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THE

NEW MEDICAL ACT:

With Explanatory Notes

FOR THE

GUIDANCE OF THE MEDICAL PRACTITIONER
AND STUDENT.

BY

R. M. GLOVER, M.D., F.R.S.E.,

LICENTIATE OF THE ROYAL COLLEGE OF PHYSICIANS

AND

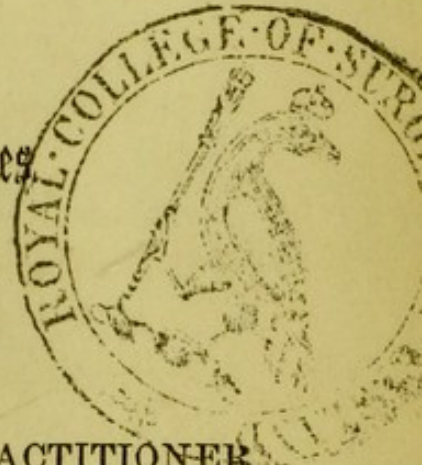
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OF LINCOLN'S-INN, BARRISTER-AT-LAW.

LONDON:

HENRY RENSHAW, 356, STRAND.

1858.



THE

NEW MEDICAL ACT:

Being an explanatory treatise

on the

PROVISIONS OF THE MEDICAL ACT, 1858,
AND THE

LONDON:

SAVILL AND EDWARDS, PRINTERS, CHANDOS STREET,
COVENT GARDEN.

TO
THOMAS WAKLEY, ESQ.
IN TESTIMONY OF HIS
UNTIRING EFFORTS IN THE CAUSE OF MEDICAL REFORM,
AND IN SUPPORTING THE DIGNITY
AND
ADVANCING THE INTERESTS OF THE MEDICAL PROFESSION,

The Work is Dedicated

BY
R. M. GLOVER, M.D., F.R.S.E.

INTRODUCTION

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There is a general feeling of uneasiness in the mind of the people of this country, and it is not without reason. The feeling is based upon the fact that the government is not doing its duty. It is not protecting the rights of the people, and it is not maintaining the peace and order of the country. The people are entitled to know the truth, and they are entitled to demand that the government should do its duty. The government is the servant of the people, and it should be held accountable for its actions. The people have the right to know what the government is doing, and they have the right to demand that the government should do its duty. The government is not doing its duty, and the people are entitled to demand that it should do so. The government is not protecting the rights of the people, and it is not maintaining the peace and order of the country. The people are entitled to know the truth, and they are entitled to demand that the government should do its duty. The government is the servant of the people, and it should be held accountable for its actions. The people have the right to know what the government is doing, and they have the right to demand that the government should do its duty. The government is not doing its duty, and the people are entitled to demand that it should do so.

INTRODUCTION.

BOTH the parties whose names are appended to this work had separately thought of publishing a copy of the New Medical Act, with notes, and had spoken to the publisher on the subject. But it occurred to him that it would be preferred by the professions of Law and Medicine to have a work before them embodying the views taken of the Act by members of both professions.

It is not requisite here to remind the reader of all the attempts at medical legislation which have been made in recent years. The failures which have taken place show the great difficulty which existed of combining the establishment of sound legislation with due attention to the preservation of existing rights, and at the same time account for some obscurity in certain clauses of the present bill, which we have endeavoured to clear up as much as possible ; but in all probability more than one judicial decision will be required before the due legal interpretation of some of the clauses can be determined.

The present Act bears some analogy to the Apothecaries' Act of 1815.

At that time numbers of persons were practising as apothecaries, and, in point of fact, virtually as physicians and surgeons, without legal qualification. The object of that Act was to secure at least a minimum qualification for such persons as might be required for the general service, so to speak, of the public ; and to avert opposition as much as possible, and to obtain the desired result in the readiest way, the Act was made non-retrospective, and the examinations were entrusted to the Apothecaries' Society. The first result there was, that, for the first time, there was created throughout the whole of England

and Wales a great party of practitioners really entitled legally to practise medicine without the sanction of the Colleges of Physicians and Surgeons. All attempts to limit the functions of Licentiates of the Apothecaries' Company, or those in practice before the 1st of August, 1815, have virtually failed, except in regard to hospital and dispensary appointments, and to some in the public service.

The present Medical Act resembles in so far its prototype, upon which it may be considered an advance and improvement, in that all the practitioners now practising by virtue of any qualification at present in any *mode* recognised, become at once legal practitioners, with one single exception, viz., that the holders of foreign diplomas must satisfy the Council that they have obtained their degrees after a suitable examination before being permitted to register. This gives the Council the power of declaring the position of several so-called "Doctors of Medicine" illegal. The force of this provision in Schedule A. will depend on the decision of the Council. But there is one obvious difficulty, viz., that the University profligate enough to trade in degrees, will not scruple to give a false certificate of proper examinations having been passed. The power of the Archbishop of Canterbury to grant degrees, in future, is suppressed. This was really a small grievance. The power was rarely exercised, and only on some remarkable occasions, as, for instance, in the case of the celebrated Dr. Willis, who attended George the Third in his attacks of insanity, and who seems to have had a natural genius for the branch of the profession which he followed, which rendered it allowable in his case to make exceptions from ordinary education and qualifications.

Now comes the important point of future qualification. The safeguard of the profession and the public here will be found in the power of the Council to require uniformity of qualification and proper examination; but we are convinced that, independently of strictly-professional qualifications, there will be required a preliminary educational test similar to the French degree of *Bachelier es Lettres et es Sciences*, or the Little-go of the English

Universities, or the matriculation examination of the University of London, which will at least serve to prove that the person examined has received a competent general, and classical, and mathematical examination.

The power of the Privy Council under the Act to suspend any licensing body which does not comply with the regulations of the Privy Council, and carry its qualifications and examinations up to a certain standard, is the means provided for enforcing a suitable uniformity of education.

Actually, then, the working of this measure will lead to the establishment of a uniform standard of education by which all must enter the profession, though one man may register as an apothecary, another as surgeon, another as physician, according to his chosen branch of the profession and his qualification.

The Act leaves an important point rather obscure in Clause XXXVI. At present, the regulations of the various Hospitals and Dispensaries throughout the kingdom, are exceedingly different with regard to the qualifications which they require in their officers. The Act states that no one is to hold any appointment there specified, unless registered under the Act, except in cases of institutions supported by "voluntary contributions." Is then, as must be meant, we presume, every institution wholly supported by voluntary contributions, as is the case with almost every Hospital and Dispensary in the kingdom, to frame still its own regulations? At present the London Hospitals require their physicians, in almost every instance, to be Fellows or Licentiates of the Royal College of Physicians, and their surgeons to be Fellows or Members of the Royal College of Surgeons. This may be called a sort of bye-law, nor does the Act regulate this matter. It must be left to the decision of the governing bodies of the institutions. Throughout the country every Hospital or Dispensary does as it likes. Sometimes the house surgeon of an Hospital must be a surgeon and an apothecary, sometimes an apothecary or surgeon, as the case may be, alone. Sometimes he must be a member of the College of Surgeons of London, sometimes the particular College of Surgeons is not specified. Under the

Poor Law Act the case is different, and generally, as regards any public appointment under the control of Government: there, any qualification under the Act procuring license to practise, will clearly be sufficient. The same applies to giving medical evidence in Coroner's Courts of justice, &c.

We believe that Clause XXIII., empowering, or rather enjoining licensing bodies not to reject persons professing purely, particular medical doctrines, will be inoperative in practice. Any examining body would reject a notorious heretic without giving a reason. The clause was intended to afford a loophole for homœopathists and other quacks; nor can such persons, if not licensed, act as medical officers to any institution supported by voluntary contributions, which may employ them if unlicensed, under the style and title of a qualified man, without rendering themselves liable to the penalties imposed by the Act.

The clause empowering the Council to issue a British Pharmacopœia, confers a privilege on the profession, but is no safeguard to the public. Duly qualified practitioners will regulate their practice by the new British Pharmacopœia; but under Clause LV., chemists and druggists will deal in quack medicines as at present, with impunity, especially as any person may style himself a chemist and druggist.

This fact with regard to chemists and druggists will serve to show still more clearly the scope and force of the Act. At present a great deal of the practice of medicine among the poor is carried on by chemists and druggists over the counter, by them and even their apprentices. A man enters a shop, and says, "I ail so and so, can you give me something to do me good?" The ready answer is, "Here is this bottle," or "this box of pills." Such practice cannot be abolished by this Bill. The chemist and druggist may even attend patients at their own homes, but he cannot pretend to assume the style and title of a qualified man, or to act as such to any Friendly Society, grant certificates of death, and so forth, without coming under the operation of the Act. This will materially

check illegal practice. Suppose a case of death, for instance, brought before the coroner, in which an illegal practitioner is concerned, numbers would be at once informed of the want of qualification of the party. The host of quacks who advertise their nostrums as "doctors" and surgeons will be stopped in their career. Had to this a prohibition to the sale of other medicines except those in the British Pharmacopœia without the authority of a registered person been added, a serious blow would have been struck at quackery. But when we find Government continuing to give its sanction to the sale of quack medicines for the sake of the pitiful duty derived thence, this could hardly be expected. In this respect there is a general resemblance to our system of legislation in other matters—the public are not precluded from employing quacks, but they must do so at their own risk and peril. They are put at least on their guard. They may also continue at their will to purchase quack medicines, and be cheated out of their health and money.

The absence of such a clause as would stop the sale of quack medicines, we regard as the greatest drawback in the Act. In foreign countries, as in France, there are most stringent laws against the sale of quack medicines, yet these are often evaded; but so are the laws in other matters, and this has been pleaded as a bar to legislation, namely, that it would be useless. As well repeal the laws punishing theft on the ground that they are often inadequate for their purpose.

It will be seen by the clauses as interpreted by us that their full force will hardly be known until the rules for admission into the public service and into hospitals and dispensaries are altered, as they must henceforth be, in accordance with the Act. Half the physicians in the country had no legal right to practise formerly. Some of the largest Hospitals in the country never recognised any legal rights in the Licentiates or Fellows of the London College of Physicians. In the North of England almost all the leading practitioners were graduates of the University of Edinburgh. It seems a strange provision that this time-honoured University should have less share

in the representation in the Council than the modern institution of Durham ; but this is meant, we presume, to keep up the old somewhat ecclesiastical supremacy.

The new Charters to be granted to the College will also serve as comments on the Bill. The proposed by-law of the London College of Physicians, by which its Fellows and Licentiates are to be prohibited from recovering fees in courts of law, will doubtless preclude those who hold other qualifications, and wish to possess the legal right to recover, from registering any qualification from the College, not, it is to be presumed, leading, however, to the absolute forfeiture of their diplomas. This College has of late years shown no wish to protect its members in the exercise of any remaining privilege. The want of power on the part of physicians to recover in courts of law has long been felt as a great grievance on the part of numbers of those not in the very highest practice.

After these preliminary remarks by way of introduction, we proceed to the analysis and interpretation of this important Act, clause by clause. Whatever be the shortcomings and obscurities of this piece of legislation, it must still be looked upon as the Charter of the medical profession, and for all time will be regarded as its Magna Charta.

ANALYSIS OF THE ACT.

I.

Preliminary.

1. Short Title.
2. Commencement of Act.

II.

Constitution of General Council of Medical Education and Registration.

3. General Council of Medical Education and Registration.
4. Members of General Council.
5. Provision for representation, in case the Universities of Edinburgh and Aberdeen, and of Glasgow and St. Andrew's respectively, shall not be able to agree.
6. Branch Councils for England, Scotland, and Ireland.
7. Members of General Council must be qualified.
8. Duration of Membership, re-appointment of Members, and provision in case of the resignation or death of any of the Members.

III.

Internal Regulation and Management of General and Branch Councils.

9. Time and place of meeting of the General Council : internal rules and regulations ; Meetings ; Executive Committee.
10. Appointment of Secretary and Treasurer of the General Council ; of Registrar and Treasurer of the Branch Council for England ; and of Clerks and Servants.
11. Appointment of Registrar, Secretary, and Treasurer of the Branch Councils for Scotland and Ireland.
12. Fees for attendance at Councils and Travelling Expenses.
13. Expenses of the Councils.

IV.

Registration.

14. Duty of Registrar to keep the Register correct ;
Penalty for not replying to Registrar's letter.
15. Right to be registered, depending upon—
 1. Possession of Qualification.
 2. Payment of a fee.
 3. Production or transmission of evidence of qualification to the Registrar.

Proviso that colleges, &c. may transmit lists of registered persons to the Registrar ; who upon payment of fee may enter the names in the register.
16. Council to make orders for regulating the Registers.
17. Persons practising Medicine in England before the 1st of August, 1815, entitled to be registered.

V.

Superintendence of Medical Education.

18. General Council may require information as to the courses of study and examinations to be gone through in order to obtain qualifications.
19. Colleges may unite in conducting examinations.
20. Defects in the courses of study and examinations may be represented by the General Council to the Privy Council.
21. Privy Council may suspend the right of registration in respect of qualifications granted by the College.
22. After such suspension no person to be entitled to be registered in respect of such qualification.
23. Privy Council may prohibit attempts to impose upon candidates obligations to adopt or refrain from any particular theory of Medicine or Surgery, by bodies entitled to grant qualifications.
24. Making and authentication of orders of Privy Council.

IV.

Registration (continued).

25. Registration by Branch Registrars.
26. Registrar to be satisfied by proper evidence ; appeal from Registrar to General Council ; erasure of fraudulent entry.

27. Register to be published yearly ; copy of the Register to be evidence ; absence of name from copy of the Register to be evidence until the contrary is made to appear.
28. Names of members struck off from lists of the Colleges to be signified to General Council, and such names may be erased from Register.
29. Medical Practitioners convicted of felony may be struck off the Register.
30. Registered persons may have subsequent qualifications registered.

VI.

Privileges of Registered, and Disabilities of Unregistered Persons.

31. Privileges of Registered Persons ; right to practise ; right to recover.
32. None but Registered persons may recover.
33. Poor Law Medical Officers not to be disqualified if Registered within six months after the passing of the Act.
34. Legal meaning of term "legally," or "duly qualified Medical Practitioner."
35. Registered persons exempt from serving on juries, &c.
36. Unregistered persons not to hold certain appointments.
37. No certificate to be valid unless signed by a Registered person.

VII.

Penalties.

38. Penalty on wilful falsification of the Register by the Registrar.
39. Penalty for obtaining registration by false representations.
40. Penalty for falsely pretending to be a Physician, Surgeon, &c. ; or to be a registered person ; or to be recognised by law as a Physician, Surgeon, &c.
41. Recovery of penalties.

VIII.

Application of monies.

42. Application of monies received for penalties.

- 43. Application of monies to be received by treasurers.
- 44. Accounts to be published.

IV.

Registration (continued).

- 45. Notice of death of Medical Practitioner to be transmitted by Registrar of Deaths to Registrars of General and Branch Councils.

IX.

Dispensing Power of General Council.

- 46. Power to General Council of dispensing with provisions of the Act in favour of persons practising in the Colonies, or practising by virtue of foreign diplomas or degrees, of Army and Navy Surgeons, and Medical Students.

X.

New Charters.

- 47. New Charter may be granted to the College of Physicians of London.
- 48. Charter may be granted to the College of Surgeons to institute examinations and grant certificates, &c. to dentists.
- 49. New Charter may be granted to the College of Physicians of Edinburgh.
- 50. The faculty of Glasgow may be amalgamated with the Edinburgh College of Surgeons.
- 51. New Charter may be granted to the King and Queen's College of Physicians, Ireland.
- 52. Charters not to contain new restrictions in the practice of Medicine and Surgery.
- 53. Provisions of the 17 & 18 Vict. c. 114, as to University of London, to remain in force.

XI.

Pharmacopœia.

- 54. British Pharmacopœia to be published.

XII.

Saving of Rights.

- 55. Rights of Chemists and Druggists, Dentists, and Licensed Apothecaries in Ireland not to be affected.

ANNO VICESIMO PRIMO & VICESIMO SECUNDO

VICTORIÆ REGINÆ.

C A P. XC.

An Act to regulate the Qualifications of Practitioners in Medicine and Surgery.

[2nd August, 1858.]

WHEREAS it is expedient that Persons requiring Medical Aid should be enabled to distinguish qualified from unqualified Practitioners: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. This Act may for all Purposes be cited as "The Medical Act." Short Title.

II. This Act shall commence and take effect from the First Day of *October*, One thousand eight hundred and fifty-eight. Commencement of Act.

III. A Council, which shall be styled "The General Council of Medical Education and Registration of the United Kingdom," hereinafter referred to as the General Council, shall be established, and Branch Councils for *England*, *Scotland*, and *Ireland* respectively formed thereout as herein-after mentioned. Medical Council.

IV. The General Council shall consist of One Person chosen from Time to Time by each of the following Bodies; (that is to say,) Members of Council.

The Royal College of Physicians:

The Royal College of Surgeons of *England*:

The Apothecaries Society of *London*:

The University of *Oxford*:

The University of *Cambridge* :

The University of *Durham* :

The University of *London* :

The College of Physicians of *Edinburgh* :

The College of Surgeons of *Edinburgh* :

The Faculty of Physicians and Surgeons of *Glasgow* :

One Person chosen from Time to Time by the University of *Edinburgh* and the Two Universities of *Aberdeen* collectively :

One Person chosen from Time to Time by the University of *Glasgow* and the University of *Saint Andrew's* collectively :

One Person chosen from Time to Time by each of the following Bodies :

The King and Queen's College of Physicians in *Ireland* :

The Royal College of Surgeons in *Ireland* :

The Apothecaries Hall of *Ireland* :

The University of *Dublin* :

The Queen's University in *Ireland* :

And Six Persons to be nominated by Her Majesty with the Advice of Her Privy Council, Four of whom shall be appointed for *England*, One for *Scotland*, and One for *Ireland*; and of a President, to be Elected by the General Council.

Provision in case the Universities of *Glasgow*, *Aberdeen*, and *Saint Andrew's* fail to appoint a Person to represent them.

V. If the said Universities of *Edinburgh* and *Aberdeen*, of *Glasgow* and *Saint Andrew's* respectively, shall not be able to agree upon some One Person to represent them in the Council, it shall be lawful for each One of the said Universities to select One Person; and thereupon it shall be lawful for Her Majesty, with the Advice of Her Privy Council, to appoint One of the Persons so selected to be a Member of the said Council for the said Universities.

Branches of the Council for *England*, *Scotland*, and *Ireland*.

VI. The Members chosen by the Medical Corporations and Universities of *England*, *Scotland*, and *Ireland* respectively, and the Members nominated by Her Majesty, with the Advice of Her Privy Council, for such Parts respectively of the United Kingdom, shall be the Branch

Councils for such Parts respectively of the United Kingdom, to which Branch Councils shall be delegated such of the Powers and Duties vested in the Council as the Council may see fit other than the Power to make Representations to Her Majesty in Council as herein-after mentioned : The President shall be a Member of all the Branch Councils.

VII. Members of the General Council representing the Medical Corporations must be qualified to be registered under this Act.

Qualification.

VIII. The Members of the General Council shall be chosen and nominated for a Term not exceeding Five Years, and shall be capable of Re-appointment, and any Member may at any Time resign his Appointment by Letter addressed to the President of the said Council, and upon the Death or Resignation of any Member of the said Council, some other Person shall be constituted a Member of the said Council in his Place in manner herein-before provided ; but it shall be lawful for the Council during such Vacancy to exercise the Powers herein-after mentioned.

Resignation
or Death of
Member of
General Council.

IX. The General Council shall hold their First Meeting within Three Months from the Commencement of this Act, in such Place and at such Time as One of Her Majesty's Principal Secretaries of State shall appoint, and shall make such Rules and Regulations as to the Times and Places of the Meetings of the General Council, and the Mode of summoning the same, as to them shall seem expedient, which Rules and Regulations shall remain in force until altered at any subsequent Meeting ; and in the Absence of any Rule or Regulation as to the summoning a Meeting of the General Council, it shall be lawful for the President to summon a Meeting at such Time and Place as to him shall seem expedient by Letter addressed to each Member ; and at every Meeting, in the Absence of the President, some other Member to be chosen from the Members present shall act as President ; and all Acts of the General Council shall be decided by the Votes of the Majority of the Members present at any Meeting, the whole Number present not being less than

Time and Place
of Meeting of
the General
Council.

Eight, and at all such Meetings the President for the Time being shall, in addition to his Vote as a Member of the Council, have a Casting Vote, in case of an Equality of Votes; and the General Council shall have Power to appoint an Executive Committee out of their own Body, of which the Quorum shall not be less than Three, and to delegate to such Committee such of the Powers and Duties vested in the Council as the Council may see fit, other than the Power of making Representations to Her Majesty in Council as herein-after mentioned.

Appointment
of Registrars
and other
Officers.

X. The General Council shall appoint a Registrar, who shall act as Secretary of the General Council, and who may also act as Treasurer, unless the Council shall appoint another Person or other Persons as Treasurer or Treasurers; and the Person or Persons so appointed shall likewise act as Registrar for *England*, and as Secretary and Treasurer or Treasurers, as the Case may be, for the Branch Council for *England*; the General Council and Branch Council for *England* shall also appoint so many Clerks and Servants as shall be necessary for the Purposes of this Act; and every Person so appointed by any Council shall be removable at the Pleasure of that Council, and shall be paid such Salary as the Council by which he was appointed shall think fit.

Appointment of
Registrars and
other Officers
by Branch
Councils.

XI. The Branch Councils for *Scotland* and *Ireland* shall each respectively in like Manner appoint a Registrar and other Officers and Clerks, who shall be paid such Salaries as such Branch Councils respectively shall think fit, and be removable at the Pleasure of the Council by which they were appointed; and the Person appointed Registrar shall also act as Secretary to the Branch Council, and may also act as Treasurer, unless the Council shall appoint some other Person or Persons as Treasurer or Treasurers.

Fees for attend-
ance at councils.

XII. There shall be paid to the Members of the Councils such Fees for Attendance and such reasonable Travelling Expenses as shall from Time to Time be allowed by the General

Council and approved by the Commissioners of Her Majesty's Treasury.

XIII. All Monies payable to the respective Councils shall be paid to the Treasurers of such Councils respectively, and shall be applied to defray the Expenses of carrying this Act into execution in manner following; that is to say, separate Accounts shall be kept of the Expenses of the General Council, and of those of the Branch Councils; and the Expenses of the General Council, including those of keeping, printing, and publishing the Register for the United Kingdom, shall be defrayed, under the direction of the General Council, by means of an equal Per-centage Rate upon all Monies received by the several Branch Councils; Returns shall be made by the Treasurers of the respective Branch Councils, at such Times as the General Council shall direct, of all Monies received by them; and the necessary Per-centage having been computed by the General Council, the respective Contributions shall be paid by the Treasurers of such Branch Councils to the Treasurer or Treasurers of the General Council; and the Expenses of the Branch Councils shall be defrayed, under the Direction of those Councils respectively, out of the Residue of the Monies so received as aforesaid.

XIV. It shall be the Duty of the Registrars to keep their respective Registers correct in accordance with the Provisions of this Act, and the Orders and Regulations of the General Council, and to erase the Names of all registered Persons who shall have died, and shall from Time to Time make the necessary Alterations in the Addresses or Qualifications of the Persons registered under this Act; and to enable the respective Registrars duly to fulfil the Duties imposed upon them it shall be lawful for the Registrar to write a Letter to any registered Person, addressed to him according to his Address on the Register, to inquire whether he has ceased to practise, or has changed his Residence, and if no Answer shall be returned to such Letter within the Period of Six Months from the sending of the Letter it shall be lawful to erase the Name of such Person from the Register; provided

Expenses of
the Councils.

Duty of Registrar to keep
the Register
correct.

always, that the same may be restored by Direction of the General Council should they think fit to make an Order to that Effect.

Registration of
Persons now
qualified, and
of persons here-
after becoming
qualified.

XV. Every Person now possessed, and (subject to the Provisions herein-after contained) every Person hereafter becoming possessed, of any One or more of the Qualifications described in the Schedule (A.) to this Act, shall, on Payment of a Fee, not exceeding Two Pounds, in respect of Qualifications obtained before the First Day of *January* One thousand eight hundred and fifty-nine, and not exceeding Five Pounds in respect of Qualifications obtained on or after that Day, be entitled to be registered on producing to the Registrar of the Branch Council for *England, Scotland, or Ireland* the Document conferring or evidencing the Qualification or each of the Qualifications in respect whereof he seeks to be so registered, or upon transmitting by Post to such Registrar Information of his Name and Address, and Evidence of the Qualification or Qualifications in respect whereof he seeks to be registered, and of the Time or Times at which the same was or were respectively obtained: Provided always, that it shall be lawful for the several Colleges and other Bodies mentioned in the said Schedule (A.) to transmit from Time to Time to the said Registrar Lists certified under their respective Seals of the several Persons who, in respect of Qualifications granted by such Colleges and Bodies respectively, are for the Time being entitled to be registered under this Act, stating the respective Qualifications and Places of Residence of such Persons; and it shall be lawful for the Registrar thereupon, and upon Payment of such Fee as aforesaid in respect of each Person to be registered, to enter in the Register the Persons mentioned in such Lists, with their Qualifications and Places of Residence as therein dated, without other Application in relation thereto.

Council to make
orders for regu-
lating registers
to be kept.

XVI. The General Council shall, with all convenient Speed after the passing of this Act, and from Time to Time as Occasion may require, make Orders for regulating the

Registers to be kept under this Act as nearly as conveniently may be in accordance with the Form set forth in Schedule (D.) to this Act, or to the like Effect.

XVII. Any Person who was actually practising Medicine in *England* before the First Day of *August* One thousand eight hundred and fifteen shall, on Payment of a Fee to be fixed by the General Council, be entitled to be registered on producing to the Registrar of the Branch Council for *England, Scotland, or Ireland* a Declaration according to the Form in the Schedule (B.) to this Act signed by him, or upon transmitting to such Registrar Information of his Name and Address, and enclosing such Declaration as aforesaid.

Persons practising in England before 1st August, 1815, entitled to be registered.

XVIII. The several Colleges and Bodies in the United Kingdom mentioned in Schedule (A.) to this Act shall from Time to Time, when required by the General Council, furnish such Council with such Information as they may require as to the Courses of Study and Examinations to be gone through in order to obtain the respective Qualifications mentioned in Schedule (A.) to this Act, 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; and any Member or Members of the General Council, or any Person or Persons deputed for this Purpose by such Council, or by any Branch Council, may attend and be present at any such Examinations.

Council may require Information as to Course of Study, &c., required for obtaining Qualifications.

XIX. Any Two or more of the Colleges and Bodies in the United Kingdom mentioned in Schedule (A.) to this Act may, with the Sanction and under the Directions of the General Council, unite or co-operate in conducting the Examinations required for Qualifications to be registered under this Act.

Colleges may unite in conducting Examinations.

XX. In case it appear to the General Council that the Course of Study and Examinations to be gone through in order to obtain any such Qualification from any such

Defects in the Course of Study or Examinations may be

represented by
general council
to privy council.

College or Body are not such as to secure the Possession by Persons obtaining such Qualification of the requisite Knowledge and Skill for the efficient Practice of their Profession, it shall be lawful for such General Council to represent the same to Her Majesty's most Honourable Privy Council.

Privy Council
may suspend
the Right of
Registration
in respect of Qua-
lifications
granted by
College, &c., in
default, but may
be revoked.

XXI. It shall be lawful for the Privy Council, upon any such Representation as aforesaid, if it see fit, to order that any Qualification granted by such College or Body, after such Time as may be mentioned in the Order, shall not confer any Right to be registered under this Act: Provided always, that it shall be lawful for Her Majesty, with the Advice of Her Privy Council, when it is made to appear to Her, upon further Representation from the General Council or otherwise, that such College or Body has made effectual Provision, to the Satisfaction of such General Council, for the Improvement of such Course of Study or Examinations, or the Mode of conducting such Examinations, to revoke any such Order.

Persons not to
be registered
in respect of
Qualifications
granted by the
College Body
before Revoca-
tion.

XXII. After the Time mentioned in this Behalf in any such Order in Council no Person shall be entitled to be registered under this Act in respect of any such Qualification as in such Order mentioned, granted by the College or Body to which such Order relates, after the Time therein mentioned, and the Revocation of any such Order shall not entitle any Person to be registered in respect of any Qualification granted before such Revocation.

Privy Council
may prohibit
Attempts to
impose Restric-
tions as to any
Theory of Medi-
cine or Surgery
by Bodies en-
titled to grant
Certificates.

XXIII. In case it shall appear to the General Council that an Attempt has been made by any Body, entitled under this Act to grant Qualifications, to impose upon any Candidate offering himself for Examination an Obligation to adopt or refrain from adopting the Practice of any particular Theory of Medicine or Surgery, as a Test or Condition of admitting him to Examination or of granting a Certificate, it shall be lawful for the said

Council to represent the same to Her Majesty's most Honourable Privy Council, and the said Privy Council may thereupon issue an Injunction to such Body so acting, directing them to desist from such Practice; and in the event of their not complying therewith, then to order that such Body shall cease to have the Power of conferring any Right to be registered under this Act so long as they shall continue such Practice.

XXIV. All Powers vested in the Privy Council by this Act may be exercised by any Three or more of the Lords and others of the Privy Council, the Vice-President of the Committee of the said Privy Council on Education being One of them; and all Orders and Acts of the Privy Council under this Act shall be sufficiently made and signified by a written or printed Document, signed by One of the Clerks of the Privy Council, or such Officer as may be appointed by the Privy Council in this Behalf; and all Orders and Acts made or signified by any written or printed Document purporting to be so signed shall be deemed to have been duly made, issued, and done by the Privy Council; and every such Document shall be received in Evidence in all Courts, and before all Justices and others, without Proof of the Authority or Signature of such Clerk or other Officer or other Proof whatsoever, until it be shown that such Document was not duly signed by the Authority of the Privy Council.

As to the making and authentication of Orders, &c.

XXV. Where any Person entitled to be registered under this Act applies to the Registrar of any of the said Branch Councils for that Purpose, such Registrar shall forthwith enter in a Local Register in the Form set forth in Schedule (D.) to this Act, or to the like Effect, to be kept by him for that Purpose, the Name and Place of Residence, and the Qualification or several Qualifications in respect of which the Person is so entitled, and the Date of the Registration, and shall, in the Case of the Registrar of the Branch Council for *Scotland* or *Ireland*, with all convenient Speed send to the Registrar of the General Council a Copy, certified under the Hand of the Registrar, of the Entry so made, and the Registrar of the General Council shall

As to Registration by Branch Registrars.

forthwith cause the same to be entered in the General Register ; and such Registrar shall also forthwith cause all Entries made in the Local Register for *England* to be entered in the General Register ; and the Entry on the General Register shall bear Date from the Local Register.

XXVI. No Qualification shall be entered on the Register, either on the First Registration or by way of Addition to a registered Name, unless the Registrar be satisfied by the proper Evidence that the Person claiming is entitled to it ; and any Appeal from the Decision of the Registrar 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 shall be proved to the Satisfaction of such General Council or Branch Council to have been fraudulently or incorrectly made may be erased from the Register by Order in Writing of such General Council or Branch Council.

XXVII. The Registrar of the General Council shall in every Year cause to be printed, published, and sold, under the Direction of such Council, a correct Register of the Names in alphabetical Order according to the Surnames, with the respective Residences, in the Form set forth in Schedule (D.) to this Act, or to the like Effect, and Medical Titles, Diplomas, and Qualifications conferred by any Corporation or University, or by Doctorate of the Archbishop of *Canterbury*, with the Dates thereof, of all Persons appearing on the General Register as existing on the First Day of *January* in every Year ; and such Register shall be called "The Medical Register ;" and a Copy of the Medical Register for the Time being, purporting to be so printed and published as aforesaid, shall be Evidence in all Courts and before all Justices of the Peace and others that the Persons therein specified are registered according to the Provisions of this Act ; and the Absence of the Name of any Person from such Copy shall be Evidence, until the contrary be made to appear, that such Person is not registered according to the Provisions of this Act : Provided always, that in the Case of any Person whose Name does not appear in such Copy, a certified Copy, under the

Evidence of
Qualification to
be given before
Registration.

Register to be
published.

Hand of the Registrar of the General Council or of any Branch Council, of the Entry of the Name of such Person on the General or Local Register shall be Evidence that such Person is registered under the Provisions of this Act.

XXVIII. If any of the said Colleges or the said 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 Council the Name of the Member so struck off; and the General Council may, if they see fit, direct the Registrar to erase forthwith from the Register the Qualification derived from such College or Body in respect of which such Member was registered, and the Registrar shall note the same therein: Provided always, that the Name of no Person shall be erased from the Register on the Ground of his having adopted any Theory of Medicine or Surgery.

Names of members struck off from List of College, &c., to be signified to General Council.

XXIX. If any registered Medical Practitioner shall be convicted in *England* or *Ireland* of any Felony or Misdemeanor, or in *Scotland* of any Crime or Offence, or shall after due Inquiry be judged by the General 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 Register.

Medical Practitioners convicted of Felony may be struck off the Register.

XXX. Every Person registered under this Act who may have obtained any higher Degree or any Qualification other than the Qualification in respect of which he may have been registered, shall be entitled to have such higher Degree or additional Qualification inserted in the Register in substitution for or in addition to the Qualification previously registered, on Payment of such Fee as the Council may appoint.

Registered persons may have subsequent Qualifications inserted in the Register.

XXXI. 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,

Privileges of registered Persons.

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: Provided always, that it shall be lawful for any College of Physicians to pass a Byelaw to the effect that no one of their Fellows or Members shall be entitled to sue in manner aforesaid in any Court of Law, and thereupon such Byelaw may be pleaded in bar to any Action for the Purposes aforesaid commenced by any Fellow or Member of such College.

None but registered persons to recover charges.

XXXII. After the First Day of *January* One thousand eight hundred and fifty-nine, no Person shall be entitled to recover any Charge in any Court of Law for any Medical or Surgical Advice, Attendance, or for the Performance of any Operation, or for any Medicine which he shall have both prescribed and supplied, unless he shall prove upon the Trial that he is registered under this Act.

Poor Law Medical Officers not disqualified if registered within Six Months of passing of Act.

XXXIII. Provided also, That no Person who on the First of *October* One thousand eight hundred and fifty-eight shall be acting as Medical Officer under an Order of the Poor Law Commissioners or Poor Law Board shall be disqualified to hold such Office by reason of his not being registered as herein required, unless he shall have failed to be registered within Six Months from the passing of this Act.

Meaning of Terms "legally qualified Medical Practitioner," &c.

XXXIV. After the First Day of *January* One thousand eight hundred and fifty-nine, the Word "legally qualified Medical Practitioner" or "duly qualified Medical Practitioner," or any Words importing a Person recognized by Law as a Medical Practitioner or Member of the Medical Profession, when used in any Act of Parliament, shall be construed to mean a Person registered under this Act.

Registered persons exempted from serving on Juries, &c.

XXXV. Every Person who shall be registered under the Provisions of this Act shall be exempt, if he shall so desire, from serving on all Juries and Inquests whatsoever,

and from serving all corporate, parochial, Ward, Hundred, and Township Offices, and from serving in the Militia, and the Name of such Person shall not be returned in any List of Persons liable to serve in the Militia, or in any such Office as aforesaid.

XXXVI. After the First Day of *January* One thousand eight hundred and fifty-nine, no Person shall hold any Appointment as a Physician, Surgeon, or other Medical Officer either in the Military or Naval Service, or in Emigrant or other Vessels, or in any Hospital, Infirmary, Dispensary, or Lying-in Hospital, not supported wholly by voluntary Contributions, or in any Lunatic Asylum, Gaol, Penitentiary, House of Correction, House of Industry, Parochial or Union Workhouse or Poorhouse, Parish Union, or other public Establishment, Body, or Institution, or to any Friendly or other Society for affording mutual Relief in Sickness, Infirmary, or old Age, or as a Medical Officer of Health, unless he be registered under this Act: Provided always, that nothing in this Act contained shall extend to repeal or alter any of the Provisions of the Passengers Act, 1855.

Unregistered
Persons not to
hold certain
Appointments.

XXXVII. After the First Day of *January* One thousand eight hundred and fifty-nine, no Certificate required by any Act now in force, or that may hereafter be passed, from any Physician, Surgeon, Licentiate in Medicine and Surgery, or other Medical Practitioner, shall be valid unless the Person signing the same be registered under this Act.

No Certificate to
be valid unless
Person signing
be registered.

XXXVIII. Any Registrar who shall wilfully make or cause to be made any Falsification in any Matters relating to the Register shall be deemed guilty of a Misdemeanour in *England* or *Ireland*, and in *Scotland* of a Crime or Offence punishable by Fine or Imprisonment, and shall, on Conviction thereof, be imprisoned for any Term not exceeding Twelve Months.

Penalty on wil-
ful Falsification
of Register.

XXXIX. If any Person shall wilfully procure or attempt to procure himself to be registered under this Act, by making or producing or causing to be made or produced

Penalty for ob-
taining Regis-
tration by false
representa-
tions.

any false or fraudulent Representation or Declaration, either verbally or in Writing, every such Person so offending, and every Person aiding and assisting him therein, shall be deemed guilty of a Misdemeanour in *England* and *Ireland*, and in *Scotland* of a Crime or Offence punishable by Fine or Imprisonment, and shall, on Conviction thereof, be sentenced to be imprisoned for any Term not exceeding Twelve Months.

Penalty for
falsely pretend-
ing to be a re-
gistered person.

XL. Any Person who shall wilfully and falsely pretend to be or take or use the Name or Title of a Physician, Doctor of Medicine, Licentiate in Medicine and Surgery, Bachelor of Medicine, Surgeon, General Practitioner or Apothecary, or any Name, Title, Addition, or Description implying that he is registered under this Act, or that he is recognized by Law as a Physician, or Surgeon, or Licentiate in Medicine and Surgery, or a Practitioner in Medicine, or an Apothecary, shall, upon a summary Conviction for any such Offence, pay a Sum not exceeding Twenty Pounds.

Recovery of
Penalties.

XLI. Any Penalty to which under this Act any Person is liable on summary Conviction of any Offence may be recovered as follows: (that is to say,) in *England*, in manner directed by the Act of the Session holden in the Eleventh and Twelfth Years of Her Majesty, Chapter Forty-three, and in *Ireland* in manner directed by "The Petty Sessions (*Ireland*) Act, 1851," or any other Act for the Time being in force in *England* and *Ireland* respectively for the like Purposes; and any such Penalty may in *Scotland* be recovered by the Procurator Fiscal of the County, or by any other Person before the Sheriff or Two Justices, who may proceed in a summary Way and grant Warrant for bringing the Party complained against before him or them, or issue an Order requiring such Party to appear on a day and at a Time and Place to be named in such Order, and every such Order shall be served on the Party by delivering to him in Person or by leaving at his usual Place of Abode a Copy of such Order and of the Complaint whereupon the same has proceeded, and upon the Appearance or Default to appear of the Party, it shall be lawful for the

Sheriff or Justices to proceed to the hearing of the Complaint, and upon Proof on Oath or Confession of the Offence, the Sheriff or Justices shall without any written Pleadings or Record of Evidence commit the Offender and decern him to pay the Penalty named as well as such Expenses as the Sheriff or Justices shall think fit, and failing Payment shall grant Warrant for Recovery thereof by Pounding and Imprisonment, such imprisonment to be for such Period as the Discretion of the Sheriff or Justices may direct, not exceeding Three Calendar Months, and to cease on Payment of the Penalty and Expenses.

XLII. Any Sum or Sums of Money arising from Conviction and Recovery of Penalties as aforesaid shall be paid to the Treasurer of the General Council.

Application of Penalties.

XLIII. All Monies received by any Treasurer arising from Fees to be paid on Registration, from the Sale of Registers, from Penalties, or otherwise, shall be applied for Expenses of Registration and of the Execution of this Act.

Application of Monies received by Treasurer.

XLIV. The Treasurers of the General and Branch Councils shall enter in Books to be kept for that Purpose a true Account of all Sums of Money by them received and paid, and such Accounts shall be submitted by them to the respective General Council and Branch Councils at such Times as the Councils shall require; and the said Accounts shall be published annually, and such Accounts shall be laid before both Houses in the month of *March* in every Year, if Parliament be sitting, or, if Parliament be not sitting, then within One Month after the next Meeting of Parliament.

XLV. Every Registrar of Deaths in the United Kingdom on receiving Notice of the Death of any Medical Practitioner shall forthwith transmit by Post to the Registrar of the General Council and to the Registrar of the Branch Council a Certificate under his own Hand of such Death, with the Particulars of Time and Place of Death, and may charge the Cost of such Certificate and

Notice of Death of Medical Practitioners to be given by Registrars.

Transmission as an Expense of his Office, and on the Receipt of such Certificate the Medical Registrar shall erase the Name of such deceased Medical Practitioner from the Register.

XLVI. It shall be lawful for the General Council by Special Orders to dispense with such Provisions of this Act or with such Part of any Regulations made by its Authority as to them shall seem fit, in favour of Persons now practising Medicine or Surgery in any Part of Her Majesty's Dominions other than *Great Britain* and *Ireland* by virtue of any of the Qualifications described in Schedule (A.); and also in favour of Persons practising Medicine or Surgery within the United Kingdom on foreign or colonial Diplomas or Degrees before the passing of this Act; and also in favour of any Persons who have held Appointments as Surgeons or Assistant Surgeons in the Army, Navy, or Militia, or in the Service of the *East India* Company, or are acting as Surgeons in the public Service, or in the Service of any Charitable Institutions, and also, so far as to the Council shall seem expedient, in favour of Medical Students who shall have commenced their professional Studies before the passing of this Act.

XLVII. It shall be lawful for Her Majesty to grant to the Corporation of the Royal College of Physicians of *London* a new Charter, and thereby to give to such Corporation the Name of "The Royal College of Physicians of *England*," and to make such Alterations in the Constitution of the same Corporation as to Her Majesty may seem expedient; and it shall be lawful for the said Corporation to accept such Charter under their Common Seal, and such Acceptance shall operate as a Surrender of all Charters heretofore granted to the said Corporation, except the Charter granted by King *Henry* the Eighth, and shall also operate as a Surrender of such Charter and of any Rights, Powers, or Privileges conferred by or enjoyed under an Act of the Session holden in the Fourteenth and Fifteenth Years of King *Henry* the Eighth, Chapter Five, confirming the same as far as

Provision for
Persons prac-
tising in the
Colonies and
elsewhere, and
for Students.

New Charter
may be granted
to the College
of Physicians
of London.

such Charter and Act respectively may be inconsistent with such new Charter: Provided nevertheless, that within Twelve Months after the granting of such Charter to the College of Physicians of *London*, any Fellow, Member, or Licentiate of the Royal College of Physicians of *Edinburgh*, or of the Queen's College of Physicians of *Ireland*, who may be in practice as a Physician in any Part of the United Kingdom called *England*, and who may be desirous of becoming a Member of such College of Physicians of *England*, shall be at liberty to do so, and be entitled to receive the Diploma of the said College, and to be admitted to all the Rights and Privileges thereunto appertaining, on the Payment of a Registration Fee of Two Pounds to the said College.

XLVIII. It shall, notwithstanding anything herein contained, be lawful for Her Majesty, by Charter, to grant to the Royal College of Surgeons of *England* Power to institute and hold Examinations for the Purpose of testing the Fitness of Persons to practise as Dentists who may be desirous of being so examined, and to grant Certificates of such Fitness.

Her Majesty
may grant
Power to
College of
Surgeons to in-
stitute Examin-
ations, &c.,
for Dentists.

XLIX. It shall be lawful for Her Majesty to grant to the Corporation of the Royal College of Physicians of *Edinburgh* a new Charter, and thereby to give to the said College of Physicians the Name of "The Royal College of Physicians of *Scotland*," and it shall be lawful for the said Royal College of Physicians, under their Common Seal, to accept such new Charter, and such Acceptance shall operate as a Surrender of all Charters heretofore granted to the said Corporation.

New Charter
may be granted
to College of
Physicians of
Edinburgh.

L. If at any future Period the Royal College of Surgeons of *Edinburgh* and Faculty of Physicians and Surgeons of *Glasgow* agree to amalgamate, so as to form One united Corporation, under the Name of "The Royal College of Surgeons of *Scotland*," it shall be lawful for Her Majesty to grant, and for such College and Faculty under their respective Common Seals to accept, such new Charter or Charters as

The Faculty at
Glasgow may be
amalgamated.

may be necessary for effecting such Union, and such Acceptance shall operate as a Surrender of all Charters heretofore granted to such College and Faculty; and in the event of such Union it shall be competent for the said College and Faculty to make such Arrangements as to the Time and Place of their Examinations as they may agree upon, these Arrangements being in conformity with the Provisions of this Act, and subject to the Approval of the General Council.

New Charter may be granted to the King and Queen's College of Physicians in Ireland.

LI. It shall be lawful for Her Majesty to grant to the Corporation of the King and Queen's College of Physicians in *Ireland* a new Charter, and thereby to give to such Corporation the Name of "The Royal College of Physicians of *Ireland*," and to make such Alterations in the Constitution of the said Corporation as to Her Majesty may seem expedient; and it shall be lawful for the said Corporation to accept such Charter under their Common Seal, and such Acceptance shall operate as a Surrender of the Charter granted by King *William* and Queen *Mary*, so far as it may be inconsistent with such new Charter.

Charters not to contain new Restrictions in the Practice of Medicine or Surgery.

LII. Provided always, That nothing herein contained shall extend to authorize Her Majesty to create any new Restriction in the Practice of Medicine or Surgery, or to grant to any of the said Corporations any Powers or Privileges contrary to the Common Law of the Land or to the Provisions of this Act, and that no such new Charter shall in anywise prejudice, affect, or annul any of the existing Statutes or Byelaws of the Corporations to which the same shall be granted, further than shall be necessary for giving full Effect to the Alterations which shall be intended to be effected by such new Charters and by this Act in the Constitution of such Corporation.

Provisions of 17 & 18 Vict. c. 114, as to University of London to continue in force.

LIII. The Enactments and Provisions of the University of *London* Medical Graduates Act, 1854, shall be deemed and construed to have applied and shall apply to the University of *London* for the Time being, notwithstanding the Surrender or Determination of the

therein-recited Charter, and the granting or acceptance of the now existing Charter of the University of *London*, or the future Determination of the present or any future Charter of the said University, and the granting of any new Charter to the said University; and that every Bachelor of Medicine and Doctor of Medicine of the University of *London* for the Time being shall be deemed to have been and to be entitled and shall be entitled to the Privileges conferred by the said Act, in the same manner and to the same Extent as if the Charter recited in the said Act remained in force, subject nevertheless to the Provisions of this Act.

LIV. The General Council shall cause to be published under their Direction 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 are to be prepared and mixed, and containing such other Matter and Things relating thereto as the General Council shall think fit, to be called "British Pharmacopœia;" and the General Council shall cause to be altered, amended, and republished such Pharmacopœia as often as they shall deem it necessary.

British Pharmacopœia to be published.

LV. Nothing in this Act contained shall extend or be construed to extend to prejudice or in any way to affect the lawful Occupation, Trade, or Business of Chemists and Druggists and Dentists, or the Rights, Privileges, or Employment of duly licensed Apothecaries in *Ireland*, so far as the same extend to selling, compounding, or dispensing Medicines.

Chemists, &c. not to be affected.

SCHEDULE (A.)

1. Fellow, Licentiate, or Extra Licentiate of the Royal College of Physicians of London.

2. Fellow or Licentiate of the Royal College of Physicians of Edinburgh.

3. Fellow or Licentiate of the King's and Queen's College of Physicians of Ireland.

4. Fellow or Member or Licentiate in Midwifery of the Royal College of Surgeons of England.

5. Fellow or Licentiate of the Royal College of Surgeons of Edinburgh.

6. Fellow or Licentiate of the Faculty of Physicians and Surgeons of Glasgow.

7. Fellow or Licentiate of the Royal College of Surgeons in Ireland.

8. Licentiate of the Society of Apothecaries, London.

9. Licentiate of the Apothecaries Hall, Dublin.

10. Doctor, or Bachelor, or Licentiate of Medicine, or Master in Surgery of any University of the United Kingdom ; or Doctor of Medicine by Doctorate granted prior to passing of this Act by the Archbishop of Canterbury.

11. Doctor of Medicine of any Foreign or Colonial University or College, practising as a Physician in the United Kingdom before the First Day of October 1858, who shall produce Certificates to the Satisfaction of the Council of his having taken his Degree of Doctor of Medicine after regular Examination, or who shall satisfy the Council, under Section Forty-five of this Act, that there is sufficient Reason for admitting him to be registered.

SCHEDULE (B.)

DECLARATION required of a Person who claims to be registered as a Medical Practitioner, upon the ground that he was in practice as a Medical Practitioner in England or Wales before the First Day of August 1815 :

To the Registrar of the Medical Council.

I, residing at in the County
of hereby declare that I was practising as a
Medical Practitioner at in the County
of before the First Day of August 1815.

(Signed) [Name.]

Dated this Day of 185 .

SCHEDULE (D.)

Name.	Residence.	Qualification.	Title.
A.B..	London . .	Fellow of the Royal College of Physicians of	
C.D..	Edinburgh	Fellow and Member of the Royal College of Surgeons of	
E.F. .	Dublin. . .	Graduate in Medicine of University of	
G.H..	Bristol. . .	Licentiate of the Society of Apothecaries.	
I.K. .	London . .	Member of College of Surgeons and Licentiate of the Society of Apothecaries.	

NOTES,

ETC.

1. *Contents of the Act.*

Section I., &c.—By reference to the analysis given *ante* p. 11. it will be found that the subject matters of the Act arrange themselves under some twelve different heads, which may be thus enumerated:—I. Preliminary Sections; II. The Formation of a General Council for Medical Education and Registration; III. Regulation of General and Branch Councils; IV. Registration; V. Superintendence of Medical Education; VI. Privileges of Registered and Disabilities of Unregistered Persons; VII. Penalties; VIII. Application of Monies; IX. Dispensing Power of General Council; X. New Charters; XI. Pharmacopœia; and XII. Reservation of the Rights of certain Persons. In the following notes it is proposed only to state the necessary steps which it will be incumbent on medical practitioners to take after the 1st October, 1858, in order to become registered; and to notice some of the principal points in which the existing laws relating to the medical profession will be modified by the new statute. Many important branches of the law on this subject, such as the punishments for malpractice in medicine, the privileges and protection of medical men, the laws relating to dissection, to the public health, to lunacy, to medical evidence, and the regulations affecting medical men employed in the army, navy, and other branches of the public service, as being comparatively untouched by the Medical Act, have not here been entered upon.

NOTE 1.—*Answer to the Registrar's Letter.*

Section XIV.—A portion of this section deserves particular notice from its stringent provisions. After a person has become registered (for which see the next Section) the registrar may write a letter, addressed to him *according to his address in the register*; and if no answer be returned to the letter within six months from the sending of it, the person's name may be *struck off* the register; subject, however, to the same being restored by direction of the General Council. Thus a practitioner's name is liable at any time to be struck off the register from the accident of the registrar's letter not

reaching the address in the register, or from the practitioner having changed his residence; and may remain off without any opportunity of the fact becoming known till the next yearly publication of the register, according to Section XXVII.

NOTE 2.—*How to become Registered.*

Section XV.—This section is one of the most important operative parts of the measure. It points out by what means a right or title to be registered under the Act may be acquired and completed. The conditions are three: there is one thing which every person who claims to be registered must *possess*, and there are two things that he must *do*:—

1. He must be possessed of one or more of the qualifications enumerated in Schedule A.

2. He must pay a fee not exceeding 2*l.* in respect of qualifications obtained before the 1st January, 1859, and not exceeding 5*l.* in respect to qualifications obtained on or after that day.

3. He must produce to the registrar of the Branch Council for England, Scotland, or Ireland, the document conferring or evidencing the qualification in respect of which he seeks to be registered; or he must transmit to the registrar by post—1, his name and address; 2, evidence of his qualification; and 3, the time when such qualification was obtained.

As soon, therefore, after the 1st of October next, as the three branch registrars for England, Scotland, and Ireland are appointed, it will be necessary for every medical practitioner who is qualified according to Schedule A., and who wishes to become registered (and practically every medical man who is so qualified will find it necessary to become registered), to take the following steps. He must apply to the registrar of the Branch Council for England, Scotland, or Ireland; and it appears that he may select that one to whom he finds it most convenient to apply. He must produce to the registrar the actual document conferring or evidencing his qualification, and he must pay the registrar a fee of 2*l.* if he be qualified before the 1st of January, 1859, or a fee of 5*l.* if qualified after that date. Or, if living at a distance, he must transmit to the registrar by post—1, his name and address (or, more strictly, his place of residence, see Sections XIV. and XXV.); 2, evidence of his qualification; and 3, the date when it was obtained. He must also transmit the fee of 2*l.* or 5*l.*, as the case may be. It appears likely that, in all cases, the registrar and treasurer will be the same person (see Section X.); if not, the fee must be paid to the treasurer.

A practitioner living in the country, or at a distance from the

branch register office where he wishes to be registered, need not send by post the actual document under which he is qualified, but only evidence of his qualification. In case, therefore, he does not choose to risk sending the actual document by post, it will probably be sufficient to enclose an abstract or short statement of the substance and date of the document, certified to have been compared with the original by some person of respectability. It may be expected also (see Section XV.) that the colleges and corporate bodies themselves will assist in furnishing the necessary evidence by a reference to their records. If the practitioner possess several qualifications, he must produce the documents under which each of them was conferred, or evidenced, or send the evidence of each of them to the registrar by post. It seems to be the intention of the Act that one fee is to be sufficient for the registry of any number of qualifications already acquired. The fee to be paid on the registration of any qualification acquired after a first registration has yet to be fixed by the Council. (See Section XXX.)

After having paid the fee, and made an application to the registrar in one of the two ways above mentioned, the practitioner has done all that is required by the Act in order to become registered. It is then the duty of the registrar to enter in the local register the practitioner's name, place of residence, qualification, or several qualifications, and the date of the registration, according to the provisions of Section XXV. By Section XXVI., no qualification is to be entered on the register unless the registrar be "satisfied by the proper evidence" that the person claiming is entitled to it. If, therefore, a practitioner finds that a registrar cannot be satisfied as to his title, and consequently that no registration can take place, his first step is to appeal to the General Council, who may decide on that appeal. In case the applicant is not satisfied with the decision of the General Council, he may then apply for a *mandamus*, as was done in the case of *Reg. v. The Pharmaceutical Society* (5 Ellis & Blackburn, 160).

NOTE 3.—*Persons in practice before the 1st of August, 1815.*

Section XVII.—This section enacts that "any person who was actually practising medicine in England before the 1st of August, 1815," shall, on payment of a fee to be fixed by the General Council, be entitled to be registered on producing to one of the registrars a declaration in the form of Schedule B, or on transmitting to him information of his name and address (place of residence) and such declaration. The schedule is headed "Declaration required of a Person who claims to be Registered as a Medical Practitioner." From this and the form of declaration itself it appears that the

designation "Medical Practitioner" is the qualification under which a person so applying will appear in the register. This section is a continuation of the exemption in the Apothecaries' Acts, whereby all persons in practice as apothecaries on the 1st day of August, 1815, are relieved from the penalty imposed on every one else (saving the rights of physicians) for practising as apothecaries in England and Wales without a certificate. The words "practising medicine" are used in this clause, because the right of apothecaries to practise medicine has since become legally established, as will be seen below. Persons who were practising as apothecaries on the 1st of August, 1815, are the only persons who are within the scope of this section. For examples of the nature of the proof required that the practitioner was practising in the manner required by the Apothecaries' Act on the 1st of August, 1815, see below, pp. 51 and 60.

NOTE 4.—*Duties of the Branch Registrar.*

Section XXV.—The duties of this officer are declared to be as follows:—When any person entitled to be registered applies to him for the purpose, he is forthwith to enter in a local register, in the form set forth in Schedule D, the name and place of residence and qualification or several qualifications in respect of which the person is so entitled, and the date of the registration. Also by Section XXVI. no qualification is to be entered unless the registrar is satisfied "by the proper evidence that the person claiming is entitled to it." Now all that can be produced or transmitted by post to the registrar is proof or evidence of the existence of the document, and that it purports to belong to the person claiming. In case the registrar is not satisfied that the person is "entitled" to it, the proper evidence will have to be obtained from the corporate body purporting to grant the document.

The occurrence of a fourth column headed "Title" in Schedule (D) has been the source of much speculation and doubt. Its appearance may be thus accounted for: When the Bill left the House of Commons, Schedule (D) stood thus—

NAME.	RESIDENCE.	QUALIFICATION.
A. B.	Edinburgh.	Surgeon.
C. D.	London.	Physician.
E. F.	Dublin.	Surgeon and Practitioner in Medicine and Midwifery.

There was no fourth column headed "Title" at all.

The Committee of the House of Lords inserted the following clause into the Bill : “The General Council shall, with all convenient speed after the passing of this Act, and from time to time as occasion may require, make orders for regulating the registers to be kept under this Act as nearly as conveniently may be in accordance with the form set forth in Schedule (D) to this Act, or to the like effect ; *and by such orders from time to time direct what titles shall be entered in the fourth column of such register, so as to distinguish the rank or class of each registered person, as indicated in the judgment of the General Council by the qualifications in respect of which he is registered, having regard to the requisites for obtaining such qualifications.*” At the same time a fourth column, headed “Title,” was added to the Schedule, which then stood in the following form—

NAME.	RESIDENCE.	QUALIFICATION.	TITLE.
A. B.	London.	Fellow of the Royal College of Physicians, London.	Physician.
C. D.	Manchester.	Fellow of the Royal College of Surgeons of England.	Consulting Surgeon.
E. F.	Bristol.	Licentiate of the Society of Apothecaries, London.	Licentiate in Medicine and Surgery.

Afterwards, on the third reading, the words printed above in italics were struck out of the clause, and the remainder was enacted and became Section XVI. It was to have been expected that the fourth column of Schedule (D) would have been struck out at the same time ; but though the contents were expunged, the empty column with its heading was still retained. This was probably a mistake, otherwise it must be intended that the registrars are to fill up the blanks in the fourth column according to orders hereafter to be issued by the General Council. The meaning of the word “Title,” though nowhere defined by the Act, may be sufficiently gathered from the words in italics above, and the table that follows them.

The other duties of the branch registrar are to forward certified copies of the entries to the General Registrar (Section XXV.) ; to keep the registers correct (Section XIV.), &c. By Section XXXVIII. a penalty is imposed on any registrar (but upon no one else) who shall wilfully make any falsification in the register.

NOTE 5.—*Duties of the Registrar of the General Council.*

Section XXVII.—The General Registrar is directed to publish every year, under the direction of the Council, a correct register of the names, &c., with the respective residences, “in the form set forth in Schedule (D) to this Act or to the like effect, and medical titles, diplomas, and qualifications,” &c., of all persons appearing on the register as existing on the 1st day of January in every year. It will be observed that the word “titles” is here used, leading to the supposition that the General Registrar is perhaps authorized—though the branch registers are not (see note 4)—to fill up the blank column in Schedule (D) with some “titles” descriptive of the status of the various practitioners. It is very questionable whether the section will bear this construction, in the absence of any definition or illustration of the meaning of the word “title;” and in any case the registrar will certainly be unable to do this, except under express orders of the General Council regularly made in the manner directed by Section XVI.

NOTE 6.—*Right of Practising and Remuneration of Practitioners.*

Section XXXI.—This is the most important clause in the Act as respects the great body of the medical profession, inasmuch as it re-establishes and enlarges the *right of practising*, and it regulates upon a new principle the *remuneration* of practitioners.

I.—*The Right of Practising.*

The words of the Act are—“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.” It will be seen therefore that the right of a medical man to practise is left unaltered as regards his qualification or qualifications. So far the right is simply confirmed and re-established; whilst the area over which it can be exercised is enlarged to the widest possible extent. In order to mark the state of the law and the changes produced by the Act, it will be necessary to observe how the case has hitherto stood on both these points with regard to each class of practitioners. In noticing the local restrictions which are henceforward to be abolished, it is found that they were often accompanied by penalties, which are to a great extent disused. These penalties, though for the future they are done away with as against the encroachments of registered practitioners of the same rank—for all will henceforward be able to practise everywhere alike—are yet available in the eye of the law.

against the intrusion of practitioners of a different qualification, or against persons who are wholly unqualified. To take an instance. The London College of Physicians can by law fine any person for practising medicine in the London precinct without their licence. After the 1st of October, registered Scotch physicians will be legally entitled to practise medicine everywhere : the above penalty therefore will be rendered powerless as against them ; but it will exist (in law if not in fact) against a licentiate of the College of Surgeons in Ireland, or against any person without a qualification who may practise medicine within the same limits.

It will be necessary first to say a few words as to the ancient and modern classes of medical practice, of which the Act provides no new definition.

DIVISIONS OF MEDICAL PRACTICE.

In former years three divisions of medical practice were distinctly recognised—physic or medicine, surgery, and pharmacy. Physic was defined in the year 1703, to consist of the three following acts :—
1. Judging of the disease and its nature from the constitution of the patient and other circumstances. 2. Judging of the fittest and properest remedy for the disease. 3. Directing or ordering the application of the remedy to the disease.—*College of Physicians v. Rose* (6 Modern Reports, 44).

Surgery, the art of the surgeon, as its name implies, included all manual and instrumental operations on the person of the patient. The following diseases have also been declared (in England) to be surgical by various Acts of Parliament, which, though antiquated in language, are still in force :—infectious diseases, “the pestilence, syphilis, and such other contagious infirmities” (32 Hen. VIII., c. 42); “letting of blood and drawing of teeth” (Ibid.); “customable diseases, as women’s breasts being sore, a pin and web in the eye, uncomes of hands, burnings, scaldings, sore mouths, the stone, strangury, sanceline and morpew, and such other like diseases; apostemations, outward swellings, and agues” (34 & 35 Hen. VIII., c. 8); “wounds, ulcers, fractures, dislocations, tumours beside and contrary to nature, and other external infirmities” (Charter of 5 Car. I., confirmed by 18 Geo. II., c. 15). In Scotland, “wounds, contusions, fractures, dislocations, tumours, ulcers, and other things of that kind,” are defined to be the “subjects of surgical operations,” whilst “the cure of diseases originally internal” is “alone to be undertaken by the prescription and direction of the physicians” (Charter of Edinburgh College of Physicians). In the Parliamentary ratification of the Glasgow charter we find

also the following :—“Itaque nos volumus et declaramus curam morborum omnium ab origine internorum ad solos medicos privatim pertinere, at morbos omnes ab externâ causâ provenientes ad Chirurgos et Chirurgos-Pharmacopœos propriè pertinere.” This distinction between “external” and “internal” diseases long prevailed ; but it could not be maintained. Surgeons, being expressly excepted out of the Apothecaries’ Act, were declared to be entitled by law to administer medicines as ancillary to the removal of surgical complaints (*Allison v. Haydon*, 3 Carrington & Payne, 246 : *Proud v. Mayall*, 3 Dowling & Lowndes, 531); and this has been decided more than once of late years in actions brought by the Apothecaries’ Company against pure surgeons for supplying medicines to patients. The most instructive case is that of *The Apothecaries’ Company v. Lotinga* (2 Moody & Robinson, 495) in 1843, where Cresswell, J., said :—“The sole question is, whether the defendant has practised as an apothecary, for it is not pretended that he has any certificate authorizing him to do so. Now, I apprehend 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 if you think the defendant has in either of the cases brought before you acted in that way, I recommend you to find your verdict for the plaintiffs. The mere fact of the defendant’s having supplied medicine does not necessarily show that he practised as an apothecary, for a surgeon may lawfully do that, if the medicines are administered in cure of a surgical case. But, on the other hand, if the surgeon takes upon himself to cure a fever, he steps out of his lawful province, and is not authorised to administer medicine in such a case. You then upon the whole case are to say, whether, in the instance before you, the defendant acted as an apothecary or as a surgeon.” See also *Simpson v. Ralfe* (4 Tyrwhitt, 325). It seems that the question of whether a case is surgical or not is one for the judge, not for the jury. A doctrine was advanced in the case of *Phys. Coll. v. Salmon* (1 Lord Raymond, 683) “that the jury cannot be proper judges of what is practising physic ;” and it is consistent with this, that, in all the reported cases, the judge has always decided the nature of the practice, leaving it to the jury to say in what character the practitioner has acted. Thus, in *Allison v. Haydon*, Best, C. J., ruled that typhus fever was a medical, not a surgical, case ; but it must be added that the decision of the learned judge appears to conflict with the Act of Parliament above referred to (32 Hen. VIII. c. 42), and to which no reference was made on the trial : typhus fever being probably an infectious disease. So in

Battersby v. Lawrence (1 Carrington & Marshman, 277), which related to a case of dropsy, the judge remarked :—" It is said that the case was a surgical case ; but not so altogether." In the case of *The College of Physicians v. Harrison* (Willcock, Laws of the Med. Profession, App. p. cxxviii,) the issue put to the jury was, whether the defendant, Dr. Harrison, had exercised the faculty of physic or not. They were not asked whether the particular treatment (which consisted of manual and instrumental applications for curvature of the spine) was medical or surgical, though that question was involved in the verdict.

Pharmacy was the art of preparing and compounding drugs, and was the appropriate business of an apothecary, whose duty is by the Apothecaries' Act (55 Geo. III. c. 194, s. 5) declared to be "to prepare with exactness and to dispense such medicines as may be directed for the sick by any physician lawfully licensed to practise physic ;" and further, "to apply and administer the same." At this date chemists and druggists were those who sold drugs, but who did not mix or compound medicines ; and it may be observed that, until a very late date, the chemists and druggists of Dublin could not compound medicines. English apothecaries, however, before this Act of Parliament, and notwithstanding the above definition, had acquired a right of prescribing in medical cases, which was upheld in the case of *The Physicians' College v. Rose* (6 Modern Reports, 44) in 1703. Having thus far encroached on the art of the physician, they were gradually permitted by law to charge for attendances, as well as for medicines supplied ; and their legal right to practise medicine is now unquestioned. As the English apothecaries have gradually acquired the right of practising physic, so the chemists and druggists have encroached on the apothecaries ; first, by compounding medicines, and then by a practice, which is certainly not legal, of administering and even of prescribing medicines without the superintendence of a qualified practitioner. In Scotland pharmacy seems to have maintained its old name and meaning. In Ireland apothecaries claim to have practised physic as well as pharmacy (the latter with rigid exclusion) from very early times, and their position is altogether exceptional, as may be gathered from Section LV. of this Act.

Midwifery, it may be here added, is no branch of the medical art. Any one may practise it, as being the superintendence and assistance of what is generally a healthy natural function, and from the necessity of the case. It is true that licentiates in midwifery are recognised by the Act : but they exclude no one else, and the nature of the practice is not altered.

Dentistry is surgical so far as relates to the operating part ; practitioners to this extent being relieved, it is presumed by legal custom, from the penalties still technically imposed upon persons practising surgery in England without a licence of the College. As far as relates to the mechanical part, it comes under the designation in Section LV. as "a lawful occupation, a business," and by the same section the rights of dentists are expressly saved to them. By Section XLVIII. it is declared lawful for her Majesty by charter to grant to the College of Surgeons power to hold examinations and grant certificates of fitness in dentistry.

It will be observed that throughout the Medical Act, pharmacy, as a third branch of practice, is nowhere mentioned ; the only two divisions of medical science enumerated in Section XXXI. being "medicine" and "surgery." It remains then to notice how far each class of practitioners named in Schedule A. is entitled to practise "medicine or surgery, or medicine and surgery, as the case may be:" and what are the local districts as to which restrictions of practice in the same qualifications will in future be abolished, but where the penalties against dissimilar or unqualified practitioners will still exist in law, though for the most part disused in practice.

QUALIFICATIONS AND LOCAL RESTRICTIONS.

1. *College of Physicians of London.*—(It is proposed hereafter to call this body the Royal College of Physicians of *England*, Clause XLVII). The rights of the College are determined by an Act of the 3 Hen. VIII. c. 11, by the 14 & 15 Hen. VIII. c. 5, which recites a royal charter of 10 Hen. VIII., and by the 32 Hen. VIII. c. 40. Fellows, licentiates, and extra-licentiates may, by virtue of the latter statute, practise the science of physic in all its members and parts ; and by the 3 Hen. VIII. surgery and surgeons are expressly included within that faculty. The rights of physicians are also expressly reserved to them by the Surgeons' Act (18 Geo. II. c. 15), confirming a charter of Charles I. ; just as their medical rights are saved to them by the Apothecaries' Act : *Apothecaries' Company v. Collins*, (4 Barnewall & Adolphus, 606). The faculty of physic in England would thus seem to include surgery also. The only authority which leads to a contrary view is that of *The College of Physicians v. Harrison* (Willcock, App. p. cxxviii), which seems to show that a prosecution at the suit of the College for practising in the London precinct without a licence will fail, if the practice is proved to be surgical. The language of the charter is "quòd nemo in dictâ civitate, &c., *exerceat dictam facultatem*:" and from the decision

above it would seem to follow that surgery is not within the *facultas* of physic. But this case is not to be considered a binding authority. The legal right proceeding from a London physician's qualification may therefore be considered to be to practise "both medicine and surgery."

It used to be held that fellows of the College could practise over England and Wales; licentiates within the London precinct, and the extra-licentiates in all other parts of the country. Henceforward all classes, after they are registered, will be able to practise throughout the Queen's dominions. It may be useful to state that in the opinion of some eminent lawyers, any bye-law of the College of Physicians forbidding a fellow of the College to practise surgery or midwifery on pain of expulsion, is contrary to the charter, and invalid in law.

The exclusive power of the College is as follows:—By the 14 & 15 Henry VIII. c. 5, no one is permitted to practise medicine (which includes surgery) within the London precinct, *i.e.*, within the city, and seven miles round it, without a licence from the College, under a penalty of 5*l.* a month for every whole month of such practising.

This right was very extensively exercised in the seventeenth century, more sparingly in the course of the eighteenth, and in the nineteenth only one case appears to be recorded. That was the prosecution of Dr. Edward Harrison, for practising in London without a licence in 1828. The jury found that he practised as a surgeon, which ought not, it seems, to have exempted him from the fine; as he does not appear to have been a M.R.C.S., and surgery is part of the *facultas* of physic. But the College were non-suited, and were ordered to pay the costs. *President, College, &c., v. Harrison* (9 Barnewall & Creswell, 524). Since then no action for unlicensed practising has been brought by the College. As to the country practice, the College had no power; but the Act of 3 Henry VIII. c. 11, distinctly prohibits practice beyond the London precinct by persons other than those licensed by the President and three elects of the College. No penalty was imposed by the Act; but the breach of it was a misdemeanour at common law, for which it is stated (Comyn's Digest, Title, "Physician") a penalty of 5*l.* a month might be recovered by information, or on an action. There is no record of such a penalty ever having been recovered, but the existence of the legal restriction was shown in a remarkable instance in the year 1831. Dr. Collins, an M.D. of St. Andrew's, was in practice at Wareham, in Dorsetshire. Another practitioner, residing in the same place,

took occasion to say of him—"I know no such person as Dr. Collins, but I know such a person by name as Joseph Collins, who calls himself Dr. Collins; but such a fellow I know to be an impostor, and a complete quack, and he has not the slightest title to such an honour." Dr. Collins brought an action for slander, but the Court of Queen's Bench held that his practice at Wareham was unlawful, under the 3 Hen. VIII. c. 11. Lord Denman said, "The statute, indeed, imposes no penalty upon unlicensed practitioners beyond the seven miles, but the prohibitory words are strong enough to make the practice unlawful. This action, therefore, cannot be maintained for slander of the plaintiff in a profession which, by law, he could not exercise." *Collins v. Carnegie* (1 Adolphus & Ellis, 695). These restrictions still exist in law as against unqualified practitioners in medicine.

2. *College of Physicians of Edinburgh*.—This is the only College of Physicians in Scotland. The acting charter of incorporation was obtained from King Charles II. on St. Andrew's Day, 1681, and was ratified by Act of the Scottish Parliament on the 16th June, 1685. This charter defines very precisely the limits between surgery and physic, as above stated (p. 43); and according to the clause there referred to, it would seem that the qualification of fellows and licentiates of the College enables them to practise medicine only, and not surgery. The rights of the surgeon-apothecaries of Edinburgh are expressly reserved by the charter.

The extent of the physicians' district, from which they were entitled to exclude all other persons, was "within the city of Edinburgh, its suburbs and liberties;" an area stated to include the old town of Edinburgh and a street called Potter's Row. (The suburbs of the city of Edinburgh are thus described in the charter:—"Letha, Vicus Canonicorum, Porta Occidentalis, Vicus Sancti Leonardi et Vicus Figulinus.") It is the opinion of legal authorities, however, that the right is in force over the extended royalty of the city of Edinburgh. After the Medical Act they will no longer be able to exclude physicians from this district, if so disposed; but the power still exists (at law) as to all persons not qualified in medicine. The penalty is 60*l.* of Scottish money a month. It seems never to have been recovered.

3. *King's and Queen's College of Physicians of Ireland*.—The only Act of Parliament connected with the College is one of the 40 Geo. III., by which the College of Physicians and Trinity College form conjointly the "School of Physic" of Ireland, which is under a separate endowment. The College consists of fellows, honorary fellows,

and licentiates. It is stated that they have always had the power of licensing other than graduates : and such licentiates are called doctors. It seems that all the licentiates, whether M.D. or not, omit to put that designation after their names. Fellows of the College, however, must have university qualifications, but whether this restriction is a legal one or not does not appear. Whether the qualification of an Irish physician extends to the practice of surgery and pharmacy, is not certain. The question must depend on their charter, which was granted by William and Mary in 1692, and on the common law. There are, it appears, no restrictions of any kind on practising.

4. *College of Surgeons of England*.—The qualification of an English pure surgeon is undoubtedly to practise surgery and not medicine. But surgery includes medical treatment in many cases as shown above (p. 44). It is questionable whether the bye-law which excludes fellows of the College from practising midwifery be lawful.

By the 18 Geo. II. c. 15, members of the College of Surgeons might practise in all parts of the empire. Their rights are not, therefore, extended in this respect by the Medical Act.

They possessed also an exclusive right of practising surgery within the London precinct, granted by a charter of Charles I., which was confirmed by the above Act : and this right, though never exercised, exists still as against all persons practising surgery in London who are not qualified so to do. The penalty is 5*l.* a month. Every person, also, who is not qualified in surgery is liable to a penalty of 5*l.* for every month during which he may practise surgery in any part of England and Wales, except the London precinct. It is needless to add that the penalty is never enforced.

Licentiates in Midwifery now, for the first time, have a legal existence. By becoming registered they will gain a parliamentary right to practise, and a right to recover. They have no exclusive privileges.

5. *College of Surgeons of Edinburgh*.—The parliamentary ratification of the patent of William and Mary gave to this body “*plenum et liberum privilegium licentiam et potentatem faciendi et exercendi utramque artem, chirurgiam et pharmaciam.*” From this it appears that an Edinburgh surgeon can practice pharmacy ; and it is the usage of members of the body, with rare exceptions, to practise as general practitioners, *i.e.* to practise medicine along with surgery. Whether this right legally flows from their qualification of surgeon it is not easy to say. If it does, a Scotch surgeon may be able

legally to practise medicine in England, notwithstanding the Apothecaries Act. By a private Act of Parliament passed in 1850, the 13 Vict. c. xxiii., followed by a charter in 1851, this body was dissociated from the corporation of the city of Edinburgh, but the right of practising was left untouched.

The exclusive powers of this corporation (which have never been enforced, but which still exist in law against unqualified persons), extend over the counties of Edinburgh, Linlithgow, Haddington, Fife, Peebles, Selkirk, Roxburgh and Berwick. This is called the Edinburgh, as distinct from the Glasgow district.

6. *Faculty of Physicians and Surgeons of Glasgow.*—This body which, notwithstanding its name, is by constitution only a College of Surgeons, by its charter granted by King James VI. in 1599, and ratified in 1672, has power to examine “all persons professing or using the art of chirurgery,” and to give them “testimonials according to their art and knowledge;” also to inspect drugs, &c., sold in Glasgow. The 14th clause forbids “any manner of person within the bounds to exercise medicine without a testimonial of a famous University in which medicine is taught.”

The penalty imposed by the Charter was enforced on several occasions of late years, until the passing of the Act of 13 Vict., c. xx., in 1850. By that Act (clause 2) fellows and licentiates are enabled “to enjoy the same status and privileges as if the said faculty had been specially authorized by law to grant licences and diplomas in surgery, conferring the same status and privileges as those conferred by any other Corporation or Royal College in Scotland,” and at the same time the exclusive rights of the College were given up. Members of the College and licentiates would seem, therefore, to be entitled, according to the charter to practise surgery only. If, however, the effect of the clause above mentioned be to place the faculty on the same footing as the College of Surgeons of Edinburgh, Glasgow surgeons will be entitled to practise medicine also throughout her Majesty’s dominions.

The Glasgow district extends over the counties of Lanark, Renfrew, Ayr and Burgh, and the barony of Dumbarton. Over parts of Scotland other than the Edinburgh and Glasgow districts there seems to have been no prohibition against practising surgery.

7. *Fellow or Licentiate of the Royal College of Surgeons in Ireland.*—The first Charter granted to this body was in 1784, which was surrendered on the grant of a second in the 9th of Geo. IV. Then came a supplemental Charter, granted in the 13th of Victoria, in 1850, in order to assimilate the body, according to the

plan of Sir J. Graham, with the College of Surgeons in London. Both fellows and licentiates could practise surgery throughout Ireland, but they had no special privileges, except that no surgeon could be elected to a County Infirmary unless he were a Licentiate of the College of Surgeons in Ireland. It is stated that no physician or surgeon in Ireland could, until a very late date, compound medicines for hire without the license of the Apothecaries.

The right of the surgeons is probably, therefore, to practice surgery only, and not medicine.

8. *Society of Apothecaries, London*.—By the Apothecaries Act, (55th Geo. III., c. 194), every one practising as an apothecary in any part of England or Wales without a certificate is liable to a penalty of 20*l.*, and as apothecaries have become legally entitled, by custom, to practise medicine, this clause has operated as an exclusion against all persons (except physicians) from practising medicine in England and Wales ; and the penalty has been actively enforced up to a late period. The exclusion will in future be powerless against Irish apothecaries, and possibly against Scotch surgeons ; but will remain in force against all unqualified persons practising as apothecaries in England and Wales.

Licentiates of the Apothecaries Company, on being registered as such, will be able to practise in all parts of her Majesty's dominions.

The following is a summary of the cases in which the Apothecaries Company have prosecuted unqualified persons. The action by the Company is for debt, and the declaration must allege that the defendant has not obtained the necessary certificate, and that he was not in practice on 1st Aug. 1815 ; but it is not necessary for the plaintiffs to prove the averments, it being incumbent on the defendant to prove either that he has obtained the certificate, or was in practice, *Apothecaries Company v. Bentley* (1 C. & P. 538). He must, however, give reasonable evidence that he was in practice on that day, *Apothecaries Company v. Roby* (5 B. & Ald. 949 ; S. C. 1 D. & R. 564) ; and it is not sufficient to shew that he was practising as a druggist or gratuitously. The court will not, however, inquire into the degree of medical skill which the defendant at that time possessed, *Apothecaries Company v. Warburton* (3 B. & Ald. 40). In one case it was attempted to be argued that a man who advised patients and sold the medicines recommended by himself, but could not make up physicians' prescriptions, was not within the Act, because he did not perform all the duties of an apothecary ; but he was held liable for practising as an apothecary without a certificate.

The *Apothecaries Company v. Allen* (4 B. & Ad. 625 ; S. C. 1 N. & M. 413). In another case, a young man bound himself as an apprentice to an apothecary who lived eight miles from Halifax. The apothecary then took a house at Halifax, in which the apprentice resided, and attended several patients, and this was held to be a practising by the apprentice as an apothecary under the Act, *Apothecaries Company v. Greenwood* (2 B. & Ad. 708). One penalty only can be recovered on the same action, though the practice was continued for some time, and was not confined to one patient, *Apothecaries Company v. Bentley* (1 C. & P. 538). Where a summons in a plaint in the County Court stated that the sum sued for was 20*l.* ; but the particulars stated that the plaint was issued for 20*l.* under the Apothecaries Act, and further stated four occasions on which the defendant had practised, and it was objected that the action should have been for 80*l.* in a higher Court (20*l.* being then (1850) the limit of the jurisdiction of the County Court) ; it was held on motion for prohibition that the County Court judge had jurisdiction : *The Apothecaries Company v. Burt* (1 L. M. & P. 405 ; S. C. 5 W. H. & G. 363).

A brief statement may be added here as to the position of chemists and druggists, including members of the Pharmaceutical Society. They seem to have acquired by general acquiescence, the right of preparing and dispensing medicines according to the prescriptions of a physician, which was formerly considered to be the duty of an apothecary, just as apothecaries by degrees acquired the physician's right of administering medicine to the sick. The Apothecaries Act, sec. 28, expressly reserves to them the right of carrying on their business, which is defined to be the "buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinal compounds, wholesale and retail." The distinction between apothecaries and chemists is, that the apothecary may not only prepare, dispense, and sell, but apply and administer medicines ; whilst if a chemist not only sells, but also applies and administers medicines in the ordinary course of attending patients, he practises as an apothecary, and if a chemist so practises he is liable to the penalties under the Act : *Apothecaries Company v. Greenough* (1 Adolphus & Ellis, New Series, 805). Nor will he be able to recover in an action if he so practises : *Richmond v. Coles*, (1 Dowling Points of Practice, New Series, 561.) The rights of chemists and druggists are expressly reserved to them by the 55th section of the Act.

The Pharmaceutical Society was incorporated by a charter of the 18th Feb. 1843, confirmed by the 15th and 16th Vict., c. 56. The

Act provides for the registration of members of the Society ; also that persons appointed under the charter and bye-laws may examine in Latin, botany, materia medica, pharmacy, and general chemistry (but not in the theory and practice of medicine, surgery, or midwifery), and grant certificates of having passed such examinations. Certificated persons are to be registered as Pharmaceutical Chemists, and then to become members of the Society. It is provided that no member of the medical profession, or who is practising under the right of a degree of any University, or under a diploma, or license of a medical or surgical corporate body, is to be registered ; and if any registered Pharmaceutical Chemist obtains such diploma, his name is not to be retained in the register.

9. *Apothecaries Hall, Dublin.*—In Ireland the apothecaries after remaining an unincorporated and distinct guild, being a portion of a community or civic company, called “The Worshipful Company of Apothecaries,” were incorporated by Royal Charter in 1745. In 1791 the apothecaries of Dublin obtained an act of incorporation, the 31st Geo. III. c. 34. The Company consists of a governor, a deputy-governor, a council, and a court of examiners chosen by the council. The council consists of a number of members who are licentiate apothecaries. Entrance into the Company is by subscription ; and the members are required to hold shares in Apothecaries Hall, it being to some extent a trading company. All subscribers must be licentiates, “judicious practising apothecaries,” having resided within the city of Dublin or the suburbs for seven years. The council is limited to sixty. They claim to have the following privileges :—

1. The right to charge for professional attendance and for medicine.
2. The *exclusive* right to keep shop for dispensing and compounding medicine under a penalty of 20*l*.
3. The right to grant medical certificates in cases of fever, lunacy, and life assurance.
4. The right to fees for medical evidence and for vaccination.
5. Eligibility to act as medical attendants at dispensaries, in fever hospitals, prisons, or military detachments, and in merchant vessels.
6. Exemption from serving on juries or inquests.

Persons who are rejected by the examiners of the Apothecaries Hall have a right of appeal to the College of Physicians by the 23rd section of the Act of incorporation. The physicians, however, will examine only in medicine, and then grant a licence to practise pharmacy. It seems probable that, in the extent of their examinations, Irish apothecaries have exceeded their legal powers.

It is stated that an Irish apothecary may legally practise surgery : if so his qualification will permit him to practise physic and surgery

throughout the empire. Their penalty still remains in force against unqualified persons.

10. *Universities*.—The degree of M.D. of Oxford or Cambridge alone, and the degree either of M.B. or of M.A. of these Universities, accompanied by a licence *ad practicandum in Medicinâ*, gives the possessors the right of prescribing in medicine. Hitherto they might practise by law in any part of England and Wales, except the London precinct; and in London also by courtesy. The restriction has been neglected.

By the Medical Graduates' Act, 1854, 17 and 18 Vict. c. 114, every M.B. and M.D. of the University of London is by virtue of his degree alone entitled to practise physic as fully and extensively in all respects as every M.B. or M.D. of the Universities of Oxford and Cambridge is entitled to practise by virtue of his degree, or under any licence or authority then conferred by either of the Universities; but this privilege thereby conferred is not to be construed to extend to the practice of surgery, pharmacy, or midwifery. It is provided by Section LIII. of the Medical Act that the Medical Graduates Act is to remain in force, notwithstanding the surrender of their Charter, and the granting or acceptance of a new Charter.

Graduates of Durham are also entitled to practise medicine.

The five Universities of Scotland all have powers of granting degrees in medicine. No University in Scotland gives the degree of M.B. All graduates are of the rank of M.D., and they all possess the legal right of practising medicine in Scotland, their right as to Edinburgh being expressly reserved by the charter of the College of Physicians.

Graduates in medicine, M.D. or B.D., of Trinity College, Dublin, are entitled, it is said, by usage rather than law, to practise as physicians, and to hold appointments in public institutions in Ireland.

None of the Universities possess any rights of local exclusion; and their graduates will, on being registered, be entitled to practise in medicine throughout her Majesty's dominions.

Doctors of Medicine, made so by Doctorate granted by the Archbishop of Canterbury, prior to the passing of the Act (2nd August, 1858) will be entitled to be registered. The Act is silent as to any others, and this bye-road to the profession will no doubt become finally closed.

11. *Practising Graduates of Foreign and Colonial Universities*.—In order that a graduate of any foreign or colonial university or college may become entitled to be registered, he must be two things, viz.,

a Doctor of Medicine, and "practising as a physician in the United Kingdom before the 1st day of October, 1858." The latter words are extremely vague, and impose no limit whatever on the period of practising before the 1st of October, 1858. Being so far qualified, he must do one of two things ; 1. Either produce certificates to the satisfaction of the Council of his having taken his degree of M.D. after regular examination ; or, 2. Satisfy the Council under Section XLVI. (misprinted XLV. in the Schedule) that there is sufficient reason for admitting him to be registered. It would thus appear that the degree of M.D. and the practising as a physician in the United Kingdom before the 1st of October, 1858, are indispensable preliminaries. If he does not satisfy the Council that he obtained his degree of M.D. after regular examination, he must appeal to them under Section XLVI. But Section XLVI. only gives dispensing powers to the Council in favour of persons now (2nd August, 1858) practising in the Colonies, and to persons practising in the United Kingdom on foreign or colonial diplomas before the passing of the Act (2nd August, 1858). The want of simplicity in these provisions, and the absence of all correspondence between the terms of Schedule A and Section XLVI. must, if unaltered, lead to much inconvenience.

From what has been already stated, it may be gathered that, previous to the Medical Act, graduates of foreign and colonial universities were entitled only by courtesy, and not by law, to practise in England and Wales ; in Ireland there appears to have been no law excluding them, and certainly no penalty against their practising ; whilst in Scotland they were invited to reside and practise, the exclusive rights of the Edinburgh College of Physicians being by the charter expressly suspended in their favour.

Upon reviewing this subject, the technical difficulty that arises from the conflict of qualifications, owing to the removal of all local limitation, must be at once apparent. Practically it is perhaps of little importance, owing to the general desuetude of all penalties for unlawful practising. In one instance, however, that of the London Apothecaries Company, the penalty is still in force, and the question is one of practical moment. An Edinburgh surgeon may practise pharmacy ; when, therefore, he is registered, and is enabled by the Medical Act to practise in England, may he practise here as an apothecary without being liable under the Act or not ? Does the right flowing from the qualification follow the person, or is it regulated by the law of the country where the practising takes place ? The answer probably is, that it follows the person, inasmuch as he must be presumed to have been educated according to his qualifica-

tion. In the case above mentioned, the English surgeon, to be on an equal footing with the member of the Edinburgh College, must take out a licence from Apothecaries Hall, and become a general practitioner.

II.—*Remuneration.*

The words of the section are: "Every person registered under this Act shall be entitled according to his qualification or qualifications (1) to practise, &c. . . . and (2) 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 difficulty that occurs on these words is very considerable; the question being whether the words "according to his qualification or qualifications" apply to the clause (1) only, which relates to practising, or to that and to the clause (2) also, which relates to remuneration. If every practitioner is to recover "according to his qualification," the registered physician will recover "according to his qualification," *i.e.*, not at all. Then why, it may be asked, was the proviso introduced respecting the bye-laws? It cannot be supposed, on the other hand, that the statute would declare that a man shall be entitled to practise in one or the other of two faculties, as the case may be, according to his qualification—thereby implying that, if qualified for one only, he shall not practise in the other; and yet that he may recover for his services in that faculty for which he is not qualified; *i.e.*, that he may recover for unlawful practising. The latter construction is the least violent of the two, but the inconsistency remains unexplained. It may be added, that the insertion of the proviso at the end of Section XXXI. respecting the bye-laws was an after-thought. It was proposed by way of amendment when the Bill was in committee in the Commons, on the 6th of July. The right of recovery will then, it seems, be ultimately unaltered, except as to the all-important provision of Section XXXII., that after the 1st of January, 1859, no person shall be entitled to "recover any charge in any court of law for any medical or surgical advice, attendance, or for the performance of any operation, or for any medicine which he shall have both prescribed and applied, *unless he shall prove on the trial that he is registered under this Act.*"

ENGLISH PHYSICIANS.

The rule of law that an English physician cannot maintain an action for fees for anything he has done as a physician, has been long settled; the leading authority on the subject being the case of

Chorley v. Bolcot, (4 Term Reports, 317), before Lord Kenyon in 1791. It is remarkable, however, that no authorities were cited on that occasion, except the *dictum* of Blackstone (3 Comm. 28) to the effect that a counsel can maintain no action for his fees; and the discussion seems to have turned rather upon the construction and meaning of a passage of Tacitus (Ann. xi. 5) than upon any express principle of the common law; the fact being that many of the older authorities decidedly support the right of the physician to recover. But the rule is now universally established, as above stated; so much so that a local custom to pay physicians a certain sum will not be permitted to prevail against it (S. C. *ubi supra*); the principle not being that the law refuses to recognise the payment of an *honorarium* to a physician any more than to a barrister; for this it frequently does (*Tuson v. Batting*, 3 Esp. N. P., 192); but that, if the physician omits to receive his fees at the proper time, viz. when his attendance occurs, the law will not allow him a remedy. (See the remarks of Mr. Justice Bayley, *Morris v. Hunt*, 1 Chitty, 551.)

Payment of a physician's fees to a reasonable amount will be allowed to trustees on taking their accounts in the Court of Chancery, under the head of just allowances, and to a solicitor acting on behalf of a person requiring medical attendance, as, for example, a lunatic. In the latter case, however, it is necessary that the physician be paid by the solicitor on each occasion of his rendering his services, as he will not afterwards be allowed to prove against the estate of the lunatic for the amount of his fees. (*Elliot v. Ince*, before V. C. Stuart, April, 1856.)

But though a physician cannot sue, he may enter into a contract for the payment of his fees, and may enforce that contract. (*Veitch v. Russell*, 1 Carrington and Marshman 365.) In order, however, that such a claim may succeed, there must have been, not indeed an express, but an *actual* contract, the *onus* of proving which is on the plaintiff. It is not sufficient for the physician to expect and trust that he will be paid; nor for the patient or his friends to expect and hope to pay him. In one case a lady called in a physician on the occasion of her brother's illness, and in the course of an after correspondence with him, made use of the following expressions: "As your account against me for attendance on my brother must be formidable, you will oblige me by letting me have it. . . . My wish is to present you with such a sum as you would call upon me to pay you. . . . I do not know what you would deem under the circumstances a proper acknowledgment. . . . I hope you will at once tell me what sum will be agreeable to you to accept from

me." The physician named 150*l.*, which the lady said was more than she expected, or could afford to pay; and after some other communications, she wrote, "Let me know the name of your bankers, that I may pay 70*l.* to your account in liquidation of my debt to you up to the present time." The jury found this no contract, and the court held that they had drawn a right conclusion from the evidence. They said that such expressions as these, if they had passed between conveyancers, or between a tradesman and his customer, would undoubtedly have had a strong effect. But this lady might have used the expressions "debt," "your account against me," "power to meet your demand," without having intended the physician to understand that she meant to make herself legally liable for his professional charges. In this case part of the physician's claim was an account of fly-hire and travelling expenses during fifty visits from London to Richmond, where the patient resided; but the Court made no exception as to this, observing, that the money paid out of pocket was not paid to the use of the patient, but to that of the physician himself while carrying on his business with a view to his ordinary remuneration. (S. C. 3 Adolphus & Ellis, N. S. 928.)

It appears that there is nothing to prevent a surgeon and apothecary, who is also a physician, from recovering fees for labour and attendance as a surgeon and apothecary, merely in consequence of his double capacity (*Battersby v. Lawrence*, 1 Carrington and Marshman, 277); so that a physician, who is also a surgeon, does not forfeit his right for a compensation for what he has done, provided he can show that it was not done by him in his capacity of physician. (*Little v. Oldaker* 1 Carr. and M. 370.)

From and after the 1st of October, 1858, it appears that, according to the best interpretation of the words above quoted,—“every person registered under this Act shall be entitled according to his qualification to recover”—every physician who becomes registered will be able to recover fees for his medical services. If an English physician may lawfully practise surgery also, it follows that he will be able to charge also for his services in surgical cases, as well as in pharmacy and midwifery; but the latter rights are not perhaps likely to be enforced. Immediately, however, upon the passing of the bye-laws referred to in Section XXXI., the disability of English physicians will be again restored as it was before the Act. It must be added, however, that Section XXXI. makes it lawful only for “any College of Physicians” to pass the bye-law. No such power is granted to, if indeed it could be exercised by, the Universities; hence, if the construction of the Section be such as is here assumed, all graduates of the Universities practising medicine, and not being mem-

bers of any College of Physicians, will still be able to recover for their fees.

In Scotland, physicians' fees are said to be actionable, but are presumed paid, unless for death-bed attendance, and where the practice of the place is not to pay on each visit. (*Erskine*, B. iv. T. 1. S. 47.)

ENGLISH SURGEONS.

Every surgeon is entitled to recover a reasonable remuneration for his attendance, skill, labour, medicines, and applications, *but in surgical cases only*. If he infringes upon the practice of the physician or apothecary, his conduct being illegal, he is entitled to no remuneration for his services. The rule is laid down in *Allison v. Haydon* (3 Carrington and Payne, 246). A case occurred in the year 1846, where the plaintiffs, who were a firm of surgeons, sent in a bill for "medicines and attendances." Their assistant proved at the trial that he had paid visits and dispensed medicines for them, and had *once* bled the patient. The judge (Patteson) said that the plaintiffs must blame themselves. If they claimed as for a surgical case, they should so have stated it in the particulars, instead of which they made their claim as for medicines and attendance. This was therefore, *prima facie* an apothecary's case. The only question was, whether a single instance of bleeding would turn these charges for medicines into medical charges ancillary to a surgical case. The rule for a nonsuit was made absolute. (*Proud v. Mayall*, 3 Dowling and Lowndes, 331.)

It is perhaps superfluous to add that there is a decision confirming the very clear proposition that a duly licensed surgeon may practise in surgery *without* a certificate from Apothecaries Hall. (*Apoth. Co. v. Ryan*, 4 Tyrwhitt, 325.)

From the 1st Oct., 1858, every person who becomes duly registered as a fellow or member of the College of Surgeons of England, as a fellow or licentiate of the College of Surgeons of Edinburgh, or in Ireland, or as a fellow or licentiate of the Faculty of Glasgow, will be entitled to recover reasonable charges for aid, advice, visits, and the cost of medicines or other medical or surgical appliances, *but only according to his qualification or qualifications*. If he is only qualified as a surgeon, therefore, he cannot recover for medical charges (*Battersby v. Lawrence*) ; if he be also registered as a physician, he will acquire all the rights of a physician, and amongst them the right to recover, until the passing of the meditated bye-laws ; and if he be also registered as a licentiate of either of the Societies of Apothecaries, he will acquire in like manner the rights belonging to the members of such body.

ENGLISH APOTHECARIES.

Before the Act an apothecary could bring an action for his fees ; but it was rendered necessary by Section XXI. of the Apothecaries Act, 55 Geo. III. c. 194, that he should prove on the trial that he was in practice as an apothecary prior to or on the 1st of August, 1815, or that he had obtained a certificate to practise from the Master, Wardens, and Society of Apothecaries. Several cases have occurred upon this clause, of which the following is a brief summary : First, as to the practising on or before the 1st of August, 1815 ; in order to prove this, the plaintiff ought to show an instance of his compounding a physician's prescription, or that he was capable or professed to compound prescriptions. Evidence that he merely went about curing local complaints is not enough. *Thompson v. Lewis* (Moody and Malkin, 255). Proof, however, that the plaintiff "sought" his living by mixing up and preparing medicines properly prescribed will be sufficient (*Woodward v. Ball*, 6 C. & P. 577). Further, an apothecary must prove either the practising before the Act, or the certificate, as a condition precedent to his right of action. He must prove it as part of his case (*Morgan v. Ruddock*, 4 Dowl. P. C. 311), this necessity being imposed by way of penalty (*Robinson v. Roland*, 6 Dowl. P. C. 261). And this though the general issue be pleaded, as, for instance, if the defendant has pleaded only *non assumpsit* (*Shearwood v. Hay*, 5 Ad. & Ell. 383) ; or as to part that he was not indebted, and as to the rest a tender (*Wills v. Langridge*, Ib. S. C. 6 Nevile & Manning, 831). This decision was affirmed by the Court of Common Pleas in the case of *Wagstaffe v. Sharpe* (3 Meeson & Welsby, 525), though some members of the Court felt great doubt as to the propriety of the decision. It was followed, however, by Talfourd J., in 1852, *Wadsworth v. Collins* (3 Carrington & Kirwan, 53), and is quite settled. What is necessary, therefore, is to produce on the trial the original certificate granted to the plaintiff, and to give reasonable evidence of its being genuine. (The law will be found laid down in *Walmisley v. Abbot*, 1 Carr. & P. 309, S. C. 3 B. & C. 218, 5 D. & R. 62 ; and other cases collected in Appendix to Willcock on Laws of the Medical Profession.) It is sufficient to prove the certificate, without showing that the plaintiff has complied with the proper requisitions entitling him to obtain it, and it is doubtful whether evidence can be admitted to shew that the plaintiff has obtained it improperly (Willcock, p. 117). As to identity, proof of having the same christian and surname as the person named in the certificate will be sufficient *prima facie* evidence. *Simpson v. Dismore* (9 M. & W., p. 47).

An opinion for a long time prevailed that an apothecary could

charge only a reasonable price for his medicines, and could not claim compensation for his skill and attention. At length, in 1829, it was held that an apothecary could charge for attendances, or that he could charge for medicines, but that he could not be permitted to make a charge for both. Shortly after, in 1830, Lord Tenterden allowed an apothecary to charge 2s. 6d. each for attendances, besides his charges for medicine, putting it to the jury whether they thought it too much. (*Handey v. Henson*, 4 Car. & P. 110.) And this was for some time considered to be the legal charge for an apothecary's attendance. Afterwards, in 1838, Littledale J. said — "I will not say that, in point of law, an apothecary has in all cases a right to charge both for drugs and attendance; but, in some cases, he certainly may. The cases resolve themselves into matters of fact for a jury." (*Morgan v. Hallen*, 3 Nevile and Perry, 498.) The result of that case seems to be that an apothecary can make what reasonable charges he pleases for attendance in a medical case, besides his charges for the medicine, subject to the opinion of a jury as to what is reasonable or unreasonable in each particular instance. (S. C. 8 A. & E. 489.)

The right of a Licentiate of the Apothecaries Society to recover under the new Act will be the same as before: he has only the additional necessity imposed upon him of proving upon the trial that he is registered under the Act, according to Section XXXII.

It may be observed, also, that an apothecary's right to recover is not disturbed, although it should be proved that he was practising within the London precinct with only a suburban licence. He may be fined by the Society of Apothecaries, it is true, but that is only a matter of fiscal regulation between the Society and its members. (*Young v. Geiger*, 6 D. & L. 337; S. C. 6 C. B. 541; *Wadsworth v. Collins*, 3 Car. & K. 53.)

With regard to the numerous class called in untechnical language "general practitioners," it follows from what has been said, that upon their becoming registered in the double qualification of surgeon and apothecary, they will enjoy the rights of both classes of practitioners. They will be able to recover "reasonable charges for professional aid, advice, and visits, and the cost of medicines, and other medical or surgical appliances" alike in medicine, surgery, and pharmacy. The following is an abstract of cases which still continue to govern the practice of surgeons and surgeon-apothecaries:—

If a qualified surgeon passes himself off as a physician, he must take the character *cum onere*, when he brings an action for visits paid by him in that capacity, and therefore cannot recover for his fees (supposing the physician cannot) *Lipscombe v. Holmes* (2 Campb.

N. P. 441). He will also, it may be added, be liable to penalties under Clause XL. of the Medical Act, and liable to be prosecuted under the Apothecaries Act. It has been decided that a surgeon cannot recover more than the employer thinks fit to give him after sending in his account with blanks opposite to the statement of his services; *Tuson v. Batting* (3 Esp. N. P. 192). But in another case, a learned judge said, that the absence, in a bill, of a direct charge for attendance, would not in itself be conclusive against the defendant's claim (*Morgan v. Hallen*, 8 A. & E. 489). In either of the above cases the plaintiff is entitled to recover what the patient may have either promised to pay, or has actually paid into court (*Ibid*). The reasonableness of the charge is always a question for the jury, who will assess it with a due regard to the situation in life, skill, and eminence of the practitioner and all the circumstances; but they will at the same time correct any exorbitant demand, however usual it may have been for practitioners to insist upon it (*Tuson v. Batting*). On one occasion a general practitioner forbore to send in his bill for medicine and attendance, expecting a legacy from the patient. Finding himself disappointed in this respect, he made a claim against the executors, and was held entitled to recover, no proof having been given of an understanding that he was to trust to the generosity of his patient (*Baxter v. Gray*, 3 Manning & Granger, 771). It is added (*ubi supra*) that by the law of France no medical or spiritual attendant can take a legacy exceeding a fair remuneration for the services he has rendered (Code Civil, sec. 909), either directly or indirectly (sec. 911). In a recent case, a general practitioner filed a declaration of insolvency, and was an uncertificated bankrupt. By some arrangement with a friend who had purchased his stock of medicines, he continued in possession of them on credit, carried on his business as before, and was supplied with fresh medicines on credit from wholesale houses. Under these circumstances the debt was contracted, the plaintiff attending the defendant, giving him the benefit of his skill, and furnishing the medicines which he thought necessary. The assignees in bankruptcy were held entitled to the proceeds of a trade thus carried on—*Elliot v. Clayton* (16 A. & E. N. S. 581).

It has been decided that it is not incidental to the employment of a station-master or other servant of a railway company that he should bind the company by contract for surgical attendance upon injured passengers. The company therefore are not liable for such attendance without evidence of express authority to their servant to employ a surgeon. In this particular case an accident happened to a labourer, and one of the railway guards called in a surgeon, Mr.

Davis, who, wishing for further assistance, sent a message to the station-master at Birmingham, acting as chief officer there in the passenger and indeed in every department. The station-master desired that every attention should be paid to the injured man, and the plaintiff, Mr. Cox, was accordingly requested by Mr. Davis to operate. Mr. Cox brought his action against the company, and was non-suited. The rule was made absolute; the learned judge (Parke) observing that it would rarely happen that a surgeon would not have a remedy against the patient, who, if he were rich, must at all events pay, and if poor, would be entitled to compensation from the company; *and the surgeon's bill would always be allowed for in damages.*—*Cox v. The Midland Counties' Railway Company* (3 M. H. & G., 269).

Finally, it is laid down that the demand of a surgeon, apothecary, or general practitioner, is founded upon his skill and attention, two qualities which every one who deals with the life and health of her Majesty's subjects is bound to possess in a competent degree, and to use—*Rex v. Spiller* (5 C. & P. 333). If, therefore, there be the absence of either of these, if there be either gross ignorance or gross negligence, any claim made by the practitioner in respect of his services must fail; the question being one for the jury. But the defendant cannot bring evidence to prove general incapacity; it must be confined to the impropriety of treatment in the particular case. (*Kannen v. M'Mullen*, Peake's N. P. C., 83; *Seare v. Prentice*, 8 East, 347; *Slater v. Baker*, 2 Wils. 359.)

In Scotland, all claims for medicines furnished on the death-bed are privileged and preferable debts (15th Dec. 1835, *Drysdale*.)

NOTE 7.—*Disabilities of Unregistered Persons.*

Section XXXVI.—From this and the following section it would seem to be the intention of the legislature that every one who seeks to be registered should become so before the 1st of January, 1859; inasmuch as after that date no certificate signed by any unregistered medical practitioner will be valid. With regard to surgeons and medical officers abroad who may find it difficult to comply with the provisions of *Section XXXVI.*, very wide powers are granted to the General Council by *Section XLVI.* It is needless to add that the disabilities imposed by these sections will compel practitioners of every class to be registered, even physicians, who may be indifferent about acquiring a legal right to receive their fees.

NOTE 8.—*Penalty for False Pretences.*

Section XL.—By this section the penalty of 20*l.* is imposed upon any person who shall wilfully and falsely pretend, as follows:—

1. To be, or take, or use the name or title of a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner, or apothecary.

2. To take or use any name, title, addition, or description implying that he is registered under this Act.

3. Or to take or use any name, &c., implying that he is recognised by law as a physician or surgeon, or licentiate in medicine and surgery, as a practitioner in medicine, or an apothecary.

It seems probable that cases of great nicety may arise in the construction of this section. But it may be noticed that, as the words "wilfully and falsely pretend" are used, it will be necessary, in order to recover, to show that there was a wilful intention to deceive; and therefore that a person using a prefix which has been long permitted to others in the same branch of practice, as a matter of courtesy, no deception or falsehood being intended by such usage, will not become liable to the penalty imposed by the section for wilful and false pretences.

NOTE 9.—*Dispensing Power of the General Council.*

Section XLVI. It may be useful to observe that although the dispensing powers granted by this section to the General Council are without limit in one direction, extending to the suspension of their own regulations, and even of the Act itself, yet these powers are to be exercised only in favour of four limited classes of persons, namely:—

1. Persons now (2nd Aug. 1858) practising medicine or surgery in the colonies by virtue of any of the qualifications described in Schedule (A.)

2. Persons practising medicine or surgery within the United Kingdom, on foreign or colonial diplomas or degrees before the passing of the Act (2nd Aug. 1858).

3. Persons who have held appointments as surgeons or assistant surgeons in the army, navy, or militia, or in the service of the East India Company; or who are acting as surgeons in the public service, or in the service of any charitable institutions.

4. Medical students who shall have commenced their professional studies before the passing of the Act (2nd Aug. 1858).

Consequently, the General Council, though they may alter their own rules (Section IX.), have no power to suspend the provisions of the Act in favour of any person who does not come strictly under one of the four heads above mentioned.