Act[1] of that year.

In 1828, a new charter was obtained from George IV., confirming the College in its already acquired powers, granting various other privileges, and also authorising the College to examine in, and confer a license to practise, midwifery. And a charter of the present reign introduced other changes of constitution. Censors, assistants, and members were abrogated, and the corporation made to consist of a president, vice-president, and a council of not more than twenty-one persons, with an unlimited number of fellows, elected by ballot. Certain restrictions are placed on the admission of fellows, by their being prohibited from

[1] 39 & 40 Vict. c. 40.

practising pharmacy, though they need not be chosen from the licentiates. All existing powers not altered by the charter it confirmed and ratified.

In reference to a recently much-discussed topic, namely, the conjoint scheme for medical education in the United Kingdom, it has been provided by the 38 & 39 Vict. c. 43, that if in pursuance of the provisions of the Medical Act, the Royal College of Surgeons of England at any time unites or co-operates with any of the Colleges or bodies mentioned in that Act, in conducting the examinations required for qualifications to be registered under the Medical Act, then notwithstanding anything in any statute or charter contained it shall be lawful for the Council for the time being of the College to prescribe by a by-law under the common seal, that no person shall become a fellow, member, or licentiate in midwifery of the College unless, in addition to passing the examination (if any) and complying with the other conditions that may be prescribed by any by-laws, he shall have passed the examinations, hereinafter called the joint examinations, for qualifications to be registered under the Medical Act, and complied with such conditions relating thereto as may be agreed upon between the College of Surgeons, and the body or bodies with whom it may be united or co-operating. And every person who has passed the joint examination and complied with the other conditions that may be required, shall be entitled to receive a diploma under the common seal of the College, allowing him to practise the art and science

of surgery, on obtaining which he shall be constituted a member of the College of Surgeons, and subject to all the laws and regulations of the same.

But nothing shall diminish or affect any power which the Council of the said College may have of appointing and electing to be fellows, without examination, any of the present members of the College, who would or might become eligible, by reason of their standing as members, to be elected fellows without examination, or any fellows, members, or licentiates respectively, of the Royal College of Surgeons in Ireland, the Royal College of Surgeons of Edinburgh, or the Faculty of Physicians and Surgeons of Glasgow, who shall be in *bonâ-fide* practice of the profession of a surgeon in England or Wales, and shall have obtained their several diplomas after examination.

Nor shall anything in the Act deprive the said College of any right they may possess, nor relieve them from any obligation they may be under to admit *women* to the examinations for their diplomas, or for qualifications to be registered under the Medical Act, or to grant diplomas to *women* who have satisfactorily passed examinations, and fulfilled the other general conditions imposed upon persons seeking to obtain the qualifications of the College.

The Council of the Royal College of Surgeons has power to order the removal of the name of any fellow or member from the list of the College, if at any time he be convicted of a felony, misdemeanour, or offence —or proved to have been guilty of infamous conduct

in any professional respect, and to signify the removal to the General Medical Council.

To continue, it has always been a question whether a person registered under the Medical Act, with a surgical qualification only, is entitled to recover anything for attendance as a physician or apothecary.[1]

The words of the Act upon which the doubt has arisen are as follows:

'Every person registered under this Act shall be entitled, according to his qualification or qualifications, to practise medicine or surgery, or medicine and surgery, as the case may be, in any part of her Majesty's dominions, and to demand and recover in any court of law, with full costs of suit, reasonable charges for professional aid, advice, and visits, and the cost of any medicines, or other medical or surgical appliances rendered or supplied by him to his patients.'

The literal meaning of the words seems plain enough, but, as in many other things which appear simple and easy to comprehend, much misunderstanding and litigation has, at different times, arisen on them.

There can be no doubt that in a partnership where one member is registered as a surgeon and apothecary, and the other as a surgeon only, the firm may recover on a joint claim for attendances and medicines supplied in both capacities, and also in like manner if one of the members thereof be unregistered.

But, it was held in the case *Allison* v. *Haydon*,[2]

[1] 21 & 22 Vict., c. 90, s. 32 (Medical Act, 1858).

[2] 6 L. J., C. P. 144.

that a Member of the College of Surgeons is not entitled to charge for medicines administered by him whilst attending a patient who was suffering under typhus fever, for that is a disease which certainly cannot be said to belong to the surgeon's branch of medicine; but he may charge, and is entitled to recover, for medicines administered in a surgical case, where the medicines are subservient and subordinate to the discharge of his duty as a surgeon. In giving judgment on this case Chief Justice Best made some very lucid remarks, which may be here quoted. He said, 'I have a great respect for the medical profession, and should be sorry to lay down any rule which had a tendency to injure it. In my opinion we best consult the honour of this profession, and, what is of higher importance, we secure the health of the people, by strictly enforcing the laws, which provide that those who practise in any branch of this art should be regularly educated in that branch. Surgeons are authorised to practise physic only when it is necessary to adminster medicines iu surgical cases. For some disorders relief is sought from medicines; for others, from topical applications. A different education is required to prepare men to undertake the cure of either of these different descriptions of complaints. To attain proficiency in either branch requires undivided attention. The first description belongs to the physician and apothecary, the second to the surgeon. The professors of each branch of medicine must sometimes go beyond their proper limits. It

may be necessary for the apothecary to use the lancet, and the surgeon to adminster medicines, either to prevent the necessity of an operation, to prepare a patient for it, if necessary, or to recover him from its effects, if performed. In these cases, the physician or apothecary cannot be considered as infringing the laws made for the protection and regulation of surgeons, or the surgeon such as relate to the other branch of his profession.'

The following cases may also serve to throw some more light on the subject: In *Proud* v. *Mayall*[1] which was an action by a firm of surgeons against a patient for the recovery of medical charges; at the trial the plaintiff's assistant proved that he had visited and dispensed medicines to the defendant, and that on one occasion he had bled the defendant. It was held that the case was, *prima facie*, one for an apothecary, and that if the claim had really arisen out of a surgical case it should have been so stated, for the single instance of bleeding did not turn the case from a medical into a surgical one.

In *Battersby* v. *Lawrence*,[2] it was held that although dropsy is not a surgical case, pure and simple, yet when a surgeon has been called in, he may recover for any work done for the patient within the province of his art, such as puncturation, scarification, bandaging, and friction. It was ruled by Justice Creswell in the case of the *Apothecaries' Co.* v. *Lotinga*,[3] that a surgeon has no right to recover charges for

[1] 3 Dowl. & L. 531. [2] Car. & M. 277.
[3] 2 M. & Rob. 495.

medicines administered and medical attendance in cases of internal diseases not requiring surgical treatment; as, *e.g.*, in fevers or consumption.

The general rule deducible from these and numerous other examples seems to be, that where the medical attendant judges of the disease by the symptoms of the patient, in regard to the internal functions of the organic system, and applies to its cure not manual operation externally, but physic internally, the case can never be classed as a surgical one; and consequently, a surgeon cannot recover his charges in a court of law.

Nor is this at all affected by the recent addition of medicine to the subjects of examination for the diploma of the College of Surgeons, as will be found by a comparison with the decision in *Leman* v. *Fletcher*,[1] one of the last reported cases on the subject. Here an action was brought in the County Court, by the trustee of an estate in liquidation to recover the sum of £2 19s. 6d. for medicine supplied to, and medical attendance on, the defendant's wife and children during the year 1872. The bankrupt was a surgeon, and registered under the Medical Act as a Member of the College of Surgeons only. He had no other legal qualification. At the trial it appeared that some of the items in the bill were for medicines administered in the cure of an internal disease not requiring surgical treatment, and for advice, etc., connected therewith; and the other items were for treating an ordinary

[1] L. R., 8 Q. B. 315.

surgical complaint. It was objected that in order to recover the charges for any of the above-mentioned items the bankrupt's name should appear in the Medical Register as a Licentiate of the Society of Apothecaries, inasmuch as the Apothecaries' Act, 55 Geo. III. c. 194, was not repealed by the Medical Act, 1858, and, under section 31 of the latter Act, a person could not recover charges for medicines and professional advice except according to his qualification. The plaintiff contended that the Apothecaries' Act being impliedly repealed by the Medical Act, the words 'according to the qualification,' in section 31 of the latter Act, applied only to the right to practise, and were inserted merely to preserve the grades of the profession, and did not apply to the latter part of the section giving the right to sue; that section 31 was not to be regarded at all in the question, but only the following section, and that under it to entitle a person to recover for any kind of professional aid, it was simply necessary that he should be registered under the Medical Act of 1858. Judgment, however, was given for the defendant on both points, the Court holding that sections 31 and 32 must be read together, and by virtue of those, the plaintiff could recover for medicines, advice and attendance according to the bankrupt's qualifications only; and as he possessed no other diploma than that of a surgeon, the plaintiff was not entitled to recover *any* of the items. But as the plaintiff had about a hundred similar cases pending in the County Court, leave was

given to refer the matter to a higher tribunal. On appeal, two questions were for the Court: First, whether a person entered in the Medical Register, and possessing no other qualification than that of the Royal College of Surgeons of England, can recover for medicines, advice, and attendance in the case of diseases, or complaints not requiring surgical treatment; and secondly, whether such a person can recover for medicines administered with the purpose of alleviating complaints which it is within the province of a surgeon to attend. The result of the appeal was to answer the former question in the negative, and the latter in the affirmative, it being held by an undivided Court that section 31 of the Apothecaries' Act[1] is not repealed; and the effect of that section, coupled with sections 31 and 32 of the Medical Act, is that a medical practitioner, registered under the latter Act, but only as a member of the College of Surgeons, and holding no other qualification, cannot recover for attendance and medicines supplied, except in a surgical case; thus it will be seen overruling the decision of the County Court, but entirely supporting that arrived at in *Allison* v. *Haydon*.[2]

The subjoined cases also illustrate the subject from other points of view, and are of some interest and practical importance. In *Cooper* v. *Phillips*[3] the

[1] 55 Geo. III. c. 194.

[2] 6 L. J., C. P. 144. The same ruling was also followed in a case tried within the last few months, in which the author was personally engaged.

[3] 4 C. & P. 581.

defendant had several of his children residing in a house distant from his own, and under the care of a servant paid by him. Lord Tenterden decided that if an accident happened to one of the children he was liable to pay for its cure, although he did not send for nor know the surgeon who was called in, and although the accident might have arisen from the default or neglect of the servant.

And the Court of Appeal upheld the verdict in the well-known case of *Baxter* v. *Gray*.[1] Here a surgeon had for several years bestowed medical attendance upon a lady, but, expecting to be substantially remembered in her will, had omitted to send in any bill. She died, however, and, contrary to all expectations, left him nothing; whereupon he sued her executors, claiming £500. The jury awarded him £250, and the Court refused to disturb the finding, for it held that in such a case, to disentitle the party to sue, there must be something more than the mere expectation of a legacy.

The last case to be cited is that of *Elliot* v. *Clayton*,[2] which was an action brought for work and labour as surgeon and for medicines. The plea was his bankruptcy before the debt accrued, and that his trustees (or assignees, as the term then was) claimed the debt from the defendant before action. It was replied that the work was personal, and necessary for the present support of the bankrupt and his family; that the

[1] 4 Scott, N. R. 374; 3 M. & G. 771.

[2] 16 Q. B. 581; 15 Jur. 293.

materials were purchased with the proceeds of his personal labour—and increased in value thereby—and necessary for the proper performance of the work. At the trial it appeared that the plaintiff was a surgeon and apothecary, and trading as such, with medicines obtained on credit from the wholesale houses. Lord Coleridge held that the trustees were entitled to the proceeds of a trade thus carried on, and that the replication had not been proved.

CHAPTER V.

THE LAW RELATING TO APOTHECARIES.

The term apothecary is derived through the French, from the Greek word *ἀποθήκη*, a repository, or hiding-place. It really signifies a person who practises pharmacy, that is, one who prepares drugs for medicinal uses, and keeps them for sale. Later on the word was applied to those persons who compounded and dispensed the prescriptions of physicians and surgeons. Now, however, it generally describes those who practise medicine, and at the same time deal in drugs.

There are two Societies having power to grant licenses to practise medicine in the British Isles—viz., the Society of Apothecaries, London, and the Apothecaries' Hall, Dublin.

In England, previous to the reign of Henry VIII., when, as has been seen, systematic attempts were first made to regulate the practice of medicine, and the faculty was divided into physicians and surgeons, apothecary seems to have been the common name for a grocer or other tradesman who vended drugs, and was the general practitioner of that day. In the year 1542, an Act[1] was passed which enabled these

[1] 34 & 35 Hen. VIII. c. 8.

irregular practitioners to administer outward medicines, and from this time the title of apothecaries exclusively applied to them.

In 1606, the apothecaries were incorporated by a charter of James I., under the title of 'The Wardens and Fellowship of the Grocers of the City of London.' A few years later,[1] however, they were separated from the grocers or poticaries, and created into a distinct corporation, as 'The Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of London.' Their gradual encroachment upon the rights of physicians in visiting patients, and prescribing medicine, was strongly resisted by the College of Physicians; but at the beginning of the eighteenth century the disputes were judicially settled by the decision in the *College of Physician's Case* quoted by Littleton, page 349 of his Reports, giving apothecaries the right to prescribe as well as to dispense medicines, and since that time they have been legally recognised as an important branch of the medical profession.

By a charter of Charles I., in the year 1617, which regulated the constitution of the Society, it was provided that the Society of Apothecaries should make no ordinance concerning medicines, and the use of the same, unless they had first consulted with the College of Physicians; and that nothing in the charter was to prejudice physicians or surgeons in the use of 'outward medicines.' It prohibited all persons, including freemen of the Grocers' Company, from keeping an

[1] A. D. 1616. See Appendix F.

apothecary's shop, or mixing, preparing, applying, or giving medicines, or selling drugs, or using the art, faculty, or mystery of an apothecary, in London, or within a seven-mile radius thereof, unless they had been apprenticed to an apothecary for seven years,[1] and examined by the Apothecaries' Society; under a penalty of £5 a month.

In the year 1815, an Act[2] was passed for 'better regulating the practice of Apothecaries throughout England and Wales,' by which the pre-existing charter of the Apothecaries' Society was confirmed, but many regulations for the better governance of the body added thereto.

Power was given to the apothecaries by this Act to appoint a Court of Examiners, and it enacted that from and after August 1st, 1815, it should not be lawful for any person or persons, except such as were already in practice, to act as an apothecary in any part of England or Wales, unless he or they should have been examined by such Court of Examiners, touching his or their skill and abilities in the science and practice of medicine, and fitness and qualification to practise as an apothecary, and have received from the examiners a certificate of being duly qualified to practise as such; and it was further provided that no person should be admitted to any such examination

[1] This period was by 55 Geo. III. c. 194, s. 15, reduced to five years, which might be made to include the time spent in hospital practice and attendance at lectures; now even that mild form of apprenticeship, under the 37 & 38 Vict. c. 34, has been dispensed with.

[2] 55 Geo. III. c. 194.

until he had attained the full age of twenty-one years, and had served an apprenticeship of not less than five years to an apothecary, and produced to the Court of Examiners satisfactory testimonials of a sufficient medical education, and of good moral conduct. The Act also declared that all persons (except those who were actually in practice as such) who should after August 1st, 1815, act or practise as apothecaries, in any part of England or Wales, without having first obtained certificates, should be liable to a penalty of £20 for every such offence, and that no apothecary should be allowed to recover any charges claimed by him in any court of law, unless he proved on the trial that he was in practice as an apothecary before that date, or that he had obtained a certificate to practise as an apothecary from the Society of Apothecaries. It was expressly stated by section 28 of this Act that nothing therein contained should affect chemists and druggists.

And by the same Act no person may serve as an assistant to any apothecary, unless he was so engaged before August 1st, 1815, or unless he has actually been apprenticed for five years to an apothecary, or has undergone an examination by the Court of Examiners of the Apothecaries' Society, or their deputies, appointed for such purpose in some county in England or Wales, not being within a radius of thirty miles of the City of London, and has obtained a certificate of qualification to act as such assistant, under a penalty of £5 for each offence.

Another Act passed in 1825 excepted from the provisions of the Apothecaries' Act of 1815, all persons who held, or had held, or thereafter should hold a commission or warrants as surgeon or assistant surgeon in the Navy, or as surgeon, or assistant surgeon or apothecary in the Army, or as surgeon, or assistant surgeon in the service of the East India Company. This Act expired in August of the following year, but persons who prior to that date held any such warrants, were not deprived of their rights by its expiry.

Also by the 37 & 38 Vict. c. 34, it is provided that the Society of Apothecaries of London may, with the sanction and under the direction of the Medical Council, subject to the approval of the Privy Council, notwithstanding anything contained in the Apothecaries' Act, 1815, co-operate with any of the licensing bodies mentioned in Schedule A, of the Medical Act, in appointing examiners and conducting examinations under the Act, and all restrictions as to the number of the examiners in the conjoint examining Board and fees to be paid are removed. The Act further declares, that nothing therein contained shall deprive the Society of such right as they now have, or relieve them from any existing obligation that they may be under to admit *women* to their examinations, or to enter on the list of licentiates any *woman* who has satisfactorily passed the same, and fulfilled the other conditions imposed upon persons seeking the license of the Society.

At this point, it will be as well, perhaps, to glance at the history of the other Society empowered to grant

licenses to practise as an apothecary in the United Kingdom.

Very little is known of the early history of medicine in the sister island; but at the beginning of the seventeenth century, strenuous efforts were made by the professors of physic in Ireland to found a College of Physicians in Ireland, with privileges similar to those enjoyed by the London College. Assisted by the Irish Government, they obtained authority from Charles I., in the year 1626, for the incorporation of a College of Physicians, in Dublin; but owing to the troubled state of the times, the design was not carried out until the year 1667.

Apothecaries in Ireland anciently formed part of the 'Fraternity of Barbers and Chirurgeons of the Guild of St. Mary Magdalene,' which was originally incorporated by Henry II., and subsequently confirmed by Elizabeth and James I. In 1695, the College of Physicians in Ireland, having lately obtained its charter, attempted, but without success, to restrain apothecaries and surgeons from practising medicine; and in the year 1745, the apothecaries were separated from the barbers and surgeons, and erected into a distinct guild, called the 'Guild of St. Luke,' or 'Worshipful Company of Apothecaries,' which regulated the profession in and around Dublin.

In the year 1791, the Guild of St. Luke, 'for the more effectually preserving the health of his Majesty's subjects' by act of incorporation,[1] erected

[1] 31 Geo. III. c. 34, Irish.

the 'Apothecaries' Hall' of the City of Dublin, which henceforth governed the profession of an apothecary throughout Ireland. Amongst other things of importance this statute enacted that no one should open a shop, or act as an apothecary, or be employed as an apprentice, foreman, or shopman to an apothecary in Ireland, unless he had first been examined by the company, and obtained from them the necessary certificate.

By virtue of this Act, also, an apothecary was the only person in Ireland who could, before the Irish Pharmacy Act, legally keep open shop for the compounding and vending of medicines, and is, at present, the only practitioner of medicine in Ireland who can recover for medicines furnished on the prescriptions of others. He is besides authorised to practise the art and mystery of an apothecary, as a medical practitioner. It may be mentioned also that nothing contained in the Medical Act, 1858,[1] in any way affects the rights, privileges, or employment of duly licensed apothecaries in Ireland, so far as extends to selling, compounding, or dispensing medicines.

With regard to the fees of an apothecary, until lately, a very general impression seems to have prevailed that an apothecary was not entitled to charge for attendance, but it was decided by the case of *Towne* v. *Lady Gresley*,[2] that he might charge for either medicine or attendances, but could not for both; and a short time afterwards, Lord Tenterden held, in

[1] 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A). [2] 3 C. & P. 581.

Handley v. *Henson*,[1] that an apothecary might recover for reasonable attendances as well as for medicines. Such being the law, it is now admitted that an apothecary can make distinct charges for medical attendance and for the medicine supplied. If, however, the price charged for medicines is so high that the jury think it ought to include attendance, they are permitted to disallow the claim for such attendances. This appears from the reported case of *Morgan* v. *Hallen*.[2]

It is not any longer necessary for an apothecary in an action to recover the amount of his bill, to prove a certificate from the Society of Apothecaries, for the fact of his registration is sufficient evidence of his right to practise in any part of her Majesty's dominions. Nor is a registered apothecary prevented from recovering the amount of his charges for medicines and attendance in London, because he has only an extra-urban license from the Society of Apothecaries, although he may have rendered himself liable to a fine from the Society.[3]

Lastly, it should be stated that the authorities for the time being, of the Society of Apothecaries, London, and of Apothecaries' Hall, Dublin, have power to remove from the roll of their respective Societies, the name of any person who is convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence; or who, after due inquiry, is judged by the General Medical Council to have been guilty of infamous conduct in any professional respect; and to signify the same to the said Council.

[1] 4 C. & P. 110. [2] 8 Ad. & Ell. 489. [3] *Young* v. *Geiger*, 6 C. B. 551.

CHAPTER VI.

THE LAW RELATING TO DENTISTS.

In an Act for the Amalgamation of the Barbers and Surgeons or Chirurgeons of London, which was passed in the thirty-second year of the reign of Henry VIII., is to be found the first mention of the dentist's art in our statute-books. Here 'drawing of teeth' is expressly excepted from amongst those 'blood-lettings' and other things appertaining to surgery which any person 'using barbery or shaving within the City of London, suburbs of the same, and one mile compass of the said City,' was henceforth prohibited from practising under a penalty of £5; and thus this branch of surgery naturally remained in the hands of barbers, smiths, and others, who had hitherto exercised it, nor was the art, until very recent times, at all cultivated, even in a minor degree, by surgeons.

Of late years, however, the necessity for some improved system of dental education having become more fully recognised, power was given to her Majesty by the 47th section of the Medical Act, to grant a charter to the Royal College of Surgeons of England, authorising that body to institute and conduct examina-

tions for the purpose of testing the fitness of persons to practise as dentists, and to award certificates of the same. This charter was granted in the following year, 1859, and under it dentists, to a certain extent, held a statutory *status*, but they were in no sense placed on an equal footing with medical men. The title of 'dentist' was not protected in any way, nor was the practice of dentistry restricted solely to persons holding a license from the College of Surgeons, for the Act itself expressly declared that nothing therein should prejudice, or in any way affect, the lawful occupation, trade, or business of dentists. Also, as a natural consequence of dentists not being entitled to registration under the Medical Act, they were unable to recover in a suit at law any charges for work and labour done and materials provided as dentists, that is in right of their holding certificates in dentistry from the College of Surgeons; and so the law continued, until the Dental Practitioners Act, 1878[1] was passed, which, after reciting the expediency of making provision for the registration of persons specially qualified to practise as dentists in the United Kingdom, and for the otherwise amending of the law relating to dental practitioners, proceeds to enact that from and after August 1st, 1879, no person should take or use the name or title of 'dentist,' or of 'dental practitioner,' or any name, title, addition, or description implying that he is registered under this Act, or that he is a person specially qualified to practise dentistry, unless he is registered under

[1] 41 & 42 Vict., c. 33.

this Act, under penalty of a fine of not exceeding £20; but a prosecution can only be instituted by a private person with the consent of the General Council of Medical Education and Registration of the United Kingdom, or a branch thereof. This provision does not, however, apply to legally qualified medical practitioners, nor if the person charged show that he is not ordinarily resident in the United Kingdom, and that he holds a qualification which entitles him to practise dentistry or dental surgery in a British possession, or foreign country, and that he did not represent himself to be registered under the Act, or if he shows that he has been registered and continues to be entitled to be registered, but that his name has been erased on the ground only that he has ceased to practise.

It was held in the case of *Lee* v. *Griffin*,[1] that a contract to make a set of artificial teeth is a contract for the sale of goods, wares, etc., within the 17th section of the Statute of Frauds,[2] which enacts that no contract for the sale of such things, if for £10 or upwards, shall be good, unless there be a delivering and acceptance of the goods, or a part thereof, or an earnest given in part payment, or some memorandum in writing of the contract, signed by the parties to be charged, or their agents thereunto lawfully authorised. In this case a lady had ordered two sets of artificial teeth, at a cost of twenty guineas, which were to be fitted to her mouth. When

[1] 1 B. & S. 272; 30 L. J. Q. B. 252. [2] 29 Car. II. c. 3.

the teeth were ready, the dentist wrote, requesting an appointment for the purpose of fitting them, to which the lady replied her health would not for a few days permit his doing so. Shortly afterwards the lady died, without the teeth having ever been fitted. Held there was no sufficient memorandum in writing to satisfy the Act, nor was the dentist entitled to sue the executor in an action for work and labour done, or material supplied.

A person registered under the Dentists Act is entitled to practise dentistry and dental surgery in any part of her Majesty's dominions, and from and after August 1st, 1879, no person can recover any fee or charge, in any Court of Law, for the performance of any dental operation, or for any dental attendance or advice, unless he is registered under this Act, or a legally qualified medical practitioner. Any person is entitled to be registered who is a licentiate in dental surgery, or dentistry, of any of the medical authorities; or is entitled to be registered as a foreign or colonial dentist; or was *bonâ-fide*[1] engaged in the

[1] On the correct interpretation of this clause (section 6, subsection C), there exists a great deal of doubt, and it is believed a large number of persons, some four hundred, have obtained admission to the Register without any legal title. In consequence of the very unsatisfactory condition in which the question of the right of these persons to be registered was left by the Medical Council, who had been applied to in the matter, the British Dental Association have recently taken the highest legal opinion as to the meaning of the words, 'separately or in conjunction with the practice of medicine, surgery, or pharmacy;' whether they can be taken to include other than the legal practice of

practice of dentistry, either separately or in conjunction with the practice of medicine, surgery, or pharmacy, on or before July 22nd, 1878. But no person can be registered under this Act as having been at the passing thereof engaged in the practice of dentistry, who has not in the manner prescribed by the schedule of the Act both claimed and enforced his right to registration, before August 1st, 1879. No person resident in the United Kingdom is disqualified for being registered under this Act by reason that he is not a British subject; and no British subject is disqualified by reason of his being resident, or engaged in practice, beyond the limits of the United Kingdom.

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those subjects, and whether persons engaged in businesses not mentioned in the Act, in conjunction with dentistry, are entitled to registration. The opinion of Sir Farrah Herschel, dated December 14th, 1880, is to the effect that the words 'separately or in conjunction with medicine, surgery, or pharmacy,' have no meaning; that the subsection is to be read as meaning simply '*bonâ-fide* engaged' in the practice of dentistry or dental surgery, without any limiting condition whatever. A more recent conjoint opinion of Sir John Holker, Mr. R. S. Wright, and Mr. G. A. Fitzgerald, given July, 1881, goes to the effect, however, that a person who, being at the passing of the Act engaged in the practice of dentistry, and also in some business not mentioned in the Act, declared himself to have been engaged in the practice of dentistry separately, is liable to have his name erased from the Register; and that a person who declared himself to be engaged in the practice of dentistry in conjunction with pharmacy, but whose name is not in the Chemists and Druggists' Register, is liable to have his name erased from the Register. It is to be hoped that a test action in the Queen's Bench will soon decide the vexed question of the right of these four hundred persons to have their names continued on the Register of Dentists.

Any colonial or foreign dentist, possessing a recognised certificate, is under certain restrictions entitled to be registered in the Dentists' Register, upon payment of the registration fee, without any further examination in the United Kingdom.

Where a person registered in the Dentists' Register has, either before or after the passing of the Dentists Act, or before or after registration, been convicted either in her Majesty's dominions or abroad, of any felony or misdemeanour, or of any offence amounting to such, or has been, after due inquiry by the General Medical Council, judged guilty of any infamous or disgraceful conduct in a professional respect, he is liable to have his name erased from the Register. Provided that the name of no person is erased from the Register on account of his adopting or refusing to adopt the practice of any particular theory of dentistry or dental surgery, or on account of a conviction for any political offence abroad, or of a conviction for an offence which does not, by reason of its trivial nature, or the circumstances under which it was committed, disqualify a person from practising dentistry. The name of any person erased from the Register by the General Medical Council, to be also erased from the list of licentiates in dental surgery or dentistry of the Medical College, or authority of which such person is a licentiate. And the name of that person may not be again entered except by direction of the General Council, or by order of a court of competent jurisdiction.

The medical authorities empowered to appoint boards of examiners, and to grant a license for dental surgery, are all such as have power, for the time being, to grant surgical diplomas or degrees, viz.: the Royal College of Surgeons of England, the Royal College of Surgeons of Edinburgh, the Faculty of Physicians and Surgeons of Glasgow, the Royal College of Surgeons in Ireland, and any University in the United Kingdom.

The Royal College of Surgeons of England, however, is still authorised to appoint examiners and hold examinations for the purpose of testing the fitness of persons to practise dentistry, and to grant certificates of the same, subject to the provisions of their charter, dated September 8th, 1859, and the by-laws made, or to be made, in pursuance thereof. Every medical authority, when required, must furnish the General Council with information concerning the course of study and examinations to be gone through in order to obtain their licenses in dentistry, and any member or members of the Council, or any person or persons deputed for this purpose, may be present at any such examinations.

When it appears to the General Council that the course of study and examinations to be gone through at any of the said Colleges are not sufficient to secure the possession by persons obtaining its license, of the requisite knowledge and skill for the efficient practice of dentistry, the General Council may represent the same to the Privy Council; on which representation the

Privy Council may order that a license granted by such College or body shall not confer any right to be registered.

By section 29 of the Dentists' Act, it is enacted that a copy of the Dentists' Register shall be evidence in all cases, until the contrary be proved that the persons therein specified are registered under the Act; and the absence of the name of any person from such copy shall be evidence, with the same proviso, that such person is not registered. Persons registered under the Act are, by the following section, exempted from serving on all juries and inquests, from service in any parochial or other office, and from liability to be called upon to serve in the militia. And lastly, it should be stated, that any person who procures, or attempts to procure, himself to be registered under this Act, by any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding and assisting in the same, is liable to imprisonment for twelve months.

NOTE.—The following provisions have been made for certain dental students:—Section 37 of the Dentists' Act provides that any person who has been articled as a pupil, and has paid a premium to a dental practitioner entitled to be registered under this Act, in consideration of receiving from such practitioner a complete dental education, shall, if his articles expired before January 1st, 1880, be entitled to be registered as though he had been in *bonâ-fide* practice before the passing of the Act; also it shall

be lawful for the General Council by special order to dispense with such of the certificates, examinations, or other conditions required for resignation under the Act, or any by-law or regulation made by its authority, in favour of any dental students or apprentices who have commenced their professional education or apprenticeship before the passing of the Act.

CHAPTER VII.

THE LAW RELATING TO UNIVERSITY MEDICAL GRADUATES.

HAVING now completed a brief survey of the regular medical and surgical licensing bodies, it will be advisable before proceeding to discuss the law as it affects members of the Pharmaceutical Societies, and chemists and druggists in general, to glance at the several Universities in the United Kingdom, which are empowered to confer degrees in medicine and surgery, or medicine, or surgery only.

These Universities are ten in number. Amongst the English, the newly-established University of London stands, *facile princeps*, from a professional point of view. It grants two degrees in medicine (M.B. and M.D.), and two in surgery (B.S. and M.S.). The University of Cambridge confers two degrees in medicine (M.B. and M.D.), and one in surgery (M.S.). The University of Oxford two degrees in medicine alone (B.M. and D.M.); and, lastly, the University of Durham confers three professional degrees (M.B., M.D., and M.S.), besides granting a special license in medicine, and one also in surgery.

Of the Scotch Universities, that of Edinburgh grants two medical (M.B. and M.D.) and one surgical

degree (C.M.). The University of Glasgow grants the same; and the Universities of Aberdeen and St. Andrews likewise.

There are two Irish Universites—Dublin, and Queen's University. Of these, the former grants three professional degrees (M.B., M.D., and Ch.M.), and a special license in medicine and in surgery; the latter two degrees only—one in medicine (M.D.), and one in surgery (M.S.).

Holders of any of these degrees, which are of course registerable, have the right of practising, each according to his qualification, throughout her Majesty's dominions, London and a seven-mile radius not excepted.

It may be here mentioned that the King and Queen's College of Physicians in Ireland, conforming to an ancient usage, invariably styles its fellows and licentiates 'Dr.;' but it was held in the recent case of R. *v.* Steele[1] that the College had no legal power or authority to confer a degree of M.D., or to permit the use of any such title, and consequently neither a fellow nor a licentiate of the College is as such registerable as M.D. However, it appears that they possess a customary right to the title of 'Dr.,' it having been from time immemorial conceded to the fellows and licentiates of this College; and such fellow or licentiate assuming the title of 'Dr.' would doubtless not be deemed to have done so wilfully and falsely within the meaning of section 40 of the Medical Act, and rendered himself liable to the penalty imposed by such section.

[1] 13 Ir. Com. L. R. 398. See Appendix G.

By the University of London Medical Graduates Act,[1] every M.B. and M.D. of the University of London is, by virtue of his degree, entitled to practise physic as fully in all respects as any M.B. or M.D. of Cambridge and Oxford is entitled to practise by virtue of his degree, or under any power, license, or authority conferred by either of the last-mentioned Universities; but such privilege is not to be construed so as to extend to the practice of *surgery*, *pharmacy*, or *midwifery*.

By section 53 of the Medical Act, 1858, the provisions of the Medical Graduates Act remains in full force, notwithstanding the surrender of the therein-recited charter of the University of London, and the granting of the present existing one, or the possible future determination of it, or of any future charter.

To continue, any M.B. or M.D. of the University of London, if he has no other *registered* qualification, can only *prescribe* medicines in the same manner as any M.B. or M.D. of the Universities of Cambridge or Oxford, and does not possess the full privileges of the Royal College of Physicians of England, in treating surgical cases, or in compounding medicines for his own patients. Nor can such graduate practise midwifery, except as anyone who chooses may practise it, namely, in the superintendence and assistance which is often required, even in a naturally healthy function, and when urged by the necessity of the case. For it

[1] 17 & 18 Vict. c. 114 (passed 11th August, 1854).

should not be forgotten that licentiates in midwifery of the Royal College of Surgeons of England are specially recognised by Schedule A of the Medical Act, and though they exclude no one else, they have a statutory right to recover fees as such, which the graduate of the University of London does not possess, being expressly forbidden by the Medical Graduates Act previously referred to. Under the Medical Act any person holding the degree of M.B. or M.D., or a license in medicine from any of the Universities in the United Kingdom, empowered to confer degrees or grant licenses in medicine, has a right to practise the same throughout her Majesty's dominions, and to recover his fees, with full costs of action, in any court of law. And any person holding one of the following degrees, B.S., M.S., C.M., or Ch.M., or a license in surgery from any of the Universities empowered to grant them, is entitled to practise surgery and medicine, provided it be ancillary to surgical treatment, and to recover his fees, with costs, in any court of law

An M.D.[1] by doctorate granted by the Archbishop of Canterbury, previous to 1st August, 1858, is entitled to practise medicine, and recover his fees with costs.

An M.D. of any foreign or colonial University or College, registered with the sanction of the General

[1] The Medical Act does not abolish this *honorary* degree. The primate will still be at liberty to confer the distinction, but it will no longer be recognised as a legal qualification to practise.

Medical Council, after giving proof of his having passed a regular examination, or for other satisfactory reason, can still practise, and recover his fees at law, if previous to the aforesaid date he had been practising in the United Kingdom as a physician. And a surgeon who, under similar circumstances and conditions, had practised surgery in the United Kingdom, can, if registered with the sanction of the Council, continue to do so, and recover his fees or charges, including ancillary medical attendance.

Apropos of the above, it should be mentioned that under the provisions of an Act[1] to amend the Medical Act, any person who is not a *British* subject, who has obtained from any foreign University or College, a degree or diploma of Doctor of Medicine, and has passed the regular examination entitling him to practise medicine in his own country, may still act as medical officer or resident physician of any hospital established exclusively for the relief of foreigners in sickness, provided always that he engage in no other branch of medical practice.

With regard to the recovery of professional charges generally by University graduates and others, since the passing of the Medical Act in all suits for the recovery of charges, fees, etc., proof of registration is imperative, and absolutely necessary to entitle him to recover at law. The defendant need not plead the want of registration as a defence; the plaintiff must prove it as part of his case. But the medical man

[1] 22 Vict. c. 21, s. 6 (Medical Act Amendment Act, 1869).

need not have been registered at the time he gave the professional attention for which the action is brought; it is sufficient if he can appear in Court with his name entered on the Register.[1] If suing on a promissory note or bill of exchange, given in payment of a debt for medical services, it will still be necessary for him to prove registration. This was held in the case of *Blogg* v. *Pinkers*.[2] If an unregistered medical man professionally attends a patient under a guaranty of payment from another person, want of registration is a good defence in either parties.

A copy of the Medical Register, as has been already stated, is evidence in all Courts that the persons therein specified are registered under the Act, and the absence of the name of any person from such copy is evidence, until the contrary be proved, that such person is not so registered. Where any registered person's name does not appear in the copy produced, a certified copy of the entry on Register, under the hand of the Registrar of the General Medical Council, or any branch Council, will be evidence of registration.

In respect to a conjoint scheme for medical education, it is enacted by the 36 & 37 Vict. c. 55, that if in pursuance of the Medical Act, the University of London co-operates with any of the Colleges or bodies mentioned in that Act, in conducting the examinations required for qualifications to be regis-

[1] *Turner* v. *Reynal*, 14 C. B., N. S. 328.
[2] Ryl. & M., N. P. 125.

tered under that Act, it shall be lawful for the authorities for the time being of the University, to prescribe by a by-law under their common seal, that no person shall become a doctor, or bachelor, or licentiate of medicine, or master in surgery of the said University, unless in addition to passing such examination, if any, and in complying with the other conditions which may be prescribed by any by-laws of the University, he shall have passed such examination for qualification to be registered under the Medical Act, and complied with the conditions relating thereto, that may be agreed upon between the University and the body or bodies with which it may be co-operating as aforesaid. But no by-law made in accordance with this Act is to have any force without the assent of one of the principal Secretaries of State, and such Secretary of State can at any subsequent time, if he think fit, revoke his assent.

In conclusion, it may be remarked that there is a large class of medical men, commonly called 'general practitioners,' who, upon being registered with the double qualification of physician and surgeon, or surgeon and apothecary, enjoy the rights and advantages of both classes of practitioners. So, too, a physician or University medical graduate may, if he have them, be registered with all these qualifications. But if he claim them by virtue of his medical diploma or degree, he must prove his demand to be in accordance with the charter of his College or University. Medical graduates who are fellows, members, or

licentiates of any College of Physicians or Surgeons, or of any Society of Apothecaries, enjoy all the privileges, and are bound by all the regulations and by-laws of that College or Society; so far as these are not incompatible with the charters of their respective Universities.

CHAPTER VIII.

THE LAW RELATING TO CHEMISTS AND DRUGGISTS.

Previous to the year 1852, the trade or calling of a chemist and druggist possessed no statutory recognition whatever; but on June 30th in that year the first of the Pharmacy Acts[1] regulating the business and qualifications of chemists and druggists, received her Majesty's assent, and since that period the calling has enjoyed a position in some respects analogous to the profession of medicine.

But eleven years before, in 1841, the Pharmaceutical Society of Great Britain had been established with the avowed purpose of advancing chemistry and pharmacy, and to promote a more uniform system of education for those who practised the same, and also for the better protection of persons carrying on the trade of chemists and druggists.

This Society was incorporated by royal charter on the 18th of February, 1843, which provided, as is recited in the preamble to the Pharmacy Act, 1852, that the Society should consist of members who were, or

[1] The Pharmacy Acts, commonly so-called, are the 15 & 16 Vict. c. 56; 31 & 32 Vict. c. 121; and 32 & 33 Vict. c. 117.

had been, chemists and druggists established on their own account at the date of that charter, or who had been examined in such manner as the Council of the Society should deem proper, or who were certified to be duly qualified for admission, or persons elected as superintendents by the Council of the Society; and that there should be admitted to the privileges of the Society, after having been examined, and having received certificates of proficiency from the Council, certain 'associates,' who were to be assistants to chemists and druggists; and also apprentices or students in pharmacy and chemistry.

The government of the Society, however, was vested in the members alone, to whom were given authority to appoint examiners, to grant certificates or diplomas, and to make by-laws regulating the affairs of the Society, and for the examination, election, and removal of members, associates, apprentices, or students. The charter was confirmed by the Act of 1852, previously alluded to, which further provided in the 2nd section that the Council should have power to alter and amend the by-laws of the Society made and established in pursuance of their charter of incorporation, or for the purposes of the Pharmacy Act, 1852, provided always that such by-laws be confirmed and approved by a special general meeting of the members of the Society, and by one of her Majesty's principal Secretaries of State.[1]

Under 31 & 32 Vict. c. 121, s. 5, all powers vested by the Pharmacy Act, 1852, in one of the principal Secretaries of State, are transferred and vested in the Privy Council.

Section 4 of the Pharmacy Act makes provision for the appointment of a registrar by the Council of the Pharmaceutical Society. It gives the Council power to remove the registrar, and to appoint any future one in the place of a registrar who may die, or retire, or be removed from office. The registrar is required to make out and maintain a complete Register of all persons who are members of the Society, and of all associates and apprentices or students respectively, according to the terms of their charter of incorporation, to keep a proper index of the Register, and all other registers and books required by the Council of the Society. He is further bound, on the application of any person paying a nominal fee, to certify under his hand, whether any person whose name and address may be furnished to him, appears in the said Register, or is a member of the Pharmaceutical Society or not. If the registrar should wilfully make, or cause to be made, any falsification in any matters relating to any register of certificate, he is by 31 & 32 Vict., c. 121, s. 14, deemed guilty of a misdemeanour, and liable to imprisonment for a period not exceeding twelve months.

Under section 13 of the same Act, the registrar is bound to make and keep, and in the month of January in every year, to cause to be printed, published, and sold, a correct list, to be called, 'The Registers of Pharmaceutical Chemists, and Chemists and Druggists,' of all persons registered as chemists and druggists, whose names appeared in the Register of Phar-

maceutical Chemists, and on the Register of Chemists and Druggists, on the 31st day of December last, preceding.

A printed copy of such Register for the time being, or a certificate under the hand of the registrar, and countersigned by the president or the members of the Council of the Pharmaceutical Society, is further made evidence in all courts of law, that the persons therein specified are duly registered; and the absence of the name of any person from such printed Register is evidence, until the contrary be proved, that such person is not duly registered.

To continue, all persons who, at the time of the passing of the Pharmacy Act, 1852, were members, associates, apprentices, or students, are entitled to be registered under that Act as pharmaceutical chemists, assistants, and apprentices or students respectively.

Every person who has been examined by persons duly appointed under the charter of incorporation, or by-laws made in pursuance of the same, or the Pharmacy Act, 1852, and has obtained a certificate of qualification from them, is entitled to be registered on payment of the fee or fees required, and every person registered as an assistant is eligible for admission as an associate of the Society, and every person registered as a student or apprentice is eligible for admission into the Society according to the by-laws thereof.

It was held by the Court of Exchequer Chamber, affirming the judgment of the Court of Queen's Bench,

in the well-known case of the *Queen* v. *Registrar of the Pharmaceutical Society*,[1] that, under 15 & 16 Vict. c. 56, persons who, either before February 18th, 1843, the date of the charter of the Pharmaceutical Society, which is recited and partly confirmed in the Act, or after that date, and before June 30th, 1852, the date of the Pharmacy Act, were established in business on their own account, as chemists and druggists, and, upon a certificate of such fact, and of their qualification to be admitted members of the Society, were according to the by-laws passed before the charter and after the Act, elected members of the Society, are entitled to be registered as pharmaceutical chemists, although they may not have passed the examination required, and although they were not members of the Society before the passing of the Act.

By the Pharmacy Act, 1868,[2] persons who on July 31st of that year had been duly admitted pharmaceutical chemists, are entitled to be registered under the Act, without any charge or fee; and all persons who, on or before the same date, carried on in Great Britain the business of a chemist and druggist, in the keeping of open shops for compounding the prescriptions of duly qualified medical practitioners, are entitled to be registered as chemists and druggists, upon payment of the proper fee, and sending in the required certificates.

By section 4 of the same Act, all persons who were

[1] 5 E. & B. 138.

[2] 31 & 32 Vict. c. 121, s. 5.

of full age on July 31st, 1868, and had been engaged for three years at least, as assistants in dispensing and compounding prescriptions, were entitled to be registered as chemists and druggists, upon producing satisfactory certificates (Schedule E) to the registrar, on or before December 31st, 1868, and passing a modified examination.

And by section 6, all persons who have been examined and duly certified to possess competent skill, knowledge, and qualification, are entitled to be registered as chemists and druggists.

But the name of no person may be entered in the Register, unless the registrar is satisfied by proper evidence that the person so claiming is entitled to be registered; and by 31 & 32 Vict. c. 121, s. 12, an appeal lies from the decision of the registrar to the Council of the Pharmaceutical Society.

No person, however, who is a member of the medical profession, or who is practising under right of any degree of a University, or under any diploma or license of a medical or surgical body, can be registered under the Pharmacy Acts; and if any registered pharmaceutical chemist obtain such diploma or license, his name must be removed from the Register during the time he is engaged in such practice.

Again, by section 16 of the Pharmacy Act, 1868, upon the decease of any pharmaceutical chemist, or chemist and druggist, actually in business at the time of his death, any executor, administrator, or trustee of such pharmaceutical chemist, or chemist and drug-

gist, may continue the business if, and so long only as, it is *bonâ-fide* conducted by a duly qualified assistant, meaning by the term a duly registered pharmaceutical chemist, or chemist and druggist. A special provision, also, of the same section enacts that registration under these Acts is *not to entitle* any person so registered to practise medicine or surgery, or any branch of medicine or surgery. But by the Juries Act, 1862, all registered chemists are freed and exempted from being returned in the lists, and from serving upon any juries or inquests whatever.

By section 12 of the Act of 1852, any person not being duly registered as a pharmaceutical chemist, who assumes or uses the title of pharmaceutical chemist, or pharmaceutist in any part of Great Britain, or assumes, uses, or exhibits any name, title, or sign implying that he is registered, or that he is a member of the Pharmaceutical Society, is liable to a penalty of £5, which may be recovered by the registrar appointed under the Act, in the name and under the authority of the Council of the Pharmaceutical Society; provided always that no action or other proceeding for any penalty be brought after the expiry of six months from the commission of the offence; and in every such action the winning party is entitled to full costs of suit.

The same section is substantially re-enacted in the Pharmacy Act, 1868,[2] with the addition of the word 'pharmacist' after 'pharmaceutical chemist, or phar-

[1] 25 & 26 Vict. c. 107, s. 2. [2] 31 & 32 Vict. c. 121, s. 15.

maceutist,' and the Act further enacts that any person not being duly registered as a pharmaceutical chemist, or chemist and druggist, who takes, uses, or exhibits the name or title of chemist and druggist, or chemist, or druggist, or who sells, or keeps an open shop for the retailing, dispensing, or compounding poisons, is liable to a like penalty, which may be recovered in the same manner.[1]

Any person who wilfully procures by false and fraudulent means a certificate of registration as a pharmaceutical chemist, assistant, apprentice, or student, or fraudulently exhibits a certificate pur-

[1] The *Pharmaceutical Society* v. *London and Provincial Supply Association* (L. R. 5 App. Ca. 857) is an important and the most recent decision under this section (15). It was an appeal to the House of Lords from a decision of the Court of Appeal, which had reversed a previous decision of the Queen's Bench Division. The London and Provincial Supply Association had been proceeded against by the Pharmaceutical Society, they contending that the Association not being themselves licensed, were liable to penalties for sales of poison, etc., at their stores, although the assistants, by whom the sales were effected, were duly qualified and licensed. The magistrate before whom the case was first brought decided against the Association, and imposed a penalty, a decision which was affirmed on appeal to the Queen's Bench Division, and from that judgment the Association again appealed. The Court took time to consider their judgment, which was now delivered in favour of the Association, Lords Justices Bramwell, Baggallay, and Thesiger being unanimously of opinion that the appeal should be allowed. The Pharmaceutical Society then appealed to the House of Lords, but on the 22nd of July, 1880, the Lord Chancellor, Lord Blackburn, and Lord Watson, before whom the case was exhaustively argued, held that the word 'person' in the Act was not intended to include a corporation, and dismissed the appeal.

porting to be a certificate of membership of the Pharmaceutical Society, is guilty of a misdemeanour, and liable to the penalty. And by 31 & 32 Vict. c. 121, s. 14, any person who wilfully procures, or attempts to procure, himself to be registered, by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding or abetting therein, is guilty of a like offence, and may, on conviction thereof, be sentenced to imprisonment for any term not exceeding twelve months.

It would be as well now if, before proceeding to discuss the important question of recovery of charges by pharmaceutical chemists, and chemists and druggists, a brief reference were made to the law as it affects the calling in Ireland. Here the trade of a chemist and druggist, distinct from an apothecary, can scarcely be said to have existed until within the last few years; for it will be remembered, as was stated in the chapter on Apothecaries, that under the provisions of the Act of Parliament[1] which established Apothecaries' Hall, Dublin, and also regulated the profession of an apothecary throughout Ireland, no other person could keep open shop for the sale of medicines, and recover charges for medicines furnished on the prescriptions of others; nor were the peculiar privileges of Irish apothecaries in this respect at all affected by the Medical Act. But as the state of things became productive of great inconvenience, and

[1] 31 Geo. III. c. 34 (Irish), passed in the year 1791.

a want was felt throughout the country for more shops where medicines might be purchased and prescriptions made up, it was decided to institute a Pharmaceutical Society, and regulate the qualifications of chemists in the same manner as had already been done in England. In pursuance of this intention, the Pharmaceutical Society of Ireland was incorporated by Royal Letters Patent, and an Act[1] passed on the 11th August, 1875, empowering the Society to examine persons who did not wish to practise as apothecaries, and yet were desirous of carrying on the trade of a chemist and druggist, and to register those persons found, after proper examination, to possess a competent knowledge of pharmaceutical chemistry, and a fairly good general education.

As the provisions of this Act in most respects, save for local differences, resemble those of the Pharmacy Act, 1852, there is no need here to discuss them; but it should be noted that, by section 34, any person registered as a pharmaceutical chemist in Ireland, is qualified to be appointed to the office of apothecary in any district lunatic asylum, or county gaol, or prison in that country, but he may not *prescribe* for patients.

Lastly, as to the recovery of charges by a pharmaceutical chemist, or chemist and druggist, in either England or Ireland. The Apothecaries Act,[2] 1815, declares the trade or business of a chemist and druggist to consist of buying, preparing, compounding,

[1] 38 & 39 Vict. c. 57. [2] 55 Geo. III. c. 194, s. 28.

dispensing, and vending drugs, medicines, and medicinable compounds, whether wholesale or retail, and it is provided by section 55 of the Medical Act, 1858, that nothing contained therein shall prejudice, or in any way affect, the lawful occupation of a chemist and druggist if carried on within these limits. But no chemist may take upon himself to prescribe medicines and visit the sick, or he will be liable to penalties under the Apothecaries Act; and it was held in the case of *Richmond* v. *Coles*,[1] that a chemist and druggist is not entitled to recover the price of medicines, although he has made out his bill as a chemist, no matter whether the items are properly within the scope of an apothecary's profession or not, the question being not has he charged as an apothecary, but whether he has acted as one.

It is *not* necessary for a chemist and druggist to prove registration before he can recover in his legitimate trade, but the want of registration, if pleaded in defence, will be a good answer to an action. It is also a good defence to an action by a registered chemist and druggist, that the medicines supplied were medicines of the British Pharmacopœia, and that they were not compounded according to the formularies therein given.

In concluding the chapter, it may be remarked that governors of a hospital are not generally liable at the suit of a druggist for medicines supplied to the hospital; but in the case of *Luckombe* v. *Ashton*,[2] an action was

[1] 11 L. J., Q. B. 155. [2] 2 Fost. & Fin. 705.

successfully maintained against the medical officers of a dispensary, who were also on the managing committee, for medicines supplied to the dispensary on the orders of others of the medical officers, on behalf of the committee, and with the knowledge of the defendants, the jury being directed that the defendants would be *personally liable* unless they made the plaintiffs understand that they were to look only to the funds of the institution.

CHAPTER IX.

THE LAW RELATING TO MEDICAL WITNESSES.

The necessity for professional men to appear in courts of law and give evidence upon cases arising specially within their cognisance has always been recognised, and the proper performance of this duty is now a most important branch of medical jurisprudence. The first statutory recognition of the obligation occurs in the 'Constitutio Criminalis Carolina,' or the Caroline Code framed by the Emperor Charles VI. of Germany, at Ratisbon, in the year 1552; where it was enacted that the opinion of medical men should be formally taken in all cases of death resulting from violence, such as child-murder, poisoning, wounds, hanging, drowning, procuring of abortion and the like. Attention being thus turned towards the great advantange of such precautionary measures, other continental states soon followed the German Emperor's example, and inserted similar provisions in their own codes. Thus the science of Forensic Medicine, State Medicine, or Medical Jurisprudence, as it is indifferently called, had its earliest origin and commencement. Half a century later, in 1606, Henry IV. of France presented letters

patent to his chief physician, conferring on him the privilege of nominating two surgeons in every city and town of importance, whose exclusive duty it should be to examine all wounded and murdered persons, and to make reports thereon; and in the year 1667 Louis XIV. ordered that no report should be valid unless it had received the sanction of one or more of those surgeons. A few years later physicians were by law associated with surgeons in these examinations. In England, however, no legal enactment seems to have been required, the common law of the country having always recognised the necessity for the attendance of medical practitioners to give testimony in such cases.

The most frequent cause necessitating professional evidence in a court of law is violent death, accidental or otherwise, and here the duties of medical men may be considered under the following heads: first, at the coroner's inquiry; and secondly, before the court and jury summoned on the trial of the accused. In other words, the facts which are to govern the verdict at the coroner's inquest must be elicited before that time, and these same facts must be again stated, and, if required, opinion and reasons given, before the court which is to decide the fate of the prisoner.

The primary duty of a medical man is to thoroughly satisfy himself as to the cause of death. He should proceed to dissection if he entertain any doubt, whether he has received a coroner's order for an examination or not, providing, of course, the friends and relations of the deceased will permit it.

And in this post-mortem examination it is always advisable that the medical practitioner be assisted by one or more of his professional brethren. The advantage of such a course of procedure is obvious, for it is little less than impossible that the examining person should perform all the manual work, and at the same time properly note the various appearances as they successively arise.

A full statement of facts and observations should be prepared *at the time,* if possible on the spot; if that be not convenient, immediately after returning home. This may be useful for reference to refresh the memory at the inquest or before the judge. Great care should be taken by the medical man in drawing his deductions from the facts discovered at the post-mortem examination; for these deductions, if unfavourable, may consign a fellow-creature to lifelong incarceration, or perhaps to an ignominious death.

After the coroner's inquiry, if the case be committed for trial, then come the most arduous duties of the medical witness. He will now have to appear before a far more imposing tribunal, and there restate the evidence given by him at the inquest, the facts, opinions deduced from such facts, and, in all probability, his *reasons* for such opinions. He will, moreover, have to maintain them against the opinions of medical experts who may be called against him. And lastly he must submit, with as good grace as he can, to the searching cross-examination of counsel, whose whole endeavours will be directed towards invalidating all that he has said.

Again, medical men, in giving their evidence at a trial, should be careful to express themselves only in the plainest and most simple language. All technicalities and obscure phrases should be eschewed as far as possible, and when a technical word is absolutely necessary to convey the precise meaning required, it must always be explained at the time. And the medical witness should endeavour to avoid the slightest suspicion of partisanship. This, from the circumstances under which he is usually summoned, becomes often most difficult. He is produced by one side or the other, the prosecution or the defence, and the side calling him naturally desires favourable evidence. But let him only for a moment appear to be actuated by prejudice or bias, and the evidence, whichever side it ought to favour, will be practically valueless. He is sworn to tell the truth, the *whole* truth, and nothing but the truth. He must extenuate nothing, and set nought down in malice. So if unquestioned to the full extent of his knowledge, it becomes his duty to volunteer information, and place the court in possession of the whole truth.

It often unfortunately happens, moreover, that, worried by legal technicalities, and alike harassed and irritated by tedious cross-examination, he is apt to let feelings get the better of a sense of justice, and express opinions in language more strongly corroborative of one view of the case than circumstances would perhaps justify. Apropos of this subject, more than one eminent writer on jurisprudence has ad-

vocated the non-calling of medical men as witnesses, as a rule, and placing in the hands of the court, in lieu thereof, the written statement previously referred to as the *medical facts of the case.* But this procedure would be opposed to a leading principle of the laws of evidence, namely, that the best evidence must be given of which the nature of the thing is capable.

Dr. Taylor, in his well-known work on Medical Jurisprudence, gives some directions which will be found very useful for the guidance of medical practitioners when called upon to give evidence in a court of law. The most important may be here briefly summarised: (1) Endeavour to cultivate a faculty of minute observation of medical and moral circumstances. (2) On being called to see a person who has died suddenly, notice everything, the room and its contents. (3) In drawing up medico-legal reports, be careful to avoid exaggerated language and technical terms. (4) Never give an opinion upon insufficient data, for such an opinion must always be more or less conjectural, and may involve you in unpleasant responsibility. (5) Be well prepared on all parts of the subject on which you are called to give evidence. (6) Let your demeanour be that of an educated man, and suited to the serious occasion on which you appear. (7) A medical witness should not allow his evidence to be influenced by the consequence which may follow from his statements of *facts;* but the possible effect they may have on the fate of a prisoner should inspire caution in forming opinions.

(8) Give direct and straightforward answers to all questions, whether put by the counsel for the prosecution or for the defence, and confine yourself strictly to the terms of the question. (9) Avoid answering in an ambiguous, undecided, or evasive manner. (10) A medical witness is at full liberty to explain medical points to counsel, and should correct him on medical subjects, when wrong in his views or deductions, but he must never even appear to prompt counsel in the conduct of the case. (11) If, in an action for *malpraxis*, or other case, it becomes your duty, as a medical expert, to give an opinion on the practice of another professional man, let there be no suppression of truth; a witness is bound, in answering questions, to state his opinion, and the grounds on which it is based, clearly and distinctly; but he need not be forward in pointing out and suggesting defects, or in endeavouring to lessen another practitioner in the estimation of the public. (12) Lastly, on the subject of conflicting medical testimony in *causes célèbres*, which is often a favourite theme of comment with the public: never take up a case from the ignoble motive of a desire for gain, nor the craving for notoriety, nor, indeed, from any other motive, save only a desire for truth.

A reference may be here made to the lamentable conflict of medical evidencé which occurred on the trial of the notorious Palmer, himself, it is to be regretted, a member of the medical profession, at the Old Bailey in 1856, for poisoning by strychnia. The remarks of Sir Alexander Cockburn, the then Attorney-

General, on the conduct of an expert called for the defence, were fully expressive of his indignation. 'I have seen *that* gentleman' (pointing to the expert), 'not merely contenting himself with coming forward, when called upon for the purpose of justice to state that which he knew as a matter of science or of experiment, but I have seen him mixing himself up as a thoroughgoing partisan in this case, advising my learned friend, suggesting question upon question, and that in behalf of a man whom he has again and again asserted *he believed to be a poisoner by strychnia.* I do not say that alters the fact; but I do say that it induces one to look at the credit of such witnesses with a very great amount of suspicion. I reverence a man who from a sense of justice and a love of truth—from those high considerations which form the noblest elements of a man—comes forward in favour of one against whom the world may run in a torrent of prejudice and aversion, and who stands and states what he believes to be the truth; but I abhor the traffic in testimony to which I regret to say men of science sometimes permit themselves to condescend.'[1]

[1] William Palmer, surgeon, of Rugeley, aged 31, was indicted for having at Rugeley, in the county of Stafford, on November 31st, 1855, feloniously, wilfully, and with malice aforethought, committed murder on the person of John Parsons Cook, a betting man. After a trial lasting twelve days, and in which the most eminent counsel were engaged on either side, the prisoner was found guilty, and executed at eight o'clock on Saturday morning, June 14, 1856, in front of Stafford Gaol. He reiterated that he was 'innocent of poisoning Cook by strychnine.' See Report of Trial, published, London, 1856.

To continue, the question whether a medical witness can avoid giving in evidence any confidential relation made to him by the deceased is of some importance; but there can be no doubt as to the law on the point. It was decided as far back as the trial of the celebrated Duchess of Kingston in 1776. A medical man has absolutely *no* privilege;[1] so great care should be taken by him in becoming the repository of secrets or anything in the nature of a death-bed confession, for he is bound to disclose them if called upon.

As a medical practitioner may sometimes be required to give evidence of what a person has stated when dying, as to the cause of his death or any of the circumstances connected therewith, it should be remembered that those declarations are only admitted in evidence when it is shown to the satisfaction of the judge that he was in actual danger of death, and had really given up all hope of recovery. The statement, also, is only admissible in trials for the murder or manslaughter of the person declaring. Thus, in a trial for murder, a written declaration of the deceased was put in evidence for the prosecution. The declaration was made on oath to a magistrate's clerk, about thirteen hours before death. The clerk asked the deceased before taking down her statement if she felt likely to die? She replied: 'I think so, from the shortness of my breath.' The clerk said: 'Is it with the fear of death before you that you make these

[1] *Duchess of Kingston's Case*, 20 How. St. Tr., 573.

statements, and have you any present hope of your recovery?' She said: 'None.'

The clerk then wrote out her statement, and added to it the above conversation in the form of a statement by the deceased, but he omitted the word 'present' before 'hope.' He then read over what he had written, and the woman added the words 'at present' before 'hope,' and signed the declaration. It was held, in the Court for Crown Cases Reserved, that the statement could not be given in evidence, as it did not appear to have been made under a settled hopeless expectation of death, inasmuch as the deceased had expressly qualified the words 'no hope,' by inserting before them the words 'at present.'[1] So in another case,[2] a person who was told by the surgeon attending her that she would never recover, said she 'hoped he would do what he could for her, for the sake of her family.' He again told her that there was no chance of her getting better. The woman died shortly afterwards, and it was held on the trial for murder that these words showed such a degree of hope in her mind as to render the statement inadmissible as a declaration made *in articulo mortis*.

An entry made by a deceased medical man in the course of his ordinary professional duties is admissible in evidence, and especially if such entry be against self-interest. Thus, in the case of *Higham* v. *Ridgway*,[3] evidence of an entry made by a deceased

[1] *R.* v. *Jenkins*, L. R., 1 C. C. R., 187.

[2] *R.* v. *Crockett*, 4 C. & P., 544.

[3] 10 East, 109.

accoucheur that he had delivered a certain woman on a particular day, with a reference also to his ledger, where the charge for his attendance was marked 'paid,' was admitted on the trial of an issue as to the age of the child.

Medical Witnesses at Coroners' Inquests. — The Statute 6 & 7 Will. IV. c. 89, passed August 17, 1836, and entitled 'An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroners' Inquests,' after reciting that it is expedient to provide for the attendance of medical men at coroners' inquests, and also remuneration for such attendance, and for the performance of post-mortem examinations at such inquests, proceeds to empower the coroner, whenever upon the summoning or holding of any inquest it appears to him that the deceased was attended at his death, or during his last illness, by any legally qualified medical practitioner, to issue his order for the attendance of such practitioner as a witness at the inquest; and if it appear to the coroner that the person was not attended at, or immediately before, his death by any such medical practitioner, to order the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death happened. The coroner may, either in his order for attendance, or at any time between the issuing of the order and the end of the inquest, direct a post-mortem examination, with or without an analysis of the contents of the stomach or intestines by the medical witness or wit-

nesses summoned to attend the inquest. If any person goes to the coroner and states, upon oath, that he believes the death was caused, partly or entirely, by the improper or negligent treatment of any medical practitioner, that medical man may not make nor assist at the post-mortem examination.

If the coroner is unwilling, or neglects to issue an order for a post-mortem examination, or has already done so, and the jury are unsatisfied with the result of the examination, a majority of the jury are empowered to submit to the coroner in writing the name of any other medical man whom they may choose, and the coroner must, under penalty of a misdemeanour, order the attendance of, and if required, a post-mortem examination to be made by, the said medical man.

When any legally qualified man has attended an inquest, in obedience to the coroner's order, he is entitled to fees in accordance with the scale marked in a schedule[1] at the end of the Act, which fees are to be paid out of the funds collected for the relief of the poor.[2]

[1] Schedule B. Table of fees : (1) To every legally qualified medical practitioner for attending to give evidence under the provisions of this Act at any coroner's inquest whereat no post-mortem examination has been made by such practitioner, the fee or remuneration shall be one guinea. (2) For the making of a post-mortem examination of the body of the deceased, either with or without an analysis of the contents of the stomach or intestines, and for attending to give evidence thereon, the fee or remuneration shall be two guineas.

[2] See Stat. 7 Will. IV. c. 58, entitled an Act to Provide for the Payment of the Expenses of Holding Coroners' Inquests.

But no order of payment shall be given, or fee or remuneration paid, to any medical practitioner for the performance of a post-mortem examination which may be instituted without the previous direction of the coroner. And in the same manner remuneration is not to be allowed for inquests held upon the body of a person who has died in any public hospital or infirmary, or in a building or place belonging thereto, or used for the reception of the patients, or who has died in any county or other lunatic asylum, or in a public infirmary or other medical institution, no matter whether it be supported by endowments or by voluntary contributions. A penalty of £5 is imposed by the Act upon any medical practitioner who has been served with an order for attendance at an inquest and wilfully refuses or neglects compliance with the same. It is specially provided that the provisions of the Medical Witnesses Act shall not extend to Scotland.

CHAPTER X.

THE LAW RELATING TO MALPRAXIS.

MALPRAXIS, malpractice, or *mala praxis*, as the word is indifferently called, may in the case of a medical man be broadly defined as the wrongfully doing by him of any action which is contrary to the laws which ought to regulate his professional conduct towards a patient. It is divided by Willcock[1] into four classes, and may be committed either by a physician, surgeon, apothecary, or by an unqualified person acting in any of these capacities:

First.—Wilful malpraxis, or that which has for its object the destruction or injury of the patient, or of a child of which a woman is pregnant.

Second.—Avaricious malpraxis, or that which has for its object the gain of the practitioner, by adopting intentionally improper modes of treatment, or substituting less valuable medicines or impure drugs for those which are more appropriate, or by any other means through which the health of the patient may

[1] See 'The Laws Relating to the Medical Profession, with an Account of the Rise and Progress of its various Orders,' by J. W. Willcock, Esq., Barrister-at-Law. London, 1830.

be sacrificed to the greed and avarice of the practitioner.

Third.—Negligent malpraxis, in which there is no criminal or dishonest object, but a gross neglect of that attention which the care of the patient requires.

Fourth.—Ignorant malpraxis, in which likewise there is no criminal or dishonest object—that is, immediately towards the particular patient—but a gross violation of that duty which every man owes to the public, in undertaking, for the sake of gain, that cure which he wants the ordinary professional skill to conduct according to the known rules of able physicians or surgeons, or in undertaking to compound medicines without a due knowledge of their names, nature, qualities, or quantities.

With regard to the first class, it may be stated that when death is occasioned by such felonious action, or under circumstances which indicate a wilful and malicious disregard for human life, the person so causing it is guilty of murder. But at common law a child *en ventre sa mère* could not be the subject of murder, and an attempt to destroy such a child appears to have been held to be a misdemeanour. If, however, in attempting to procure abortion, a living child is brought into the world prematurely and dies in consequence, the person who caused it would be guilty of murder.[1]

By the 58th section of the 24 & 25 Vict. c. 100, it is enacted that any woman being with child, who, with

[1] *R.* v. *West*, 2 C. & K. 784.

intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, and whosoever with the intent to procure the miscarriage of any woman, whether she be or be not with child, unlawfully administers to her, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, is guilty of felony, and liable, at the discretion of the court, to penal servitude for life, or for any term not less than three years, or to imprisonment for not more than two years, with or without hard labour. And by the following section, any person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, is guilty of a misdemeanour, and liable, at the discretion of the court, to penal servitude for three years, or to imprisonment for two years, with or without hard labour. It is no palliation that the woman consented to or solicited the perpetration of either of the offences, for this would be to nullify the law, as these crimes are very seldom attempted without the woman's approval.

In only one case can the medical practitioner be justified in procuring abortion, or in bringing on premature labour, and that is where the state of the mother's health is such that to allow her to proceed

to the full term of parturition would be attended by imminent risk and grave peril for her own life. And here, also, the medical man should take the earliest opportunity of explaining to the friends his reason for the action pursued or about to be pursued.

Turning to the subject of infanticide, it is to be regretted that cases have occurred in which the medical attendant has lent himself either from motives of pity or of lucre to the destruction of a child whose existence would prove perilous to the reputation of one or both parents. But happily the cases are not of very frequent occurrence, difficult though detection would be. It should be remembered that the crime of the medical man is in no way comparable with the act of the wretched creature who, feeling that last remaining vestige of virtue, the shame of exposure, in a moment of madness kills her offspring. Horror and commiseration are alike aroused at the mention of her crime; the act is always accompanied by a state of great mental excitement, which is indistinguishable from insanity whilst the paroxysm lasts. Yet the law punishes her offence with death![1]

Apropos of the prospective alteration of the law in respect of this crime, when committed by a woman under such circumstances, a writer in the *Nineteenth Century*[2] eloquently pleads for a mitigation of the

[1] Though by statute this crime is murder, and the prisoner, therefore, sentenced to the extreme penalty of the law, no execution has taken place for the last thirty years, a commutation being always granted.

[2] See 'The Punishment of Infanticide,' by C. A. Fyffe, vol. i. p. 583.

sentence. Two considerations, he says, guide us in determining the penalty proper to crime, the moral guilt of the criminal, and the efficacy of the punishment in checking similar offences. No measure which fails to satisfy these conditions, which treats either the offender with a severity out of proportion to his guilt, or results in the frequency and impunity of crime, can be satisfactory. Applying the first of these standards to the question of infanticide, we are forced to take into account the wrong, the shame, and the desolation which almost always leads to the commission of this crime. Nature deals heavily with the mother of an illegitimate child. The parent upon whom nature throws the entire burden of the common offspring is forsaken and cast off; child-birth which to others brings the excess of love and care, brings to her nothing but solitary anguish, nothing but the anticipated scorn of her friends and the loss of her daily bread. The sacredness of life is indeed not a conception with which the law can dispense; but while we rightly refuse to describe the act of infanticide as anything but murder, reason and feeling equally insist that the moral extenuation shall be regarded in determining the penalty. If we are told that the greater the temptation, the greater the necessity of punishment, we accept the principle as pointing to the certainty, we reject it as pointing to the severity of punishments. But 'a life for a life' finds no echo in the just heart; and the actual infliction of death for infanticide has long been irrevocably abandoned. Ought the punishment, then,

to be imprisonment, with the addition, for those who are poor and ignorant, and without means to ascertain the state and operation of the law, of such anguish as a fictitious sentence of death inspires? No; for the law ought to be an example of sincerity, and ought not to take advantage of ignorance and simplicity to terrify [1] people with the dread of what it really does not intend. By such action the law puts itself in the wrong, and turns the criminal into a victim. The penalty morally proportioned to the crime of infanticide is a term of imprisonment, varying according to the nature of the offence; and what the penalty is, the sentence should be.

The second class of malpraxis is most frequently found amongst prescribing chemists, druggists, and members of the lower ranks of the profession who keep 'open shop.' By the common law, a man knowingly selling one drug in place of another which is more valuable, or adulterated drugs or medicines, was held guilty of 'cheating,' and liable to fine and imprisonment. But on the passing, August 11th, 1875, of the Sale of Food and Drugs Act,[2] the mixing or the sale with knowledge of adulterated drugs became a statutable offence, subject to a fine for a first, and to imprisonment with hard labour for a second offence. A fine is also imposed on the sale, in certain cases, of drugs not of the quality demanded by the purchaser, unless

[1] Insanity has in many cases supervened, which is surely a result not intended by the Legislature.

[2] 38 & 39 Vict. c. 63. See Analysis of Statutes, page 134.

a label is given showing the article to be mixed with other matter. There are also provisions for the appointment of analysts, and the proceedings necessary to obtain an analysis.

The third class of malpraxis is rather the subject of civil action for damages than of criminal prosecution. Yet, in any gross cases of negligence, a medical man would undoubtedly be criminally responsible.

The difference between civil and criminal liability cannot, it has been frequently said, be distinctly laid down, but Chief Justice Erle, in a case[1] tried at Lewes, stated that there must be a 'felonious' degree of negligence.

Here the prisoner, a chemist and druggist, was indicted for manslaughter. The deceased dealt with him for drugs, and had been accustomed many years to send to him for aconite as a liniment. The prisoner was in the habit of using bottles of a particular make and colour to contain poisons, but on this occasion the man sent his own bottles. He had been ordered to take thirty drops of henbane, and also to use aconite as a liniment, and he had sent two bottles to the chemist, one for the aconite, and the other for henbane. The bottle for the henbane, both being ordinary bottles, had on it a label bearing that word, and also, in smaller letters, 'thirty drops at a time,' which, for aconite, would be a deadly dose. The prisoner himself filled the bottles, and through some mistake put the aconite into the henbane bottle. The deceased took a dose of

[1] *R.* v. *Noakes*, 4 F. & F. 920.

it, and died almost instantly, with symptoms of aconite poisoning.[1] The prisoner was acquitted.

In his direction to the jury, the judge put it strongly that they ought not to call upon the prisoner for his defence; and that the case was not sufficient to warrant them in finding the prisoner guilty on a charge of felony. They could not, he said, convict on such a charge, unless there was such a degree of complete negligence as the law meant by the word 'felonious.' No doubt there ought to have been due care and caution in the dispensing of deadly drugs, but this was the case of a chemist put out of his ordinary course by the customer sending his own bottles. And though there doubtless was negligence in not observing the label on the bottle, on the other hand, it was the case of a customer who had for years been sending for aconite, and only rarely for henbane. Without saying that there might not be evidence of negligence in a civil action, he did not think there was sufficient to support a conviction in a criminal indictment.[2]

[1] Some slight doubt existed as to how far the aconite, or the disease of the heart under which deceased suffered, was the cause of death; but this point was held to be immaterial.

[2] This case is of practical importance, as affording a remarkable illustration of that which cannot be defined, and can only be described by illustrations, namely, culpable or *criminal* negligence. It is impossible to explain it, and it is also impossible to mark the distinction between actionable negligence and criminal negligence intelligibly, except by means of illustrations drawn from actual judicial opinions. One cannot deny that there was

Again, a medical practitioner, who undertakes to attend a patient, is bound to bring to the performance of his duty a reasonable amount of skill and knowledge of the profession he practises; and, if this be done, he cannot be held answerable for any fatal or other evil consequences that may ensue. Every practitioner is liable to make a mistake, *errare est humanum*, and doing so he might have to answer for its consequences in a civil action; but, unless he has been guilty of gross negligence, *culpa lata*, as the Civil Law has it, or evinces a gross want of professional knowledge, he cannot be held criminally responsible.

To render a medical man civilly liable for negligence or want of due care, it is not enough to show that there has been a less degree of care than some other medical man might have used, or even than he himself might have bestowed. Nor is it sufficient that he himself acknowledges some want of care; there must have been a want of competent and ordinary care and skill, to such a degree as to have led to a bad result. Thus, in *Rich* v. *Pierpoint*,[1] where an action was brought against an accoucheur for injuries caused to a woman whom he had attended in her confinement, in consequence of his neglect and want of proper care and skill, Chief Justice Erle directed the jury that

actionable negligence in this case, and 'contributory negligence' could hardly be set up, where the customer had sent bottles carefully labelled, and a poisonous ingredient was put into a bottle marked for something else.

[1] 1 F. & F. 35.

a medical man was not answerable merely because some other practitioner might possibly have shown greater skill and knowledge, but he *was* bound to have a competent degree of skill in his profession. So, in *Pimm* v. *Roper*,[1] a surgeon being called by a railway company to examine one of their passengers, who had been injured through a collision on their line, having examined the plaintiff, told him the wounds were of no consequence, it was held that no ground of action existed, even supposing the injuries were more serious. But in the case of *George* v. *Skivington*,[2] damages were recovered against a chemist and druggist, for injuries sustained by the plaintiff's wife through using a hair-wash sold by the defendant, and represented by him as being fit for the purpose. And likewise, in *Black* v. *Elliot*,[3] it was held that the plaintiff, a farmer, could recover against a chemist for vending a sheep-wash which, in consequence of the absorption of arsenic contained in it, killed his sheep, though he used it according to the defendant's directions; and notwithstanding it was proved in evidence that the same wash had been sold and used with impunity for years.

Before passing on to the fourth or last class of malpraxis as here discussed, reference may be made to the action very recently brought by Dr. Howell, a

[1] 2 F. & F. 783.

[2] 5 Law Rep. Exch. 1; and 39 L. J. Ex. 8.

[3] 1 F. & F. 595; and see also *Phillips* v. *Wood*, 1 Nev. & M. 434.

medical man practising at Wandsworth, against the head-master of Epsom College, and a Mr. Jones, the medical attendant. The case excited much interest in professional circles, on account of the school consisting almost entirely of the orphan sons of medical practitioners, and the charge of negligence against the doctor in attendance. The chief grounds of complaint were the removal of the plaintiff's son from the head-master Dr. West's house, where he was a boarder, to the school infirmary, whilst suffering from scarlet-fever, and the neglect of the medical attendant. The plaintiff and his wife gave evidence in supporting the case, insisting that when the boy was sent to Epsom College, it was distinctly arranged that he was to have nothing to do with the Council by whom the College was managed, but was to be under the special care of Dr. and Mrs. West, and declaring that the infirmary was unfit to put a boy in who was suffering from scarlet-fever, and that in consequence of this unfitness and the neglect of Mr. Jones, the boy ultimately died. The evidence for the defence was to a directly contradictory effect, and commended itself to the jury, who found a verdict for the defendants on all the points submitted to them. Application was shortly afterwards made to the Queen's Bench Division for a rule *nisi* for a new trial, on the grounds that the verdict was against the weight of evidence, and that there had been a misdirection of the judge. The application was refused. Dissatisfied with this decision, Dr. Howell carried the case to the Court of

Appeal, and applied that the judgment of the divisional court be set aside, and a new trial granted. Lord Justices Brett, Cotton, and Thesiger, however, expressed themselves perfectly satisfied with the verdict of the jury, and dismissed the appeal.

The last class of malpraxis to be mentioned is undoubtedly a very serious offence, either in a qualified or in an unqualified practitioner.[1] For every person who undertakes the practice of any profession, by so doing impliedly holds forth to the public that he is possessed of the requisite amount of skill and learning to enable him successfully to tend those who apply to him. The distinction in this respect between a qualified and unqualified medical practitioner, is that the qualified man, having submitted to, and been pronounced competent upon, an examination by persons appointed by law to conduct that examination, may very properly consider himself qualified to undertake the ordinary duties of his profession; but this is merely *primâ-facie* evidence in his favour, the effect of which the jury will have to consider in deciding upon the whole case: as the question is always whether, taking and weighing all the circumstances, it appears that the accused exhibited such gross ignorance of science, or was so totally lacking in skill, that he must be presumed to be utterly indifferent to the welfare of his patient. The offence consists in undertaking the conduct of a case being

[1] See 'Willcock on the Laws of the Medical Profession,' chapter iv.

wholly deficient in the necessary skill or knowledge. It does not matter whether the patient sustained only a temporary injury, or whether the practitioner's imprudence was attended by the most fatal results. The treatment and its effects are the evidence of the incompetence or ignorance, but this in nowise aggravates the nature of the offence, for it does not consist in an intention or supposed intention to injure anyone, but in a total disregard of the terrible consequences which will most likely follow the rashness of a man who attempts to do that for the proper execution of which he is altogether unfitted and incompetent.

In *Rex* v. *Spiller*,[1] it was held by Baron Bolland that any person, whether a licensed medical practitioner or not, who deals with the life or the health of any person, is bound to have competent skill, and is furthermore bound to treat his or her patients with care, attention, and assiduity; and if a patient dies for want of either, the person is guilty of manslaughter. But this must be taken in conjunction with the dicta of Chief Justice Tindal, in *Edsall* v. *Russell*,[2] which was an action of slander brought by an apothecary against a person who had accused him of killing his child by means of an injection administered, to the effect that in order to justify a charge of manslaughter, it is not sufficient to show mere want of care and caution; there must be gross negligence and want of that degree of skill which everyone, undertaking the

[1] 5 Car. & P. 333. [2] 4 M. & G. 190.

exercise of a particular art or profession, is bound to bring to each particular case.

On the several liabilities of qualified and unqualified practitioners, Sir Matthew Hale, in his 'History of the Pleas of the Crown,' has made some very interesting remarks which are as valuable now as when uttered more than two centuries ago. 'If a physician,' he says, 'gives a person a potion without any intention of doing him bodily hurt, but with an intent to cure or prevent a disease, and, contrary to the expectations of the physician, it kills him, this is no homicide, and the like of a surgeon. And I hold their opinions to be erroneous that think, if he be an unlicensed surgeon or physician that occasions the mischance, then it is felony, for physic and salves were before licensed physicians and surgeons; and therefore, if they be not licensed according to the statute of 3 Hen. VII. c. 11, or 14 Hen. VII. c. 5, they are subject to the penalties in the statutes; but God forbid that any mischance of this kind should make an unlicensed person guilty of murder or manslaughter. If a woman be with child, and anyone gives her a potion to destroy the child within her, and she takes it, and it works so strongly that it kills her, this is murder, for it was not given to cure her of a disease, but unlawfully to destroy the child within her; and therefore he that gives a potion to this end must take the hazard, and if it kills the mother, it is murder. And if that opinion should obtain that one not licensed as a physician would be guilty of felony,

should his patient miscarry, we should have many of the poorer sort of people, especially remote from London, die for the want of help, lest their intended helpers might miscarry. The doctrine, therefore, that if any dies under the hand of an unlicensed physician, it is felony, is apocryphal, and fitted, I fear, to gratify and flatter doctors and licentiates in physic; though it may, as I have said, have its use in making people cautious and wary how they take upon them too much in this dangerous employment.'

Thus in a case[1] tried at Bedford before Chief Baron Pollock, some years ago, the prisoner, a herb-doctor, was charged with the manslaughter of a child brought to him for advice. He had examined the child, and given the mother a bottle of *lobelia inflata* in infusion, desiring her to administer two tea-spoonfuls three times a day. The child died, and a *post-mortem* examination of the body showed death to have resulted from over-doses of *lobelia*, which is an acro-narcotic poison. The question left for the jury was, had the prisoner under all the circumstances acted so rashly and carelessly as to cause the child's death? A verdict of not guilty was returned. In his summing-up to the jury, the Chief Baron said, it is no crime for anyone to administer medicine, but it is a crime to administer it so rashly and carelessly as to produce

[1] *R.* v. *Crick* (F. & F. 519, and see also *R.* v. *Crook*, 1 F. & F. 52), where a blacksmith was convicted of manslaughter for applying corrosive sublimate to a person suffering from cancer of the lip, and thereby causing his death.

death; and, in this respect, there is no difference between the most regular practitioner and the greatest quack. 'If the prisoner had been a medical man, you should take the most favourable view of his conduct, for it would be most fatal to the efficiency of the medical profession if no one could administer medicine without a halter round his neck; and, although I cannot speak of a person in the prisoner's position in such strong language, yet he ought not to be held responsible unless it has been proved with reasonable certainty that he caused the death by the careless administration of the drug.'

And in *R.* v. *Williamson*,[1] the prisoner, who had been in the habit of acting as accoucheur amongst the lower classes, was indicted for murder, and also charged with manslaughter in the coroner's inquisition, for having torn away part of the *prolapsed uterus* of one of his patients, fancying it to be a part of the *placenta* or after-birth, and thereby causing her death. Several witnesses, who had been delivered by the prisoner at different times, spoke to the kindness and attention that the prisoner displayed, and also to his skill, as far as they were able to judge. Lord Ellenborough, in summing-up the case, said there had not been a particle of evidence brought forward which went to convict the prisoner of murder; and as for the charge of manslaughter, it was for the jury to say whether the accused had been guilty of *criminal* misconduct—that is, of either the grossest ignorance, or

[1] 3 Car. & P. 635.

the most criminal inattention, one or other of which is absolutely necessary to substantiate a charge of manslaughter; and, for his own part, he thought to find the prisoner guilty of manslaughter would tend to compass a most important and anxious profession with such dangers as would deter reflecting men from entering it. The prisoner was acquitted on both charges.

See also *R.* v. *Chamberlain*,[1] where Justice Blackburn directed the jury that, if the accused had caused the death of the deceased by culpable negligence, he was guilty of manslaughter, but the mere fact that death had happened through mistake or misfortune could not suffice, or no medical man would be safe. But in *R.* v. *Senior*,[2] which came before the Court for Crown Cases Reserved, the prisoner practised midwifery in the town of Stockport, and being called to attend a woman in labour, proved himself so grossly ignorant of the art which he professed, that unable to deliver the woman with safety to herself and the child, as might have been done by anyone possessing ordinary skill, he broke and compressed the skull of the infant, thereby occasioning its death immediately after birth, it was held he could be convicted of manslaughter.[3]

[1] 10 Cox, C. C. 486.

[2] 1 Moo. C. C. 346.

[3] It was in this case submitted to the judge by the counsel for the prisoner that the indictment had been misconceived, though the facts would warrant an indictment in another form; and that the child being *en ventre sa mère* at the time the wound was given, the prisoner could not be guilty of manslaughter; but this was overruled.

In *R.* v. *Whitehead*,[1] the prisoner, who had formerly been a butcher by trade, but had practised as a surgeon at Sheffield, without any legal qualification, for many years, was indicted for the manslaughter of a man upon whom he had performed an operation for a disease in the bone. The fact that the prisoner was not a licensed medical practitioner being admitted, the only question left to the jury was, had the prisoner, in the case of the individual whose death it was alleged he had occasioned, been guilty of gross and culpable negligence? A verdict of guilty was returned. In summing-up, Justice Maule said, if a medical or any other man caused the death of another *intentionally*, that would be murder; but where a person, *not intending* to kill a man, by his gross negligence, unskilfulness, and ignorance, caused the death of another, then he was guilty of culpable homicide. The judge held, also, that on an indictment for manslaughter by reason of gross negligence and ignorance in surgical treatment, neither on the one side nor the other can evidence be gone into of former cases treated by the prisoner, but witnesses may be asked, *causâ scientiæ*, their opinion as to his skill.

In *R.* v. *Webb*,[2] a man was convicted of manslaughter[3] for causing the death of a person suffering

[1] 3 Car. & Kir. 202.

[2] Moo. & R. 405.

[3] In an indictment for manslaughter it is not necessary to allege the causes, merely natural, which conduced to the death of the party; it is sufficient to allege truly the act with which the prisoner is charged, if that act accelerated the death.

from smallpox, by the administration of large doses of Morrison's pills. Lord Lyndhurst said it was his opinion, in these cases, that there is no difference between a licensed practitioner and one unlicensed. In either case, if a party having a competent degree of skill and knowledge makes an accidental mistake in treating a patient, through which death ensues, he is not thereby guilty of manslaughter; but if where proper medical assistance can be had, a person totally ignorant of the science of medicine takes upon himself to administer a violent and dangerous remedy to one labouring under disease, and death ensues in consequence of that dangerous remedy having been so given, then he is guilty of manslaughter. It is for the jury to say, first, whether death was occasioned or accelerated by the medicines administered, and if so, did the prisoner act with a criminal intention, or from very gross ignorance?

From these, and numerous other cases which might be cited, it is plain that a medical man can only be held *criminally* liable where he has been guilty of *gross negligence* or want of skill. What constitutes this *gross* negligence (*culpa lata*) in the eyes of the law is very well laid down in *R.* v *Markuss*,[1] where a 'herbalist' was indicted at the Durham Assizes for the manslaughter of a woman by administering to her an overdose of colchicum seeds and brandy, which caused inflammation of the stomach and death. 'Gross negligence,' said the learned judge (*Willis, J.*), who

[1] 4 F. & F. 356.

tried the case, after remarking that any person who dealt with the health of others was dealing with their lives and so bound to be reasonably careful, 'might be of two kinds; in one sense, where a man for instance went hunting and neglected his patient, who died in consequence. Another sort of gross negligence consisted in rashness, where a person was not sufficiently skilled in dealing with dangerous medicines which should be carefully used, of the properties of which he was ignorant, or how to administer a proper dose. A person who with ignorant rashness, and without skill in his profession, used such a dangerous medicine, acted with gross negligence. It was not, however, every slip that a man might make that rendered him liable to a criminal investigation. It must be a substantial thing. If a man knew that he was using medicines beyond his knowledge, and was meddling with things above his reach, that was culpable rashness. Negligence might consist in using medicines in the use of which care was required, and of the properties of which the person using them was ignorant. A person who so took a leap in the dark in the administration of medicines was guilty of gross negligence. If a man were wounded and another applied to his wound sulphuric acid, or something which was of a dangerous nature and ought not to be applied, and which led to fatal results, then the person who applied this remedy would be answerable, and not the person who inflicted the wound, because a new cause had supervened. But if the person who dressed the

wound applied a proper remedy, then if a fatal result ensued, he who inflicted the wound remained liable.' The jury acquitted the prisoner after a long deliberation.

In *Tessymond's case*,[1] where a chemist's apprentice was indicted for manslaughter, in causing the death of an infant child by negligently delivering laudanum for paregoric, Justice Bayley went so far as to direct the jury that if a party is guilty of negligence and death results, the party guilty of that negligence is also guilty of manslaughter; but this must be read in conjunction with the various other *dicta* referred to.[2]

The chapter may be well concluded[3] with the following quaint statement of the law on this subject made for the benefit of our ancestors in the *Mirror*: 'Physicians and chirurgeons are skillful in their faculties, and probably do lawful cures, having good consciences, so as nothing faileth to the patient which to their art belongeth; and if their patients die they are not thereby manslayers or mayhemers; but if they take upon them a cure, and have no knowledge or skill therein; or if they have knowledge, if nevertheless

[1] Lewin, C. C. 169.

[2] For many further cases on this branch of the law, the reader is referred to Glenn's 'Manual of the Laws Affecting Medical Men,' where the subject is exhaustively treated.

[3] There are other and more remote cases of malpraxis which it is not considered advisable to discuss here, as for instance inoculating with small-pox (under 30 & 31 Vict. c. 84, s. 32), assault on patients and the like; but these scarcely come within the scope of the present work.

they neglect the cure, or minister that which is cold for hot, or hot for cold, or take little care thereof, or neglect due diligence therein, and especially in burning or cutting off members, which they are forbidden to do, but at the peril of their patient; if their patients die or lose their members, in such cases they are manslayers or mayhemers.'

CHAPTER XI.

THE LAW RELATING TO LUNACY PRACTICE.

By L. S. Forbes-Winslow, D.C.L., etc.

I do not propose in this chapter to give a lengthened account of the various lunacy enactments, as space would not admit of this being done. I will draw attention to the principal ones, in which medical men are concerned. The first Act of Parliament where reference is made to dealing with lunatics is the 'Vagrant Act,' passed in 1744. In this Act there is a clause enabling two justices of the peace to issue a warrant for the apprehension of any lunatic, who was to be locked up in a secure place; if it was found necessary he was to be chained in his own parish, and his property, if any, was to be expended for his maintenance; but if he possessed none, he was to be maintained at the expense of his own parish.

In 1763 a Committee was appointed by the House of Commons to inquire into the condition of the insane; but notwithstanding the resolutions then passed, nothing was done in the matter of legislation until 1774, in which year was passed Mr. Townsend's Lunacy Act. A fresh Bill was introduced before Par-

liament in 1814 by Mr. Rose; it passed the Commons, but was thrown out by the Lords. A Committee sat in 1816, and various measures were placed before Parliament from time to time, no Act, however, being passed until 1828, when Mr. Gordon introduced his Lunacy Bill. Lord Ashley, the present Lord Shaftesbury, President of the Commissioners in Lunacy, brought in his Lunacy Act, the 8 & 9 Vict. c. 100, in 1845; and since this period there have been the following amended Acts: 16 & 17 Vict. c. 96; the 25 & 26 Vict. c. 111. The principal Act of Parliament, containing in all 118 sections, is the Lunacy Act of Lord Shaftesbury, passed in 1845. The others more recently passed are slight alterations of the Act of 1845, though not materially changed.

Recently a Lunacy Committee was again appointed by the House at the request of Mr. Dillwyn. After a long investigation, a report was drawn up. We have been threatened since the sitting of this Committee with various legislative measures dealing with the protection of lunatics, but as yet nothing has been done. The subject was alluded to a few years back in the Queen's Speech. There is no doubt that the subject will be renewed with increased vigour before long, as we hear there are several Bills in preparation. Medical men at the present day have to use the greatest caution and discretion in the management of lunatics, especially as far as relates to their incarceration. The medical men who sign the certificates must be registered at the time, and in actual practice. They

must not be in partnership with each other, neither must they be interested in any way with the proprietor of the asylum in which it is proposed to place the patient. The medical certificates, moreover, cannot be signed by the father, brother, son, partner, or assistant of the person who has charge of the patient. Though mistakes in the certificates made by those medical men who sign do not invalidate the documents, fourteen days being allowed for the amendment of the certificates, nevertheless certain omissions on the part of medical men render them answerable in courts of law. In section 22 of the 16 & 17 Vict. c. 97, s. 122, we read: 'Any physician, surgeon, or apothecary who shall sign any certificate, or do any other act not declared to be a misdemeanour, contrary to any of the provisions herein contained, shall for every such offence forfeit any sum not exceeding £20; and any physician, surgeon, or apothecary who shall falsely state or certify anything in any certificate, under the Act, in which he shall be described as a physician, surgeon, or apothecary, not being a physician, surgeon, or apothecary respectively within the meaning of this Act, shall be guilty of a misdemeanour.'

Many medical men's prospects have been ruined by some trivial infringement of the lunacy law, committed in ignorance; but *ignorantia non excusat legem*, so they must be legally held responsible for any unconscious infringement of the law they have committed.

I will briefly mention some of the principal errors

made by medical men in signing certificates by which they can be held legally responsible:

1. Giving circumstances and facts in the certificates which have not been observed by the medical man signing on the actual day of making the examination of the alleged lunatic.

2. Examining the person in the presence of another medical man.

3. Stating facts which are false.

4. Signing a certificate, and, though qualified, not being registered as a medical practitioner.

In order to place a person in an asylum, two certificates are required to be signed by two medical men who have carefully and independently examined the alleged lunatic. An order accompanies these certificates signed by a relation of the patient; and these documents, which are on printed forms,[1] must accompany the patient when he is received as an inmate into the asylum. As medical men are only affected as far as regards their liability in signing lunacy certificates, I do not propose to discuss the matter further.

[1] Forms of certificates can be obtained at Messrs. Shaw and Sons', Fetter Lane.

END OF PART I.

PART II.

APPENDIX A.

AN ANALYSIS OF THE PRINCIPAL STATUTES RELATING TO MEDICAL MEN.[1]

ANATOMY.—The 2 & 3 Will. IV. c. 75, passed 1st August, 1832, with its amendments,[2] regulates the practice of anatomy in this country. The statute, after reciting that a knowledge of the causes and nature of sundry diseases which affect the body, and of the best methods of curing such diseases, and the wounds and injuries to which the human frame is liable, can only be acquired by anatomical examination, and as the legal supply of bodies for such purposes is not sufficient to provide the means of such knowledge, and in order to supply human bodies for anatomical examination great and grievous crimes have been committed, and lately murder, for the single object of selling the dead bodies; in order to prevent the recurrence of such crimes and murders, and to give protection to the study and practice of anatomy, authorises the Home Secretary in Great Britain, and the Chief

[1] As far as possible the alphabetical order of the table of Statutes is preserved.

[2] For amendments to this and succeeding Acts, see Table of Statutes.

Secretary for Ireland in that country, to grant under the following regulations licences to practise anatomy to teachers and professors of medical schools and others. Inspectors of schools of anatomy are to be appointed, with certain defined districts to superintend. These inspectors are to make quarterly returns of the subjects removed for examination, and to be at liberty at any time to inspect the places where anatomy is practised.

Any person having the lawful control and custody of a dead body, he not being an undertaker or other person intrusted with the body only for purposes of interment, may allow the body to be dissected, unless the deceased person shall in the terms of the Act have prohibited it, or any relation desire otherwise. If the dead man has himself, in accordance with the Act, directed such examination or dissection before his friends, it shall be permitted, but the body must not be removed without a certificate of death, nor within forty-eight hours of decease. The body, after undergoing anatomical examination, must be decently buried in consecrated ground or some public cemetery. Any offence against the provisions of this Act is a misdemeanour punishable with three months' imprisonment or fine of £50.

Apothecaries.—See page 51; Act appointing Physicians and Surgeons, see page 151.

Arsenic.—The sale of this mineral is ordered by the 14 & 15 Vict. c. 13. It requires that on every sale of arsenic and its compounds, particulars of the

sale are to be entered in a book kept by the seller for the purpose, and in the form of this Act. The sale must be made in the presence of a witness known to the seller, and to whom the buyer is known, who must sign his name and address before delivery of the arsenic, and the purchaser must be over twenty-one. Provision is made for the sale of arsenic coloured with soot or indigo. A penalty of £20 is imposed for any infringement of the Act, but it does not apply to sale of arsenic in medicine or under a medical prescription.

Births, Deaths, and Marriages.—By 6 & 7 Will. IV. c. 86 and its amendments, a General Registry Office is established for keeping an account of the above. Under its provisions, the father or mother of any child, or the occupier of the house in which the birth or death happened, may, within forty-two days after birth, or five days after death, give notice of such to the registrar of the district. After the expiry of the forty-two days it is unlawful for the registrar to register a birth, unless within six months from the date of birth some person present at the birth, or the father or guardian, make a declaration of the particulars required; in which case the registrar may, in the presence of the superintendent registrar, register the birth. After six months from the birth of a child, except one born at sea, no register shall be made. Offenders against this provision are liable to a penalty of £50.

In the case of a death, some one present at it, or *in attendance*[1] during the fatal illness, or in default of

[1] This provision particularly applies to members of the medical profession.

such person, the occupier of the house, or in default some inmate, is required within eight days of death to give information to the registrar, upon request, of all particulars touching the death of such person, except in the case of inquests, when the coroner's jury will make the inquiry, and the coroner forward their finding to the registrar. Every registrar shall immediately, or as soon as required, deliver to the undertaker, or any person having charge of the funeral of deceased, a certificate of the registration, and the undertaker or other person shall deliver it to the officiating minister. If any body be buried without a certificate, it is the duty of the minister to give notice of the fact to the registrar, but a coroner may, by certificate, order the burial before registration. For burying without either of these certificates a penalty of £10 is imposed; for refusing or omitting, without cause, to register, a penalty of £50.

Colonial Practitioners.—See page 21.

Contagious Diseases. — The Contagious Diseases Acts,[1] passed in 1866 and in 1869, extend only to the neighbourhood of those naval and military stations enumerated in the Acts and schedules thereof.[2] The

[1] 29 & 30 Vict. c. 35, and 32 & 33 Vict. c. 96.

[2] On the 29th of June, 1868, the Marquis Townshend introduced a Bill into the House of Lords for extending the provisions of the Act of 1866 to the metropolis and to any corporate borough which chose to adopt it. The Bill was withdrawn, but the policy it embodies is constantly re-appearing, and legislation of the kind must some day take place.

principal Act, that of 1866, orders the appointment of visiting surgeons, inspectors of hospitals and assistants, and the providing of certified hospitals for the places named; and by section 15, where an information is sworn before a justice of the peace, by a superintendent of police, that he has good reason to believe that any woman is a common prostitute, and resident within the limits to which the Act applies, or, not being resident, prosecutes her trade within such limits, the justice may direct a notice to be served upon her, that she be periodically examined by the visiting surgeon of the district, for any period not exceeding a year. By section 17 any woman resident in districts to which the Act applies may, by submission in writing duly signed, voluntarily subject herself to such examination; and if any such woman is found to be affected with a contagious disease within the meaning of the Act, or from other causes unable to be examined, she may be detained in a certified hospital to enable the surgeon to properly examine her. Any woman may, if she think fit, place herself in such certified hospital, and any woman refusing so to do when ordered may be apprehended and conveyed to the hospital, where she may be detained until discharged by the chief medical officer in writing. But no woman can be detained under one certificate for more than six months (extended by the Act of 1869 to nine months). Lastly, if a woman has ceased to be a prostitute, and desires to be relieved from the periodical examination, the visiting surgeon may, on

proof that she has so ceased, give her a written order of release.[1]

DENTISTS' ACT.—See page 59.

DISPENSARY HOUSES IN IRELAND.[2]—The Dispensary Houses in Ireland Act, passed July 21, 1879, provides for the more effectually affording medical relief to the poor within the dispensary districts of certain unions of Ireland, by giving facilities for obtaining loans for the erection, enlargement, improvement, or purchase of houses or buildings, as dispensary houses or dwelling-houses for medical officers of such districts; and authorises the Commissioners of Public Works in Ireland, out of moneys issued to them under certain scheduled Acts, to make loans to the amount, upon the security and upon the terms and conditions authorised by this Act. Certain other clauses as to insurance of premises subject to the loan, mortgages, sale, etc.

DRUNKARDS, HABITUAL.—The Habitual Drunkards' Act,[3] which came into operation Jan. 1st, 1880, is not in any way compulsory. By its provisions licenses may be granted for the keeping of 'retreats' for habitual drunkards to any person or persons, one of

[1] The following are the places to which the acts apply:

Aldershot.	Maidstone.	Winchester.
Canterbury.	Plymouth and Devonport.	Windsor.
Chatham.	Portsmouth.	Woolwich.
Colchester.	Sheerness.	The Curragh.
Dover.	Shorncliffe.	Cork.
Gravesend.	Southampton.	Queenstown.

[2] 42 & 43 Vict. c. 25.

[3] 43 & 44 Vict. c. 19.

whom resides in the retreat, and is responsible for its management, and employs a duly qualified medical man to superintend there. Licenses are granted by the Justices of the Peace for the county or place, at Quarter Sessions. Every license must bear a stamp of £5, and also 10s. in addition for every patient beyond the number of ten. The Act also requires an inspector of retreats to be appointed by the Secretary of State, and he is to make annual reports to such Secretary. The Secretary is empowered, if he think fit, to make any orders for the management of the retreats. Any habitual drunkard, desirous of being admitted into a retreat, may make application to the licensee of such retreat. The application must be in writing in the form of the Act, and must state the time such applicant undertakes to remain in the retreat. It must be accompanied by a statutory declaration of two persons that the applicant is an habitual drunkard. The signature of the applicant must be attested by two Justices of the Peace, who have satisfied themselves that the person applying is an habitual drunkard, and explained to him the effect of his application; and the justices must state in their attestation that the person understood the effect of the application. After his admission, unless authorised by license or discharged, the applicant cannot leave such retreat until the expiry of the time mentioned in his application, provided that time do not exceed twelve months. If the habitual drunkard neglects to conform to the rules of the place he is liable to a

penalty, on summary conviction, of £5 or seven days' imprisonment. And any habitual drunkard escaping from a retreat may be apprehended on a warrant and brought before a justice, and may, by order of such justice, be remitted to the retreat from which he had escaped.

Factory Surgeons.—The sections of the Factory and Workshop Act[1] which principally apply to medical men are those relating to the sanitary inspection of premises used for factory and workshop purposes, by the properly appointed officer, and the appointment of certifying surgeons. With regard to these latter, it is enacted that where there is no certifying surgeon resident within three miles of a factory, the Poor Law Medical Officer shall, for the time being, act as certifying surgeon for such factory or workshop. Subject to regulations made by a Secretary of State, an inspector may from time to time appoint a sufficient number of duly registered medical practitioners to be certifying surgeons for the purposes of this Act, and may from time to time revoke any such appointment, subject to appeal to a Secretary of State. A medical man who is the occupier of a factory, or interested in any way therein, may not be appointed certifying surgeon for that factory. No certificate may be granted by the surgeon, for purposes of the Act, except he have *personally* examined the person therein named. He may not examine a child or young person under the Act, or sign any such certificate, elsewhere

[1] 41 & 42 Vict. c. 16.

than at the factory where such child is or is about to be employed, unless the number of children employed in the factory are less than five, or for some other special reason allowed in writing by an inspector. If the certifying surgeon refuse to grant a certificate, he must, when required, give in writing, and signed, the reasons for his refusal. Section 32 of the Act requires that when a certifying surgeon receives notice of an accident, he shall with the least possible delay proceed to the factory where the accident has occurred, and make a full investigation as to the nature and cause of the death or injury, and within the next twenty-four hours send a report to the inspector. Some other sections relate to the scale of fees, etc., paid to the certifying surgeons.

Food, Drugs, etc.—The Sale of Food and Drugs Act[1] of 1875 was based upon the report of a commission appointed to inquire into the operation and effect of the then existing laws. It provides for the appointment of public analysts throughout the United Kingdom, their election or removal being subject to the approval of, in England, the Local Government Board, in Scotland and Ireland, one of her Majesty's principal Secretaries of State. It affords protection to the chemist and druggist when making up the prescriptions of a physician or registered medical practitioner, and provides for unavoidable and accidental admixtures or adulterations. The Act does not apply when at the time of sale notice is duly given that the

[1] 38 & 39 Vict. c. 63.

article sold is a mixture, provided that mixture be not injurious to the public.

Notice must, to satisfy the Act, however, be by label distinctly written or printed on, or given with, the article. The certificate of a public analyst is sufficient evidence of the facts therein stated, unless the defendant requires that the analyst be called as a witness; so, also, the parts of the articles retained by the person who purchased them may be produced, and the defendant is at liberty to tender himself and his wife to be examined on his behalf. If a chemist, or other tradesman, refuse to sell any article to an authorised officer, he is liable to a penalty of £10. When the person prosecuted under this Act proves to the satisfaction of the court that he purchased the article in question as the same, materially and substantially, as that demanded of him by the purchaser, and with a written warrant to that effect, and that he sold it in the same state as when he purchased it, he is discharged from the prosecution, but must pay the cost of prosecution, unless he has notified to the prosecutor his reliance on that defence. The penalties recoverable under the Act are, for selling adulterated food and drugs, a fine not exceeding £20; wilfully using a false label or description, the same; forging certificates of warranty, imprisonment with hard labour for any term less than two years; wilful misapplication of a genuine warranty, fine of £20; false warranty in writing, the same. Special provisions are made in this Act as to the sale of tea, and the

responsibility for tea adulterated abroad, by the appointment of a Government analyst, whose duty is to examine all teas on importation, and if found unfit for consumption, order them to be forfeited and destroyed. This is a vast improvement on the old law, where in many cases the small retailer has suffered in lieu of the importer and real offender.

Health Acts.[1]—The first Public Health Act was passed in the year 1848. It was followed in subsequent years by a great number of other statutes with the same object, but they have all now been repealed by the Public Health Act[2] of 1875, which consolidates the laws relating to public health, and re-enacts their substance. This Act provides for the division of England, with the exception of the metropolis, into urban sanitary districts, and rural sanitary districts, and also for the appointment of medical officers of health for each district. The urban authority is in boroughs vested in the mayor, aldermen, and burgesses, acting by the council; in districts subject to the Improvement Acts,[3] the Commissioners; in local government districts, the Local Government Board; in rural districts, the guardians of the poor. Provisions are made in the Act with reference to sewers and the disposal of sewage, scavenging and cleansing, water supply, cellar-dwellings and lodging-houses, abatement of nuisances, offensive trades, unsound

[1] For amending Acts, see Table of Statutes.

[2] 38 & 39 Vict. c. 55.

[3] 10 & 11 Vict. c. 34; and 23 & 24 Vict. c. 30.

meat, infectious diseases and hospitals and mortuaries, highways and streets, public pleasure-grounds and docks, markets and slaughter-houses, police regulations, local authorities, rural authorities, union of districts, port sanitary authorities, inquiries and provisions of the Local Government Board, and rules for the election of Local Boards, etc., etc. With regard to the metropolis, every vestry and district board must appoint one or more legally qualified medical men, as officer, or officers, of health, and may remove such officer, or officers, at pleasure. The principal duties of the medical officers of health are to inspect and report periodically on the sanitary condition of their districts, to ascertain the existence of disease, especially epidemics, to discover nuisances, endeavour to prevent the spread of epidemics and contagious and other diseases, by attention to cleanliness and ventilation of houses, churches, etc.

Ireland and Scotland.—For the Acts consolidating and amending the laws relating to public health in these countries, see Table of Statutes.

Local Government.—The Local Government Board Act,[1] 1871, after reciting that it is expedient to concentrate in one department of the Government the supervision of the laws relating to public health, the relief of the poor, and local government, proceeds to enact that a board shall be established, to be called the Local Government Board, and from and after the establishment of such board, the Poor-law Board

[1] 34 & 35 Vict. c. 70.

shall cease to exist, and all powers or duties vested in, or imposed on, the Poor-law Board by the several Acts of Parliament relating to the relief of the poor, and any other Acts, or are vested in or imposed on one of her Majesty's principal Secretaries of State by the enactments in that behalf mentioned in the first part of the schedule annexed thereto, so far as such powers and duties relate to England, or vested in or imposed on her Majesty's most honourable Privy Council by the enactments in that behalf specified in the second part of the said schedule, shall be transferred to and imposed on the Local Government Board, and, except as otherwise provided by that Act, shall be exercised and performed by such board in like manner and form, and subject to the same conditions, liabilities and incidents respectively, as such powers and duties might before the passing of this Act have been exercised and performed by the authorities in whom the same were then vested respectively, or as near thereto as circumstances admit. By the 35 & 36 Vict. c. 79, s. 36, the powers of the Secretary of State under the Highway and Turnpike Act are transferred to the Local Government Board. And by the Public Health Acts, 1875, before mentioned, various powers are conferred on the board, including powers to grant provisional orders in certain cases, and to hold local inquiries with reference to various matters dealt with by that Act.

Local Government (Ireland).—A similar board

has been constituted in Ireland by the Local Government Board Acts[1] of Ireland.

Lunacy Acts.—For list of Acts with Amendments, see Table of Statutes, and *ante* Chapter XI.

Medical Acts. — For lists of Acts with Amendments, see Table of Statutes—for chief provisions, see page 16.

Medical Officers under Artisan's Dwellings Act,[2] 1875.—Under this Act the Metropolitan Board of Works may, with the assent of a Secretary of State, at any time appoint one or more legally qualified medical practitioner or practitioners, with such remuneration as they think fit, for the purpose of better carrying into effect the Act in the metropolis. Any officer so appointed is deemed to be a medical officer of health of a local authority within the meaning of the Act, and must perform the duties, and be subject to the liabilities, which the medical officer is, by this Act, required to perform and be subject to. In the case of unavoidable absence through illness, or other cause, of the medical officer of health, the district board, vestry, or local authority, may appoint a duly qualified medical practitioner for the period of six months or less, to perform all the powers and duties of a medical officer of health under this Act. If twelve or more ratepayers have complained to a medical officer of the unhealthiness of any area within the jurisdiction of such officer, or the medical officer has

[1] 34 & 35 Vict. c. 109 ; and 35 & 36 Vict. c. 69.

[2] 38 & 39 Vict. c. 36.

failed to inspect such area, and make an official representation with respect thereto, or has made an official representation to the effect that, in his opinion, the area is not an unhealthy area, such ratepayers may appeal to the confirming authority, and upon their giving security to the satisfaction of that authority for costs, the confirming authority may appoint a medical officer to inspect such area, and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area is healthy or the reverse. The representation so made is to be transmitted by the confirming authority to the local authority, and if it state that the area is unhealthy, the local authority may proceed in the same manner as if it were an official representation made to that authority. The confirming authority can make such order as to costs of inquiry as shall be just in their estimation.

Merchant Ships, Surgeons in.—By the Merchant Shipping Acts,[1] 1854 and 1867, it is enacted that every foreign-going ship[2] having one hundred passengers or upwards on board must carry, as part of her complement, some registered medical practitioner, or in default, the owner shall, for every voyage, be liable to a penalty of not exceeding £100; but this

[1] 17 & 18 Vict. c. 104, s. 230; and 30 & 31 Vict. c. 124.

[2] 'Foreign-going ship' includes every ship employed in trading, or going between some place or places in the United Kingdom, and some place or places beyond the coasts of the United Kingdom, the Channel Islands, the Isle of Man, and the continent of Europe between the rivers *Elbe* and *Brest* inclusive.

does not affect any provision in the Passengers Act[1] of 1852 concerning the carriage of medical men by the class of ships therein called passenger-ships; nor is any such ship, if not thereby required to carry a medical man, hereby required to do so.

The owners of every ship navigating between the United Kingdom and any place out of the same, must provide, and cause to be kept on board, a supply of medicines and medical stores, according to a scale issued by the Board of Trade, and a sufficient quantity of lime or lemon juice, or such other antiscorbutics as may be directed by Orders in Council; and if any seaman refuse or neglect to take the same, an entry to that effect must be made in the log-book by the medical officer on board. The same Acts also contain provisions for the appointment of medical inspectors of merchant-ships, medical inspectors of passenger-ships,[2] and medical inspectors of seamen.

Passenger Ships, Surgeons in.—The carriage of surgeons in passenger-ships is regulated by the 18 & 19 Vict. c. 119, which is amended and nearly entirely repealed the Passengers Act, 1852, previously alluded to. This Act requires that every passenger-ship must carry a duly qualified and registered medical man, who is to be rated on the ship's articles, firstly, when the duration[3] of the intended voyage

[1] 15 & 16 Vict. c. 44 (Emigrant Ship Act).

[2] 18 & 19 Vict. c. 119.

[3] The duration of a voyage is computed by a scale issued by the Emigration Commissioners.

exceeds eighty days in the case of sailing-ships, and forty-five days in the case of steam-ships, and the number of passengers exceeds fifty; secondly, whenever the number of persons on board, including passengers, officers, and crew, exceeds three hundred. On failure of compliance with these provisions, the master shall, for each offence, be liable to a penalty not less than £20, and not exceeding £100. Medicines, medical comforts, instruments, and all other things necessary for diseases and accidents incident to sea-voyages, and for the medical treatment of the passengers during the voyage, including an adequate supply of disinfecting fluid, together with directions for its use, must be provided by the owner or charterer of the ship. They must be sufficient in quantity, and properly packed and placed under the charge of the medical officer (when there is one on board), to be used at his direction. In case of default, the master is liable to a penalty of from £5 to £50.

Pharmacy Act of Ireland, The.—This Act,[1] passed August 11th, 1875, after reciting that a great deficiency exists throughout Ireland of establishments and shops for the sale of medicines and compounding prescriptions, and great inconvenience arises therefrom, and that it is expedient that persons who, although they do not desire to practise the art and mystery of an apothecary, do desire and are qualified to open shop for the retailing, dispensing, and compounding of poisons, should be enabled so to do, pro-

[1] 38 & 39 Vict. c. 57.

ceeds to incorporate a Pharmaceutical Society in Ireland, similar to the Pharmaceutical Society of Great Britain, and with like powers, for the examination of persons desiring to keep open shop for the above purposes, and for the registration of persons who, upon examination, are found to possess a competent practical knowledge of pharmaceutical and general chemistry, and such other branches of useful knowledge as fit persons to keep open shops for the dispensing of prescriptions of duly qualified medical practitioners.

Poisons.[1]—The sale of poisons is regulated by 31 & 32 Vict. c. 121, amended by 32 & 33 Vict. c. 117; also by the Sale of Food and Drugs Act[2] of 1875. Any person selling or compounding poisons must, after December 31st, 1868, be registered under the principal Act, and conform to such regulations as to the keeping and selling of poisons as may be prescribed by the Pharmaceutical Society, with the consent of the Privy Council. Section seventeen of the Act directs that it is unlawful to sell any poison, either by whole-

[1] The following articles, enumerated in Schedule A of the Act, are declared to be poisons within its meaning, but the Council of the Pharmaceutical Society has power to add to their number. Part I.: Arsenic and its preparations; prussic acid; cyanides of potassium, and all metallic cyanides; strychnine, and all poisonous vegetable alkaloids and their salts; aconite and its preparations; emetic tartar; corrosive sublimate; cantharides; savin and its oil; ergot of rye and its preparations. Part II.: Oxalic acid; chloroform; belladonna and its preparations; essential oil of almonds, unless deprived of its prussic acid; opium, and all preparations of opium or of poppies.

[2] 38 & 39 Vict. c. 63. For principal provisions see page 134.

sale or retail, unless the box, bottle, vessel, wrapper, or cover, in which such poison is contained, be distinctly labelled with the name of the article, and the word 'poison,' with the name and address of the seller of the poison; and it shall be unlawful to sell any poison of those which are in the first part of Schedule A (see note *ante*), or may hereafter be added thereto, to any person unknown to the seller, unless introduced by some person known to the seller; and on every sale of any such article, the seller shall, before delivery, make or cause to be made an entry in a book to be kept for that purpose, stating the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser, and of the person, if any, who introduced him, shall be affixed; and any person selling poison otherwise than is therein provided will, upon summary conviction before two justices of the peace in England, or the sheriff in Scotland, be liable to a penalty not exceeding £5 for the first offence, and to a penalty not exceeding £10 for the second or any subsequent offence; and for the purposes of this section, the person on whose behalf any sale is made by an apprentice or servant will be deemed to be the seller. But the provisions of this section, which are solely applicable to poisons in the first part of Schedule A, or which require that the label shall contain the name and address of the seller, do not apply to articles to be exported from Great

Britain by wholesale dealers, nor to sales by wholesale to retail dealers in the ordinary course of business; nor do any of the provisions of this section apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered under the Pharmacy Acts; provided such medicine be labelled in the manner aforesaid, with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is delivered, in a book kept for that purpose. Medicine supplied by legally qualified medical men, or dispensed by any person duly registered, are excepted from the operation of the Act, provided the same conditions are complied with.[1]

Similar regulations with regard to the sale of poisons in Ireland are made by the 33 & 34 Vict. c. 26, amended by the 38 & 39 Vict. c. 63.

Prison Surgeons.—The 28 & 29 Vict. c. 126 provides that a surgeon duly registered under the Medical Act, 1858, shall be appointed to every gaol, house of correction, bridewell, or penitentiary, by the justices in session assembled. His salary is to be fixed by the justices; but in the case of a municipal borough the

[1] During the progress of the late celebrated Lamson trial, an animated discussion was provoked in the papers on the law as it stood with regard to the sale of poisons to medical men and others; so it is possible some more stringent enactment may be shortly passed.

approval of the council must be obtained, and he holds his office during their pleasure. A superannuation allowance not exceeding two-thirds of his salary and emoluments, or a gratuity not exceeding the amount of his salary and emoluments, may be granted him by the justices in sessions assembled, if he has held his office for twenty years, and is over sixty years of age, or if he has become incapable, from confirmed sickness, age or infirmity, or injury received in actual execution of his duty, of executing his office in person. Since judgment of death is now executed within the walls of the prison in which the offender is confined at the time of such execution, the most unpleasant duty of the prison surgeon's attendance at every execution is required by this Act. The appointments of prison surgeons in Scotland and Ireland are regulated by 40 & 41 Vict. c. 53, and 40 & 41 Vict. c. 49 respectively.

Superannuation of Medical Officers.—For Acts referring to the above, see Table of Statutes.

Vaccination.—The several enactments on this subject prior to 1867 were repealed by the 30 & 31 Vict. c. 84; and it is provided by this Act, amongst other things, that the parent of every child born in England shall, within three months after the birth of such child, or where by reason of the death, illness, absence, or inability of the parent, or other cause, any other person shall have the custody of such child, such person shall, within three months after receiving the custody of such child, take it, or cause it to be taken,

to the public vaccinator of the vaccination district in which it shall be then resident, to be vaccinated, or shall within such period as aforesaid cause it to be vaccinated by some medical practitioner. This principal Vaccination Act has been amended by the 34 & 35 Vict. c. 98, passed in 1871, which relates to the compulsory appointment by the guardians of every union or parish of a vaccination officer, whose duties are similar to those imposed by the principal Act on the registrar of births and deaths. It also provides a penalty of £1, or under, as the magistrate may order, for preventing a public vaccinator from taking lymph from any child he has vaccinated. Also for the granting by a public vaccinator of a certificate of successful vaccination of a child he has not personally vaccinated, if he be of opinion that such child has been successfully vaccinated; and for the vaccination by the Poor Law medical officer of persons resident in the house with a person ill of small-pox. The Act also re-enacted a provision of 3 & 4 Vict. c. 29, which it repealed, rendering it a criminal offence to inoculate with small-pox.

The 42 & 43 Vict. c. 70, passed August 15th, 1879, regulates the law of vaccination in Ireland.

Vivisection—The Cruelty to Animals Act,[1] 1876, commonly called the 'Vivisection Act,' prohibits, under a penalty of £50 for the first offence, and £100 or one month's imprisonment for the second, all painful experiments on animals, except those performed sub-

[1] 39 & 40 Vict. c. 77.

ject to the restrictions of the Act. The restrictions are as follows: (1) The experiment must be performed with a view to the advancement by new discovery of physiological knowledge, or of knowledge which will be useful for saving or prolonging life or alleviating suffering; (2) and it must be performed by a person holding the license of one of her Majesty's principal Secretaries of State. (3) The animal must, during the whole of the experiment, be under the influence of some anæsthetic of sufficient power to prevent the animal feeling pain. (4) The animal must, if the pain is likely to continue after the effect of the anæsthetic has ceased, or if any serious injury has been inflicted on the animal, be killed before it recovers from the influence of the anæsthetic administered. (5) The experiment shall not be performed as an illustration of lectures in medical schools, hospitals, colleges, or elsewhere; (6) and the experiment shall not be performed for the purpose of attaining manual skill. Further provisions allow experiments by a person giving illustrations of lectures in medical schools, etc., if a certificate, such as required by the Act, be given to the effect that such experiments are absolutely necessary for the due instruction of the persons to whom the lectures are given. So, also, experiments may be performed without anæsthetics, if a similar certificate be given that insensibility cannot be produced without necessarily frustrating the object of the experiment. So, in like manner, the animal experimented upon need not be killed before it recovers from the influence

of the anæsthetic, if the killing would frustrate the object of the experiment, and the animal be killed as soon as the object has been obtained. And experiments may also be performed not directly for the advancement by new discovery of physiological knowledge, or for the purpose of alleviating suffering, but in order to test a particular former discovery alleged to have been made for the advancement of such aforesaid knowledge, on a like certificate being given. Urari (curare) as an anæsthetic is in *all cases* prohibited. There are some special restrictions regarding painful experiments on horses, dogs, cats, and other domestic animals. The Act extends over the whole of the British Isles, but does not apply to any invertebrate animals.

Witnesses, Medical.—The chief Act bearing on the above subject is the 6 & 7 Will. IV. c. 89, which provides for the attendance and remuneration of medical witnesses at coroners' inquests. The provisions of this statute are discussed at length in Chapter IX., to which the reader is referred for further information.

APPENDIX B.

DRAUGHT OF ACT OF PARLIAMENT, 9 HEN. V. (A. D. 1422) PETYT'S MSS. V. 33.

No one shall use the mysterie of Fysyk, unless he hath studied in some university, and is at least a bachelor in that science. The sheriff shall enquire whether anyone practises in his county contrary to this regulation; and if anyone so practise, he shall forfeit £40, and be imprisoned. And any woman who shall practise physic, shall suffer the same penalty. It is ordered in Parliament on this petition, that the Lords of the Privy Council shall make what regulations they shall think proper.

NOTE.—It appears that this never had the effect of an Act of Parliament.

APPENDIX C.

AN ACT CONCERNING PHESICIONS AND SURGEONS, 14 & 15 HEN. VIII. C. 5 (A.D. 1521).

FORASMOCHE as the science and connyng of Physyke (and Surg̃ie) to the pfecte knowlege wherof bee requisite bothe grete lernyng and ripe expience ys daily within this Royalme exccised by a grete multitude of ignoraunt psones of whom the grete partie have no manner of insight in the same nor in any other kynde of lernyng some also can no letters of the boke soofarfurth that comon Artifics as Smythes Wevers and Women boldely an custumably take upon theim grete curis and thyngys of grete difficultie. In the which they partely use socery and which crafte, partely applie such (medycyns) unto the disease as be verey noyous and nothyng metely therfore to the high displeasoure of God grete infamie to the faculties and the grevous hurt damage and distruccion of many of the Kyngs liege people most sp̃ally of them that cannot descerne the uncūnyng from the cunnyng; Be it therfore to the suertie and comfort of all manner of

people by the auctoritie of thys psent parliament enacted that noo pson within the Citie of London nor within vii myles of the same take upon hym to exccise and occupie as a Phisicion (or Surgion) except he be first examined approved and admitted by the Bisshop of London or by the Dean of Poules for the tyme beyng callyng to hym or them iv Doctours of Phisyk (and for Surg̃ie other expt psones in that facultie). And for the first examynacion such as they shall thynk convenient; And aftward alway iv of them that have been soo approved upon the payn of forfeytour for evy moneth that they doo occupie as Phisicions (or Surgions) not admitted nor examined after the tenour of thys Acte of £5 to be employed the oon half therof to thuse of our Soveraign Lord the Kyng and the other half therof to any pson that wyll sue for it by accion of dette in which no Wageour of Lawe nor proteccion shalbe allowed. And over thys that noo pson out of the seid Citie and precincte of vii myles of the same except he have been, as is seid before approved in the same take upon hym to ex̃cise and occupie as Phisicion (or Surgion) in any diocesse or he beyng out of the Diocesse of hys vicar generall either of them callyng to them such expert psons in the seid faculties as there discrecion shall thynk convenyent and gyffyng ther letters testimonials under ther sealle to hym that they shall soo approve upon like payn to them that occupie contrie to thys Acte as is above seid to be levyed and empoyd after the fourme before expressed. Provided alway that thys Acte nor

any thyng therin conteyned be prejudiciall to the Universities of Oxford or Cantebrigge, or either of them or to any privilegys gaunted to them.

NOTE.—Two copies of this Act are entered on the Roll. The text is printed from the former.

APPENDIX D.

THE COLLEGE OF PHYSICIANS *v.* LEVITT.

In the case of the *College of Physicians* v. *Levitt*,[1] which was decided in Easter Term, 1699, it was held that a graduate doctor of one of the universities could not practise physic in London, or within seven miles of it, without the license of the College of Physicians. The facts of the case were as follows: The plaintiffs brought action of debt against the defendant for £25 for having practised within London five months without license. Upon *nil debet* pleaded, it was tried before Chief Justice Holt at the Guildhall. The defendant pleaded that he was a graduate doctor of Oxford, but the Chief Justice ruled, upon consideration of all the statutes concerning this matter, that he could not practise within London or a seven mile radius unless licensed by the London College. The same question with regard to either of the universities was again argued in the *College of Physicians* v. *West*,[2] Hilary Term, 1716, where the Court was clearly of opinion that a license from the College was necessary, and that by reason of the charter of incorporation, confirmed by the statute 14 & 15 Hen. VIII. c. 5, penned in very strong and negative words. These cases now have, of course, no interest save in an antiquarian sense.

[1] 1 Ld. Raym. 472. [2] 10 Mod. Case 353.

APPENDIX E.

FOR BARBERS AND SURGEONS, 32 HEN. VIII. C. 42 (A.D. 1540).

THE King, our Sovereign Lord, by the advice of the Lords spiritual and temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, by all their common assents duly pondering, among other things necessary for the commonwealth of this realm, that it is very expedient and needful to provide for men expert in the science of physic and surgery, for the health of man's body, when infirmities and sickness shall happen, for the due exercise and maintenance thereof good and necessary Acts be already made and provided; yet nevertheless, forasmuch as within the City of London, where men of great experience, as well in speculation as in practice of the science and faculty of surgery, be abiding and inhabiting, and have more commonly the daily exercise and experience of the same science of surgery than is had or used within other parts of this realm, and by occasion thereof many expert persons be brought up under them as their servants, apprentices and others, who by the exercise and diligent information of their

said masters, as well now as hereafter, shall exercise the said science within divers other parts of this realm, to the great relief, comfort and succour of much people, and to the sure safeguard of their bodily health, their limbs and lives; and forasmuch as within the said City of London there be now two several and distinct companies of surgeons, occupying and exercising the said science and faculty of surgery, the one company being called the Barbers of London, and the other called the Surgeons of London; be it therefore enacted that the two several and distinct companies of surgeons, that is to say both the barbers and surgeons, and every person of them, and their successors, from henceforth immediately be united and made entire and whole body corporate and one commonalty perpetual which at all times hereafter shall be called by the name of Masters or Governors of the Mystery and Commonalty of Barbers and Surgeons of London, for evermore, and by none other name; and by the same to implead and be impleaded before all manner of justices in all courts, and also to purchase, enjoy and to take to them and to their successors all manner of lands, tenements, rents, and other possessions, whatsoever they may be; and also shall have a common seal to serve for the business of the said company for ever; and also shall peaceably and quietly have and enjoy all former privileges granted to either of the said companies or corporations by whatsoever name or names they or any of them were called; and that all persons of the said company now incorporate by this present

Act, and their successors, that shall be lawfully approved and admitted to occupy surgery after the form of the statute in that case ordained and provided, shall be exempt from bearing of armour, or to be put in any watches or inquests; and that they and their successors shall have the search, oversight, punishment and correction, as well of freemen as of foreigners, for such offences as they or any of them shall commit or do against the good order of barbery or surgery, as before this time among the said mystery and company of barbers of London hath been used and accustomed.

2. And further be it enacted that the said masters or governors of the mystery and commonalty of barbers and surgeons of London, and their successors yearly for ever, at their free liberty and pleasure, shall and may have and take without contradiction, four persons condemned and judged and put to death for felony by the due order of the King's laws of this realm, for anatomies, without any further suit or labour to be made to the King's highness, his heirs or successors, for the same; and to make incision of the same dead bodies, or otherwise to order the same after their discretions, at their pleasures, for their further and better knowledge, instruction, insight, learning, and experience in the said science or faculty of surgery.

3. And forasmuch as such persons using the mystery or faculty of surgery, oftentimes meddle and take into their cures and houses such sick and diseased persons as have been infected with the pestilence,

great-pox, and such other contagious infirmities, do use or exercise barbery, as washing or shaving, or other feats thereunto belonging, which is very perilous for infecting the King's liege people resorting to their shops and houses, there being washed or shaven; wherefore it is now enacted, ordained, and provided by the authority aforesaid, that no manner of person within the city of London, after the feast of the Nativity of our Lord God next coming, using barbery or shaving, or that hereafter shall use any barbery or shaving within the said city of London, suburbs, or one mile circuit of the same, he nor they, nor none other for them to his or their use shall occupy any surgery, letting of blood, or any other thing belonging to surgery, drawing of teeth only except; and furthermore in like manner, whosoever that useth the mystery or craft of surgery shall in no wise occupy nor exercise the feat or craft of barbery or shaving neither by himself nor by none other for him, to his or their use; and moreover, that all manner of persons using surgery for the time being, as well freemen as foreigners, aliens and strangers within the said city of London, the suburbs thereof, and one mile compass of the said city of London, before the Feast of St. Michael the Archangel next coming shall have an open sign on the street side where they shall fortune to dwell, that all the King's liege people there passing by may know at all times whither to resort for remedies in time of necessity.

4. And further be it enacted, by the authority afore-

said, that no manner of person, after the said Feast of St. Michael the Archangel, next coming, presume to keep any shop of barbery or shaving within the city of London, except he be a freeman of the said corporation and company.

5. And furthermore, at such times heretofore accustomed, there shall be chosen, by the same company, four masters or governors of the same corporation or company, of the which four two of them shall be expert in surgery, and the other two in barbery; which four masters, and every of them, shall have full power and authority, from time to time during their said office, to have the oversight, search, punishment, and correction of all such defaults and inconveniences as shall be found among the said company using barbery or surgery; and if any person or persons, using any barbery or surgery, at any time hereafter offend in any of these articles aforesaid, that then for every month the said person so offending shall lose, forfeit, and pay £5; the one moiety thereof to the King, our sovereign lord, and the other moiety to any person that will or shall sue therefor by action of debt, bill, plaints, or information in any of the King's courts, wherein no wages of law, essoign, or protection shall be admitted or allowed in the same.

6. Provided that the said barbers and surgeons, and every of them, shall bear and pay lot and scot, and such other charges as they and their predecessors have been accustomed to pay within the said city of

London, this Act nor anything therein contained to the contrary hereof in anywise notwithstanding.

7. Provided alway, and be it enacted by authority aforesaid, that it shall be lawful to any of the King's subjects, not being a barber or surgeon, to retain, have, and keep in his house, as his servant, any person being a barber or surgeon, which shall and may use and exercise those arts and faculties of barbery or surgery, or either of them, in his master's house, or elsewhere by his master's license or commandment, anything in this Act above written to the contrary notwithstanding.

APPENDIX F.

CHARTER GRANTED TO THE APOTHECARIES, MAY 30, 1616 (ABRIDGED), 13 JAC. I.

RECITING a grant to the Grocers' Company and the mischiefs which have resulted from the sale of improper medicines, and his own wisdom and mightiness, and the propriety of separating the Apothecaries' from the Grocers' Company, the King grants that the apothecaries shall be separate from, and constitute a company distinct from that of the grocers, and free from their by-laws, regulations, jurisdiction, and privileges. And to promote the full dignity of the faculty of the pharmacopolites (apothecaries), before sunk into disrepute and despised, he grants to certain persons therein named, and all other persons educated in the faculty of pharmacy, and practising it, being freemen of the Grocers' Company, or of any other company of London, that they and all such practising within London and its suburbs, and seven miles around, shall constitute a corporation by the name of the Master, Wardens, and Society of the Art and Mystery of Pharmacopolites of the city of London.

1. By this name they shall be capable of acquiring

and holding lands, liberties, privileges, functions, jurisdictions, goods, etc., and any estate therein, and of alienating lands, etc., and of suing and being sued.

2. They shall have a common seal, master, wardens, a court of assistants, and a hall or council-house within the city of London.

3. The master, wardens, and court of assistants, to the number of thirteen, of whom the master must be one, shall make regulations and ordinances for the government of the body, and of all persons practising as apothecaries in or within seven miles of London. Provided that on regulations relating to medicines or compositions, and their use, they call the president and four censors of the College of Physicians, or other physicians by them nominated, to advise in that behalf.

4. They shall appoint such punishment, by fine and imprisonment, on the violation of such by-laws, as they may deem expedient, and of themselves or by the aid of law, levy and recover the same to their own use without hindrance by accounting to the King or any of his officers; so as such fines be reasonable, and the by-laws consonant with the law of the land.

5. No person, free of the Grocers' or any other mystery in London, except those of the Apothecaries' Company, shall keep any apothecary's shop, or make, compound, administer, sell, send out, advertise, or offer for sale any medicines, distilled waters, compounded chemical oils, decoctions, syrups, conserves, eclegmas, electuaries, medical condiments, pills,

powders, lozenges, oils, unguents, or plasters; or otherwise in any way practise the faculty of an apothecary within seven miles of London, under the penalty of £5 a month, leviable by distress, and recoverable by the junior warden, by action of debt or otherwise, in any court of Westminster.

6. No person shall so practise unless he has served an apprenticeship of seven years with some apothecary practising and free of that mystery, and afterwards appeared and been presented before the master and wardens, and been by them, calling to their assistance the president of the College of Physicians, or some physician or physicians assigned by him, if unwilling to be present, as to his knowledge and choice of simples, and as to the preparation, dispensing, application, mixture, and composition of medicines examined and approved.

7. The master and wardens shall have the oversight, scrutiny, examination, government, and correction of all, as well free as others, practising the faculty of an apothecary, or any branch of it as aforesaid, within London, its liberties, or suburbs.

8. They and each of these, or any of the assistants by them assigned, shall, at seasonable times, and in convenient manner as often as to them shall seem fit, enter any house, shop, or other building of any person using or practising as aforesaid, anywhere within London or seven miles around, where any such medicines and the like may probably be found, and examine whether such medicaments, and all other things

appertaining to the art of an apothecary, are proper for the health and relief of the people.

9. The master, wardens, and the assistants shall have authority to examine and approve all persons who should profess, use, or exercise the art of an apothecary, or any branch of it, within London or its liberties, or seven miles around the city, as to their knowledge, skill, and science therein, and to prohibit the practice of the art to all persons whom they should find wanting sufficient skill therein.

10. They shall have authority to destroy all such medicines and medicaments as they shall find false, illegal, adulterated, or otherwise unfit, before the doors of the offenders, and punish them by fines as aforesaid.

11. The master, wardens, and society shall have and enjoy all such franchises, privileges, customs, advantages, and other rights, in respect of aromatics, pharmacy, drugs, and other things pertaining to their art, as they did before when included in the Grocers' Company.

12. Nothing in this charter shall interfere with the authority of the president and College of Physicians in the oversight and correction of pharmacy; but they and all physicians of the college, and the physicians of the King, Queen, and princes, may, at their pleasure in all things, practise the medical art and enjoy all their former jurisdictions, powers, and privileges; and the president and College of Physicians may call to them the masters and wardens of the Apothecaries'

in all cases in which they might have called any of the Grocers' Company, for the scrutiny of medicines and medicaments; and these physicians may not on any future occasion call any of the Grocers' Company to them for this purpose.

13. Nothing contained in this charter shall prejudice the city of London, its privileges, jurisdiction, or other rights.

14. Nor shall anything therein contained prejudice any surgeons, experienced and approved, from exercising their art and faculty, and using and enjoying their proper practice in the composition and application of external medicines alone; so that they do not vend medicines, or expose them to sale, according to the common practice of apothecaries.

15. This charter shall not be less valid, because the true value is not mentioned with the usual *non obstante*.

APPENDIX G.

THE QUEEN *v.* STEELE.

THE case of *The Queen* v. *Steele*,[1] which was tried in Dublin, Trinity Term, 1861, is as follows: In Easter Term the prosecutor, one James Barker, junior, obtained a conditional order for a writ of mandamus directed to William Edward Steele, commanding him, as registrar of the Branch Council for Ireland under the 'Medical Act,' to restore the entry in the Local Register for Ireland, under said Act, of the name and qualification therein of the said James Barker, junior, to the same state as such entry was originally made by the said registrar; and that he insert in the Register the letters 'M.D.,' struck out therefrom by him without authority in that behalf; or that he enter on said Register as part of the medical qualification of the said James Barker, junior, as a licentiate of the King and Queen's College of Physicians in Ireland aforesaid, the words 'as Doctor of Medicine' after the word 'licentiate' in the column of said Register entitled 'Qualification.'

The conditional order was granted on the prosecutor's affidavit, which stated that the deponent had received, from the King and Queen's College of Phy-

[1] 13 Ir. Com. L. R. 398.

sicians in Ireland, its diploma or license dated 27th of April, 1860, testifying that he had, on examination, proved himself learned and skilled in medicine, and granting him license to practise in medicine; that the Branch Medical Council for Ireland had elected W. E. Steele as their registrar, who, as such registrar, having been satisfied by proper evidence that the deponent was entitled to be registered in the Local Medical Register for Ireland, pursuant to the 'Medical Act,' as a Licentiate of the College of Physicians, and as a Licentiate of the Royal College of Surgeons in Ireland, on the 7th of February, 1861, entered the same as follows: 'Lic. & M.D., K. Q. Col. Phys. Ireland, 1860, Lic. R. Coll. Surg., Ireland, 1859,' and that the letters 'M.D.' in the entry were meant to express that he was a licentiate as Doctor of Medicine of the King and Queen's College of Physicians in Ireland.

At a meeting of the Branch Council in Ireland held shortly after, a resolution was carried that the registrar 'be directed to expunge from the Local Medical Register for Ireland the title of M.D., which has been illegally attached to the names of the following persons,' of which the deponent's name was one; 'and that he be required henceforward to conduct the Local Register in strict accordance with the regulations of the General Medical Council, and the provisions of the Medical Act, and refuse for the future to register the title of M.D. of the College of Physicians.' In obedience to that resolution, the registrar immediately

struck out the letters 'M.D.,' without notice to the deponent.

The affidavit further stated, that the College is empowered by charter to grant licenses to persons to practise in midwifery, and also licenses to practise as persons learned in medicine or physic; and that from the date of the charters, all licentiates of the latter class have been publicly known and designated as Doctors of Medicine or Doctors of Physic, and are so called and recognised by several public Acts of Parliament; and that such distinction is an important and necessary part of their qualification. And that inasmuch as the Medical Act in its preamble states its object to be 'That persons requiring medical aid should be able to distinguish qualified from unqualified practitioners,' it is necessary that the particular nature and extent of the qualifications and medical titles conferred on licentiates of the said College, whether as Doctors in Medicine, or as Licentiates in Midwifery only, or in both, as the case may be, should appear on the Medical Register; and that the omission to state such qualification of the deponent as a Doctor of Medicine, or Doctor in Physic, or as a learned practiser in physic, or learned physician, all of which are convertible terms, having the same meaning on the Medical Register, is and would be injurious to the deponent.

The application came before the court on the 10th of June, 1861. After various arguments had been heard, for and against, the learned judges[1] who tried

[1] Lefroy, C. J.; Hayes, J.; Fitzgerald, J.; O'Brien, J.

the case were unanimously of opinion that the application could not be complied with, nothing titular being admitted on the Register since 22 Vict. cap. 21, s. 3,[1] and that the College of Physicians has no legal authority to grant the degree of Doctor of Medicine, or to authorise the use of any such designation or title—that Licentiates of the King and Queen's College of Physicians, though physicians, and entitled to practise physic, have, as such licentiates, no right to assume the title of 'M.D.' or Doctor of Medicine, however it may from *courtesy* have been conceded to them, and even though it were otherwise, that no such designation is specified in the statute as a qualification of those who are licentiates of that body.

[1] This section enacted that the fourth column, for titles, of Schedule D of the Medical Act, 1858, with its heading, should be repealed and omitted.

APPENDIX H.

TABLE OF FEES AND CHARGES ALLOWED TO MEDICAL WITNESSES.[1]

High Court of Justice: £1 1s. a day, if resident in the town in which the cause is tried; £2 2s. to £3 3s. a day if resident at a distant, inclusive of all but travelling expenses.

If the witness attend in more than one cause, he is entitled to a proportionate part only in each cause.

For travelling expenses, 1s. per mile is allowed.

Probate Court: £1 1s. a day, if resident within five miles of the General Post Office; £3 3s. a day if resident beyond (including board and lodging). Travelling expenses as above.

Divorce Court: £1 1s. a day, if resident within five miles of the General Post Office; from £2 2s. to £3 3s. if resident beyond (including board and lodging). Travelling expenses as above.

House of Lords: Physicians and surgeons £2 2s. a day, and £1 1s. for hotel expenses if from home. Apothecaries £1 1s. a day, and the same for hotel

[1] With the exception of criminal cases, these fees are all payable, though the witness be not called.

expenses. Higher charges are allowed under special circumstances, and also all necessary travelling expenses. Sunday is a *dies non.*

Admiralty Court: £1 1s. to £3 3s. a day, including board and lodging. Travelling expenses, 1s. per mile.

Bankruptcy Court: £1 1s. a day if resident where the court is held. £1 1s. to £3 3s. if resident at a distance, including board and lodging. Travelling expenses out of pocket.

Lord Mayor's Court: 10s. 6d. to £1 1s. a day, and 1s. per mile travelling expenses.

County Court: 10s. to £1 a day, and not more than 6d. per mile, one way, travelling expenses.

Police Court: 10s. 6d. a day, if witness reside in neighbourhood, £1 1s. if at a distance. Travelling expenses, 6d. per mile, one way.

Courts of Assize, General Sessions of the Peace, etc.: to give professional evidence (not otherwise), £1 1s. a day, with 2s. for every night detained from home. Travelling expenses, 6d. per mile, one way.

N.B.—The expenses of a witness in most cases of misdemeanour, and in all cases of felony, are now allowed.

APPENDIX I.

THE APOTHECARIES' COMPANY, AND THE RIGHTS OF CHEMISTS TO PRESCRIBE MEDICINES.

MUCH light is thrown on this subject by the recent and well-considered judgment of Motteram, Q.C., judge of the Birmingham County Court, in the case of the *Apothecaries' Company* v. *Harrison*,[1] which was tried before him on the 2nd and 3rd of July, 1877, and then adjourned, pending the decision of a similar case in a superior court.

The action was one brought by the Master, Wardens, and Society of Apothecaries, to recover a penalty of £20 on the ground that the defendant had prescribed and furnished medicine to a person, and acted thereby as an apothecary, without having obtained a certificate as required by the Apothecaries' Act.[2]

The facts were briefly these: A young woman, named Julia Caddick, called at the defendant's shop on the 27th November, 1876, and asked defendant if he could make up something to relieve her of the weakness from which she was suffering. Defendant asked her what the weakness arose from, and she told

[1] 67 *Law Times*, 232.

[2] 55 Geo. III. c. 194.

him that it was a weakness left on her after her confinement. He then felt her pulse, looked at her tongue, and asked her to describe what she felt. She described her symptoms, and the defendant made her up some medicine, for which she paid a shilling.

In giving judgment on this case, on the 4th of July, 1879, his honour said: 'The action is brought by the plaintiffs to recover the sum of £20, by way of penalty under the 20th section of the 55 Geo. III. c. 194, for practising as an apothecary without having first obtained the necessary certificate. It was heard before me as far back as the 2nd July, 1877, and was adjourned in consequence of the pending of an appeal to the High Court of Justice. That appeal has now been disposed of, and unfortunately no assistance is to be derived therefrom. By the 20th section of the 55 Geo. III. c. 194, under which this action is brought, it is enacted that if any person shall, after Aug. 1st, 1815, act or practise as an apothecary in any part of England or Wales without having obtained a certificate as mentioned in the preceding section of the Act, "he shall be liable to forfeit and pay the sum of £20." The 28th section of the same Act, the one on which the defence is grounded, enacts, by way of proviso, "that nothing in this Act contained shall extend, or be construed to extend, to prejudice or in any way affect the trade or business of a chemist or druggist in the buying, preparing, compounding, dispensing, or vending drugs, medicines, or medicinable compounds, wholesale or retail; but all persons

using or exercising the said trade or business, or who shall or may hereafter use or exercise the same, shall and may use, exercise, and carry on the same trade or business in such manner, and as fully and amply to all intents and purposes, as the same trade or business was used, exercised, or carried on by chemists and druggists before the passing of this Act." The first point to be considered is, has the defendant acted as an apothecary? If he has, and is not protected by the proviso, he is undoubtedly liable to pay the penalty sued for, and the verdict must be for the plaintiffs. The defendant, however, raises two questions by way of defence—first, he says in what he did, he did not act as an apothecary; and, secondly, that if in strictness it should be held that he did, then, inasmuch as he was only carrying on his business as a chemist, as chemists carried on their business before the passing of the Act in 1815, he is protected by the proviso referred to, which, he contends, permits chemists and druggists to carry on their business in the same manner as they did before the passing of the Act, and that chemists were in the habit of advising patients in trifling cases, as well as supplying them with medicines; and he argues that the present is a case of that character which a chemist would have treated before the passing of the Act, as the defendant has done since.

'Now with reference to the question raised by the first part of the defence—whether in what the defendant did, he acted as an apothecary—the case of *The*

Apothecaries' Company v. *Lotinga*[1] decided that "an apothecary is a person who professes to judge of internal disease by its symptoms, and applies himself to cure that disease by medicines;" and in the same case Mr. Justice Cresswell told the jury that "a chemist is one who sells medicines that are asked for, and that if the chemist himself selected the medicine and determined on what he ought to give, he is stepping out of his lawful province as a chemist, and entering upon that of an apothecary." The definition of a chemist, as given by Mr. Justice Cresswell in *Lotinga's* case, would appear not to be large enough, because the 28th section of the Apothecaries Act referred to clearly shows that the trade of a chemist was not confined to selling medicines that were asked for merely, but extended to the preparing, compounding, and dispensing them. His lordship's definition of an apothecary is, however, doubtless, perfectly correct, if it is to be presumed that Mr. Justice Cresswell did not mean internal as opposed to external disease, in the sense of a man having an eruption produced by some diseased condition of the body, which would not be any less an internal disease, and if anyone proceeded to judge of it by the symptoms, and applied medicine for its cure, the law would equally apply to him as it would to the man who attempted to cure a persistent difficulty of indigestion, a diseased condition of the lungs, or any of the other ills which flesh is heir to, and which affect mankind internally. There is a case, *The Apothecaries'*

[1] 2 M. & R. 500.

Company v. *Nottingham*,[1] tried before Baron Bramwell in 1876. In that case it was proved that the defendant, who was a certified chemist, but not an apothecary, had been in partnership with a duly qualified medical practitioner, but it was also shown that this medical man was not always on the spot. It also appeared in evidence that the defendant had on various occasions been applied to for advice and medicine, both of which he gave to the applicants, but did so as an ordinary shopkeeper from behind the counter. It did not appear that he ever went from his shop to attend on patients, and he was proved in cases of serious illness always to have referred the patients to the doctor with whom he was in partnership, and the learned judge in addressing the jury said : "I feel some little difficulty in putting the case to you, for, on the defendant's own admission, he says he prescribed, and that if a person brought a child to him suffering from diarrhœa, and asked what was good for it, he gave a medicine; if, however, the case was serious, he sent it to the doctor. Surely," said the learned Baron, "that is acting and practising as an apothecary within the meaning of the Act." There is also a case, known as *Wiggin's* case[2], tried before Mr. Justice Field, on May 23 and 24, 1878, in the Bail Court, at Westminster, in which his lordship approves and adopts the definition of Mr. Justice Cresswell in *Lotinga's* case, with the qualification previously alluded to. Upon these authorities, and

[1] 34 L. T. R. N. S. 76.

[2] This case is not reported in the recognised legal reports.

there are several others, it must be found that the defendant in this present case has acted as an apothecary, in contravention of the statute, and has incurred the penalty prescribed by it; for it is distinctly proved that the defendant, after performing the acts mentioned in the evidence to enable him to form an opinion on the case, proceeded, in the language of Mr. Justice Cresswell, to judge of the internal disease from which the woman was suffering by the symptoms ascertained by his acts, and applied himself to cure it by medicine. If this is not acting as an apothecary, it is really impossible to define what acting as an apothecary is. Upon the second part of the defence, a witness is called who had been apprenticed to a chemist and druggist in 1809. His evidence shows that chemists, in carrying on their business before 1815, did something, lawful or otherwise, beyond selling medicines merely; and if the present, instead of being a case of a serious character, as the medical evidence points out, had been of the trivial nature mentioned by this witness, the second part of the defence would have deserved serious consideration. If, however, it be correct that before 1815 some chemists were in the habit, in trifling cases, of advising as well as supplying persons with medicine, it does not by any means follow that they ever had the legal right to so advise and supply the medicine, or are protected by the 28th section of the Act in case they do. Very probably some chemists before 1815 did advise and supply medicines, as it is well known some do now; but if

they did, in my opinion they had no legal right to do so, and were usurping the rights of those who had, just as the surgeon, as shown by *Lotinga's* case, usurped and contended for the right to advise and supply medicine as an apothecary, or indeed as the apothecary did when, as is known, he sometimes exercised, though illegally, the right of the physician to attend and prescribe for patients before he possessed the legal right to do so, which at the present time he undoubtedly possesses. If the language of the 28th section is carefully considered, it will be found not to have the effect contended for on the part of the defendant. He contends that the business of chemists before 1815 extended to the advising or prescribing in the shop, over the counter as it were, in cases of a trifling nature, and supplying medicines for the cure of them, and consequently they are protected in what they do now, provided they do no more than they did then; but the section does not say a word about advising or prescribing. On the contrary, it would seem from the language used rather to ignore the fact that to do so formed at the passing of the Act any part of the chemist's business. The words of the section are, "nothing shall extend or be construed to extend to prejudice, or in any way to affect the trade or business of a chemist or druggist in"—be it observed, not the advising or prescribing—but "the buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinable compounds, wholesale and retail." The section then proceeds to provide that all

persons using or exercising the said trade or business, or who shall or who may thereafter use or exercise the same, shall and may use, exercise, and carry on the same trade or business in such a manner and as fully and amply to all intents and purposes as the same trade or business was used, exercised, or carried on by chemists and druggists before the passing of the Act. What business, therefore, the section provides is not to be affected by the Act, and what might be carried on notwithstanding the Act, would appear to be only the buying, preparing, compounding, dispensing and vending of drugs. The Legislature seems not to have known (if it existed) of this extended business of a chemist now contended for; or if it did, it appears to have ignored it as part of the legitimate business of the chemists, and declined to protect them in the exercise of it after the passing of the Act.' The learned judge then proceeded to say that there was no word in the proviso that could by any stretch of imagination be construed to extend so far, unless it was the word 'dispensing;' and this word, according to Ree's Encyclopædia, title 'Dispense' (in pharmacy), meant 'to dispose and arrange several medicines, either simple or compound, by weight, in their proper doses or quantities, in order to be employed in the making of the composition.' The defendant had clearly and unmistakably 'acted as an apothecary,' and the proviso relied upon afforded him no defence. The verdict was then given for the plaintiffs, £20 with costs. Before closing his remarks, the judge expressed

his convictions that the Apothecaries Act was intended (which intention he thought had been successfully carried out) to have a beneficial effect on the interests of the poorer classes. The more scientific masters of medicine being otherwise engaged, had no time to compound and dispense their own prescriptions; these, therefore, are relegated to the chemists and druggists, who, if not a less highly educated class, are at least a class who have not passed the necessary examinations to entitle them to practise as apothecaries. If the chemists were permitted to advise on the ailments of the poor, as well as to make up their drugs into medicines, the sick poor would lack the benefit of that highest class of skill which the rich by their purses can command. But this want has been provided for the necessitous at our public hospitals and dispensaries, where the ablest physicians, surgeons, and apothecaries in the land generously give their time and best skill to all comers, on whom not only sickness but poverty is pressing. It was argued that the poor would suffer by limiting the action of the druggist according to the express language of the Act; but to this argument the best answer is given by the Act itself, which protects, benefits and furthers the highest interest of the sick poor by pointing and directing them to our public medical institutions for advice with reference to their ailments, and to the chemists for their medicines, when such are required and are not provided for by those noble and charitable institutions.

APPENDIX K.

ASSAULT ON PATIENTS.

THE leading case on this subject is that of *R.* v. *Rosinski*.[1] Here the defendant, one Peter Rosinski, was tried and convicted before Mr. Justice Bayley, at the Lancaster Lent Assizes, in the year 1823.

It appeared from the evidence that the defendant pretended to be able to cure disorders of all kinds. One Ann Gibbins, the prosecutrix, applied to the defendant to be cured of fits, when he told her she must strip naked. Upon her refusing to do this, she was told she must, or else no good could be done. She then began to untie her dress, and the defendant stripped off all her clothes; she told him at the time she did not like to be stripped in that manner, but said nothing more. When she was stripped, the defendant rubbed her with some stuff from a bottle, and then bid her put on her clothes, which she did, and went away. The judge left it to the jury to say whether the prisoner really believed that the stripping her could assist him in enabling him to cure her. The jury were satisfied he had no such belief, and that

[1] 1 Moo. C. C.

it was wholly unnecessary; but the judge doubted whether the making her strip, and pulling off her clothes, was an assault, and reserved those points for the consideration of the judges. Upon the meeting of the judges in the following term, the conviction for a common assault was held right.

So, in the case of *Regina* v. *Case*,[1] which came before the Court for Crown Cases Reserved, in Trinity Term, 1850, it was held that if a surgeon, professing to take steps to cure a girl of a complaint, has carnal connection with her, and she is ignorant of the nature of the act, and makes no resistance solely from a *bonâ-fide* belief that he is, as he represents, treating her medically, with a view to cure, his conduct in point of law amounts to an assault. The facts were as fellows: The defendant, William Case, was a medical man; and Mary Tuckett, who was fourteen years of age, was placed under his professional care by her parent, in consequence of illness arising from suppressed menstruation. The defendant gave her medicines, and, on the occasion of her going to his house, and informing him that she was no better, observed, 'Then I must try further means with you.' He then had carnal connection with her in the surgery, she making no resistance, believing, as she stated, that she was submitting to medical treatment for the ailment under which she laboured. The jury found the defendant guilty, and he was sentenced to eighteen months' imprisonment. On the case coming before

[1] 19 L. J. M. C. 174.

the higher court, where the judgment was unanimously maintained, Chief Justice Wilde said, 'It does not matter that the man committed the act with the view of benefiting her in a medical point of view. It cannot be justifiable or legal, in any case, for a surgeon to adopt such a mode of medical treatment to a girl who was ignorant of the character and consequences of his conduct. It would be in all cases a grave moral offence.'

The same rule has been followed in *R.* v. *Stanton*,[1] and many other similar cases.

To continue, medical men should act with the greatest circumspection when called upon to examine young girls and women by their employers and other persons. In the case of *Agnew* v. *Jobson*[2] and others, it was held by Mr. Justice Lopes that an examination by medical men in pursuance of a magisterial order, of the person of a female in custody upon a charge of concealing the birth of her illegitimate child, was an assault, inasmuch as a justice of the peace has no power to make such an order, either by common or by statute law. Here an action had been brought on behalf of the plaintiff, who was convicted at the Winter Assizes at Durham, in 1875, for concealing the birth of her bastard son, against the defendant, a magistrate of the county, and a physician, a surgeon, and a policeman, for two assaults, occasioned by compelling her to be twice examined, which was done by lifting up and

[1] 1 Car. & Kir. 415.

[2] 13 Cox, C. C. 625.

partially removing her clothes to ascertain whether or not she had recently been delivered of a child.

The evidence of the physician, who alone examined her the first time, and also that of the surgeon, who examined her on the second occasion, tended to show that no force was attempted on either examination to induce the girl to submit herself to the same, and that the former was only partial and incomplete; but, when about to examine her subsequently, she said: 'I have already confessed, and there is no use in your examining me,' and whilst not resisting the examination she did not expressly consent to it. No evidence being offered against the constable, the case against him was abandoned. In the course of the trial Mr. Justice Lopes said that, 'unless the jury are convinced that the girl gave her consent to the examination, the defendants had no right to do it. There is a great difference between consenting and submitting. But if she really consented, thinking they had the power to compel her, that would do.' The learned judge further told the jury that the main question was, Had the plaintiff actually consented to the examination which took place on the second occasion? if not, then the examination would be an assault, illegal, and unjustifiable, and the plaintiffs would be entitled to their verdict. But if she consented, then they must find for the defendants. It was for them to say whether it looked like a girl consenting, when she told the doctors that it was no use their examining her, as she had confessed all. The defendants had acted

extremely foolishly; and the damages might be such as to show in unequivocal terms that neither magistrates, nor policemen, nor medical men, may infringe upon the rights of any person. The jury awarded £50 damages for the assault.

A somewhat similar case is that of *Latter* v. *Braddell*[1] and others, which a short time since created much commotion and newspaper comment. The plaintiff, a woman about twenty-eight years of age, was housemaid in the service of a Captain and Mrs. Braddell. This lady, suspecting that her servant was pregnant, told her to pack up and leave the house before twelve o'clock that day, as she was in such a condition. The plaintiff denied the charge, and Mrs. Braddell said: 'The doctor will be here presently and we shall see.' She then requested the plaintiff to go to her bedroom. Dr. Sutcliffe, the third defendant, who had previously been sent for, on his arrival, was asked by Captain or Mrs. Braddell to examine the plaintiff to see if she were pregnant. On the doctor entering the bedroom the plaintiff cried, and asked him what he was going to do, as she did not like to be examined. He answered that he was a professional man, and told her to take off her dress. She strongly expressed her objection to this treatment, and to stripping herself, and cried nearly the whole time. No third person was present during the examination; and after its conclusion the doctor found that she was not pregnant, and said he would speak seriously to Mrs. Braddell about

[1] This case is as yet unreported in the recognised legal reports.

the matter. The latter, however, dismissed the plaintiff from her service, and without a character.

At the Manchester Spring Assizes, in 1880, an action brought by the plaintiff was first tried before Mr. Justice Denman, but the jury disagreed, and were discharged without coming to a verdict. It was retried at the next assizes, in the same city, before Mr. Justice Lindley. He withdrew from the jury the case against the plaintiff's master and mistress, as he considered there was no evidence against them of the plaintiff's refusal to be examined, on which the jury could reasonably act, and a verdict was, therefore, found for Dr. Sutcliffe. A rule was afterwards obtained requiring the defendants to show cause why the verdict should not be set aside, and a new trial had, on the ground that the judge ought not, as against Captain and Mrs. Braddell, to have withdrawn the case from the jury, and that it was against the weight of evidence. On the motion being argued before this judge and Mr. Justice Lopes they differed in their decision. The former adhered to his original opinion expressed at the trial; whilst the latter thought that a new one should be granted, and expressed himself to the effect he did in *Agnew* v. *Jobson, etc.* The rule was consequently discharged. The plaintiff next applied to the Court of Appeal, before Lords Justices Bramwell, Bagallay, and Brett, on February 23rd, 1881, when it was held in support of the view of Mr. Justice Lindley, that, to maintain the action, the plaintiff must have been overpowered, or have had

reasonable cause to think that violence would be resorted to to cause her to be examined; but that the evidence showed that she reluctantly submitted to it, and that no threats or violence were used by the doctor, nor could she suppose, by the way in which he acted, that force would be used against her; therefore the case was rightly withdrawn from the jury, as against Captain and Mrs. Braddell, and the verdict in favour of Dr. Sutcliffe was right.

It may be remarked that Lord Justice Brett, in giving his decision upon this case, protested very strongly against the conduct to which the unfortunate plaintiff had been subjected. 'I cannot,' he said, 'conceive how right-minded people should presume, because they suppose—even if it had been true—that a young girl is in the family way, that they should immediately take it into their heads that they are insulted. Why on earth should they have sent for the doctor? If they did not like to keep the girl why not let her go away as quietly as possible? This idea of having servant-girls examined by doctors is, to my mind, absolutely wrong; and it is conduct which anybody ought to scout.'

Mr. Justice Lindley, on the motion for a new trial, also stated that he objected most strenuously to the theory that a master and mistress had a right to submit a servant to such treatment as was here revealed to have taken place.

There is another branch of the law relating to assault which is of great importance to medical men,

and that is where a doctor has to undertake the responsibility of imprisoning a man on the ground of his insanity. It has been held[1] over and over again, that if a medical man sign papers sending a supposed lunatic into confinement, merely on the statements of friends and relatives, he is guilty of an assault.

It was held, however, in the case of *Scott* v. *Wakem*,[2] that a person, medical man or otherwise, may justify such an assault and restraint, where the patient is a dangerous lunatic, or in such a state as to render it likely that he might do mischief to anyone. So, also, if he is called in to attend a person suffering under *delirium tremens*, he may justify such measures as are reasonably necessary, either to cure him or to restrain him from doing mischief, so long as the fit lasts, or is likely to return.[3]

And, in the case of *Hall* v. *Semple*,[4] which was an action brought against a well-known physician, Dr. R. Hunter Semple, under whose certificate the plaintiff had been confined as a lunatic, it was held that a medical man who has merely signed a certificate under the Lunacy Acts, and has done nothing more towards causing the confinement of the alleged lunatic, is not liable to a charge of assault. Nor, if he has merely consulted another medical man, who has signed the certificate, and has told him his own idea of the case, is he liable for causing the other to sign such certificate.

[1] *Anderson* v. *Burrows*, 4 C. & P. 210; *Eliot* v. *Allen*, 1 C. B. 18.
[2] 3 F. & F. 333. [3] *Ibid.* [4] *Ibid.* 337.

APPENDIX L.

SALE OF POISONS UNDER THE PHARMACY ACT OF 1868.

THE case of *Templeman* v. *Trafford*[1] was an appeal brought by the Secretary of the Chemists' and Druggists' Association of Great Britain, in order to have the law declared upon a point of great importance to traders, namely, whether a grocer, chandler, or any other trader can, under the Pharmacy Act of 1868,[2] sell poisons to the people; that is, whether such a trader can sell poisons by retail supplied to him by a duly qualified chemist and druggist under cover of a label bearing the name and address of the chemist and not of the actual seller. The Act requires that no one shall sell any poisons unless labelled with the name and address of the seller, it being provided that for the purposes of the Act any person in whose behalf any sale is made by any servant shall be deemed the seller. In the present case, which arose at Oxford, a person went to the shop of the defendant in Friar Street, in that city, and asked for a pennyworth of red oxide of mercury, and was served by some one in the shop. The packet containing the poison had a label,

[1] This case was not reported at the time of publishing.

[2] 31 & 32 Vict. cap. 121.

which did not bear the defendant's name, and there was no name over the door at all, but the packet bore the name and address of another person a duly qualified chemist and druggist—'Patterson, Chemist, Cowley Road, Oxford'—who, it appeared, there carried on his business, but rented a window at the defendant's shop, and sent drugs to the defendant to sell for him on commission, not selling or invoicing to him, but holding him responsible under these circumstances. The Secretary of the Chemists' and Druggists' Association laid the information in order to raise the question whether persons not qualified can thus sell poisons; and it was said that the question was of great importance, the practice of so doing being extensively prevalent. At the hearing of the information the defendant insisted that he was the servant of the chemist for whom he sold, and called him as a witness to show that he was so, and the witness said he considered the defendant as his servant; but, in truth, he sold on commission for him as already stated. The magistrates would not convict, but stated a case in which they found that the defendant was a servant, and referred it to the court whether the sale was legal, and whether the packet was duly labelled.

The case came before the court, consisting of Mr. Justice Grove and Mr. Justice Lopes, on the 17th of November last year, when Mr. Higgins appeared for the prosecutor, the Secretary of the Association in support of the appeal. He cited the recent case of the *Pharmaceutical Society* v. *The London and Provincial Supply*

Association,[1] where the question was, whether the Act applied to incorporated supply associations, and the House of Lords held that it did not, but also said that 'the person who sells, whether as master or servant, is struck at' by this enactment; and here he urged that the actual seller was the person who served in the shop, and that the person on whose behalf the sale was made was the defendant who kept the shop, and he could not be considered as a servant as he did not actually conduct the sale. He was not the servant but the seller, as being the person on whose behalf the poison was sold. He was not the servant of the chemist, as he only sold on commission, having a business of his own. Under these circumstances the sale of the poison was within the mischief of the Act; that is, poison was sold by persons not qualified. The chemist was not on the premises when the poison was sold, and he might have been in another town. An unqualified tradesman might, if this were legal, sell poisons at Manchester on commission for a chemist in London, so that the purchaser would not in the purchase of drugs have the security of a duly qualified chemist, which it was the object of the Act to secure. After a few remarks from Mr. Justice Grove and Mr. Justice Lopes the court called on the other side; but no counsel appearing, judgment was given against the defendant.

Mr. Justice Grove said, in giving judgment, that he regretted the case had not been argued for the defendant

[1] See Note, page 83.

as it was a case of great importance. He was, however, of opinion that the magistrates had not drawn the proper inference from the facts as to the sale, and that the packet was not duly labelled within the Act. The Act required qualification and registration for those who sold poisons or kept an open shop for retailing them, and the penalty was imposed on the person selling, and in whose shop the sale took place, in cases of sales of poisons by persons not qualified, or without labels containing the name and address of the seller; that is, 'the seller' meant the person conducting the business of sale, the business in which the sale took place. In the present case it was clear that the person who first sent the poison to the defendant could not be deemed the seller of the packet of poison, as he was not on the premises, and was not in a position to comply with the Act. The person who sold poisons was to enter the names of purchasers in his books, and a person living at a distance could not do so. It was impossible, therefore, that the chemist who carried on business at a different place could, as the magistrates had supposed, have been the 'seller' of the poison in the present case. The seller was the person on the spot, the person who kept the shop, and had the power to regulate the sale, and the packet to be labelled with his name, not of course as personally or manually selling, but as the person having the control over the sale. The chemist in this case had no control over the sales of poisons which took place in defendant's shop. A chemist at Aberdeen might send poisons for sale in

London, and could not of course have any control over the sales. The Act, therefore, had been violated, and the defendant was liable to be convicted.

Mr. Justice Lopes concurred on the grounds already stated, holding that 'the seller' meant the person at whose shop or place the poison was sold, or who carried on the business. That was the plain meaning of the Act, and was necessary to its policy and object.

The judgment of the court was given accordingly.

APPENDIX M.

THE 'LEX NON SCRIPTA' OF MEDICAL ETIQUETTE.[1]

I. MEDICAL Etiquette may be defined as the code of professional honour, agreed upon by mutual understanding, and tacitly accepted by members of the profession as regulating their intercourse one with another, and with the public.

II. Medical men honour their profession by honouring themselves in their confraternal relations, and, consequently, by observing in their mutual intercourse the greatest courtesy in actions and in words.

III. The same rules of conduct should prevail, whether towards hospital patients or in private practice. Every case committed to the charge of a medical man should be treated with care, attention, and humanity; every allowance should be made for the whims and caprices of the sick, secrecy and delicacy should be observed, and the familiarity and confidential intercourse to which members of the pro-

[1] The following brief code is mainly compiled from a chapter entitled 'Medical Ethics' in Weightman's 'Medical Practitioner's Legal Guide,' and the By-laws of the Royal College of Physicians, London.

fession are admitted should ever be used with the most scrupulous regard to fidelity and honour.

IV. A medical man should, whenever the case justifies it, encourage the patient with hopes of recovery; but on the other hand he must not fail, when occasion requires it, to warn the friends of the patient, or even the patient himself, of any real or imminent danger when it has actually arisen.

V. When a medical man has been called in accidentally to a patient who is under treatment, in the temporary absence of the usual medical man, he should restrict himself to prescribing the medicines necessary for the moment, and make no remark upon the treatment which has been adopted. He should not call a second time upon the patient, unless he be asked in consultation by the usual medical attendant.

VI. If a medical man be called to a patient who has hitherto been under the care of another practitioner, he should at once propose a consultation with the latter, even though he may have discontinued his visits. The treatment pursued by the first in attendance had better not be criticised, but if noticed it should be regarded with candour, and justified so far as honour and truth will permit.

VII. Consultations with physicians, or even other general practitioners, should be encouraged in difficult and protracted cases, as they give rise to confidence and an interchange of ideas to the advantage of the patient. Every respect should, however, be shown towards the medical man first called in, and too much

stress should not be laid upon the strict precedency of seniority of rank.

VIII. Medical men called in consultation should abstain, whilst in the presence of the patient and of his friends, from any expression which may prejudice the usual attendant. In private consultations between medical men only, any expression which may throw discredit upon either of the consultants is to be reprehended. The treatment agreed upon between the consultants should be applied by the usual medical man. To him belongs the applications of dressings, and the performance of any operation decided upon, unless he delegate this work to a surgeon or another medical man.

IX. If, as is very usual, the consultation be held in a room away from the patient, and after he or she has been examined, where more than one consultant has been retained, the junior should first give his opinion, and the senior afterwards, when the nature of the case is made out and the course to be followed has been decided on. The senior gives his opinion to the friends, and sketches the general outline of treatment, whilst distinctly referring them to the usual attendant for all matters of detail.

X. When two or more medical men are called in consultation they should confer together with the utmost forbearance, and no one should prescribe, or even suggest any opinion as to what ought to be done, before the method of treatment has been determined by the consultation of himself and his colleagues. If

any difference of opinion arise the greatest moderation and forbearance should be observed, and the fact of such difference should be communicated to the patients or his friends by the usual medical attendant, so as to cause as little distress as possible. It is well to settle such differences of opinion by arranging for a fresh consultation, to which another medical man, must be summoned, whose opinion should be held final, on the course of treatment to be adopted.

XI. Theoretical discussions at consultations should be avoided as much as possible; for they often become the occasion of much perplexity, and seldom lead to any sensible or practical result. A medical man is justified in refusing to meet another if it be notorious that the other persistently disregards the rules of professional etiquette.

XII. Medical men should be as punctual as the exigencies of their profession will permit, both in calling upon patients and at consultations. Visits to the sick, either singly or in consultation, ought not to be unnecessarily repeated, because when too frequent they tend to diminish medical authority, and become objectionable alike to the patient and his friends.

XIII. When one medical man officiates for another, who is sick or absent during any considerable period, he should receive a portion or the whole of the fees accruing during such intervals, according to previous arrangement; but if the attendance be of short duration, it were better to act gratuitously, and the utmost care should be taken to protect the interests of an absent brother practitioner.

XIV. It is customary for members of the profession, together with their wives and children, to be attended by other medical men, provided, of course, they reside within a reasonable distance. Clergymen, or rather the unbeneficed portion of the clergy, are sometimes visited in the same way; but, as a rule, these will make an effort to maintain their self-respect and independence by offering some remuneration for the services rendered.

XV. When a medical man is, by an untoward circumstance, called upon to attend a case of midwifery for another with whom he is not on intimate terms, it is usual for the fee to be divided between the stranger and the ordinary medical attendant. But the second medical practitioner should not accept a fee from the family, unless the full fee be paid to their own medical man.

XVI. Medical men should never talk of the diseases of their patients to a third person. Much mischief is often made thereby. And besides, the nature of the disease is the patient's own secret, and ought not to be divulged. So with regard to patients' confidences, medical men should never invite them, for communications so made are not privileged, and cannot be withheld if asked for in a court of law; yet should he by any chance become the repository of such a confidence, the knowledge must be kept inviolate and secret, unless the laws of his country require him to speak.

XVII. A medical man ought always in his conduct

to have regard to the general credit and well-being of the profession. He should do nothing that may tend to degrade or militate against the respectability of his noble calling, being careful to avoid any affectation of scepticism, even in a vein of humour, concerning the efficacy and utility of the healing art.

XVIII. Should a diversity of opinion or controversy arise as to the professional conduct of a brother-practitioner, the point in dispute ought to be referred to the arbitration of two other medical men, one of whom can be selected by the party complained of; and in the event of their differing, the decision to be referred to an umpire, previously named by the two arbitrators. The adjudication should not be made public, but submissively acquiesced in and accepted *con amore*.

XIX. Medical men, although, of course, free to adopt any theories in the practice of medicine they may see fit, yet should nevertheless abstain from assuming or accepting a special designation implying the adoption by them of particular modes of treatment, as this is directly opposed to those principles of the freedom and dignity of the profession which should govern the relations of its members to each other and to the public.

XX. Lastly, in all professional dealings with one another, medical men should bear in mind, and endeavour to act up to that best of maxims, which is indicated in the golden rule, 'Whatsoever ye would that men should do to you, do ye even so to them.'

APPENDIX N.

THE CHIEF STATUTES RELATING TO MEDICAL MEN.

Anatomy Acts, The Practice of, 2 & 3 Will. IV. c. 75 (1832), amended by 34 Vict. c. 16 (1871).

Apothecaries Act, 55 Geo. III. c. 194 (1815), amended by 37 & 38 Vict. c. 34 (1874).

Appointing Physicians and Surgeons Act, 3 Hy. VIII. c. 9 (1512), amended by 32 Hy. VIII. c. 4 (1541); 1 Mary, s. 2, c. 9 (1553); 15 Jac. I. (1618); 15 Car. II. (1664).

Arsenic, Sale of, 14 & 15 Vict. c. 13 (1851).

Births, Deaths, and Marriages, 6 & 7 Will. IV. c. 86 (1836); 37 & 38 Vict. c. 88 (1874).

Colonial Practitioners, 31 & 32 Vict. c. 29 (1868).

Contagious Diseases, 29 & 30 Vict. c. 35 (1866); 32 & 33 Vict. c. 96 (1869).

Dentists Act, The, 41 & 42 Vict. c. 33 (1878).

Dispensary Houses in Ireland, 42 & 43 Vict. c. 25 (1879).

Drunkards Act, The Habitual, 42 & 43 Vict. c. 19 (1879).

Factory Surgeons, 41 & 42 Vict. c. 16 (1878).

Food, Drugs, etc., Sale of, 38 & 39 Vict. c. 63 (1875), amended by 42 & 43 Vict. c. 30 (1879).

General Council, Act Incorporating, 25 & 26 Vict. c. 91 (1862).

Health Acts, The Public, 18 & 19 Vict. c. 116 (1855); 18 & 19 Vict. c. 121; 23 & 24 Vict. c. 77 (1860); 26 & 27 Vict. c. 117 (1863); 29 & 30 Vict. c. 41 (1866)—nearly all repealed by 38 & 39 Vict. c. 55 (1875), amended by 42 & 43 Vict c. 31 (1879). 29 & 30 Vict. c. 90 (1866), Parts I., II., III., repealed except as to the Metropolis, Scotland and Ireland by 38 & 39 Vict. c. 55 (1875). 31 & 32 Vict. c. 115 (1868),

repealed except as to the Metropolis by 38 & 39 Vict. c. 55. 35 & 36 Vict. c. 79 (1872), repealed except as to the Metropolis by 38 & 39 Vict. c. 55. 37 & 38 Vict. c. 89 (1874), repealed except as to the Metropolis by 38 & 39 Vict. c. 55. 41 & 42 Vict. c. 25 (1878).

Health (Public) in Ireland, 41 & 42 Vict. c. 52 (1878), amended by 42 & 43 Vict. c. 57 (1879).

Health (Public) in Scotland, 30 & 31 Vict. c. 101 (1867), amended by 38 & 39 Vict. c. 74 (1875); 38 & 39 Vict. c. 49; 42 & 43 Vict. c. 15 (1879).

Local Government Act, The, 34 & 35 Vict. c. 70 (1871).

Local Government Act (Ireland), 35 & 36 Vict. c. 69 (1872).

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