The law relating to medical, dental and veterinary practice / by Fred Bullock.

Contributors

Bullock, Fred, 1878-1937.

Publication/Creation

London : Baillière, Tindall and Cox, 1929.

Persistent URL

https://wellcomecollection.org/works/k5k6568y

License and attribution

The copyright of this item has not been evaluated. Please refer to the original publisher/creator of this item for more information. You are free to use this item in any way that is permitted by the copyright and related rights legislation that applies to your use.
See rightsstatements.org for more information.

wellcome collection

Wellcome Collection
183 Euston Road
London NW1 2BE UK
T +44 (0)20 7611 8722
E library@wellcomecollection.org
https://wellcomecollection.org

LAW RELATING TO MEDICAL DENTAL AND VETERINARY PRACTICE

FRED BULLOCK


22400048741

Med
K19734

PRESENTED TO THE LIBRARY
BY

To my friend Dr Alfred Cox,
with much gratitude
W. H. Bullock

11. VI. 29

THE LAW RELATING TO MEDICAL DENTAL AND VETERINARY PRACTICE

Digitized by the Internet Archive
in 2017 with funding from
Wellcome Library

https://archive.org/details/b29809721

THE LAW RELATING TO MEDICAL DENTAL AND VETERINARY PRACTICE

BRITISH MEDICAL Library ASSOCIATION

BY

FRED BULLOCK, LL.D.

OF THE HONOURABLE SOCIETY OF GRAY'S INN, BARRISTER-AT-LAW,
FELLOW OF THE CHARTERED INSTITUTE OF SECRETARIES

THESIS APPROVED FOR THE DEGREE OF DOCTOR OF LAWS IN THE UNIVERSITY OF LONDON

BRITISH MEDICAL ASSOCIATION LIBRARY 11 MAY 1940

LONDON
BAILLIÈRE, TINDALL AND COX
7 & 8, HENRIETTA STREET, COVENT GARDEN, W.C. 2

STEVENS AND SONS, LIMITED
119 & 120, CHANCERY LANE

1929

PRINTED IN GREAT BRITAIN

9812538

WELLCOME INSTITUTE LIBRARY
Coll. welMOmec
Call No. W

BRITISH MEDICAL ASSOCIATION Library

PREFACE

In this work I have endeavoured to provide a comprehensive statement of the law relating to Medical, Dental, and Veterinary Practice in this country, and, with a view to explaining the origin and development of the modern law, I have given a brief historical sketch of the earlier attempts to govern the professions and control practice.

In that it includes in one study a consideration of the cognate subjects of medical, dental, and veterinary legislation, which have not before been brought into their natural relation with each other, it may be claimed to be an original presentation of the subject.

In writing this treatise I had the inestimable advantage of being able to submit the first draft of it to Mr. W. Hussey Griffith, M.A., Barrister-at-Law, Vice-Dean of the Faculty of Laws at King's College, and my teacher in Common Law. To his wise counsels and patient criticisms I owe the greater part of the encouragement which I needed for the completion of my task.

Since the manuscript passed through his hands, and after presentation of the work to the University of London, I have taken opportunities of submitting it to the criticism of Colonel Norman C. King, Registrar of

the General Medical Council and of the Dental Board, and of Dr. Alfred Cox, Medical Secretary of the British Medical Association. On their advice, for which I here express my gratitude, a few enlargements and some additions have been made, but for these, as for the work as a whole, I must take full responsibility.

F. B.

LONDON,
May, 1929.

BRITISH MEDICAL ASSOCIATION Library

CONTENTS

	PAGE
PREFACE	v
TABLE OF STATUTES	ix
CHARTERS AND ORDINANCES	xi
TABLE OF CASES	xii
CHAPTER I	
INTRODUCTION	1
CHAPTER II	
GOVERNMENT BY ORDINANCE AND CHARTER	9
CHAPTER III	
THE EARLY STATUTES	28
CHAPTER IV	
THE SEVENTEENTH AND EIGHTEENTH CENTURIES	61
CHAPTER V	
THE NINETEENTH CENTURY	90
CHAPTER VI	
THE DENTIST	120
CHAPTER VII	
THE VETERINARY SURGEON	135
CHAPTER VIII	
JURISDICTION OF THE PRIVY COUNCIL	161

CHAPTER IX

PAGE
PROFESSIONAL DISCIPLINE - - - - - 168

CHAPTER X

UNQUALIFIED PRACTICE - - - - - 205

CHAPTER XI

RECOVERY OF FEES - - - - - - 239

CHAPTER XII

NEGLIGENCE - - - - - - - 253

APPENDIX - - - - - - - 305
BIBLIOGRAPHY - - - - - - 311
INDEX - - - - - - - 313

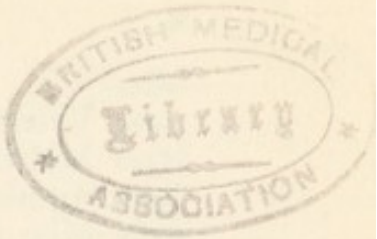

TABLE OF STATUTES

YEAR		PAGES
1388	Sanitary Act	19
1421	Against the Meddlers with Physic and Surgery	23
1487	Nuisances Act	29
1511	Concerning Physicians and Surgeons	30
1513	Confirmation of Surgeons' Charter	32
1522	Privileges and Authority of Physicians	34
1533	Exoneration from Executions, etc.	35
1540	Physicians and their Privileges	38
	Union of Barbers and Surgeons	40
1542	That persons being no common surgeons may minister medicines outwardly	44
1553	Corporation of Physicians	48
1695	Apothecaries, etc.	79
1722	Apothecaries, etc.	79
1723	College of Physicians	82
1726	College of Physicians	82
1739	Joanna Stephens Act	84
1745	Establishing two separate Companies of Barbers and Surgeons	86
1752	To prevent the horrid crime of murder	87
1815	Apothecaries Act	93
1832	Anatomy Act	100
1858	Medical Act	102
1859	Medical Act	111
1860	Medical Act Amendment Act, c 7	111
1860	Medical Act Amendment Act, c 66	111
1862	Medical Council Act	111
1868	Pharmacy Act	111, 217
1869	Pharmacy Act	112
1873	Medical Act (University of London)	112
1874	Apothecaries Act Amendment Act	112
1875	Medical Act (College of Surgeons)	112
1876	Medical Act (Qualifications)	112
1878	Dentists Act	123
1881	Veterinary Surgeons Act	143
1886	Medical Act	114
1890	Lunacy Act	305
1891	Lunacy Act	310
1894	Diseases of Animals Act	164
1897	Public Health (Scotland) Act	166

YEAR		PAGES
1900	Veterinary Surgeons Act Amendment Act - -	146
1902	Midwives Act - - - - -	174
1907	Apothecaries Act - - - - -	118
1914	Milk and Dairies (Scotland) Act - - -	166
1915	Milk and Dairies (Consolidation) Act - - -	166
	Midwives (Scotland) Act - - - -	174
1917	Venereal Diseases Act - - - -	218
1918	Midwives Act - - - - -	174
	Midwives (Ireland) Act - - - -	174
1919	Sex Disqualification (Removal) Act - - -	113
1920	Veterinary Surgeons Act Amendment Act - -	146
	Dangerous Drugs Act - - - -	217
1921	Dentists Act - - - - - -	128
1926	Midwives and Maternity Homes Act - - -	174
1927	Medical Practitioners Amendment Act - -	119
1928	Dentists Act - - - - - -	134

BRITISH MEDICAL Library ASSOCIATION

CHARTERS AND ORDINANCES

YEAR		PAGES
1308	Ordinance of Barbers Gild	14
1345	Grocers Charter	10
1356	Farriers Ordinance	17
1376	Barbers Ordinance	15
1369	Gild of Surgeons Ordinance	16
1390	Gild of Surgeons Ordinance	16
1410	Barbers Ordinance	20
1414	Barbers Ordinance	21
1416	Barbers Ordinance	21
1423	Physicians and Surgeons Ordinance	24
1425	Barbers Ordinance	24
1427	Grocers Ordinance	25
1435	Ordinance of Surgeons Gild	26
1462	Barbers Company Charter	25
1491	Surgeons Gild Ordinance	26
1499	Barber Surgeons Charter	26
1505	Charter of College of Surgeons, Edinburgh	41
1518	Charter of College of Physicians	32
1605	Surgeons' Charter	61
1606	Charter incorporating Grocers and Apothecaries	67
1617	Apothecaries' Charter	67
1618	Charter of College of Physicians	68
1629	Surgeons' Charter	70
1674	Charter to Company of Farriers	77
1676	Ordinance for Farriers	78
1738	Ordinance for Farriers	78
1800	Charter to Royal College of Surgeons	88
1843	Charter to Royal College of Surgeons	101
1844	Charter of Royal College of Veterinary Surgeons	136
1852	Charter to Royal College of Surgeons	101
1859	Charter to Royal College of Surgeons	122
1876	Charter to Royal College of Veterinary Surgeons	142
1879	Charter to Royal College of Veterinary Surgeons	140
1883	Charter to Royal College of Veterinary Surgeons	142
1888	Charter to Royal College of Surgeons	102
1892	Charter to Royal College of Veterinary Surgeons	142
1914	Charter to Royal College of Veterinary Surgeons	142
1923	Charter to Royal College of Veterinary Surgeons	143

TABLE OF CASES

PAGES

A B *v.* C D - - - - - - - 283
A B *v.* C D (1905) - - - - - - 283
Allbutt *v.* General Medical Council - - 196, 197
Re C. Allen - - - - - - - 159
Allinson *v.* General Medical Council - - 175, 197
Allison *v.* Haydon - - - - - 47, 97, 240
Andrews *v.* Styrap - - - - - - 209
Apothecaries Company *v.* Allen - - - - 109
Apothecaries Company *v.* Bentley - - - - 240
Apothecaries Company *v.* Flitcroft - - - 96
Apothecaries Company *v.* Greenough - - - 98
Apothecaries Company *v.* Gregory - - - 109
Apothecaries Company *v.* Jones - - - 96, 109
Apothecaries Company *v.* Lotinga - - - 97, 98
Apothecaries Company *v.* Shepperley - - - 99
Apothecaries Company *v.* Wall - - - - 96
Apothecaries Company *v.* Warburton - - - 240
Atkins *v.* Gardener - - - - - - 62
Attorney-General *v.* Apothecaries Hall of Ireland - - 116
Attorney-General *v.* Appleton - - - - 223
Attorney-General *v.* Churchill - - 214, 233, 234
Attorney-General *v.* G. C. Smith - - - - 223
Attorney-General *v.* Myddletons - - - - 223
Attorney-General *v.* Royal College of Physicians - - 111

Barnes *v.* Brown - - - - - - 224
Barney *v.* Pinkham - - - - - - 276
Battersby *v.* Lawrence - - - - - 239
Beatty *v.* Cullingsworth - - - - - 274
Beckh *v.* Sinclair - - - - - - 275
Bellerby *v.* Heyworth - - - - 126, 224
Blank *v.* Lynde - - - - - - 266
Blogg *v.* Pinkers - - - - - - 242
Bonham *v.* College of Physicians - - - - 64
Bredon *v.* Prior of Lewes - - - - - 267
Brown *v.* Whitlock - - - - - - 222
Butler *v.* President of the College of Physicians - 46, 71
Byrne *v.* Rogers - - - - - - 225
C. A. B., *ex parte* - - - - - - 196

PAGES

Carpenter *v.* Hamilton - - - - - 210
Chorley *v.* Bolcot - - - - - - 239
Clark *v.* Mumford - - - - - - 252
Clarke *v.* McGuire - - - - - - 208
Clements *v.* Stanley - - - - - 277
Clifford *v.* Phillips - - - - - 198
Clifford *v.* Timms - - - - - - 198
Colledge de Physitians Case - - - - 64
College of Physicians *v.* Barton - - - - 73
College of Physicians *v.* Butler - - - 46, 71
College of Physicians *v.* Eyre - - - - 69
College of Physicians *v.* Jenkins - - - - 54
College of Physicians *v.* Levett - - - - 82
College of Physicians *v.* Rose - - - - 80
College of Physicians *v.* West - - - - 82
Collins *v.* Carnegie - - - - - - 99
Collins *v.* Rodway - - - - - - 275
Cooper *v.* Mirron - - - - - - 276
Cope *v.* Rowlands - - - - - - 248

D'Allax *v.* Jones - - - - - - 32
Davis *v.* Makuna - - - - - 32, 199
De Freville *v.* Dill - - - - - - 297
De la Rosa *v.* Prieto - - - - - 250
Dickson *v.* Hygienic Institute - - - - 272

Eastburn *v.* Robinson - - - - - 210
Edgar *v.* Lamont - - - - - - 269
Edsall *v.* Russell - - - - - - 262
Ellis *v.* Kelly - - - - - - 209
Emslie *v.* Paterson - - - - - 221
Everett *v.* Griffiths - - - - - 288

Farquhar *v.* Murray - - - - - 275
Fryday *v.* West - - - - - - 265

Gibbon *v.* Budd - - - - - - 241
Gladwell *v.* Steggall - - - - - 269
Grenville *v.* College of Physicians - - - - 75
Groenvelt *v.* Burwell - - - - - 77

Hall *v.* Semple - - - - - - 286
Hall *v.* Trotter - - - - - - 243
Hancke *v.* Hooper - - - - - 275, 276
Harmer *v.* Cornelius - - - - - 272
Harnett *v.* Bond - - - - - - 292
Harnett *v.* Fisher - - - - 295, 296, 299
Harward *v.* Hackney Union - - - 287, 289

PAGES

Hennan *v.* Duckworth - - 127n., 246, 247, 250
Hill *v.* Clifford - - - - - - 198
Hunter *v.* Clare - - - - - - 212
Hume Spry *v.* Watson - - - - - 297
Hupe *v.* Phelps - - - - - - 242

Johnson *v.* Halls Hygienic Company - - - 273
Jones *v.* Fay - - - - - - 273

Kingston's Case, Duchess of - - - - 283
Kitson *v.* Playfair - - - - - - 283

Ladd *v.* Gould - - - - - - 209
La Mert, *ex parte* - - - - - - 196
Lanphier *v.* Phipos - - - - - - 272
Latter *v.* Braddell - - - - - - 274
Laughton *v.* Gardener - - - - - 62
Leeson *v.* General Medical Council - - 197, 201, 202
Leman *v.* Fletcher - - - - - 110
Leman *v.* Houseley - - - - - 110
Lipscombe *v.* Holmes - - - - - 239

Re Mackenzie - - - - - - 159
MacNaghten *v.* Douglas - - - - - 245
Mann *v.* Stephens - - - - - - 277
Marshall's Case - - - - - 263, 264
Minter *v.* Snow - - - - - - 225
Mort's Case - - - - - - 263

O'Duffy *v.* Jaffe - - - - - - 222

Panhaus *v.* Brown - - - - - - 222
Re Parsons - - - - - - - 159
Partridge, *ex parte* - - - - - - 197
Partridge *v.* General Medical Council - - - 197
Partridge *v.* General Medical Council and Miller - - 198
Pedgrift *v.* Chevallier - - - - - 209
Perionowsky *v.* Freeman - - - - - 274
Pharmaceutical Society *v.* London Provincial Supply Association - - - - - - - 233
Pickering *v.* Ilfracombe Railway - - - - 246
Pickup *v.* Dental Board - - - - 170, 176
Pippin and Wife *v.* Sheppard - - - - 268
Poucher *v.* Norman - - - - - - 239
Powtuary *v.* Walton - - - - - 268

R. *v.* Askew - - - - - - 85
R. *v.* Aston (Justices) - - - - - 212

PAGES

R. *v.* Baker - - - - - - 212
R. *v.* Bateman - - - - - - 277
R. *v.* Bradford - - - - - - 256
R. *v.* Bull - - - - - - - 261
R. *v.* Chamberlain - - - - - - 260
R. *v.* Crick - - - - - - 259
R. *v.* Crook - - - - - - 259
R. *v.* Ferdinand - - - - - - 213
R. *v.* Ferguson - - - - - - 257
R. *v.* General Medical Council - - - - 196
R. *v.* Gibbons - - - - - - 283
R. *v.* Groenvelt - - - - - - 76
R. *v.* Hodgson - - - - - - 208
R. *v.* Lewis and Bridgwater - - - - 210
R. *v.* Lewis and Frickhart - - - - - 210
R. *v.* St. J. Long - - - - - - 257
R. *v.* MacLeod - - - - - 262, 270
R. *v.* Markuss - - - - - - 260
R. *v.* Noakes - - - - - - 261
R. *v.* Priestley - - - - - - 281
R. *v.* Registrar of Joint Stock Companies - - 222
R. *v.* Nancy Simpson - - - - - 257
R. *v.* Scott - - - - - - - 218
R. *v.* Shadforth - - - - - - 219
R. *v.* Spencer - - - - - - 261
R. *v.* Spiller - - - - - - 258
R. *v.* Spilling - - - - - - 261
R. *v.* Tessymond - - - - - - 261
R. *v.* Van Butchell - - - - - 254, 256
R. *v.* Webb - - - - - 259, 260
R. *v.* Whitehead - - - - - - 258
R. *v.* Williamson - - - - - - 256
Rich *v.* Pierpoint - - - - - - 271
Rillesford's Case - - - - - - 264
Roberston *v.* Hawkins - - - - - 226
Royal College of Physicians *v.* General Medical Council 39, 118
Royal College of Veterinary Surgeons *v.* Robinson - 228
Royal College of Veterinary Surgeons *v.* Collinson - 230
Royal College of Veterinary Surgeons *v.* Groves - - 230
Royal College of Veterinary Surgeons *v.* Kennard 145, 234
Ruddock *v.* Lowe - - - - - - 273

Seare *v.* Prentice - - - - - - 271
Sewell *v.* Corp - - - - - - 240
Seymour *v.* Pickett - - - - - 249, 251
Shackleton *v.* Swift - - - - - 288
Shiels *v.* Blackburne - - - - - 270
Slater *v.* Baker - - - - - 269, 274

PAGES

Spicer's Case - - - - - - 262
Steed *v.* Henley - - - - - 47, 242
Steel *v.* Ormsby - - - - - - 213
Steele *v.* Hamilton - - - - - - 209

Tattersall *v.* Sladen - - - - 131, 195
Thistleton *v.* Frewer - - - - - 243
Thomas *v.* Barker - - - - - - 192
Thompson *v.* Schmidt - - - - - 287
Towne *v.* Gresley - - - - - - 240
Tyndall *v.* Alcock - - - - - - 281

Veitch *v.* Russell - - - - - 46, 239

Woodward *v.* Ball - - - - - 98

BRITISH MEDICAL Library ASSOCIATION

THE LAW RELATING TO MEDICAL DENTAL AND VETERINARY PRACTICE

CHAPTER I

INTRODUCTION

At least four centuries of experimental legislation in regard to the practice of medicine and surgery in this country have brought us to a stage at which the practice of certain parts of the healing art is prohibited to all but legally qualified persons, while the rest of the field is open to be exploited by all who will.

At the present day no uncertificated person may practise as an apothecary, no unregistered person may practise dentistry, no unqualified person may treat venereal diseases. Moreover, no unregistered person may hold an appointment as medical officer of any public institution or sign certain certificates; no uncertified woman may habitually and for gain attend women in childbirth otherwise than under the direction of a qualified medical practitioner; no unregistered or unlicensed person may use certain dangerous drugs in his practice.

Apart from these restrictions, the law allows unqualified persons to practise physic, surgery, and veterinary surgery, and, in applying to them the common law rule which attaches to qualified practitioners—namely, that they must show no gross negligence or gross lack of skill and competence in their practice—may even make an allowance for their lower degree of skill.

Nevertheless, if it is in the public interest that the law should protect us in respect of our property or other temporal interests, by permitting no person to act as a solicitor unless he is registered, it is equally in the public interest that it should protect us in respect of our bodily health, and permit no person to act as a doctor in the treatment of diseases in, and injuries to, our bodies or the bodies of our children, where the very life of the patient may be at stake.

In the professions of law and medicine a prolonged course of study is essential before practice in either can safely be entered upon. Neither in law nor medicine does knowledge come by intuition. But in medicine less even than in law can the knowledge required for practice be gained solely from books. A knowledge of the anatomy and physiology, necessary to an understanding of the principles of surgery and medicine, can only be obtained by attendance at a recognized course of study at a medical school, for the State prohibits the use of the human cadaver for the study of anatomy except at such institutions. No person can have practice in dissection—an essential preliminary to skill in surgery—or learn how to

diagnose disease by attendance at practical demonstrations of clinical treatment, except in the great hospitals attached to the medical schools.

It is therefore self-evident that those who have not passed through the recognized course of training cannot possibly possess the required knowledge and skill to warrant their entering upon practice. When such men do set up in practice, any knowledge and skill they may acquire must obviously be obtained by experiment on the bodies of living human beings, a gross form of "vivisection" tolerated by the law. So, too, in veterinary surgery the quack gains his experience at the expense of other people's animals.

The system of education adopted by the medical authorities has been evolved out of the combined wisdom and experience of the most expert in the art and science of surgery and medicine, and is the fruit of the observation of centuries. The scheme of ordered training which has grown out of this accumulated experience is recognized in practically every country in the world, and it cannot be encompassed in less than five years' study.

Moreover, though a highly trained medical service is one of the most important needs of the country, training alone is not everything. The calling of the doctor is one which exacts from him far more than the mere exercise of professional knowledge and skill. He must be ever at the call of the public. No trades union fixes his hours of labour; public opinion looks upon his refusal from sheer fatigue to accept the last of many night calls as a wilful neglect of duty—the

same public opinion which holds the refusal of the workman to do more than his day's allotted work to be loyalty to his class. Only a body of men and women animated by the highest ideals of public service could willingly accept the doctor's yoke. But more than this, the doctor loyally submits to a corporate discipline imposed in the public interest which restricts his liberties and interferes very often with his own material prosperity.

Since all this is asked of members of the medical profession, it is no little anomaly that their highly specialized service to the public should be rendered still more difficult by the interference and competition of quacks who, free and unfettered, may by every art and device of the advertiser gull the public to their own profit.

Since persons lacking a medical education cannot possibly acquire the essential knowledge and skill by any means other than experiment, with its concomitants of unnecessary suffering and danger to the patient, we might well ask why the law continues to allow them to practise. If unqualified practice in medicine were prohibited, the hardship inflicted upon any class of persons would certainly be a lesser evil than the continuance of the present dangerous laxity. Can there be any reason in the public interest, for example, why unqualified persons should be allowed to treat diseases such as cancer, consumption, epilepsy, locomotor ataxy, paralysis? Is cancer more easily curable than venereal disease? Is paralysis less important than an aching tooth?

It is clear, at all events, that the present state of the law cannot be regarded as final. Now and again the public conscience is awakened to the dangers which exist, and on several occasions recently the practice of medicine by unqualified persons has been the subject of public inquiry. In 1908 a Committee of the General Medical Council reported [1] on the state of unqualified practice in this country, and showed that the practice of medicine by unqualified persons was prohibited in forty-three British Colonies and in thirty-three foreign countries. The Committee came to the conclusion that sufficient protection against the injury done to the public by the practice of unqualified persons and companies, carried on with impunity in this country, was not afforded by the Medical Acts, and that a remedy must be found in legislation such as exists in most civilized countries. But the Committee recognized that before such legislation could be promulgated, it was necessary that the public should be made aware of the dangerous abuses which exist.

The General Medical Council, on receipt of this Report, resolved as follows :

> "That the General Medical Council, being of opinion that the present Medical Acts do not sufficiently enable 'persons requiring medical aid' 'to distinguish qualified from unqualified practitioners,'[2] and that it is contrary to the interests of the public that medical and surgical practice should be carried

[1] Report of the Unqualified Practice Prevention Committee.

[2] See Preamble to the Medical Act, 1858, p. 103.

on with impunity by persons holding no recognized qualifications, requests the Government to take steps for the appointment of a Royal Commission to inquire into the evil effects produced by the unrestricted practice of medicine and surgery by unqualified persons."

The Government thereupon appointed a Royal Commission, whose report on "The Practice of Medicine and Surgery by Unqualified Persons" was published in 1910 (Cd. 5422). Just before the outbreak of the Great War there was also published the "Report of a Select Committee on Patent Medicines" (No. 414, 1914).

Each of these inquiries resulted in the finding that the health of the public was seriously endangered by the present lax control of unqualified medical practice, but no serious attempt to provide a general remedy has yet been made.

On the other hand, a similar inquiry by a Departmental Committee into the extent and gravity of the evils of unqualified dental practice, set up since the War, has led, *mirabile dictu*, to the complete prohibition of such practice!

Perhaps this is a finger-post pointing the way in which future legislation with regard to the practice of medicine will move. The history of the legislation of the past, at any rate, as outlined in the following chapters, shows that while one of the greatest evils in the way of improved public health has been the ubiquity of quackery, no attempt to prohibit it has ever been effectual until the recent legislation relating to dentistry.

The story of the gradual development, up to the end of the eighteenth century, of some kind of control over medical and surgical education and practice, as effected by the rival activities of physicians, surgeons, and apothecaries, is sketched in the next three chapters of this work. The history of the medical legislation of the nineteenth century, given in Chapter V., brings the story up to date. In Chapters VI. and VII. brief outlines are given of the development of legislation governing dental and veterinary education and practice. The varying nature of the jurisdiction of the Privy Council in relation to medical, dental, and veterinary education and legislation is discussed in Chapter VIII.

In the chapter on Professional Discipline (Chapter IX.) the byelaws of the three professions relating to the removal of names from and the restoration of names to the registers are examined in detail, and certain important differences are pointed out. Chapter X. contains a review of all the principal cases brought before the courts for infringements of the statutes by unregistered persons, and attention is drawn to the defects of the provisions made for the protection of the public. The same remarks apply to Chapter XI., on the Recovery of Fees.

An attempt has been made to provide in Chapter XII. a new and concise survey of the law of negligence as applied to medical men, and to make this more complete by a consideration both of the early Year Book cases and the latest decisions of the courts. The modern law on the subject is critically

examined, and a special section is devoted to the question of negligence in certifying lunatics. The results of the most important recent cases are discussed, and suggestions made for ameliorating the present unsatisfactory position of the certifying doctor.

CHAPTER II

GOVERNMENT BY ORDINANCE AND CHARTER

THE first definite control of the practice of the healing art in this country came from within the body of practitioners. It arose out of the desire to maintain a high standard of learning and skill, and was directed towards the safeguarding of the interests of the public. Rules drawn up for the observance of practitioners became incorporated in Ordinances, later in Royal Charters, and ultimately in Acts of Parliament.

Similarly, the modern Medical, Dental, and Veterinary Acts were all initiated by the members of these professions, but in the process of passing through Parliament these enactments, owing to the conflicting claims of rival parties and the resulting compromise, in every case became so modified as to prevent their giving such complete control as was sought and as would be in the best interests of the country.

It is intended to trace as briefly and concisely as may be how this control arose and developed, but the history of this legislation must be prefaced by some reference to the state of medical learning in this country before the rise of the gilds which for so many centuries ruled the crafts.

Leeches and Apothecaries.—The first doctors of the common people were no doubt the old mothers who bound up wounds and administered simples, and the leeches, who in the days of Bede and Alfred were the recognized physicians and surgeons. Bede (673-734) records that the Leech Cyneferth operated unsuccessfully on Queen Etheldreda for a tumour, and Bald's "Læce-boc," which appeared soon after Alfred's death, shows that there was already in existence, even at that early date, a school of medical thought with treasured prescriptions.[1] In due time the grocers, who purveyed culinary spices and served the leeches with worts, drugs and herbs for medicines, having prudently kept the recipes of their customers, began to prescribe on their own account. As early as 1230 they were known in Oxford under the name of apothecaries. In 1306 Richard of Montpellier, Grocer to the King, was appointed to purvey medicines for the King's sickness, "as is fully enjoyned by the King's Physicians."

By Chaucer's day the Doctor of Physic

> "Ful redy hadde his apothecaries
> To send him drugges and his lettuaries."

In 1345 the grocers appear to have been incorporated by a Charter of 20 Edward III., and in that same year Edward settled 6d. a day for life on Coursus de Gangeland, Apothecarius, for taking care of him during his illness in Scotland.[2] John le Spicer, an apothecary who practised in Cornhill, was in 1354 accused at the Guildhall of malpractice, after an inquisition by four surgeons.[3] J. Falcand de Luca publicly sold medicines

[1] Cockayne, ii. 298. [2] Corfe, 16. [3] Riley, 273.

in London in 1357,[1] and Pierre de Montpellier was appointed apothecary to Edward III. in 1360.[2] It is evident that by this date the apothecary was accepted as a medical practitioner, though of a lower order than the Doctor of Physic or the Master Surgeon. They continued to be the chief preparers and compounders of medicines until the end of the eighteenth century.

Physicians.—The earliest doctors with any pretence to training were also priests, the clergy being the only class who had opportunity of acquiring any kind of learning. Part of their education as youths was instruction in medicine.[3] After the Council of Treves (1310) those who took upon themselves the practice of medicine had first to obtain the permission of the Bishop, as we see illustrated in Piers Plowman's "Vision of Antichrist," when "Friar Flattery" is to be sent for to "physick all you sick":

"The frere hereof herde . and hyede faste
To a lorde for a lettere . . leue to haue to curen
As he a curatour were . and cam with hus letteres
Baldely to the bushope . and his briefe hadde."

The Ordinance of Treves was to the effect that since so many unlearned persons took upon them the practice of physic, no man should henceforth practise or teach medicine or surgery without the permission of the Bishop, and then only after proof of ability and good character.[4] That is why "Friar Flattery" had first to go to a lord for a letter.

They were at first both physicians and surgeons, but

[1] Good, 94. [2] *Ibid.*
[3] Hefele, iii. 747, ordinance of Charlemagne, 805 A.D.
[4] Hefele, vi. 494.

the physician would soon find it dangerous to his reputation to venture on the hazardous occupation of surgery, and very early a separation of duties as between physician and surgeon seems to have been recognized. In Guillaume le Breton's description of the death of Richard I., after his arrow wound at the siege of the Castle of Châlus in 1199, this separation is clearly seen—

> "Interea regem circumstant undique mixtim,
> Apponunt medici fomenta, secantque chirurgi
> Vulnus, ut inde trahant ferrum leviore periclo."[1]

Moreover the twelfth General Council, held in 1215, ruled that no subdeacon, deacon, or priest might practise that part of surgery which involved cutting or burning.[2]

When, therefore, an abscess was to be lanced or a patient to be bled, it was natural that the physician should employ the "barbitonsores," accustomed to the use of sharp instruments. Certain it is that among the barbers a class of practitioners arose who began to devote themselves exclusively to minor surgery, while the clergy prosecuted the study of physic.

The physicians were thus from the beginning the learned men of the profession. Physic, as it was called, was taught at the ancient universities, at Oxford at the beginning and at Cambridge towards the end of the thirteenth century. But long before this date there had been physicians in practice in England, some of whom may perhaps have studied at Salerno, Montpellier, or Bologna. In the Exon. Domesday it is recorded that

[1] Cited by T. Chevalier in "Observations in Defence of a Bill," etc.

[2] Hefele, v. 887.

"Nigel the Physician" (*medicus*) had five hides of land in demesne in the hundred of Scife.[1] The Charter of Henry I. to the Abbey of Abingdon, 1105, is witnessed by "Grimbaldus Medicus." Robert Grosseteste (1175–1253), the Oxford Franciscan, was a physician. In 1306 Nicholas de Tyngwyck, physician to the King, was presented with the living of "Recolure."[2]

Reginald de Stokes was known as "in artibus et in medicina provectus et expertus" at Oxford before 1250.[3] In 1325 the University Statutes provided that

> "since to the discretion of those skilled in medicine are committed the cure of the sick, the perils of death, and the ordering of life, great care must be exercised that only competent persons are allowed to practise or incept in that faculty."[4]

The University granted two licences and two degrees in the faculty of medicine:

(1) The "licentia ad practicandum in re medica per totam angliam."

(2) The "licentia ad practicandum in chirurgia per universam angliam."

(3) The degree of Bachelor of Medicine.

(4) The degree of Doctor of Medicine.[5]

The University Statutes for 1400 provide that unlicensed persons will be proceeded against as disturbers of the public peace. This was in consequence of the number of illiterate persons advertising themselves as medical men.[6]

[1] Cited by Willcock, p. 5. [2] Rym. Fœd., ii. 1035.
[3] Mon. Franciscana, i. 113. [4] Gunther, p. 10.
[5] Chaplin, p. 83. [6] Anstey, Mun. Acad., 236.

The University of Cambridge, where a school of medicine was established probably before 1279, conferred not only the degrees M.B. and M.D., but also licences to practise not ranking as degrees. By a University Statute of 1396 no one was admitted to a degree except after examination and one year's practice.[1]

Surgeons.—As has already been said, surgery fell almost wholly into the hands of barbers; these had, however, a multitude of competitors in "bath-keepers, sowgelders, and wayfaring mountebanks,"[2] and irregular practitioners of all kinds. The barbers, gaining experience, practised not only phlebotomy and the extraction of teeth, but attempted more ambitious operations; and, indeed, it was necessary that they should do so, for the number of surgeons other than barbers was never very great.[3]

Barbers were thus in the main the earliest body of persons to become expert in the arts of surgery and dentistry. They had established a gild in London by the middle of the thirteenth century, and in 1308 an "Ordinance of the City of London concerning the Barbers of London" appointed Richard le Barbour Master and Supervisor to govern the craft. He made oath that he would every year make scrutiny throughout the whole of his trade, and if he found any among them acting unseemly in any way, and to the scandal of the trade, he would distrain on them and cause the

[1] *British Medical Journal*, 1920, i. 369. [2] Garrison, 134.

[3] In London in 1491 there were only eight, and in 1513 twelve, belonging to the Fellowship of Surgeons.

distress to be taken to the Guildhall.[1] Persons were also admitted to the gild who were surgeons only and not barbers, as for instance in 1312, "Magister Johannes de Suthwerk, cirurgeon."[2]

During the next fifty years little progress was made towards improving the status of practitioners. The Hundred Years War, beginning in 1336, the Black Death in 1354, and the Great Pestilence of 1361 and 1368, sufficiently account for this.

In 1357, by an Ordinance of the Mayor and Aldermen, the barbers of London were exempted from serving on inquisitions in the Sheriff's Court. In 1376, on the petition of the Barbers Gild, the Mayor and Aldermen ordered that no person should be allowed to intermeddle with barbery and surgery "before he has been found able and skilled in the art and office of barbery," and that by essay and examination of the good folks barbers of the City itself.[3] This was the first attempt to restrict the practice of minor surgery by examination. The government of the craft was put into the hands of two masters, who had power to inspect all instruments. The Company included the two classes of members, (i.) barbers proper (who may also have practised bleeding and toothdrawing), (ii.) barber-surgeons — *i.e.*, barbers exercising the faculty of surgery.

The small body of surgeons, not barbers, referred

[1] Riley, 67.

[2] In York a Barber-Surgeons Company was in existence from the beginning of the century, and similar gilds are known to have been formed in Exeter, Lincoln, and Norwich.

[3] Riley, 393.

to above had probably gained their experience as Army Surgeons during the Hundred Years War, and some had also no doubt studied in the continental schools. They had a corporate existence in London by 1354, for, by order of the Mayor and Aldermen, in that year an inquisition was held by four of the masters into a case of negligence by an apothecary.[1] This proceeding must have commended itself to the civic authorities, for in 1369 the duty of reporting all such cases was laid upon the gild, as the following Ordinance testifies :

> "On the Monday after the Feast of the Purification of the Blessed Mary in the 43rd year of the reign of King Edward III. . . . Master John Dunheved, Master John Hyndstoke, and Nicholas Kyldesby, Surgeons, were admitted at full husting before Simon de Mordon (Mayor) and the Aldermen and were sworn as Master Surgeons of the City of London, to deserve well and truly of the people in doing their cures, to take from them reasonable payment, and truly practise their craft, and to report as often as need be to the Mayor and Aldermen the faults of those who undertook cures. . . . To take charge of the hurt and wounded, and to give true information to the officers of the City about such persons whether they be in danger of death or mayhem . . . and to act uprightly in all things belonging to their calling."[2]

A similar Ordinance is recorded in the year 1390, with this interesting addition, that the four masters are

> "to make faithful oversight of all others, both men and women, occupied in cures or using the art of

[1] See Chapter XII., p. 262. [2] Riley, 337.

> Surgery, presenting their lack, both in practice and medicines, so often as may be to the Mayor and Aldermen."[1]

This is the first recognition of women as competent to be surgeons, though among the unqualified persons who practised there was probably a preponderance of women.

The practice of surgery was sometimes combined with the practice of physic, as is evident from an Ordinance of Edward III., 1372, in which John of Gaunt secured the services of Frere Wm. de Appleton, phisicien et surgien, and Maistre Johan Bray to attend on him in peace and in war so long as they lived for a pension of 40 marks yearly and "bouche en court."[2]

Farriers or Marshals.—The medical and surgical treatment of animals in general did not until the nineteenth century come under the control of a corporate body. But the farriers who shod horses and had inevitably to put the feet right, gradually acquired some sort of empirical knowledge which enabled them to treat injuries and diseases of the horse. In 1356, under the name of the "Marshalls of the City of London," they were incorporated by an Ordinance granted by the Mayor and Aldermen of the City of London, providing:

> "That no one shall keep a forge until he has been admitted by the Masters of the said trade so as to be known as able and skilled in his trade to the profit of the commonalty of the said city and of all

[1] Riley, 519.

[2] Jusserand, 187.

the realm. And also it is agreed between the said Masters and the good folks of the said trade that they will well and loyally advise all those who shall ask counsel of them as well in the purchase of horses as in their cure. Any contravention of this to be reported to the Mayor and Aldermen and at their discretion to be punished.

"And that no one of the said trade shall commence or undertake any great cure if he does not reasonably see at the beginning that the same cure will be brought to a good end, and that if any person shall undertake any great cure and shall fear in his conscience that the same will take a disastrous turn, then in such cases he shall come before the Masters and other wise men of the said trade to ask their counsel and aid for the saving of the horse and for the profit of him to whom the horse belongs, and the honour of the trade.

"And if the contrary be found or it shall be proved against any person that through negligence he has let such horse perish, then he shall be accused thereof before the Mayor and Aldermen and be punished at their discretion in the way of making restitution for such horse to the person to whom the same belongs."

Finally, there was an undertaking that farriers should not employ unskilful assistants.[1]

The rule with regard to reporting serious cases to the masters shows a likeness to the rule by which surgeons were bound to report cases where death or mayhem might be feared.

* * * * *

By the middle of the fourteenth century, therefore, the practice of physic, surgery (including dentistry),

[1] Riley, 292.

veterinary surgery, and pharmacy, was regulated by rules of the gilds, or Ordinances of the Universities.

There was, of course, much empiricism, as there is today, but not infrequently the quack was taken in hand and punished, sometimes in a dramatic way as in the case of Roger Clerk, in 1382, who was punished by the pillory for pretending to be a physician :

"Roger Clerk, summoned before the Mayor and Aldermen on a charge made by Roger atte Hacche of deceit and falsehood, for having undertaken to cure Roger's wife, pretending to be skilled in medicines, whereas he was altogether ignorant of the art of physic." He had given the lady a parchment writing to put about her neck, on which parchment he alleged a charm powerful against fever was written. He was condemned to be led through the city with trumpets and pipes, he riding a horse without a saddle, the said parchment and a whetstone for his lies being hung about his neck, a urinal also being hung before him and another urinal on his back.[1]

Development through the Fifteenth Century

The fourteenth century had been stricken more than once by the terrible Black Death, the mortality of the years 1348 and 1369 having been especially heavy. But these disasters were not without salutary conse quences, one of which was the passing of the Sanitary Act of 1388 (12 Ric. II., c. 13), for the cleansing of streets in all cities and towns of the realm, an early insistence on the public duty of municipal cleanliness

[1] Riley, 464 ; Young, 37.

which had considerable influence on the practice of medicine. There had been earlier municipal ordinances —*e.g.*, for the cleansing of the streets of London—in 1308 and in 1357.[1] But the experience of the following century made it plain that if the health of the King's lieges was to be safeguarded the practice of medicine and surgery must be regulated by legislation.

Abroad, in Sicily even as early as 1140,[2] the practice of medicine by unqualified men was forbidden on penalty of imprisonment and sale of goods. At Salerno the regulations of 1237 provided that no one might enter upon the practice of medicine until after a prolonged training and the passing of an examination before two doctors. In England, however, quackery was rampant, and the efforts both of surgeons and physicians failed to find any suitable remedy. Recognizing the need for greater skill, the barber-surgeons sought fresh powers; the physicians petitioned the King for some prohibition of unqualified medical practice, and there was even projected a conjoint faculty of physicians and surgeons.

Surgery.—In 1410 the Barbers Ordinance of 1376 was confirmed. Their privileges were to be enjoyed and their powers to be exercised "without the scrutiny of any person or persons of other craft or trade under any

[1] Riley, 67, 295.

[2] "Whosoever will henceforth practise medicine, let him present himself to our officials and judges to be examined by them; but if he presume of his own temerity, let him be imprisoned and all his goods be sold by auction. The object of this is to prevent the subjects of our Kingdom incurring peril through the ignorance of physicians" (Edict of Roger II., King of the two Sicilies, cited by Withington, p. 233).

name whatsoever other than the craft or trade of the said Barbers . . . either as to shaving, making incisions, or bloodletting," a proviso inserted, no doubt, in view of the powers granted to the Fellowship of Surgeons.[1]

Four years later, complaint having been made to the Mayor and Aldermen concerning the unskilful and fraudulent practice of certain barbers in matters of surgery, the privileges of the barbers were again recorded. The Company were, however, not to choose their own masters as heretofore, but to submit the names of all the barbers practising surgery within the city. The Mayor and Aldermen then chose the two masters to rule the craft, and took their oath "at all times when duly required thereto, well and faithfully to examine wounds bruises and other infirmities, without asking anything for their trouble." Later in 1416 a further ordinance was passed to strengthen the masters' powers. The provision is repeated that no barber practising the surgical faculty in the city should presume to take under his charge any sick person in actual danger of death or mayhem without showing him to the overseeing masters, under a penalty of 6s. 8d. for each breach.[2]

This rule does not appear to have been adopted by the Surgeons Gild, for as the following entry in the City Records shows, the surgeon was required to give security to ensure due care of the patient:

"5 Henry V., 1417.

"On the 8th day of May in the 5th year, etc., came here John Severelle Love Surgeon and acknow-

[1] Young, 39. [2] Young, 40.

ledged that he owed to John Hille Chamberlain of the City £20 Sterling to be paid at the feast of Pentecost then next ensuing by way of recognizance, etc., the condition being that if he the said John Severelle Love should take any man under his care as to whom risk of maim or of his life might ensue, and within four days should not warn the wardens of the craft of Surgery thereof, then such recognizance should hold good, etc. But if he should, then otherwise. Provided always that so often as it might be lawfully proved that the said John Severelle Love had done against the condition aforesaid, then one half such sum should remain unto the use of the said City and the other half to the Faculty or Craft of Surgeons aforesaid."[1]

Medicine.—In 1421 the first proposal for the general control of the practice of physic was made, probably on the instigation of Thomas Morstede, King's Surgeon. A petition to Henry V. recorded in Petyt's MSS.[2] states that—

"many unlearned and unapproved in the aforesaid science practiseth and specially in Physic, so that in this realm is every man be he never so ignorant, taking upon him to practise, suffered to use it to great harm and slaughter of many men. . . . Wherefore pleaseth to your excellent wisdome . . . to ordain and make a statute perpetually to be straitly used and kept that no man of no manner of estate degree or condition practise in Physic from this time forward but he have long time used the Schools of Physic within some University and be graduated in the same, under pain of long imprisonment and paying £40 to the King . . . and that no woman use the practice

[1] Riley, 651.

[2] No. 533, vol. xxxiii., p. 146 (Inner Temple Library).

of Physic under the same pain. . . . And that the Sheriffs of every shire make inquisition in their turnes if there be any that forfeiteth against this statute under a reasonable penalty, and then that they put this statute in execution without any favour under the same penalty. . . . Also lest they that be able to practise in Physic be excluded from practice by not being graduates, pleaseth to send warrant to all the Sheriffs of England that every practiser in Physic not graduated, that will practise, be within one of the Universities of this land by a certain day, that they that be skilful may after true and strait examination be received to their degree, and they that be not skilful to cease from the practice until the time that they be skilful and approved, or never more intermeddle therewith, and that thereto also be set a convenient penalty."

The physicians were, it will be seen, ready to make special arrangements for the admission of the more skilful of the unlicensed practitioners, an interesting foreshadowing of the provisions inserted in the Medical and Dental and Veterinary Acts of the nineteenth century in favour of those who were already in practice.

The reply to this petition appears on the Rolls of Parliament for the 2nd May, 9 Hen. V., and is as follows:

"Ordinance against the meddlers with physic and Surgery . . . to get rid of the mischiefs and dangers which have long continued within the kingdom among the people by means of those who have used the art and practice of physic and surgery, pretending to be well and sufficiently taught in the same arts when of truth they are not so, to the great deceit of the people, it is ordained . . . that the

> Lords of the King's Council . . . shall make an ordinance to provide for the punishment of all practitioners who have not been proved in their specialty, that is to say those of physic by the Universities, and the surgeons by the masters of that art."[1]

But no such regulations appear to have been made, probably owing to the political difficulties consequent on the death of the King and the minority of his son. The physicians, however, with much foresight, now proposed a conjoint faculty of physicians and surgeons, that is a Society of Physicians to co-operate with the Fellowship of Surgeons, each being independent. Regulations were drawn up for the government of the conjoint college, and an Ordinance was granted by the Mayor and Aldermen in 1423,[2] providing for the oversight of practice and the punishment of faults.[3] No person was to presume to work in the craft of surgery unless he was examined and found able and then admitted.

This was an encroachment on the privileges of the Barbers Company, and the Company, in reply, quickly secured by City Ordinance a fresh confirmation (1425) of the power to practise surgery notwithstanding the

[1] Rolls of Parliament, 9 Hen. V., iv., p. 130.

[2] South, 299.

[3] "If any physician before the Rector of Medicines and the two Surveyors of Physic truly and lawfully be convict of false practice in physic or of any other open fault slander and worthy accusation by two or three true men . . . he be punished by the said Mayor without delay with pecuniary penalty or prison or putting out from all practice in physic for a time or for evermore after the quantity and quality of his trespass. . . . And similarly with regard to surgeons."

authority given to the Rector and Surveyors of the physicians and to the masters of surgery by the Ordinance of 1423.

The Joint College of Physicians and Surgeons did not last for more than a quarter of a century, and it was not until late in the nineteenth century that the idea was revived.

In 1427 the grocers obtained a new charter of incorporation from the Crown, and twenty years later those members of the Company who exercised the exclusive right of "garbling" drugs (testing them for purity) were made liable to punishment by the Company if they used untrue or imperfect drugs. This rule continued down to 1617, when the apothecaries obtained a separate charter.

In spite of these various attempts at control the mischief of unqualified practice continued, and in order to give more authority to the practice of approved practitioners, Edward IV.[1] in 1462 granted a charter of incorporation to the

> "Barbers using the faculty of Surgery and having . . . occupied themselves with the wounds bruises hurts and other ailments of our lieges in tending and curing our lieges as well in bleeding them and in drawing their teeth. . . ."

Powers of oversight over all instruments were included, and also exemption from jury service. No persons were to practise surgery in London unless approved by the masters. This is the first royal charter, and it

[1] W. Hobbes, Warden of the Barber-Surgeons at this time, was Serjeant-Surgeon to the King.

definitely established the right of the members of the Barbers Company to practise surgery.[1]

The Surgeons Gild of London, which numbered seventeen in 1435 and eight in 1491, obtained in the latter year an Ordinance which among other provisions forbade any man to practise surgery but such as were proved skilful and having learning and experience. It also granted them exemption from constableship, watch, and the bearing of arms.[2]

"The Composition."—In 1493 an agreement was entered into between the Barbers Company and the Gild of Surgeons, and the two gilds seem to have worked amicably together for a time. The "composition" did not unite the two bodies, but they agreed to follow the same rule and practice with regard to the government of all surgeons. The charter granted by Edward IV. was confirmed by Henry VII. in 1499, but whereas in Edward's charter reference is made to the "Barbers of London," it is now to the "Barber-Surgeons."

A Surgeon's Diploma.—The following extract from the earliest extant English diploma of a surgeon, dated 1497, shows the extent of a barber-surgeon's licence at this period. After reciting the power given to the Company to examine persons concerning "new woundys, old soris, and other lesyons whatsoever they be, also in drawyng of teeth, ventosyng, scarificacions,

[1] It is from this charter that the Royal College of Surgeons of England dates its corporate existence.

[2] Report and Appendix of City Liveries Commission, 1884, iii., p. 74.

and suche other manwall operacions" . . . the diploma declares the appointment of examiners, including "Mastur John Smyth Doctour in phesick, Instructour and Examener of the seide felishiip," and continues: "Roberd Anson submyttyng hymselfe to the examynacion and th'apposicion,[1] wher and when the seide Roberd by the seide John Smyth in a gret audiens of many ryght well expert men in surgery and other, was openly examyned in dyvers things concernying the practice operative and directif in the seyde crafte of surgery," and he is "founde abyll and discrete to ocopy and use the practise of surgery as well abowte new woundis, as cansers, fystelis, ulceracions and many others disesses and dyvers . . . ," and so he is licensed.[2]

By the end of the fifteenth century there were Barbers Gilds organized on the lines of the London Gild in at least twenty-four other important towns in the kingdom. The rules appear to have been similar to those in London, namely that no one should practise surgery unless he was duly admitted to the gild, and that in all difficult cases consultations must be had with the masters.

There were also gilds of farriers or marshals in many places.

[1] Questioning. [2] Young, 69.

CHAPTER III

THE EARLY STATUTES

We have now reached the period dominated by the influences of the Renaissance. Craftsmen of all trades from France, Italy, and the Low Countries were brought into the country, and there was much upheaval in the gilds. The wardens of the crafts had secured power by City Ordinances to admit apprentices, to inspect work done, to confiscate unlawful tools and improper goods, and to punish disobedience to gild rules by loss of the right to trade. Then followed a struggle to secure royal charters to legalize these powers, and render the control more effective. In this struggle the physicians and surgeons were not behindhand.

The physicians were nearly all graduates of one or other of the Italian Universities—these were at that time the most efficient schools of medicine—and many were foreigners. There was still a close fellowship between medicine and the Church, and many physicians were also priests. Linacre (1460–1524), physician to Henry VIII., was in holy orders, and his position gave him the opportunity to initiate a movement for the improvement of the status of medicine which culminated in the establishment of the College of

Physicians. Popular belief, shared even by physicians and priests, still held that the influence of the planets controlled bodily diseases ; cutting and bleeding could only be done when the moon was in the favourable quarter, and medicine, witchcraft, and magic were still strangely mixed. None the less, the importance of the medical profession to the well-being of the community had come to be clearly recognized before the death of Linacre in 1524.

The English epidemic of sweating sickness in 1486 had, perhaps, much to do with this development, as awakening the public conscience to the need for better sanitation and more efficient medical training. In 1487, by the Act of 4 Hen. VII., c. 3, the nuisance of "corruptions caused by blood of beasts and scalding of swine" in the butchery of St. Nicholas (near St. Paul's) was ended, and common slaughterhouses of beasts were not allowed within the City walls. The provisions of the Act were made to apply to every city, borough, and walled town within the realm of England, and to Cambridge, but not to Berwick or Carlisle. Unfortunately, these provisions soon fell into desuetude.

First Medical Act.—The recognition of the need for trained doctors is shown in what has been called "the first Medical Registration Act," passed in 1511, 3 Hen. VIII., c. 11. There are two copies of this on the roll, No. 18 and No. 22. To the original Act a schedule is attached, containing a memorandum "that sourgeons be comprised in this Act like as Physicions for like mischief of ignorant persons pre-

suming to exercise sourgerie." The words "surgery" and "surgeons" are interlined in the original Act, which reads as follows :

"An Act concerning Phesicions and Surgeons.

"Forasmoche as the science and connyng of Physyke (and Surgerie) to the perfecte knowledge whereof bee requisite bothe grete lernyng and ripe experience ys daily within this royalme exercised by a grete multitude of ignorant persones of whom the grete partie have no manner of insight in the same nor in any other kynde of lernyng, some also can no letters on the boke, soo far furth that common artificers as smythes wevers and women boldely and custumably take upon them grete curis and thyngys of great difficultie. In the which they partely use socery and wichcrafte partely applie such medicyne unto the disease as be verey noyous and nothyng metely therefore to the high displeasoure of God great infamye to the faculties and the grevous hurte damage and destruccion of many of the King's liege people most specially of them that cannot descerne the uncunnyng from the cunning; Be it therefore to the suertie and comfort of all manner people by the aucthoritie of thys present parliament enacted that noo person within the Citie of London nor within vii myles of the same take upon hym to exercise and occupie as a Phesicion (or Surgeon) except he be first examined approved and admitted by the Bisshop of London or by the Dean of Poules for the tyme beyng callyng to him or them iiij Doctours of Physyk (and for Surgerie other expert persones in that facultie). And for the first examinacion such as they shall thynk convenient. And afterward alway iiij of them that have been soo approved upon the payn of forfeytour for every moneth that they do occupie as Phisicions (or Surgeons) not admitted nor examined after the tenour of thys Act

of V li., to be employed the oon half thereof to the use of our soveraign Lord the Kyng and the other half thereof to any person that wyll sue for it by accion of dette in which no wageour of lawe nor proteccion shall be allowed. And over thys that noo person out of the said citie and precincte of vii myles of the same except he have been as is said before approved in the same take upon hym to exercise and occupie as a Phisicion (or Surgeon) in any Diocesse within thys Royalme but if he be first examined and approved by the Bisshop of the same Diocesse or he being out of the Diocesse by his vicar generall either of them callyng to them such expert persons in the seid faculties as there discreccion shall thynk convenyent and gyffing their letters testimonials under ther sealle to hym that they shall so approve upon like payn to them that occupie the contrarie to thys Acte as is above seid to be levyed and employd after the fourme before expressed. Provided alway that thys Acte nor anythyng therein conteyned be prejudiciall to the Universities of Oxford and Cantebrigge or either of them or to any privilegys granted to them."

The close alliance of medicine with the Church is here recognized by statute in the appointment of bishops and deans to examine with doctors of physic and surgeons. Ever since the Council of Treves (1310) the bishop had had canonical authority to authorize the practice of medicine (p. 11). The Act makes no mention of apothecaries, but there is no doubt that, though few in number, they carried on practice amongst the poor. There has been no repeal of this Act, but in so far as the prohibition of unlicensed practice was concerned, it was not very effectual, particularly in the provinces, since no one was enjoined

to prosecute. It must now be considered obsolete, although as late as 1856 it was said to be still in force (D'Allax *v.* Jones, 26 L.J. [Ex], 79). As to its effect after the Medical Act of 1858, Cotton, L.J., in Davis *v.* Makuna (1885) (54 L.J. [Ch.], 1148), said: "I will not go into the question as to whether the Act of 3 Hen. VIII., c. 11, is still in force so far as it prohibits and imposes a penalty upon anyone acting as a surgeon without the qualification required by it"; and Lindley, L.J., said in the same case: "If it were necessary to spell out the extent to which the old Act of 3 Hen. VIII., c. 11, is still in force, I should desire to take more time before deciding. I cannot at present satisfactorily completely dovetail it in with the other (*i.e.*, subsequent) Acts."

In 1513, by the Act 5 Hen. VIII., c. 6, the Gild of Surgeons ("not passing in number xii persons") secured confirmation of the right of exemption from constableship, watches, and bearing arms,[1] juries and inquests. The Act also extended the same privilege "to all Barber-Surgeons admitted and proved to exercise the said mistery of surgeons according to the form of the statute lately made in that behalf, so that they exceed never at one time above the number of twelve persons." This is a statutory confirmation of the interlineation of the words "surgeons" and "surgery" in the Act of 1511.

Physicians' Charter.—In 10 Hen. VIII. (1518) by the influence of Linacre a charter was granted

[1] "They being unharnessed and unweaponed" in the field "according to the law of arms."

incorporating the College of Physicians of London, having among other objects that of checking men who profess physic rather from avarice than good faith, to the damage of credulous people, and in the hope that ignorant or rash practitioners be restrained or punished. The charter was granted "partly . . . imitating the example of well governed cities in Italy and many other nations, and partly inclining to the petition." It instituted "a perpetual College of learned and grave men who shall publicly exercise medicine in our City of London and the suburbs and within seven miles . . . whose care it will be . . . as well to discourage the unskilfulness and temerity of the knavish men whom we have mentioned, by their own example and gravity, as to punish the same by our laws lately enacted, and by the constitutions to be ordained by the same College."

The charter provides that no one in the area mentioned shall practise medicine unless he be admitted thereto by the President and commonalty, under pain of one hundred shillings for every month during which not having been admitted he has practised, half to go to the King and half to the College. Four men were to be elected to have the oversight and scrutiny, correction and government of all physicians practising in the city and suburbs, and the punishment of the same for their defaults in not well executing, doing and using it; also the scrutiny of all medicines and recipes used by physicians for curing or healing infirmities, "so that the punishment of such physicians . . . may be executed by fines, amercements and imprisonment of their bodies or by other reasonable and fitting means." Exemption

was granted from assizes, juries, inquests, inquisitions, etc.

The Act of 14 and 15 Hen. VIII., c. 5 (1522–23), recites and confirms this charter of 1518 and extends the Act of 1511 by the following additional provision:

> "*Section* 3.—And where that in dioceses of England out of London it is not light to find alway men able sufficiently to examine after the Statute such as shall be admitted to exercise physic in them, that it may be enacted . . . that no person from henceforth be suffered to exercise or practise in physic through England until such time as he be examined in London by the said President or Elects and to have from the said President or Elects letters testimonials of their approving and examination, except he be a graduate of Oxford or Cambridge, which hath accomplished all things for his form without any grace."

Here we may stay to summarize the work of Linacre.

1. The Act of 1511 provided:

(*a*) That no man might practise physic or surgery in London or suburbs without a licence from the Bishop of London or Dean of St. Paul's, to be granted only after examination by four Doctors of Physic or Surgeons. Penalty £5 a month.

(*b*) That no man might practise physic or surgery in the provinces unless similarly licensed by the Bishop of the Diocese after an examination by Physicians or Surgeons.

(*c*) The privileges of the Universities of Oxford and Cambridge are saved.

2. The Charter of 1518 to the College of Physicians provided that no man might practise medicine in London unless admitted by the President and College.

3. The Act of 1522 provided that no man, unless

a graduate of Oxford or Cambridge, may practise in the provinces until examined in London by the College.

The law, then, at this date clearly was that no man might practise medicine and surgery in England unless he was licensed after due examination or unless he was a graduate in physic of Oxford or Cambridge. This prohibition of practice lasted in theory until the beginning of the nineteenth century. It did not effectually prevent unqualified persons from practising, however, and in the very next year (1524) the King gave a special licence to Roger Smyth, "citizen and grocer of London," to practise physic and surgery in all parts of the realm.[1]

"Lambeth Degrees."—About this same time the Archbishops obtained the power, rarely exercised it is true, of granting medical degrees without examination. The famous Reformation Parliament returned in 1529 passed, in 1533, a number of statutes abrogating the authority of the Pope in England, among which was the 25th Hen. VIII., c. 21 :

> "An Act concerning the exoneration of the King's subjects from executions and impositions heretofore paid to the See of Rome, and for having licences and dispensations within this realm, without suing further for the same."

Section 2 provides that the Archbishop of Canterbury shall have power to grant

> "all manner such licences, dispensations, compositions, faculties, grants, rules, delegacies, instruments, and all other writings for causes not being contrary

[1] Brewer, vol. iv., pt. i., No. 311.

or repugnant to the holy scriptures and laws of God as heretofore hath been and accustomed to be done and obtained by your Highness or any of your most noble progenitors or any of your or their subjects at the See of Rome."

No mention is made here of the granting of degrees in medicine or any other faculty, but as the granting of degrees in medicine, law and divinity had been exercised by the Popes independently of the Universities, the abolition of the papal authority in this country, especially after the Act of Supremacy in 1535, would doubtless cause some disappointment to persons who were looking forward to receiving such titles from the Church. Cranmer (Archbishop of Canterbury in 1532) certainly used the general power under 25 Hen. VIII., c. 21, for he conferred the degree of Doctor of Divinity in 1539; Archbishop Juxon (1660-63) conferred among other degrees one M.D. and one M.B. Other Archbishops continued the practice—*e.g.*, Archbishop Tenison in 1695[1]—and in 1725, on the Bishop of Chester refusing to admit to the Wardenship of Manchester College Mr. Samuel Peploe, a B.D. of Lambeth, the Archbishop's authority to grant such degrees was upheld by the King's Bench. This authority, although it is still exercised, ceased to have any practical value after the Medical Act, 1858, Schedule A of which includes as one of the qualifications entitling to registration the degree of Doctor of Medicine by doctorate granted, *before the passing of the Act*, by the Archbishop of Canterbury.[2] Degrees

[1] Munk, ii. 7. [2] See *Lancet*, 1896, i. 1147.

granted by the Archbishop since 1858 cannot be registered.

Regius Professor's Powers.—After the Reformation many who had been preparing themselves for the Church felt it safer to turn to medicine, and when Henry in 1536 appointed John Warner to be first Regius Professor of Physic at Oxford, the Professor was given special powers of examination to meet this circumstance. Wood's "History and Antiquities of the University of Oxford," under date 1535, gives the following account:[1]

> "And because divers scholars upon a foresight of the ruin of the Clergy, had and did now betake themselves to Physick, who as yet raw and inexpert would adventure to practise, to the utter undoing of many . . . the . . . Visitors ordered therefore that none should practise or exercise that faculty unless he had been examined by the Physick Professor concerning his knowledge therein. Which order, being of great moment, was the year following confirmed by the King and power by him granted to the Professor and successors to examine those that were to practise according to the Visitors' Order."

A Surgeon's Contract.—An interesting relic of the year 1537 is found in an agreement of that year preserved in Cart. Harl. 45, B. 33, in the British Museum, between Nicholas Alcock, Citizen and Barber-Surgeon of London, and Robert Morton, of High Holborn, Middlesex, gentleman, which witnesseth:

> "That whereas the said Robert Morton is diseased in his hand by the byte of a dog to his great payne . . for remedy whereof the said Nicholas cove-

[1] Vol. ii., p. 62.

nanteth and graunteth unto the said Robert by these presents that he the said Nicholas or his assigns shall do his faithful diligence and devors as much as in him lyeth and as far forth as God hath endued him in the art and science of surgery, for to give the said Robert, so that the same Robert be ordered and ruled after the said Nicholas in every condition concerning surgery and also do take noon other than such as the said Nicholas shall admit and assign, for the which business diligence labour and attendance of the said Nicholas in the cure to be had and done, the said Robert covenanteth and graunteth by these presents that he and his assigns shall well and truly pay or do to be paid unto the said Nicholas five pounds sterling in this wise following—*i.e.*, at the feast of St. John the Baptist 40s., at the feast of the birth of our Lord God the next ensuing £3 . . . and further that the said Robert covenanteth and graunteth by these presents . . . unto the said Nicholas that he the said Robert shall be ruled and guided in all things after the advice of the said Nicholas and his assigns during the cure aforesaid. (Signed) R. MORTON."[1]

Physicians and Surgeons Acts.—In the year 1540 two important medical statutes were passed—viz., Chapters 40 and 42 of 32 Hen. VIII.

The former, entitled "Physicians and their Privileges," exempted physicians in London from keeping watch and ward, constableship, or any other office. It gave the College of Physicians authority to enter the houses of apothecaries within the city to search, view, and see such apothecary wares, drugs, and stuffs as the said apothecaries have, and provided that any that were found defective, corrupted, and not meet nor convenient

[1] B.M. Cart. Harl. 45, B. 33.

to be ministered in any medicines for the health of man's body should be destroyed.

Section 3 provided that "forasmuch as the science of physic doth comprehend, include, and contain the knowledge of surgery as a special member and part of the same," all admitted physicians might in London and elsewhere within the realm practise and exercise physic "in all and every his members and parts, any Act, statute or provision made to the contrary notwithstanding."

This section was the ground on which the Court held in Royal College of Physicians *v.* General Medical Council, 68 L.T., 496, that the Royal College of Physicians was authorized to give a diploma in physic including surgery (see p. 118).

But though the Act authorized physicians to practise surgery, the surgeons were still prohibited from practising physic (see the case of Read and Jenkins, *post*, p. 54).

Apothecaries.—As for the apothecaries, they had been accustomed, as we have seen, from before Chaucer's day to be subject to the physician, and the following oath of an apothecary, recorded in 1526 as having been sworn at Oxford, is evidence that this subjection still continued:

> "I swear that I will always have in my shop all medicines, species of medicines, and confections which concern the art and mystery of an Apothecary, and are necessary for the health of man.
>
> "That I shall be contented once a year (at least) that certain physicians practising in the university shall visit my shop upon the account of good and

bad medicines, in the month of November, or any other time if occasion shall require it, to be adjudged of by the Vice-Chancellor, one of the Proctors, and the practising physicians here, and these searchers and tryers of medicines, being of the Vice-Chancellor's and Proctor's appointment, shall have power to destroy and throw away all bad and unprofitable medicines and drugs.

"That I will not make up any compound medicines without the presence and advice of some physician admitted to practise, who shall judge those simples fit to be made up into compositions.

"That I will observe all these things without fraud or deceit."[1]

In those early days of pharmacy, when strange and uncouth remedies were the vogue, and little was known of chemistry, the physicians would no doubt find it essential for the protection of their own credit, to say nothing of their patients' lives, to have some control over the dispensing of their prescriptions.

Barber-Surgeons.—The second statute of 1540 is headed "The authority and liberty of Barbers and Chirurgeons in London being made of one Company." It recites that there are two distinct companies of surgeons—the "Barbers of London" and the "Chirurgeons of London," the former incorporated, the latter not—and enacts that the two are thereby united and incorporated as "Masters or Governors of the mystery and commonalty of the Barbers and Chirurgeons of London." Authority is given that the surgeons may take yearly four condemned persons for anatomies,

"and to make incision of the same dead bodies or otherwise to order the same after their said discretion

[1] Gunther, p. 8.

at their pleasures, for their further and better knowledge instruction insight learning and experience in the said science or faculty of Surgery.

"And forasmuch as persons being of the mystery or faculty of Chirurgery oftentimes meddle and take into their cure and houses such sick and diseased persons as been infected with the Pestilence, Great Pocks, and such other contagious infirmities, do use or exercise barbery . . . which is very perilous for infecting the King's liege people . . ." it is enacted . . . "that no barber in London shall occupy any surgery, letting of bloud or any other thing belonging unto cirurgery (drawing of teeth only except); and no chirurgeon shall use the art of barbery or shaving."

Power is given to four wardens or masters chosen by the Company to have the oversight and correction of defaults and inconveniences as shall be found amongst the company using barbery or surgery in London and suburbs.

This Act therefore marks a great step forward. It united the two companies, a union destined to last for two hundred years, it provided means for improving the knowledge of anatomy,[1] and it separated, for a very

[1] A similar grant of bodies for anatomy had been made to Scottish surgeons thirty-five years earlier. The Corporations of Surgeons-Barbers in Edinburgh had obtained in 1505 from the Town Council a deed of cause by which, in addition to powers of examination and admission to the craft, they acquired the right to have "ains in the yeir ane condampnit man efter he be deid to mak anatomea of, quhairthrow we may haf experience. Ilk ane to instruct uthers." This right was ratified by James IV. in 1506, and this was the first enactment of the kind in Great Britain. The College of Physicians did not secure the right until 1565 (Munk, iii. 319).

sufficient reason, the two classes of members of the Company and limited their respective spheres of work.

But it was not entirely effective in this last respect; as late as 1641 we find surgeons practising barbery, and as late as 1714 barbers practising surgery. The Ordinances of the barber-surgeons[1] contain the following entries:

> "18 Jan. 1641. Richard Tompkins and Symon Crouch, Surgeons by profession yet using barbery. This Court doth give them order by Our Lady day next to leave barbering it being against ye statute to practise both.
>
> "1 April 1712. Two barbers ordered to be prosecuted for practising surgery contrary to the byelaws.
>
> "17 Nov. 1714. J. Spurling, a barber, ordered to be prosecuted for practising surgery."

Irregular Practice.—Nor did the exclusive right to practise given to licensed physicians and surgeons by the Acts and charters long remain inviolate or prevent the King from exercising the dispensing prerogative. Two years after the statutes of Henry VIII. just noticed there are two instances of grants under the King's Privy Seal:

> "Lewis Torfote, of Water Lambith, Surr., Licence (as he is 'very expert and cunning in the science of physic to cure lightly any infirmities or diseases'), to practise the said science in London or elsewhere and heal such as shall resort to him."[2] (Dated October 12, 1542.)

[1] Young, pp. 217, 349, 350.

[2] Gairdner, "Letters and Papers, Hen. VIII.," vol. xvi., p. 566.

In 33 Hen. VIII. "John Wisdam" and John Lister had been sued by the College of Physicians in the Court of Exchequer for practising physic against the statute; Wisdam had been fined £10, and Lister £30.[1] The King at once granted Wisdam a free pardon (June 1, 1542).

> "John Wysedome, Pardon of all penalties incurred by him in exercising the mystery of Physic in London without licence. . . . Information was sworn before before the Barons of the Exchequer the sixth of July last by one Otwell Wylde that the said John Wysedome of the parish of St. Stephens, Colman Street, had since the 13th July 32 Hen. VIII., practised as a physician without having been approved by the Bishop of London or the Dean of Powles, contrary to the Statute of 3 Hen. VIII., and had thereby forfeited £55 of which the said Wylde prayed to have half; it however appears that the said Wysedom has done many great cures upon the King's subjects and that Wylde was instigated by evil disposed persons maliciously stomached against the said Wysedom; Also licence to him, and his son Gregory Wysedom,[2] to exercise the said science and mystery in London or elsewhere in the King's Dominions."[3]

Moreover, it would appear that the surgeons used unwisely and vexatiously the powers given them to prohibit unlicensed practice, for when in 1542 Thomas Gale, a member of the Barber-Surgeons Company,[4]

[1] Goodall, p. 305.

[2] One Gregory Wisedom was, on his humble petition, admitted a licentiate of the College of Physicians on December 4, 1582, though he was not a graduate in either arts or medicine (Munk, i. 84).

[3] Gairdner, vol. xvi., p. 254.

[4] He was Master in 1561.

sued unlicensed persons for practising surgery, his action appears to have given offence. The following is the record of what took place :

"Agnes Guy wyff of Thomas Guy was suyd for helyng of wemen's papes.

"Itm. Agnes Mason Wydow was suyed for the same cause.

"Itm. Kat'rine Bownington was suyd for gyvyng water to yonge chyldren to hele cankers in ther mothes.

"Itm. John Margetson on of the Kinge's Maj[ties] brewers was suyd for gyvyng water to clense mens yeese.

"All these persons were suyde in the guyldhall in London Sir Rolande Hyll Knyght being Shereffe by Thomas Gale barber surgeon which persons and divers others be now in suyte agayne in the Kings bench for the same cause."[1]

This troubling of "divers honest persons" who ministered surgical aid to poor people out of charity would seem to have been the ground for the passing of the 34–35 Hen. VIII., c. 8, 1542, the preamble of which recites cases very similar to those described above :

"An Acte that persones being no common Surgeons maie mynistre medicines outwarde."

The preamble cites the Act[2] 3 Hen. VIII., c. 11, and continues :

[1] Gairdner, Paper No. 1255, vol. xvii., p. 960.

[2] It is worthy of note that it raises no question of the authenticity of the words "surgeon" and "surgery" which were interlined in that Act. This, indeed, had been settled by the Act of 1513 (*ante*, p. 32).

"Sithens the making of whiche saide Acte, the company and fellowship of Chirurgeons of London, minding only their own lucres, and nothing the profit or ease of the diseased or patient, have sued troubled and vexed divers honest persons as well men as women whom God hath endued with the knowledge of the nature kind and operation of certain herbs roots and waters and the using and ministering them to such as been pained with customable diseases: as women's breasts being sore, a Pin and the Webb in the eye, uncomes of hands, scaldings, burnings, sore mouthes, the stone, strangury, saucelin, and morphew, and such other like diseases, and yet the said persons have not taken anything for their pains and cunning but have ministered the same to poor people only for neighborhood and God's sake and of pity and charity; And it is now well known that the Chirurgeons admitted will do no cure to any person, but where they shall know to be rewarded with a greater sum or reward than the cure extendeth unto, for in case they would minister their cunning to sore people unrewarded there should not so many rot and perish to death for lack of help of Surgery as daily do, but the greatest part of Surgeons admitted been much more to be blamed than those persons that they trouble; for although the most part of the persons of the said craft of Surgeons have small cunning, yet they will take great sums of money and do little therefor, and by reason thereof they do oftentimes impair and hurt their patients rather than do them good:

"In consideration whereof and for the ease comfort succour help relief and health of the King's poor subjects inhabitants of this his realm, now pained or diseased or that hereafter shall be pained or diseased,

"Be it ordained established and enacted by the authority of this present Parliament, that all times from henceforth it shall be lawful to every person

being the King's subject having knowledge and experience of the nature of herbs roots and waters or of the operation of the same by speculation or practice, within any part of the realm of England or within any other the King's Dominions, to practise use and minister in and to any outward sore uncome wound apostemations outward swelling or disease, any herb or herbs oyntments bathes pultes and emplasters, according to their cunning experience and knowledge in any of the diseases sores and maladies aforesaid, and all other like to the same, or drinks for the stone strangury or agues, without suit vexation trouble penalty or losse of their goods. The aforesaid statute . . . or any other Act Ordinance or Statute in any wise notwithstanding."

Effect of the Act.—This Act is clearly directed against "covetous surgeons" and not against physicians. The surgeons, as members of a trade gild, had the right to charge for their labours, whereas the physicians never seem to have sought such a right (Veitch *v.* Russell [1842], 3 Q.B., 928). It recognizes and protects irregular practitioners who acted without pay and for charity's sake, and gives them permission to treat outward sores and to give drinks for the stone or strangury or agues (see Butler's case, Sir W. Jones's Report 26, *infra*, p. 71). Though it was directed against surgeons, yet they benefited by it to the extent that they might now administer drinks as well as apply outward remedies so long as they restricted the drinks to the three diseases mentioned. But though the statute does not extend either in words or intent or meaning to give liberty to any person to practise or exercise medicine for gain or profit (Steed

v. Henley, 1 C. and P., 574, Allison *v.* Haydon, 4 Bing., 619), its effect was to stimulate the growth of quackery of every kind.

It is probable that the apothecaries took full advantage of the liberty given by the Act to extend their practice, and that this was the beginning to which their ultimate development as a separate class of medical practitioners can be traced.

Quackery.—In 1555 the Barber-Surgeons Company, attempting to counteract the evil effect of the Act of 1542 in encouraging empiricism, established a register of admitted surgeons. John Halle, a member of the Company of Surgeons, writing in 1565, declares:

> "Whereas there is one surgeon that was apprentised to his art, or one Physician that hath travayled in the free study and exercise of Physic, there are ten that are presumptuous swearers, smatterers and abusers of the same, yea, smiths, cutlers, carters, coblars, copers, coriars of lether, carpenters, and a great rable of women."[1]

The literature of the period shows that this was no overstatement. Ben Jonson in "Volpone" (Act II., sc. i.) (1605) makes Volpone, disguised as a mountebank doctor, utter the kind of bragging speech affected by the travelling quacks of the time, decrying all other practitioners with their poor "groat's worth of unprepared antimony finely wrapped up in several scartoccios," who yet "want not their favours among your shrivelled salad-eating artisans, who are over-joyed that they may

[1] Halle, p. ix.

have their halfperth of physic, though it purge them to another world it makes no matter" . . . and so he comes to his own panacea. Travelling quacks ventured even into the University cities, and "the vulgar flocked to them, leaving the University Physicians."[1]

The physicians, however, were still in favour and were even given further powers. The Act of 14 and 15 Hen. VIII. which ratified their charter was confirmed by an Act of 1 Mary, sess. 2, c. 9 (1553), which in Section 2 provides that the said statute "with every article and clause therein contained, shall from henceforth stand and continue still in full strength force and effect, any Act Statute Law Custom or any other thing made had or used to the contrary in any wise notwithstanding."

Sections 3 and 4, "for the better reformation of divers enormities happening to the commonwealth by the evil using and undue administration of Physic," enlarged the powers of the College for the better execution of their duties. Henceforth, whenever the President or College committed an offender for any offence or disobedience to the Act of 14 Hen. VIII. or the charter of 1518, the gaolers must receive him and keep him until discharged by the President, under a penalty of £20, or double the amount of the fine imposed upon the condemned practitioner.

By Section 5 the power granted by 32 Hen. VIII. to supervise apothecaries' wares was confirmed, and it was made lawful for the Wardens of the Grocers Company to attend with the physicians in their search. But if

[1] Gunther, 52.

they did not attend when called, the search might proceed without them.

Thus the physicians were given the sole guardianship of medical education in England. They used it well, and were able not only to prevent persons of insufficient knowledge from admission to degrees at the Universities, but to take drastic action against unlicensed practitioners.

In the year this Act was passed (1553) Simon Ludford, a Franciscan friar, had been admitted a Bachelor of Medicine at Oxford, though he was ignorant and incompetent. The College of Physicians wrote to the University recommending that the admission should be rescinded, and advising them to be more cautious for the future. In the result the University was interdicted by the Visitors from a repetition of the licence, and it was ordered that a proper course of study should be followed. Ludford then tried to obtain a licence to practise from Cambridge, but he was prevented for a time by the influence of Dr. Caius. He then appears to have set himself to improve his knowledge, and obtained his M.D. at Oxford in 1560. In 1563 he was elected a Fellow of the College of Physicians.[1]

In 1554 the College issued a letter to all the justices, mayors, sheriffs, bailiffs, and constables in the kingdom, citing the medical statutes and requiring their assistance in prosecuting itinerant quacks. Visitors were appointed with authority that they should not suffer any to practise physic throughout England unless graduates of Oxford or Cambridge or otherwise

[1] Munk, i. 64.

properly licensed. All unlicensed practitioners were to enter into recognizances not to practise until examined and admitted, and those who refused were to be committed to prison.[1]

The College also prohibited surgeons and apothecaries from practising physic, and in 1555 the wardens of the grocers and all the apothecaries of London were summoned to the College and enjoined to divulge the ingredients of their medicines, so that physicians passing their shops might judge of the goodness of them and prevent the sale of corrupt goods. To this the wardens and the apothecaries agreed.[2]

In the early years of Elizabeth the College authorized provincial physicians to prosecute quacks in their districts.[3]

In the Universities the academic ideal of medical and surgical practice restricted to qualified men was carefully maintained; these statutes were passed at Oxford in 1565:

> "Every Doctor of Physick, after his admission, is allowed to practise in all kinds of Physick but no other is suffered to practise in Oxford unless he be a Master of Arts and have taken a batchelor's degree and be admitted by the congregation to practise.
>
> "No one is allowed to practise surgery within the University without the Chancellor's licence first obtained, and if any one shall presume the contrary he shall be punished as a disturber of the peace. A student in Surgery is admitted to practise throughout England if he has been exercent therein for seven years and has gone through two operations in Anatomy and performed three cures at the least, and

[1] Goodall, 308. [2] Goodall, 310. [3] Goodall, 313.

be also approved of under the handwriting of the King's Professor of Physick and of one doctor in the same faculty, or of any three doctors of physic residing within the University, and then his grace on supplication is granted with a condition that he cures gratis four poor persons (at least) when required thereunto."[1]

In 1570, at Cambridge, new statutes were also instituted providing for a six years' course in medicine for the degree of M.B., and a further five years for the M.D. In surgery the student had to perform two anatomies and at least three cures before licence.[2]

Special Licences.—In London, however, it was quite possible for untrained persons to get a licence to practise. The College of Physicians granted exceptional licences, as in the case of John Luke in 1561, to whom a faculty was granted to treat diseases of the eye by external means only :

"Concessa est facultas Joanni Luke, oculari medico, ut oculis medeatur, sic ut externis tantum medicamentis utatur, et non internis ut nec clysteribus, nec purgationibus, nec syrupis, nec id genus (*sic*) aliis rebus, quae intro in corpus assumuntur, neque in urbe Londinio, neque in suburbiis, neque per ambitum septem milliarorum, nisi cum consilio alicujus docti et experientis medici ex Collegio accersiti."[3]

William Delaune, a clergyman, was admitted as a licentiate in 1582 on compassionate grounds,[4] and Richard Scott in 1590 was licensed to practise

"in mitioribus morbis, quamdiu bene et honeste se gesserit, et accersiverit in gravioribus morbis aliquem Collegarum."[5]

[1] Gunther, 40. [2] Chaplin, 102. [3] Munk, i. 64.
[4] Munk, i. 85. [5] Munk, i. 100.

In 1596 L. Poe, who had practised for many years, secured a licence from the College to treat venereal diseases, cutaneous and calculous diseases, gout and simple tertian ague, but in all severe diseases he was to call in a physician. This restriction was removed ten years later on the recommendation of the Earls of Suffolk, Northampton, and Salisbury.[1]

These concessions were usually granted on the application of some notable persons, but the applications were not always successful. Sir Francis Walsingham in 1581 pleaded with the College to permit one Margaret Kennix to continue her practice with simples, as "she has an impotent husband to maintain and a family," but the College respectfully declined to waive their duty under the law.[2] Sir Francis intervened again in 1586 in favour of John Not, a quack in Kent, but was refused. Not then entered into a bond not to practise, but he forfeited his bond and fled abroad. He returned under James, and was frequently fined and imprisoned afterwards.

Prosecution of Irregular Practitioners.—In 1589 Sir Francis[3] appealed for Paule Buck, who had practised six years and had been committed by the College to the Compter in Wood Street.[4] The College

[1] Munk, i. 149. [2] Goodall, 316.

[3] Throughout the history of medical practice it is strikingly noticeable that quacks have ever sought the patronage of the nobility or even of royalty. All their claims to special knowledge or skill are backed up by the quotation of some noble name, knowing that the common people who are to be gulled love high-sounding titles.

[4] The Compter was the debtors' prison, attached to the Mayor's Court in London.

refused to release him, but the Keeper set him at liberty without the consent of the College. Buck started to practise again, and was ordered to appear before the College. The Lord High Admiral addressed a letter to the College on his behalf, but the College refused to yield. Then the Earl of Essex intervened, and he too was refused, and Buck was sent to prison.[1] In 1593 Burleigh, Lord Treasurer, wrote to the College on behalf of Dr. Butler, asking that he should be allowed to practise as he was a Professor of Physic at Cambridge; the College reply was, "Yes, if he will submit to examination."[2] John Banister, who was licensed to practise by the University of Oxford, and then settled in London, in 1594 received permission to practise at the special request of Queen Elizabeth, but on condition that he would in all serious cases consult a Fellow of the College.[3]

The College would also prosecute all who practised physic without licence. In 1593, Forman, an astrologer, was committed to the Compter. He was released by order of the Lord Keeper, and the College then asked that he should be returned to prison. He again appeared before the College and was interdicted. After his release he fled to Lambeth as a place of refuge, whereupon the College addressed a letter to the Archbishop and, with his approval, proceeded to prosecute Forman *de mala praxi et illicita*.[4]

The College also watched keenly for any encroachment on their province by the surgeons. In 1572 the

[1] Goodall, 326.
[2] Goodall, 336.
[3] Munk, i. 105.
[4] Goodall, 337.

question was argued in the Mayor's Court whether surgeons might give inward remedies in the sciatica, French pox, or any kind of ulcer or wound. Many arguments were used by the Bishop of London, the Master of the Rolls, and others, for the surgeons, but Dr. Caius being summoned defended the rights of the physicians, and it was agreed by all present that surgeons ought not so to practise.[1]

Two surgeons, Roger Jenkins and Simon Read, were fined and imprisoned in 1596 for illegal practice, and interdicted from further practice. They procured a writ, *corpus cum causa*, from Sir John Popham, Chief Justice of the King's Bench, and they appeared before him at his house, when the Censors of the College were also present. Jenkins claimed that he was a surgeon, and that in that art inward remedies were sometimes necessary. The Chief Justice replied that in such cases a physician should be called in, it being upon no such account lawful for a surgeon to invade the physician's province. The accused were ordered back to prison until they had made satisfaction to the College. Arising out of this case the Chief Justice laid down, amongst other things:

Powers of the College.—1. That no surgeon as a surgeon may practise physic—no, not for any disease though it be the great pocks.

2. The authority of the College is strong and sufficient to commit to prison.

3. It were fit to set to physicians' bills (*i.e.*, prescriptions) the day of the month and the patient's name.

[1] Munk, i. 41.

4. The Chief Justice cannot bail or deliver the College prisoner, but is obliged by law to deliver him up to the College censure.

5. That a freeman of the City of London may lawfully be imprisoned by the College.

6. That no man, though never so learned a physician or doctor, may practise in London or within seven miles without the College licence.[1]

It is interesting to note that Jenkins paid one-third of his fine and was released, and that Read was released by intercession of the Bishop of London. Two years later Jenkins was again fined and interdicted from practice. Many similar cases are recorded by Goodall.

Special Licences in Surgery.—The licence to practise surgery was easy to obtain, for the Barber-Surgeons Company of London were more lenient in this respect than the learned physicians. A practitioner who could show even a modicum of knowledge could get either a temporary or a limited licence.

In 1557 William Thomlyn was permitted "to drawe teethe, and to make cleane teethe, and no more." This is the earliest instance of a special licence in dentistry, though in 1551 there is a record of the admission to the Company of John Bryckett, "toothe-drawer."

In 1573 James Vanotten and Nicholas Boulden were allowed on petition to practise as surgeons for three months, but only for the couching of the cataract, cutting for the rupture, stone, and wen.

Prohibition of Practice.—If, however, they were found hopelessly ignorant, the Company did not hesitate

[1] Merrett, 115; Goodall, 341–345.

to use their powers under Ordinance Charter, and the Act of 1540, to stop their practice, as the following cases taken from Young's "Annals" show:

1567. John . . . a Dutchman, who had set up bills announcing his practice, all the way from Blackfriars to Westminster, having been found on examination that he could "answer none," was prohibited from practising anywhere within one mile of the city.

1576. March 13, Tho. Hodes "for that he was proved ignorant" was "bound in xl. li." never to meddle in any matter of surgery.

1609. Mathias Jenkinson, who had a conditional licence, was discharged from practice in surgery, not having observed the conditions "and for his evil and unskilful practice."

1605. Wm. Corbet dismissed from the exercise of surgery for his evil practice.

> "Pascall Lane, a practitioner in the art of surgery, was by our Masters further committed to the Compter for cutting of one Thomas Thomlin's child for the stone who died presently under his hand, by his negligence and ignorance; where he is to continue till he hath paid the fine xl. sh. for not making presentation to the Masters of the cure according to the orders of the Company."

1610. J. Cotton was committed to the Compter for not making presentation, for evil practice, and was forbidden to practise.

1610. October 9, Widow Bryers was committed to the Compter for practising surgery contrary to the statutes.

1612. November 17, R. Finch dwellyng at Pyckle Herring was forbidden to practise bone-setting or any other matter touching surgery at any time hereafter.

1624. December 5, John Baptista Succa, "A mountibancke and an Italian born," had order to "forbeare his practice here in London."

1635. October 23, Laurence Raylen, a mountebank, was ordered to pay a fine of £5 for hanging his signs, tables, bladders and stones upon the public posts and on the traitor's scaffold at Tower Hill in an exorbitant manner, being contrary to the laws and charters, etc., and "this court doth order that those signs and bladders shall be demolished and he is forbidden from further practising any part of surgery hereafter within London or seven miles compass of this city."

But the Barber-Surgeons Company, though willing to grant a licence where a case was made out, yet desired a strict control of all licences. In 1555 the Company established a register of certified surgeons and in 1556 an Ordinance was passed that no man of the Company should call for the Bishop's seal which (under the Act of 1511) is the confirmation of a surgeon, until such time as he hath passed his first preferment of grace. By the statute the bishops were clearly under the duty of taking the advice of surgeons before licensing anyone to practise surgery, but they did not always do so, for in 1599 the Barbers Company petitioned the Bishop of London that he would not license any person to practise surgery unless he could show by letter under the seal of the Company that he had been examined and admitted. The bishop granted this request, but subsequent bishops did not all carry out the undertaking, for again in 1607[1] the Company

[1] Young, 329.

ordered that no examiners of barbers and surgeons should present any person using surgery to the Bishop of London or the "Dean of Powles" to the intent to get such surgeon licence or admission to practise surgery unless such surgeon at such time shall have his letter of admittance under the common seal of the Company. The same question cropped up again in 1710, when a protest was addressed to the Archbishop of Canterbury, to which protest, however, His Grace vouchsafed no reply. He was, of course, entitled to rely on the Act of 1529.

A rule of the Barber-Surgeons Company of the 18th July, 1583, again distinguishes between barbers and barber-surgeons and gives a clear indication of a growing recognition of the necessity for preventive measures in dealing with contagious diseases. The Lord Mayor and Court of Aldermen, having recommended that persons using barbery should not practise surgery, the Masters and Governors went to Guildhall and there promised the Court of Aldermen that they would compel all their free barbers to enter into bonds not to meddle or deal with any sick of the plague or infected *cum morbo gallico*, and accordingly the barbers entered into bonds to that effect.

This was, however, merely carrying to its logical conclusion the provisions of the Act 32 Hen. VIII., c. 42, but it shows that the framers of the Act were far-sighted enough to anticipate the main provisions of our twentieth-century Venereal Diseases Act. It is, however, strange that the Governors should have to compel all their free barbers to enter into bonds not to do the

very thing they were prohibited from doing by the statute passed forty-three years earlier.[1]

In the other cities of England where barber-surgeon gilds existed, rules were followed similar to those prevailing in London. In York, for example, in 1572, Isabell Warwick was granted permission to use the science of surgery in the city "without lett of any of the surgeons of the same"; and in 1598 W. Padmore, who was not a freeman, though he had the Archbishop's licence, was committed to prison until he paid the necessary penalty, when he was made free of the Company.[2]

At the end of the sixteenth century, therefore, it may be said that medical practice was in the hands of three kinds of practitioners, almost of three grades:

1. The learned physicians, often also ecclesiastics, learned in the ancient lore, and practising under the authority of a licence from one of the Universities or of the College of Physicians, authority derived from the charter of 1518 and the statutes of 1511, 1522, 1540, and 1553.

2. The surgeons, skilled in bleeding and the cure of wounds, practising under authority of licence from one of the Universities or of the Barber-Surgeons Company, and with the protection of the statutes mentioned. The surgeons were also tooth-drawers.

[1] In October, 1724, T. Cooke, who published bills as a quack pretending to the cure of venereal disease, was examined by the Barber-Surgeons Company and found "to know little or nothing of it." He was ordered to take down his sign and not to practise for the future on pain of being sued upon the Act of Parliament and the Company's charter (Young, 352).

[2] Auden, 72.

3. The apothecaries, familiar with the use and compounding of drugs, but still practising under control of the Grocers Company and subject to visitation from the College of Physicians. These no doubt practised as irregular medical practitioners after the Act of 1542.

Veterinary Surgery.—As for animal medicine and surgery, though there was an awakening of interest in the rational treatment of animal diseases, as shown by the one or two books on the subject that were published in this century, the practice of the veterinary art was in general in the hands of ignorant and untrained persons, and so remained until the end of the eighteenth century. There was probably some attempt by the Farriers Company, in their government of the craft, to improve the practice of equine medicine and surgery, but no records exist of the activities of the Company in this direction.

CHAPTER IV

THE SEVENTEENTH AND EIGHTEENTH CENTURIES

Surgeons' Charter.—On the accession of James I. the surgeons took the precaution of obtaining a new charter (1605). It confirmed their rights, authorized them to elect four masters, of whom two were to be surgeons, and gave them power of search, oversight, reformation, government, and correction, as well of "free" (*i.e.*, freemen of the Company) as of "foreign" (or outside) professors of barbery and surgery in London and suburbs, including the powers—

1. To enter barbers' and surgeons' shops, to oversee and approve or condemn plasters, ointments, and instruments.

2. To examine barbers and surgeons, and to admit those proved skilful to practise surgery.

3. To prohibit ignorant persons, or such as should wilfully refuse to be examined, from practising.

4. To reject or destroy all noxious or improper remedies.

The exemption of members of the Company from watch, wards, and juries was continued.[1]

The surgeons were governed by this authority until the charter of Charles I. in 1629.

[1] Young, 112.

Powers of the Physicians.—The College of Physicians continued to exercise the control vested in them by the Acts of 1511, 1522, 1540, and 1553, and, as the result of several decisions, secured a clear declaration of their powers from the courts.

In 1607 the President, Dr. Laughton, sued Gardener in debt for £5 per month, the fine for practising physic in London without a licence. The defendant pleaded 34 Hen. VIII., c. 8, which enables unlicensed persons to practise outward remedies, but the plaintiff proved that 1 Mary, c. 9 (1553), confirmed the charter to the College notwithstanding any other Act, so that the 34 Hen. VIII. was repealed by 1 Mary quoad the College of Physicians in London, "quia leges posteriores leges priores contrarias abrogant" (4 Ed. IV., Porter's Case, Co. 1, fol. 25). Judgment was therefore given for the plaintiff (Laughton *v.* Gardener, 1607, Cro. Jac., 121). Before execution of this judgment Dr. Laughton died, and Dr. Atkins, the new President, brought a writ of *scire facias* to have execution. It was demurred that Laughton's executor should sue, but it was held that it was his successor as representing the Corporation that had this right (Atkins *v.* Gardener, 1608, Cro. Jac., 159).

In the year the case was first tried questions arose concerning the interpretation of the Acts and charters controlling the practice of physic, and the Lord Chancellor (Ellesmere) and the Judges set out their answers to a series of questions put to them as follows:

1. No graduate of Oxford or Cambridge that is not

admitted and licensed by the President and College of Physicians under their common seal could practise in London or within seven miles compass of the same.

2. "Graduates" means graduates in physic only, and by the exception in 14 Hen. VIII., c. 11, those graduates may practise in all other places of England out of London and seven miles of the same, without examination, but not in London nor within the said circuit of seven miles.

3. Graduates not admitted to practise in London, but who do practise there, are for evil practice or misdemeanour therein, subject to the correction and government of the College by an express clause of the charter giving to the College "supervisionem, scrutinum, correctionem, et gubernationem . . ." of all persons using the practice of medicine within the city.

4. All that practise or should practise physic whether in London (or within seven miles) must submit themselves to the examination of the President and College, if they be required thereto by their authority, notwithstanding any licence, allowance, or privilege given them in Oxford or Cambridge either by their degree or otherwise.

The College was declared to have the following powers:

1. For not well doing or practising . . . physic or for disobedience or contempt . . . against any ordinance of the College . . . to commit without bail or mainprise.

2. To commit to prison for offences or disobedience

as above or to impose reasonable fines and detain the parties until the fines are satisfied.

3. To take upon every admission a reasonable sum of money for the better maintenance of the College and defraying of necessary expenses.

4. To commit offenders and practitioners that offend in "non bene exequendo, faciendo et utendo facultate medicinæ"; but doubtful if they might commit to prison such as practise (not being admitted), for that the statute and charters in that case inflict a punishment of £5 a month against such practisers. But if the President and College made an Ordinance to prohibit the practising of all without admittance . . . then for breach of this Ordinance the College had power both to impose a fine and commit the offender without bail or mainprise.

5. So also if the practiser refuse to be examined.[1]

Bonham's Case.—Two years later the case of Thomas Bonham *v.* the College of Physicians was heard.[2] Bonham had been examined by the College in 1603 and rejected. When later on he practised in London and was consequently fined by the College he refused to pay, claiming that he was a Doctor of Physic of Cambridge and had a right to practise in London. He was then arrested and committed to prison; he brought an action of false imprisonment, and Coke, who was himself a Cambridge man, "showed himself a

[1] Merrett, p. 116.

[2] It is thrice reported: Le College de Physicians Case, Litt. C.P., 349; Dr. Bonham's Case, 8 Co. Rep., 107a, 114a; 1609, Trin., 7 Jac., C.B. Brownlow, ii.

great friend in behalf of the Universities,"[1] and gave judgment for the plaintiff on the ground that the punishment under the statute could only be pecuniary and not imprisonment. This judgment was contrary to the express declaration of the Lord Chancellor in 1607 and to Popham's decision in 1596 against Jenkins and Read. But that Coke was here trying to make the law fit his own opinion is clear from his statement in this very case (f. 118*a*): "When an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will contro it and adjudge such Act to be void." While it may be true that if an Act is unworkable the common law courts might disregard it, it is bad law to say that a statute can be declared void by the courts if it is against common right and reason.

Bonham was, therefore, released, but when he began again to practise the College again committed him to prison. He then procured letters from the Archbishop of Canterbury, but on everything being explained, the Archbishop was fully satisfied with the justice and equity of the College.[2]

Powers of the College.—After giving his judgment in Bonham's case, Coke set out the following seven rules for the better direction of the College for the future; they must, however, only be taken as obiter dicta:

1. That none may be punished for practice of physick in London but by the forfeiture of £5 a month which is to be recovered by law.

[1] Wood, ii. 311. [2] Goodall, 363.

2. If anyone practises there for a less time than a month he shall forfeit nothing.

3. If any person prohibited by the statute offend in *non bene exequendo*, etc., the College may punish him according to the statute within the month.

4. Those whom they may commit to prison by the statute ought to be committed presently.

5. The fines which they assess according to the statute belong to the King.

6. They cannot impose a fine or imprisonment without a record of it.

7. The cause for which they impose fine or imprisonment must be certain, for it is traversable (see, however, Groenvelt's case, *infra*, p. 77, where Holt, C.J., contradicts this opinion).

In the course of this judgment Coke said: "It is an old rule that a man ought to take care that he do not commit his soul to a young divine, his body to a young physician, and his goods or other estate to a young lawyer, for 'in juvene theologo est conscientiæ detrimentum, in juvene legislatore bursæ detrimentum, et in juvene medico cœmeterii incrementum'!" (fo. 117*a*).

After this case the College sent a warrant to all justices, mayors and sheriffs, bailiffs, constables, etc., in London and suburbs for the attachment of all empirics and bringing them before the College.[1] Among those interdicted from practice was Wm. Blancke Chandler. The Bishop of Lincoln intervened on his behalf, and he produced letters patent from the Archbishop of Canterbury confirmed by the King.

[1] Goodall, 370.

The College, nevertheless, committed him to Newgate *ob pessimam praxim.*

C. Butler also showed a licence from the Archbishop confirmed under the Great Seal. The College showed that his patients died under him and applied to the Archbishop, the Lord Chancellor, and the Master of the Rolls to have his licence revoked, and this was agreed to.

Apothecaries.—The apothecaries had in 1606 been incorporated with the grocers, who had obtained their first charter in 1345. But in 1617 the apothecaries separated and became a distinct corporation: "The Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of London."[1] No grocer was henceforth to keep an apothecary's shop, and no one but an apothecary was to prepare or administer medicines or sell them in London or within seven miles under a penalty of £5. The powers of examining all persons practising and of searching shops within London and seven miles thereof, and the punishment of offenders, were vested in the new society, and like the surgeons and physicians the Society of Apothecaries was given the power of summary committal for minor offences. The rights of "expert and approved surgeons" to exercise their faculty and to use and enjoy their proper practice, including the application of outward salves or medicines, were saved, but they were not allowed to vend or expose for sale to others such salves or medicines "according to the common manner of apothecaries." There was also a proviso that the

[1] Charter of James I., December 6, 1617.

ordinances to be made concerning medicines and compositions and their uses should be drawn up in collaboration with the President and four Censors of the College of Physicians, and all the privileges of the College were saved. The College, rightly fearing the rivalry of the apothecaries, now sought new powers for themselves.

Physicians' Charter.—In 1618, the year in which Harvey was appointed Physician to the King, a new charter was granted, confirming the powers of the charter of 10 Hen. VIII. and the Act 14 Hen. VIII. The College (which in 1614 numbered no more than forty-one[1]) was empowered to receive the whole of the penalties imposable, and to examine and punish all physicians and practisers of physic, apothecaries, druggists . . . and all persons using the art of apothecary and administering inward medicines within seven miles of London.[2] The penalty for unlicensed practice was £3 or seven days' imprisonment Malpraxis was punishable by a fine of £10 or fourteen days' imprisonment. Powers to search apothecaries' shops and to destroy bad drugs were confirmed, and power was given to impose a penalty on apothecaries for malpraxis.

The apothecaries were thus clearly recognized as medical practitioners, but they were subject to inspection of both their own society and the physicians. The first search by the Society of Apothecaries was made on September 9, 1616, when Hanck, a weaver, and Pelwell, who were found to be selling inferior drugs,

[1] Munk, i. 101.

[2] Under this clause the surgeons were frequently brought before the College and fined.

were made to acknowledge that they were incapable of making compositions, and ordered never again to make or sell medicines.

The physicians' charter provided that the Royal Assent should be given in the next Parliament to a Bill incorporating the charter. The barber-surgeons petitioned against it, and though the charter was allowed to stand and the surgeons were left to their legal remedy, if any, the Bill was dropped.[1] Thus the charter was not given the force of a statute, but it was none the less authoritative until amended by subsequent legislation or charter, and five years later, in 1623 (20 Jac. I.), an Ordinance of the King charged the College "on account of the abuse of Physic by many unlearned men" to call before them "all such irregular and ignorant practitioners as contrary to our laws and authority do abuse that art, and to examine their sufficiency," and to punish such as they should find not sufficient for their bad practice. Those who persisted after being warned and punished were to be proceeded against with all severity. The College were not to allow themselves "to be moved to overlook such faults, to the great prejudice of the health of many of our poor people,"[2] but were "straitly charged and commanded that henceforth neither for favour, friendship, or respect the just punishment of such delinquents should be withheld."

Among those punished was Dr. Eyre, who was

[1] Merrett, 134.

[2] The plague was prevalent at this time. In 1625, 40,000 died. The mortality then abated slightly, but another serious outbreak occurred in 1636.

practising without a licence. He was prosecuted and a verdict given against him *de praxi illegitima.* He then applied to the College for a licence, but failed at the examination. He continued to practise and was at length fined £10; he paid the fine, and on again submitting to examination he was licensed subject to his calling in a colleague in difficult cases.[1]

In the provincial cities the gilds still held some control over the practice of surgery. In York, for example, after 1614 every surgeon was compelled to join the Company or be expelled the city, and every free man or woman of the city was compelled to consult a licensed surgeon, under a penalty of £40, before consulting an unlicensed practitioner. These latter were rigorously dealt with, and such as could not give a proper reason for entering on practice were fined twenty shillings for every time they so practised in the city.[2]

In 1624 the Act concerning monopolies (21 and 22 Jac. I., c. 3), which made all monopolies void and of none effect with certain exceptions, makes a special exception in Section 9 of any corporations, companies, or fellowships of any art, trade, occupation, or mystery, so that the charters to the medical and surgical corporations still held good in this respect.

Surgeons' Charter.—The surgeons managed to secure in 1629 a new charter with increased powers. The charter subjects all surgeons within seven miles of London to the authority of the Surgeons Company. None save physicians were to practise within seven

[1] Munk, i. 178. [2] Auden, 73.

miles of London "for private lucre or profit" until admitted and licensed after examination. Every member of the Company was authorized to prepare and use all necessary medicaments required in surgery, and (an important extension)

> "may lawfully practise surgery as well within London and Westminster and in all other cities and towns throughout the Kingdom of England."

Further—

> "that whensoever any empiric hereafter or any such person . . . ignorant of the art and science of surgery, and not approved of or lawfully admitted to practise, shall affix or put out any pictures or bills writings or signs upon posts outsides or walls or other conspicuous places in London or Westminster to call in any persons . . . to have anything done there which according to our Royal intention . . . belongs to a skilful allowed and admitted surgeon, then [the Company] may take away, blot out, demolish, and totally cancel all such pictures, bills, writings and signs lest our people by any such imposter may be deceived or deluded."

Upon the Company was placed the duty of examining surgeons for the Navy and Merchant Service, and of inspecting their instruments and chests of medicines, a duty which continued to be discharged by the Company, and its successor the Royal College of Surgeons, until quite recently. The charter saved the privileges of the College of Physicians, as also those granted by 34 Hen. VIII., c. 8, to persons who gave simple treatment for outward complaints and made no charge.

Butler's Case.—This latter provision was the loophole which had long enabled unqualified persons to defy

the College of Physicians, but the College was occasionally able to succeed in an action, as in the case of Dr. Butler in 1633. He had been fined for practising without a licence, and the case was first heard on a writ of debt for the fine (College of Physicians *v.* Butler, Sir W. Jones's Rep. 261), when a decision was given in favour of the College. Then on a writ of error Butler pleaded that he was authorized by 34 Hen. VIII. and that he had applied and administered medicines, plasters, drinks "ulceribus, morbis, et maladiis, calculo, strangurio, febribus, et aliis in statuto mentionatis." But as he left out of his plea the principal word "externis," and did not show that he had ministered potions for the stone, strangury, or ague, as the statute appoints, and to these three diseases only, his plea "was held naught," for by it his potions might have been ministered to any other sickness (Butler *v.* President of the College of Physicians, Cro. Car., 256).

In their desire to improve the conditions of practice the College had obtained in 1632 an Order in Council ordering the surgeons, in serious cases such as amputations, trepanning, and operations for the stone, to call in a "learned physician," but three years later the surgeons secured the rescission of the order.[1]

The College next turned their attention to the apothecaries, and Mr. Briscoe appeared before them in 1634, being accused of falsifying a bill (*i.e.*, prescription), having administered a different remedy than that prescribed by Dr. Johnson "without asking the Doctor's opinion." He was fined five marks and expelled from the Company.

[1] South, 216.

It is clear that physicians, surgeons, and apothecaries were open enemies. The protection of the public against unqualified practice aimed at by the charters and statutes in force was much more complete than that which is now afforded, but there was no unity of aim in the profession and the division in their ranks was the opportunity for empirics, who, after the plague of 1636, were forced into prominence because of the immense demand for medical aid and the dearth of qualified practitioners. Qualification was, however, still very difficult of attainment. By new statutes passed in 1636 at Cambridge, the student desiring to take a medical degree was required to take the M.A. first, and no licence was granted unless the candidate obtained his M.B. In surgery the candidate must have practised his art for at least seven years and must be certified to have performed three cures on pauper patients gratis. He was required to abstain from practising medicine.[1]

Quackery.—In 1638 the College committed one Barton, a weaver, for practising physic, and he sued out his habeas corpus. The College cited their charter and the Act of Henry VIII. and showed that the Censors found on examination that Barton "hath unskilfully practised the art of physick within the City of London . . . upon the bodies of Richard Ballady of Aldermary Parish, London, Michael Knight of St. Botolph's Parish, Aldgate, and the childe of one Jane Bigge," and some others in January 1638, contrary to the laws in that behalf, whereupon they had imposed on him a fine of £20. The court refused bail, and

[1] Chaplin, *op. cit.*, 91.

Barton was remanded to the Compter. He then pleaded for abatement of part of the fine and for his enlargement, and the College was contented to abate half the fine and he was discharged.

But public opinion was really in favour of quackery. "The seventeenth century was the age par excellence of successful quacks . . . of both sexes."[1] One Leverett, a gardener, who claimed to cure, by touch alone, king's evil, dropsy, fevers, agues, internal diseases and external sores, was brought before the Star Chamber in 1637, and William Clowes, King's Serjeant Surgeon, one of whose duties it was to examine all persons brought to be cured of the king's evil by the royal touch, was directed to lay the matter before the College of Physicians. The College after examination reported Leverett to be an impostor and deceiver.[2] Goodall records many other instances of quackery about this time which were exposed by the College.

After the troubles of the civil wars, when the affairs of the College fell into great disorder, a large number of physicians were found to be practising in London without a licence from the College.[3] In 1664, a year after the establishment of the Royal Society, it was decided, in order to maintain the prestige of the College, to bring within its authority as many as possible of those who were thus practising irregularly. Upwards of seventy physicians were therefore admitted as honorary fellows.[4]

[1] Garrison, 400. [2] Goodall, 460. [3] Munk, i. 202; iii. 326.

[4] Munk, i. 321 to 350, records the names of sixty-five of these, including the famous Sir Thomas Browne and Dr. Thomas Willis

Striking off the Rolls.—The College had occasionally exercised the right of expelling undesirable persons from its fellowship, and in 1649 Doctors Chamberlain and Goddard were declared *non socii.* Dr. Goddard, however, carried the matter to the Court of King's Bench, but judgment was given in favour of the College.[1] This appears to be the first recorded instance of the court's confirmation of the College's power of expulsion under the charter. The power was again exercised in 1681, when the famous Dr. Christopher Merrett was expelled. He had been librarian, and had lived free in the College House before it was destroyed by the Great Fire; a quarrel arose about his salary as librarian after the destruction of the Hall and he appealed to the King's Bench, but judgment was again given in favour of the College.[2] The effect of this expulsion should have been that Dr. Merrett could not practise within seven miles of London, but it is doubtful if it had any effect on his practice.

Malpractice.—The College also took action against its members for malpractice. Dr. Groenvelt (variously spelt Greenfield, Grenville, Grenvil), who had been judged guilty of malpractice in 1692, was imprisoned in Newgate by order of the President and Censors in 1697 under the powers of the charter. On an application for a writ of habeas corpus, on the ground that his offence had been pardoned by two general Acts of Grace enacted since 1692, the College claimed that the general pardon was for public wrongs and did not affect the private right of the College to imprison for infringe-

[1] Munk, i. 216. [2] Munk, i. 263.

ment of its rules. But Holt, C.J. (later in the same year), held that the offence for which the defendant was imprisoned was a public offence, for "Mala praxis is a great misdemeanour and offence at common law, whether it be for curiosity and experiment, or by neglect, because it breaks the trust which the party have placed in the physician, tending directly to his destruction. Yet the King may pardon it, and as it is a sort of criminal proceeding, and for the purpose of punishing the doctor, the punishment could not be imposed on him after so many acts of pardon." Groenvelt was therefore discharged (R. *v.* Groenvelt, 12 Mod., 119; 1 Ld. Raym., 213).

In Michaelmas term of the same year Groenvelt brought an action against the College for false imprisonment, and asked for a copy of the conviction. Holt, C.J., held that the King's Bench could not oblige the College to supply a copy of their proceedings, "for they act in a judicial manner by an authority of Act of Parliament, and therefore it shall be presumed they have done right" (Groenvelt *v.* College of Physicians, 12 Mod., 145; 1 Ld. Raym. 252 [Mich. term, 9 Wm. III.]).

Dr. Groenvelt is known to have experimented on the effect of cantharides as an internal remedy in "esuries, stranguries, and ulcers of the bladder." He was again reported to the College by the husband of a woman to whom he had administered "such unwholesome and noxious pills" that "she became incurable and in danger of death." He was called up and examined, and in the presence of the President and Censors he experimented with dogs to show the effect of cantharides

corrected with camphor. He was, however, judged guilty of ill-practice and fined £20 with imprisonment for twelve weeks. He brought an action of trespass for assault and imprisonment. The College pleaded not guilty to the assault, and with regard to the imprisonment, that the charters and the Acts of 14 Hen. VIII. and 1 Mary empowered them to imprison him. Holt, C.J., held that the arrest and imprisonment was lawful, and that the College had jurisdiction over the person of a physician as a practiser, especially if he practised ill; that absolute power had been given to the College to hear and determine such offences, and that therefore their proceedings are untraversable notwithstanding Coke's dictum in Bonham's case, so that they cannot be criminally accused and liable to action by any party for what they do as judges under the powers given by their charter. Holt thought the Censors were empowered to administer an oath as a necessary consequence of their judicial powers, but would give no opinion on it (Groenvelt *v.* Burwell, 1 Ld. Raym., 454; Dr. Grenville *v.* College of Physicians, 12 Mod., 386).

Veterinary Surgery.—The Farriers Gild, established in 1356, had no doubt made efforts from time to time to improve the treatment of horses, but as their Hall and all their archives were destroyed in the Great Fire of London, little is known of their early activities. In 1674 they obtained a charter from Charles II. authorizing them to control the craft, and among the first Wardens was Andrew Snape, "our Sergeant Farryer," author of the well-known "Anatomy of an Horse," published in 1683.

The charter forbade any person other than freemen of the Company to "practise use or exercise the said art or mistery of a Farryer," unless he had served seven years' apprenticeship. The officers of the Company were to have power to enter into shops, cellars, stables or other suspected places "to search for, seek and find out every misdemeanour and defective works and medicines, to the intent that due and legal prosecution may be had and taken against all and every such offenders."

The Ordinances made two years later under the provisions of the charter provide that "no person of the craft shall dresse or use their means in any cure . . . elsewhere but at his public forge," and authorizes the Master, Wardens, and assistants to "search and trye . . . the wares, workmanship, metal, medicines, and ingredients," and to punish offenders.[1]

Apothecaries.—The apothecaries, who numbered 114 at the time of their charter at the beginning of the century, had increased to nearly 1,000 in 1684, and had become a trading company supplying drugs to any customers who applied. In March, 1690, they proposed a compromise with the physicians that, if the physicians would not keep open shops of their own, the apothecaries would recommend the physicians and

[1] In 1738 an Act of the Common Council of the City of London declared that from and after the 1st June, 1759, no person should act as a farrier without being admitted to the Company under a penalty of £5, but by 1820 the object for which the Company was founded had practically ceased to be exercised. Nevertheless the Company threatened in 1848 to prosecute a number of veterinary surgeons in London who carried on the shoeing of horses (*Veterinarian*, xxi. 476).

not practise themselves. The proposal fell through, but in 1695 they obtained an Act (6 Wm. III., c. 3, made permanent by 9 Geo. I., c. 8, 1722) exempting them from jury services and other public duties. It was made to apply to all freemen of the Society and all others throughout England and Wales who had served seven years' apprenticeship in the art according to 5 Eliz., c. 4. They had been constantly encroaching on the province of the physicians by practising medicine as well as pharmacy, by prescribing as well as dispensing. They also, it would appear, charged exorbitant prices for their drugs, so that the poor were deprived of medicines they needed. The College of Physicians had already (in 1687) directed all its members when desired to give advice gratuitously to all the sick poor within seven miles of London, and the laboratory of the College was used for preparing the medicines. In 1695 they determined to establish dispensaries, the members of the College subscribing voluntarily towards the cost, and they were thus able to supply medicines at cost price. A wordy warfare between physicians and apothecaries ensued, of which many echoes are heard in contemporary literature. Sir Samuel Garth, a Whig physician and fellow of the College, satirized the apothecaries in "The Dispensary," which had a huge vogue. Pope, too, in his "Essay on Criticism" (1711), wrote (ll. 108-111):

> "So modern 'Pothecaries, taught the art
> By Doctors' Bills to play the Doctor's part,
> Bold in the practice of mistaken rules,
> Prescribe, apply, and call their masters fools."

The battle of the dispensaries waged principally around the question of the qualification of apothecaries to practise medicine. To it can be traced the source of the present distinction between the modern apothecary and the dispensing chemist or pharmacist; for the assistants in the physicians' dispensaries, being restricted solely to the dispensing of prescriptions, in due time became dispensing chemists on their own account, and some of the apothecaries adopted the same course. It is from these that the modern chemist and druggist developed, whereas the apothecaries who continued to practise as medical men became in time, as the Society of Apothecaries, recognized as general practitioners.

Rose's Case.—The case of Rose *v.* the College of Physicians in 1703 (5 Bro. P.C., 553) established the right of the apothecary to compound, dispense, and dissect, and also to order remedies, and laid down the law that an apothecary was a general medical practitioner.

Rose, an apothecary and freeman of London, attended a patient and made up and administered proper remedies to him, but he had no licence from the faculty and did not act under a physician. He did not demand or take any fee for his advice, and had only charged the price of his drugs. The question was whether this was practising physic so as to contravene the statute. It was argued three times in the Court of Queen's Bench, and finally the judges unanimously decided that what Rose did was practising as a physician; "for the making up and compounding of

medicines is the business of an apothecary, but the judging of what is proper for a cure, and advising what is proper for a cure, and advising what to take for that purpose, is the business of a physician. Therefore let the distemper be what it will, the prescribing and advising what is fit for it is the business of a physician, though without fee, but that rarely happens" (3 Salk., 17; 6 Mod., 44).

Thereupon a writ of error in Parliament was brought to reverse the judgment, and it was argued on behalf of the plaintiff that the decision if upheld would ruin all apothecaries, for they would never be able to exercise their profession without licence of a physician. It was shown that it was the constant usage of apothecaries to supply medicines the effect of which was well known, and that the practice of medicine to this extent was not only not unlawful, but was necessary for poor people who could not afford a physician's fee. The physicians on their part contended that physicians were giving gratis treatment to poor people, and, because apothecaries charged so high for their drugs, the former had established dispensaries where the poor could get drugs at a third of the apothecaries' charges. Notwithstanding this argument, the judgment of the Queen's Bench was reversed (5 Bro. P.C., 553).

The Apothecary a Medical Man.—Though this established the right of the apothecary to visit and prescribe as well as to compound and sell medicines, he could not take a fee for his advice, and he had therefore to secure his remuneration by making higher charges for his drugs. After this decision the practice

of the apothecaries grew at the expense of the physicians, the College dispensaries had to close, the work formerly done by apothecaries fell into the hands of the chemist and druggist, and the apothecaries, with the support of the Corporation of Surgeons, were in the way of becoming the general practitioners of the country.

The powers of the College of Physicians had not been framed to meet such a crisis. The College could and did prosecute University graduates in physic who had not been licensed to practise in London (Coll. of Phys. *v.* Levett, 1 Ld. Raym., 472; Coll. of Phys. *v.* West, 10 Mod., 353), but they were unable to find a means for providing the country with a sufficient number of properly trained medical practitioners.

A New Statute.—In 1723 the Censors of the College secured wider powers of search, with the assistance of the Wardens of the Apothecaries Company, over apothecaries' shops and wares, including powers to visit the shops of persons other than apothecaries who sold medicines, and to destroy all unfit drugs by burning them before the owner's door. There was a proviso, however, that the Act should not extend to any medicines made "by virtue of letters patent for the sole making and vending of medicines," nor to empower the Censors of the College with the Wardens of the Apothecaries Company to inspect the same (10 Geo. I., c. 20, continued for three more years by 13 Geo. I., c. 7).

Under the extended powers thus obtained the Society of Apothecaries sent their two Wardens with

the four Censors of the College of Physicians to visit the shops of several chemists, druggists, and apothecaries, and in the case of James Goodwin, a "chymist," they burnt several drugs and chemicals before his door, at the corner of Pall Mall facing the Haymarket. It was indeed for this very purpose that the Act had been obtained. Goodwin was in a large way of business, and was a serious competitor to the apothecaries. When summoned before the College of Physicians he challenged all present to prove his drugs faulty, but shortly afterwards again "the Censors came before his door with a coach-load of faggots, made a great fire, and burnt his goods."

When the Bill for the Act 13 Geo. I., c. 8, was before the House (an Act for continuing the laws . . . for searching drugs and compositions for medicines), Goodwin appeared before the House and stated his objections; he was unsuccessful, but he prosecuted his case and was heard before a Committee of the House of Lords.[1] The Bill was, however, passed, and the Act was to continue in force for three years. It is said, however, that Goodwin gained £600 damages for the injury he had sustained.[2]

Patent Medicines.—The proviso in 10 Geo. I., c. 20, in favour of medicines made under patent indicates that by this time "patent medicines" were on the market. Timothy Byfield in 1711 was the first to take advantage of the old statute of Monopolies with his "sal oleosum volatile."[3] Robert James (1703-76)

[1] "The Case of James Goodwin," Brit. Mus., 777, 1, i. 38.
[2] Bell, 31. [3] Garrison, 143.

patented his fever powders although he was a licentiate of the College of Physicians.[1] Dr. Eaton's patented "balsamic styptic" was advertised in the *London Gazette*, December 18, 1723, as being exempted under the Act from search by the Censors.

There was indeed little real efficacy in any of the rules governing the practice of medicine in these days. Exemption from interference by the College of Physicians with the practice of the notorious quack Joshua Ward was granted by George II. in 1735. In 1739 a public statute (12 Geo. II., c. 23) was passed for providing a reward of £5,000 to Joanna Stephens to encourage her to discover the nature of her remedy for the stone. She got her £5,000, but the remedy, which consisted of a powder made of calcined egg-shells and snails, a decoction of herbs, and a pill of similar ingredients,[2] was obviously worthless.

University Graduates.—The College of Physicians had by now established a tradition that their licence to practise in London would be granted only to graduates of Oxford and Cambridge. These were, in fact, too few to satisfy the medical needs of the city; but without a degree in physic from these Universities it was worth no man's while to try to obtain a licence, and consequently quackery was encouraged. The right of the College to refuse admission was moreover confirmed by the courts, though its rigid restrictions were criticized. Dr. Letch applied for admission as a fellow in 1767, and sought a mandamus from the King's Bench to compel the College to admit him.

[1] Munk, ii. 269.

[2] See *London Gazette*, July 19, 1739.

It was held (i.) that the court had jurisdiction over such corporate bodies, and would assist a party who had a right but no other specific remedy by issuing a mandamus; (ii.) "that the College are obliged in conformity to the trust and confidence placed in them to admit all that are fit and to reject all that are unfit, . . . but that their conduct in the exercise of their trust ought to be fair, candid and unprejudiced, and not arbitrary, capricious, or biassed, much less warped by resentment or dislike." Nevertheless, Letch's claim was rejected, for he had been examined by the College and had failed to pass (R. *v.* Askew, 4 Burr., 2186).

The College decided in 1783 to grant licences to practitioners in midwifery,[1] but this plan of granting special licences, owing to the restrictions on practice it involved, being found inconvenient, they ceased to be granted in 1800.[2]

Barbers versus Surgeons.—By 1744 the growing enmity between barbers and surgeons became so acute that separation was inevitable, and a Select Committee of the House of Commons reported that separation was expedient.[3] Sixty years earlier the surgeons, feeling that the association with the barbers was intolerable, had made plans for a separation, but the barbers succeeded in preventing any secession at that time. In December, 1744, however, the surgeons

[1] Licences to practise midwifery were also granted by the Bishop of London under the authority of 3 Hen. VIII., c. 11.

[2] Munk, iii. 333.

[3] *Journal of House of Commons*, xxiv. 629, and Report of Select Committee, 1744.

made known to the court of the Company that they intended to seek powers to separate and to set up as a distinct corporation. A petition was presented to Parliament in the following January, which led to a counter-petition in February by the barbers,[1] who set out the history of the Company, and claimed that if separation were decided upon they should retain their property. The surgeons had assigned as reasons for separation that the union with the barbers was highly inconvenient, and that if they were separated they would be encouraged to meet and communicate to one another their experiments and successes. They showed that like separation had already taken place in Paris, Edinburgh, and Glasgow. The surgeons prevailed, and in 1745 the Act 18 Geo. II., c. 15, was obtained, mainly through the good offices of the King's Serjeant Surgeon Ranby: "An Act for making the Surgeons of London and the Barbers of London two separate and distinct Companies." The Company of Surgeons was established under the title "The Master Governors and Commonalty of the Art and Science of Surgeons of London"; its members retained their ancient privileges, but the corporate property was left to the Barbers Company with the exception of two surgical lecture trusts. The right to practise surgery in London was restricted to those examined and admitted by the Company; with regard to the rest of the King's dominions, those who were members of the Company might practise anywhere (see Medical Act, 1886,

[1] Brit. Mus. Collected Papers, 777, 1, i.

Sections 6, 24, 25), but those who were licensed under 3 Hen. VIII., c. 11, might practise only in the diocese in which they were licensed—not in any case in London or Westminster, or within a compass of seven miles thereof. There was no penalty, however, for practice by unqualified persons.

When the two Companies were united in 1540 authority had been given for the surgeons to have yearly the bodies of four condemned persons for the study of anatomy. This privilege was confirmed and extended in 1752 by the Act for the better preventing the horrid crime of murder, 25 Geo. II., c. 37, which provided by Section 11 that the body of a murderer (if hanged in London or Westminster) should be immediately conveyed to the hall of the Surgeons Company, there to be anatomized and dissected by the said surgeons.

It was provided by the Act of 1745 that the Court of Assistants of the new Company of Surgeons was to consist of a Master or Chief Governor, and two Governors or Wardens, with other members, and that the Master and one Governor, together with one or two members, should form a court for the despatch of business. Neglect to observe strictly this constitution was the cause of the dissolution of the Corporation in 1796.

End of the Company of Surgeons.—In that year the Company found themselves in an unforeseen difficulty. It happened that Mr. Walker, one of the Governors, had died in May, whilst the other, John Wyatt, was lying blind and paralyzed in Warwickshire. His son was sent to fetch him to London, but he was

found too ill to be moved.[1] A meeting was nevertheless held on July 7, 1796, and proceeded to business, though it was not legally a court. This indiscretion was held to destroy the corporation, and a Bill was introduced into Parliament to legalize the doings of the court. The extremity in which the surgeons found themselves was seized by those who practised without a diploma, and they fiercely opposed the Bill. It passed the House of Commons, but on the motion for its third reading in the House of Lords Lord Thurlow, in a strongly antagonistic speech, moved its adjournment for three months. The Lord Chancellor agreed, and the Bill was lost.[2] That was on July 17, 1797; the session ended three days later, and the surgeons made no further attempt to persuade Parliament; instead, they sought a royal charter.

Royal College of Surgeons.—At this time the great Hunterian collection was purchased for the nation at a cost of £15,000, and it was necessary to find a home for it. It was decided by order of the Treasury on November 28, 1789, to entrust it to the Surgeons Company, and in 1800 a royal charter reconstituted the Company under the name of the Royal College of Surgeons of London, thus severing the long association of the surgeons with the City of London. The title was no doubt chosen to conform to that of the College of Physicians.

The charter of 40 Geo. III. granted to the members of the corporation the right to practise the art and science of surgery, but it contained no power to prohibit

[1] South, 290. [2] *The Times*, July 18, 1797.

unqualified practice in London or elsewhere. It renewed their old privileges and immunities and duties, including the duty of examining surgeons for the army and navy, and the duty of providing a room conveniently near to the usual place of execution in which to anatomize the bodies of murderers.

This is, I think, the first time that prohibition of practice by unqualified persons was omitted in a document of this kind, but the powers given in the past had been found to be very illusory.

CHAPTER V

THE NINETEENTH CENTURY

In spite of the long period during which medicine and surgery had been taught in the Universities, the state of medical education at the beginning of the nineteenth century was still very defective. Undoubtedly one of the main reasons for this was that it was at least as profitable to be an empiric. Medical literature during the previous century is largely concerned with the grave scandal of quackery. The Statute of Monopolies had enabled many to amass huge fortunes out of patent medicines to the detriment of qualified practitioners. The Acts of 1511 and 1522 had largely fallen into disuse. The College of Physicians fined and imprisoned unlicensed persons who practised in London, but they frequently escaped by declaring they were practising surgery. The apothecaries, assisted by the physicians, had the power to burn the false drugs of apothecaries and drug-sellers, but no power to exclude such persons from general practice. Ignorant custom prevailed over enlightened legislation, and quackery flourished openly everywhere.

Any person, whether a graduate or not, whether licensed or not, could practise in England and Wales outside London. There was no control over provincial practitioners, no authority who examined them as to

their fitness to enter on practice; consequently a very large number, with merely fictitious titles or purchased diplomas, were exercising the different branches of medicine as regular practitioners. The number of heterogeneous medical qualifications was bewildering. Some of the examining bodies were very easily satisfied; the granting of titles was always a source of income, and the licences were of very varying values. Properly trained practitioners had therefore to submit to the competition not only of unlicensed quacks, but of a large number of licensed empirics, obviously to the detriment of public health and the hindering of medical science.

Fresh Legislation Sought.—Against this state of affairs the more public-spirited members of the profession had always protested, and early in the nineteenth century they began to urge with greater insistence that the health of the nation demanded that medical practitioners should be properly educated before being allowed to practise. But it was only after fifty years of discussion of proposals and counter-proposals that at last an agreed policy emerged, resulting in the compromise represented by the Medical Act of 1858.

A Bill was drawn up in 1809 providing that no unlicensed person should be allowed to practise as a physician unless he was a graduate of some University, as a surgeon unless possessed of the diploma of the College of Surgeons, as an apothecary unless he had served five years' apprenticeship, or as an accoucheur unless he was a physician or surgeon who had spent twelve months in the study of midwifery. The Lords Commissioners of H.M. Treasury had the draft under

consideration and sent inquiries to the bodies concerned, but there was no practical result.

The Apothecaries.—After 1812 the movement took another direction, when a body of apothecaries formed an association and drew up a Bill to establish a fourth medical authority in addition to the College of Physicians, the College of Surgeons, and the Society of Apothecaries. The new body was to have powers to examine apothecaries, surgeon apothecaries, accoucheurs, midwives, dispensing chemists and assistants, to prohibit the practice of medicine, surgery, midwifery, or pharmacy by uneducated persons, to grant licences to qualified persons after examination, to impose an annual fee on practitioners, and to withdraw licences from practitioners who were guilty of unprofessional conduct. The three established bodies declined to support the associated apothecaries, and when the Bill was introduced without their support, the physicians and surgeons actively opposed it. The Bill was redrafted, many of its proposals dropped, and its scope limited to the provision of examinations for apothecaries, with power to them to charge for attendance as well as drugs. The revised Bill proposed to vest the new powers in the Society of Apothecaries, and was drawn up after consultation with the College of Physicians. It included (1) the confirmation of the Charter of the Society of Apothecaries; (2) the regulation of practice of apothecaries throughout England and Wales; and (3) the establishment of examinations before admission to practice as apothecaries. The effect of the Bill would have been to extend the con-

trol of the Society of Apothecaries to all apothecaries in England and Wales.

Amendments were introduced into the Bill in both Houses, and those of the House of Lords being rejected by the Commons, the Bill was lost. An amended Bill, brought in at the end of the session, was, however, passed, and became the Apothecaries Act of 1815, 55 Geo. III., c. 194.

Apothecaries Act, 1815.—Section 1 recites the charter of 15 Jac. I., and confirms it except as altered by the Act.

Section 2 repeals so much of the Charter as directs Masters and Wardens to enter shops, etc.

Section 3 provides in lieu thereof that the Master, Wardens and Society of Apothecaries may enter and examine drugs of any person in England and Wales, and impose certain penalties.

Section 4 provides for the appointment of Examiners (repealed in part by the Apothecaries Act, 1878).

Section 5 directs apothecaries to prepare with exactness and to dispense such medicines as may be directed for the sick by any physician lawfully licensed to practise by the President and Commonalty of the Faculty of Physicians in London or by either of the two Universities of Oxford and Cambridge.

Section 14. And to prevent any person or persons from practising as an apothecary without being properly qualified to practise as such . . . it shall not be lawful for any person or persons (except already in practice as such) to practise as an apothecary in any part of England or Wales unless he or they shall have been examined by the said Court of Examiners . . . and have received a certificate of his or their being duly qualified to practise

as such from the said Court . . . who are hereby authorised and required to examine all person and persons applying to them for the purpose of ascertaining the skill and abilities of such person or persons in the science and practice of medicine and his or their fitness and qualification to practise as an apothecary, and the said Court . . . are hereby empowered either to reject such person or persons or to grant a certificate of such examination and of his or their qualification to practise as an apothecary. Provided always that no person shall be admitted to such examination until he shall have attained the full age of twenty-one years.

Section 15. Applicants are to produce a certificate of having served five years' apprenticeship to an apothecary and testimonials of a sufficient medical education and of good moral conduct (repealed in part by the Apothecaries Act, 1874).

Section 17. No person is to act as an apothecary's assistant without examination and certificate of qualification to act as an assistant.

Section 20. If any person (except such as are in practice) shall act or practise as an apothecary in England or Wales . . . without having obtained such certificate, he shall forfeit for every such offence £20.

Section 21. No apothecary shall be allowed to recover any charge claimed by him in any court of law unless such apothecary shall prove on the trial that he was in practice as an apothecary before August 5, 1815, or that he has obtained a certificate to practise as an apothecary from the Society of Apothecaries.

Section 23. A list of approved apothecaries is to be printed annually.

Section 24. Fees for certificates are to go to the Society.

Section 25. Fines are to go half to the informer and half to the Society.

Section 26. Penalties are to be recoverable by

process of law or in default imprisonment for one month.

Section 28. The "trade or business" of Chemist and Druggist is excepted from the provisions of the Act.

Section 29. The privileges and immunities of the Universities of Oxford and Cambridge are saved, and also of the Royal College of Physicians and the Royal College of Surgeons, the Society of Apothecaries (except as varied by the Act), and of any person practising before August 15, 1815.

Results of the Act.—The intention of the Act was to protect the public from unqualified persons practising as apothecaries, and to secure a better status for qualified apothecaries. It placed no restrictions on unqualified practice in surgery, midwifery, dentistry, or veterinary surgery, yet, owing to the manner in which the powers given by the Act were interpreted by the Society, certain unexpected consequences followed. Though Section 14 clearly lays down that no person who is not certificated may practise as an apothecary, the Society, no doubt because of the last provision of Section 29, took no action against quacks who practised openly all over the country, until the year 1846, thirty-five years after the passing of the Act! In that year, perhaps stimulated to action by the stinging criticisms of Wakley in the *Lancet*, the Society of Apothecaries laid a case before the Law Officers of the Crown for the purpose of ascertaining their opinion whether an indictment would lie against a person who had practised as an apothecary without legal qualification. The answers to the various points set out were to the effect that an indictment would lie

in such a case under Section 14, notwithstanding the particular penalty imposed by Section 20, and the disability imposed by Section 21. The indictment might be preferred in any of the ordinary criminal courts having cognizance of misdemeanours, and might be proved at the instance of a private prosecutor. Punishment, as in the case of other misdemeanours, would be by fine or imprisonment or both (*Lancet*, 1847, i. 21).

Before this date the Society, which was the only body in existence possessing any statutory powers to prevent unqualified practice, had restricted their activities to actions against physicians and surgeons who committed a technical offence against the Act of 1815. In August, 1846, they ventured a test case at Bristol summer assizes when Frank Bargeer Wall was prosecuted, the case being heard before Mr. Justice Erle and a special jury. Wall was convicted, but one penalty only was imposed (Apoth. Co. *v.* Wall, *Lancet*, 1846, ii. 250; see also Apoth. Co. *v.* Jones [1893], 1 Q.B., 89).

Emboldened by this success, and fortified by the opinion of the Law Officers of the Crown, the Society extended the range of their activities to the prosecution of quacks, and one Flitcroft, an assistant to the notorious Dr. Coffin, the herbalist, was convicted under Section 14 of the Act at the Bolton quarter sessions in 1847[1] for administering medicine, though unqualified, in a scarlet fever case. The Recorder stated that though there was a section in the Act

[1] *Lancet*, 1847, i. 419.

imposing a penalty (Section 20) it was equally open to the parties to proceed by indictment under Section 14, which absolutely prohibited practice by unqualified persons. Flitcroft was sentenced to one month's imprisonment.[1]

Action taken after the Act by a surgeon for the recovery of fees brought out the fact that a certified surgeon could not now recover charges for attending a patient in a fever, unless he was also a certified apothecary (Allison *v.* Haydon [1828], 4 Bing., 619).

The position under the Acts of 1511 and 1542 was that a surgeon might still administer medicines in the cure of surgical cases, but had no right to do so in the case of internal disorders not requiring surgical treatment—*e.g.*, fever or consumption. The restriction had for many years been a dead letter, but the Society of Apothecaries in 1843 took action under Section 20 against a surgeon who took upon himself to cure a fever, and secured a conviction (Apoth. Co. *v.* Lotinga [1843], 2 Moo. and R., 495).

Chemists and Druggists.—While thus taking action against physicians[2] and surgeons, with University qualifications in medicine, who practised as apothecaries,

[1] It is worth recording that when Flitcroft had served his sentence he was brought back to the town of Bolton in a car drawn by four horses, and accompanied by Dr. Coffin and others, the Temperance Band playing through the streets, with the display of flags and banners. Similar popular demonstrations in favour of quacks have been seen in provincial towns in much more recent days.

[2] Fellows and licentiates of the College of Physicians were prohibited by the byelaws of the College from compounding and selling medicines.

the Society did not use its powers against another class of persons who, though without medical training, practised under the name of chemists and druggists. These as a sub-class of the traditional apothecaries had been accustomed to give advice and supply medicines long before 1815, and it was not until 1841, in an action against one of these, that it was laid down that the protecting clause 28, in exempting the "trade or business" of chemists and druggists, did not give them the right to give advice as well as medicine[1]—*i.e.*, to practise as apothecaries (Apoth. Co. *v.* Greenough [1841], 1 Q.B., 799).

The distinction between the druggist and the apothecary which had now to be laid down depended on the interpretation of the words "practising as an apothecary" in Section 14. They came to be defined as "the mixing up and preparing of medicines prescribed by a physician or other medical practitioner who prescribes, or the mixing and preparing of medicines prescribed by the party himself" (Woodward *v.* Ball [1834], 6 C. and P., 577). Gresswell, J., in Apoth. Co. *v.* Lotinga (1843), 2 Moo. and R., 495, went further and said: "An apothecary is a person who professes to judge of an internal disease by its symptoms and applies himself to cure that disease by medicine." This distinguishes him both from the

[1] In 1841 the chemists and druggists became united into the Pharmaceutical Society, and were henceforth to restrict themselves to dispensing. Yet even now the popular tradition remains; the chemist and druggist is still consulted by the common people as an "apothecary," and "counter-practice" is not dead.

surgeon and the pharmacist. In Apoth. Co. *v.* Shepperley (unreported; see *Chemist and Druggist*, November 15, 1878, p. 477) Pollock, B., said: "The duty of an apothecary must be to form an opinion on the case and advise and give medicines and treatment in consequence of that opinion."

Licensing Anomalies.—In spite of the Act, however, anyone who chose might entitle himself doctor or surgeon, and even those who were qualified as doctors obtained their licences on conditions which varied so widely that it was impossible to compare one qualification with another. A physician or surgeon qualified in Edinburgh was not qualified to practise in London,[1] but a certified apothecary could practise anywhere in the kingdom.

These anomalies in medical education and practice were the subject of constant investigation and discussion; from 1818 onwards Bill after Bill was drawn up to remedy the law on the subject, but the mutual antagonism of the medical corporations prevented any progress being made. Though all of them desired the punishment of persons who assumed the designation or exercised the functions of a legally qualified medical practitioner and who practised for gain, no agreement could be secured on the details of the necessary reforms. In the meantime there was no control of professional conduct; advertising was common, the poor had frequently to be content with the ministrations of unqualified assistants, while qualified practitioners made profits from the sale of proprietary remedies.

[1] Collins *v.* Carnegie, 1 Ad. and Ell., 695.

There were in existence several private medical schools and schools of anatomy, but no ordered courses of training. The provision of bodies for the teaching of anatomy and surgery under the statutes of 1540 and 1752 and the charters of the Colleges was totally inadequate, and very dubious means were resorted to to remedy the deficiency. After the scandal of the "resurrection men"[1] the Anatomy Act of 1832, 2 and 3 Wm. IV., c. 75, was passed. Its preamble contains the important recital that "a knowledge of the causes and nature of sundry diseases which affect the body, and of the best methods of treating and curing such diseases and of healing and repairing divers wounds and injuries, to which the human frame is liable, cannot be acquired without the aid of anatomical examination." It provides for the licensing of teachers of anatomy, the appointment of inspectors of schools of anatomy, and gives permission for the bodies of persons dying friendless in workhouses, hospitals, and elsewhere, to be used, under certain safeguards, for the purpose.

Rise of the British Medical Association.—In this same year (1832) was founded the British Medical Association, which was mainly responsible for the preparation of the Medical Reform Bills, and it is to that body that the modern organization of the medical profession is due. Their task was to secure sufficient unity of purpose in the profession to permit of an agreed Bill being drawn up which would have a chance of passing through Parliament. The objects aimed at were the uniformity of medical education and privileges,

[1] Report of the Select Committee, 1828.

a general registration of practitioners, the suppression of unqualified practitioners[1] and a revised system of medical government. A Committee of the House of Commons was appointed in 1834 to inquire into the state of the medical profession, and published its report the same year. Medical Reform Bills were introduced in 1842, 1844, 1845, and 1847, but it proved impossible to reconcile the many conflicting interests. In 1847 a Select Committee on Medical Registration reported, showing how the number and variety of medical qualifications was an effective cause of much of the evil that existed.[2]

Surgeons' Charters.—In 1843 the Royal College of Surgeons obtained a new charter providing for the election of fellows who alone were to be eligible to serve on the Council. It was stipulated that no fellow must have practised midwifery or pharmacy within five years of his election. The byelaws of the College were in future to be subject to the approval of the Crown or of Parliament.

The College obtained a further charter in 1852 authorizing new rules for the admission of fellows, and extending the right of admission to the College of certain licentiates of other bodies. Power was granted

[1] The 1841 Census gives 33,339 persons as practising one or more branches of medicine. The medical directories show that only 11,808 were qualified, thus leaving 21,531 unqualified practitioners, or two quacks to one qualified doctor! (*Medical Times and Gazette*, 1853).

[2] See Report of Committee on Medical Education, 1834, and Report of Select Committee on Medical Registration, 1847.

to award certificates of fitness in midwifery, but this provision was rescinded by the charter of 1888.

Pharmacy Act.—In the meantime the Pharmaceutical Society, founded in 1841, secured legislation to control the dispensing of poisons. The Pharmacy Act of 1852, 15 and 16 Vict., c. 56, confirms the charter to the Society, and institutes a register of qualified pharmacists. Special provision is made by Section 8 that the examinations for pharmacists shall not include the theory and practice of medicine, surgery, or midwifery, and by Section 11 that no member of the medical profession shall be entitled to be registered as a pharmaceutical chemist. This was intended to secure that these two professions should henceforth be clearly distinct.

Medical Act, 1858.—Another medical Bill, introduced in 1855, was lost, owing to the dissension created by its proposals for the control of examinations. The desire of the general body of medical practitioners, as represented by the British Medical Association, was for a single and uniform examination ensuring a standard of minimum qualification recognized in all parts of the kingdom, but the existing medical examining bodies would not forego their powers, and when at last the Medical Act of 1858 was passed it was a compromise on this matter.

The Act of 21 and 22 Vict., c. 90, passed on August 2, 1858, set up a General Council of Medical Education and Registration, but gave it no powers of examination. Instead of this it left the medical authorities to carry on their examining functions as before, but

subject to a power in the General Council to report on these examinations to the Privy Council. Provision was made for registering persons already in practice who held no medical qualification, but there was no prohibition of practice by unqualified persons. The previous statutory attempts at prohibition of unqualified practice had never been really effective, and this Act omits any such provision. The Act does not, however, repeal the Apothecaries Act, 1815, Section 14 of which prohibits practice as an apothecary by uncertificated persons. To all intents and purposes the only protection the Medical Act gives the public in their choice of medical men is the confusing and ineffectual provisions of Sections 32 and 40 (see Chapters X. and XI.).

The preamble is an important part of the statute; it recites that "it is expedient that persons requiring medical aid should be enabled to distinguish qualified from unqualified practitioners."

> Section 3 provides that a Council, which shall be styled the General Council of Medical Education and Registration of the United Kingdom . . . shall be established, and branch Councils for England, Scotland and Ireland respectively formed thereout. . . .
>
> Section 4 sets out the list of bodies to be represented on the Council, together with six representatives chosen by the Privy Council, and a President.
>
> By Section 15 every person possessed of one of the medical qualifications set out in schedule A was eligible for registration on payment of a fee. Application may be made direct or the examining bodies may send to the Registrar lists of applicants who have been awarded diplomas qualifying for registration.

Section 18. The General Council may require information from the medical authorities as to the course of medical study for their diplomas, and may send representatives to attend their examinations.

Section 19. Two or more Colleges or examining bodies may unite for the conduct of examinations.

Section 20. Defects in courses or examinations may be reported by the General Council to the Privy Council.

Section 21. The Privy Council may suspend the right to registration in respect of qualifications granted after an insufficient examination.

Section 23. The Privy Council may prohibit attempts to impose restrictions on the adoption of theories of medicine.

Section 27 provides for the annual publication of the Medical Register.

Section 28. Members' names struck off the list by Colleges and examining bodies shall be reported to the General Council.

Section 29. If any registered medical practitioner shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall after due inquiry be judged by the General 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.[1]

S. 31 (repealed by S. 6 of the Act of 1886) provided that "Every person registered . . . 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

[1] There is no provision, as in the Dental and Veterinary Acts, for the exercise by the Council of the power to restore names to the register. But names which have been removed may be re-registered, see p. 186.

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 the 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."

Section 32. 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.

Section 34. The words "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.

Section 35. Registered medical practitioners are exempt (if they so desire) from jury service, but only if actually practising (*vide* Jury Act, 1870).

Section 36. No person shall hold any appointment as 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, infirmity, 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 or repeal or alter any of the provisions of the Passengers Act, 1855 (now included in the Merchant Shipping Act, 1894).

Section 37. 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.

Section 40. 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.[1]

By Section 42 any sum or sums of money arising from conviction and recovery of penalties shall be paid to the treasurer of the General Council.

Section 46 makes provision for the registration of (*a*) qualified persons practising in the Colonies and elsewhere; (*b*) persons already practising in the

[1] There is no provision in this section, as there is in the Dentists and Veterinary Acts, prohibiting the use of a title stating or implying that the practitioner is specially qualified to practise medicine or surgery; and the words "wilfully and falsely" here included do not appear in the corresponding sections of the Dentists and Veterinary Acts.

United Kingdom on foreign or colonial diplomas; (*c*) persons already in practice either in official appointments, or in public service or charitable institutions.

Sections 47 to 51 provide that new charters granting new powers may be given to the Colleges of Physicians of London, Edinburgh, Glasgow, and Ireland, and to the College of Surgeons enabling it to hold dental examinations.

By Section 52 no new charter is to contain restrictions on the adoption of theories of medicine.

By Section 54 the General Council is authorized to publish the British Pharmacopœia.

By Section 55 the Act is not to prejudice 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.

Schedule A sets out the names of the nine medical corporations whose licences, together with degrees in medicine granted by Universities in the United Kingdom, and the doctorate in medicine granted before the Act by the Archbishop of Canterbury, qualified for registration. One of these qualifications was sufficient to admit to the register, and this provision, in conjunction with Section 31, led to difficulties that were put right by Section 6 (1) of the Medical Act of 1886.

The Medical Register.—The Act of 1858 gave the first statutory definition of a medical practitioner. It united the many different kinds of medical practitioners, physicians, surgeons and apothecaries into one legally recognized body of qualified medical men. Each registered practitioner was given equal rights to

practise everywhere in the United Kingdom. The anomaly that a physician's right to practise was restricted to certain areas, and that he had no status at all outside those areas, was ended. But registration, not the holding of a diploma, is now henceforth the evidence of qualification (Section 34).

By the establishment of a register of qualified practitioners a means was provided by which the public could distinguish the qualified from the unqualified. The Act also sought to make the examinations of the twenty-one different examining bodies more nearly uniform, and to give the qualifications equal value and recognition in all parts of the British Empire, and it put into the hands of one body, the General Medical Council, the power to remove from the register the names of medical practitioners guilty of professional misconduct. The inclusion in the register of certain of the practitioners who had no qualification was fully justified, for among them were many who had received all the education of the apprenticeship system, who had walked the hospitals, but who had neglected to pass the examinations for a licence because it was not legally necessary and because compliance with all the formalities preliminary to examination was often more difficult and uncertain than passing the examinations.

Effect of the Act.—The control of medical practice afforded by this Act differed from that given by the Apothecaries Act of 1815 in two respects:

1. Practice as an apothecary by an uncertificated person is prohibited by the Apothecaries Act, but

practice as a physician or surgeon by an unqualified person is not prohibited by the Medical Act.

2. Physicians and surgeons might only practise and sue for fees according to their qualifications; practice outside their qualifications might bring them under Section 20, and suing for charges for medicine might bring them under Section 21, of the Apothecaries Act.

The first point is illustrated by the case of a fish salesman who charged two guineas for attending to a thumb injured by a fish bone. He bathed it and applied a plaster of various ingredients compounded according to a family recipe. It was held in the County Court that this was not practising as an apothecary (or it would have been against the Apothecaries Act), but practising as a surgeon in a minor surgical case, such practice not being illegal under the Medical Act. On appeal it was held that the question was one of fact for the County Court Judge, and the appeal was dismissed (Apoth. Soc. *v.* Gregory [1908], 25 T.L.R., 37). If what he had done was to compound and sell medicines recommended by himself, and to give advice to patients, it would have been within Section 20 (Apoth. Co. *v.* Allen [1833], 4 B. and Ad., 625). The section imposes only one penalty for practising as an apothecary, not a separate penalty for each offence (Apoth. Co. *v.* Jones [1893], 1 Q.B., 89).

The second point is illustrated by the case of a surgeon who was a member of the Royal College of Surgeons, but had no other qualification. He sued

for his fees for medicine supplied and medical attendance, but failed because he was not qualified to practise medicine, and the case had not required surgical treatment (Leman *v.* Fletcher [1873], L.R. 8 Q.B., 319). The same point was raised in Leman *v.* Houseley (1874), L.R. 10 Q.B., 66, the surgeon having in the meantime obtained a certificate as an apothecary. But as the debt accrued before his medical licence, he did not succeed, because his procuring himself to be registered as an apothecary before the trial did not cure his want of qualification in that regard at the time the services were rendered.

A question with regard to the position of physicians in this respect arose in 1860. Until 1859 the College of Physicians had always prohibited its members from engaging in trade or compounding and selling drugs, but in that year new byelaws were passed making a new order of licentiates who were to have power to vend, compound and dispense medicines, but only for patients under their care. The Society of Apothecaries thereupon filed an information in restraint of this scheme, alleging that it was *ultra vires*. The Royal College of Physicians demurred, and Wood, V.C., allowed the demurrer, stating that the original charter of the College embraced the whole of physic and surgery, and that though the College had by byelaw prohibited its members from selling drugs, it had power to revoke such a byelaw. Surgeons could charge for medicines administered in a surgical case, and physicians who, since the Act of 32 Hen. VIII., c. 40, were authorized to practise and exercise physic "in all and every his

members and parts," and whose rights and privileges were saved by the Act of 1815, must also be outside Section 20 (Att. Gen. *v.* Royal College of Physicians [1861], 1 J. and H., 561).

The question raised in this case and in Leman *v.* Fletcher and Leman *v.* Houseley, *supra*, is now governed by Section 6 of the Medical Act of 1886, but before this Act was obtained several other amending Acts were passed which must be first noticed.

Further Legislation.—The Medical Act of 1859 (22 Vict., c. 21) provides (Section 6) that a foreign practitioner may act as resident medical officer of any hospital for foreigners.

Two amending Acts followed in 1860. The Act of 23 Vict., c. 7, gave recognition to Irish medical licences, and postponed the operation of Section 32 of the Act of 1858. The Act of 23 and 24 Vict., c. 66, made provision for regularizing the new charters to be granted under the Act of 1858 to the medical corporations.

The Medical Council Act of 1862 (25 and 26 Vict., c. 91) declared the General Medical Council to be incorporated, and vested in the Council the exclusive right of publishing the British Pharmacopœia.

The Pharmacy Act of 1868, which provided that no unqualified or unregistered persons should sell or keep open shop for retailing, dispensing, or compounding scheduled poisons, made provision (Section 16) for the exemption of apothecaries and members of the Royal College of Veterinary Surgeons. No reference was made to qualified medical practitioners or the veterinary surgeons who were holders of the veterinary certificate

of the Highland Society,[1] but these omissions were supplied by the Amending Act of 1869.

The Medical Act (University of London), 1873 (36 and 37 Vict., c. 55), empowered the University to unite with any other medical authority in conducting examinations qualifying for registration.

The Apothecaries Act Amendment Act, 1874 (37 and 38 Vict., c. 34), made provision (Section 3) to enable the Apothecaries Society to unite or co-operate with other medical authorities in conducting examinations for registration, and (Section 4) to give them power to strike off the list of licentiates any person convicted of a crime or pronounced guilty of infamous conduct by the General Council. Nothing was provided for the restoration of names, but this omission was remedied by the Apothecaries Act, 1907, Section 6. By Section 5 of the Act of 1874 the Society's right to admit women to their examinations was confirmed. The Society was the first licensing corporation in this country to grant women a licence to practise medicine.[2]

Powers for the Royal College of Surgeons similar to those found necessary for the Society of Apothecaries were provided by the Medical Act, Royal College of Surgeons of England, 1875 (38 and 39 Vict., c. 43).

Power was conferred on medical examining bodies to admit women to their examinations by the Medical Act, 1876 (39 and 40 Vict., c. 41), though without compulsion to exercise the power.

[1] See Chapter VII.

[2] Miss Garrett (afterwards Mrs. Garrett Anderson) was the first woman licensed to practise medicine since the Medical Act,

Multiplicity of Licences.—All these enactments were more or less necessary to complete the scheme of medical registration set up by the Act of 1858, but during all this time the medical profession was seeking a means to decrease the number of heterogeneous medical licences which qualified for registration, and to secure one recognized portal of entry to the profession. Between the years 1870 and 1886 no fewer than twenty-five Medical Act Amendment Bills were introduced into Parliament for this among other purposes, not one of which passed. The House of Commons appointed a Special Committee in 1878 to which they referred four Bills which were simultaneously before Parliament, and reports were published in 1878, 1879 and 1880. A Royal Commission was then appointed to inquire into the whole question of medical education and registration. The Commission reported in 1882 approving of the establishment of one uniform final examination for admission to the register, as had been consistently urged by the British Medical Association, and proposing that the power to take action against offenders under the Medical Act should be in the hands of the Public Prosecutor. The Bill drawn up on the Report was, however, opposed by the Universities and the Royal Colleges of Physicians and the Royal Colleges of Surgeons, and had to be dropped. Finally, after a

---

1858. She was licensed by the Society of Apothecaries on September 28, 1865. The London School of Medicine for Women was opened in 1874. By the Sex Disqualification (Removal) Act, 1919, women were made eligible for admission to all medical, dental, and veterinary examinations.

compromise preserving the right of the Universities and the medical corporations to hold their own examinations, the Medical Act, 1886, was passed (49 and 50 Vict., c. 48).

Medical Act, 1886.—It repealed Sections 4, 5, 24, and 31 of the Act of 1858, and replaced them by the following provisions :

Sections 4 and 5, by Section 7 of the new Act which alters the constitution of the General Council.

Section 24, relating to the making of Orders by the Privy Council, is replaced by Sections 22 and 23 to somewhat the same effect.

Section 31, relating to the privileges of registered persons, is replaced by Section 6 of the new Act as follows :

> "6. A registered medical practitioner shall . . . be entitled to practise medicine, surgery and midwifery in the United Kingdom, and (subject to any local law) in any other part of Her Majesty's Dominions, and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled, unless he is a fellow of a college of physicians, the fellows of which are prohibited by byelaw from recovering at law their expenses, charges or fees, in which case such prohibitory byelaw, so long as it is in force, may be pleaded in bar of any legal proceedings instituted by such fellow for the recovery of expenses, charges, or fees."

By Section 2 the Act provides that registration is to depend on the applicant having passed an approved qualifying examination in medicine, surgery and mid-

wifery, conducted [Section 3 (i.)] by a recognized examining body or a combination of two or more such bodies. By Section 3 (ii.) the duty is laid on the General Council of securing the maintenance of such a standard of training as to guarantee the knowledge and skill requisite for the efficient practice of medicine, surgery and midwifery. For this purpose the Council is to appoint paid inspectors of examinations whose report must be sent by the Council to the Examining Body and to the Privy Council [Section 4 (3)]. Where an examination is considered by the Privy Council to be of insufficient standard it may be declared to be no longer an examination qualifying for registration [Section 4 (1)], and any diploma granted after such examination shall not entitle the holder to registration. These provisions are an elaboration of those already contained in the Act of 1858 (Sections 18, 20, 21), but are made more workable.

Where a medical corporation is unable to combine with another for the holding of qualifying examinations, the General Council may appoint examiners to assist at the examination held by such a medical corporation, so as to secure a proper standard of efficiency in the three required subjects (Section 5). If the Council should fail in its duty of maintaining a sufficient standard of professional education its duties may be taken over by the Privy Council (Section 19).

Provision is made for the registration of colonial and foreign practitioners (Sections 11, 12, 13,) and a separate register is authorized to be made for them (Section 14). If a registered practitioner held prior to the passing of

the Act a foreign medical degree, he is authorized to have it registered, but no such degree obtained since 1886 can be registered (Section 16). Medical practitioners are not required to pay an annual fee while they continue in practice, such as is imposed by statute in the case of dentists (p. 131) and veterinary surgeons (p. 147).

Adjustments.—Questions soon arose as to the nature of the combination proposed between medical bodies, provided for in Sections 3 and 5, and by what rule a medical corporation was to be held qualified to grant independent diplomas in medicine. The Apothecaries Hall of Ireland joined with the Royal College of Surgeons in Ireland for the purpose of holding qualifying examinations, but the King's and Queen's College of Physicians in Ireland applied for an injunction to restrain them on the ground that the curriculum of the Hall was insufficient for the purpose. The injunction was refused on the ground that the power of maintaining the standard and quality of the examinations was in the hands of the General Council (Att. Gen. *v.* Apoth. Hall of Ireland [1888], 21 L.R. [Ir.], 253).

Under the provisions of the enabling Act of 1875 the Royal College of Surgeons of England entered into an agreement with the Royal College of Physicians of London, establishing a Conjoint Examining Board and requiring that all candidates for the licence of the Royal College of Physicians and the membership of the Royal College of Surgeons, commencing their professional study after 1st October, 1884, should pass the

examinations of the new Board before becoming entitled to their diplomas, and consequently to registration. The Royal College of Physicians, however, continued to hold independent examinations in respect of candidates who had commenced their study before the appointed date, and the General Medical Council until 1891 continued to register the holders of the single diploma awarded on the results of these examinations. The General Council decided, however, after the Medical Act of 1886, that the Royal College of Physicians was no longer a body capable of granting independently a qualification admitting to the register, and when requested by the College to alter this decision the Council passed the following resolution :

> "That as the claim made by the Royal College of Physicians of London that its single diploma of licentiate or member should admit to the Medical Register without any additional qualification would involve the admission by the Council that the College can itself confer a complete qualification in medicine, surgery and midwifery, and as this claim is based upon the interpretation of the charter of the College along with the Medical Acts, 1858, 1860 and 1886, the Council leave it to the Royal College of Physicians to substantiate their claim in such way as they may think fit, and in the meantime instruct the Registrar not to register the qualifications of licentiate or member of the Royal College of Physicians as in themselves sufficient to admit to the register."

The Royal College of Physicians therefore sought a declaration from the courts. It was held that they were a corporation legally qualified to grant diplomas in respect of medicine and surgery, for Section 3 of

32 Hen. VIII., c. 40, contains a direct recognition that in 1540 the science of physic included the knowledge of surgery and embraced the general art of healing whether by drugs or surgery (Royal Coll. Physicians *v.* General Medical Council [1893], 62 L.J. [Q.B.], 329).

Conjoint Examinations.—This decision did not, however, affect the agreement of the College with the Royal College of Surgeons for the holding of conjoint examinations for all students who entered upon the course after 1884. That agreement, which also includes an undertaking that each College should abstain from the exercise of its independent privilege of giving a qualification for admission to the Medical Register, still remains in force.

Licentiates of the Apothecaries Society.—A further question arose later with regard to the position of licentiates of the Apothecaries Society under the Act of 1886. The Apothecaries Act, 1815, authorized the Society to examine candidates as to their fitness to practise as apothecaries, and the Medical Act, 1886, required that the Society's examination should be of a certain standard. The licence granted did not, however, indicate that the holder possessed a qualification both in medicine and surgery, and the case of Hunter *v.* Clare decided that he could not use the title of Physician (see p. 212). It was therefore enacted by the Apothecaries Act, 1907, Section 3, that any of the licentiates of the Society since 1887 who had passed, or should in future pass, the Society's examination in medicine, surgery, and midwifery, should be granted the qualification of licentiate in medicine and surgery of the Society of Apothecaries of London, and this title was

to be entered in the Medical Register. Power was also given by Section 6 to restore, with the consent of the General Medical Council, the names of licentiates struck off in accordance with the provisions of Section 4 of the Act of 1874.

Defects of the Medical Act, 1886.—The main effect of the Act of 1886 is to put an end to the registration of candidates who have received only a sectional training, but it does nothing to reduce the plethora of medical examining bodies.[1] Nor do the Medical Acts generally give the General Council as effective a control as is desirable over either the preliminary educational examinations of prospective medical students, or over the medical examinations held by the examining bodies. The Council maintains a register of medical students, but has no power to compel registration. It inspects periodically the medical examinations, but the machinery provided for effecting improvements by making representations to the Privy Council is cumbrous and slow.

The defects of the Medical Acts in respect of the protection afforded to the public are shown in Chapters X. and XI.

The Medical Practitioners Act, 1927, passed by the Government of the Irish Free State for the establishment of a separate Register of Medical Practitioners in that Dominion provides for the continued recognition of the medical authorities in the Free State as teaching and examining bodies.

[1] Indeed the number has been increased by six since the Act was passed.

CHAPTER VI

THE DENTIST

TOOTH-DRAWING seems to have been a specialized craft in this country as early as the fourteenth century, for it is mentioned as a branch of surgery in the earliest Barbers Ordinance (1376). It was a calling that naturally separated itself from surgery; he who extracted teeth in early days could look for little gratitude from his patient, and surgeons would gladly leave this work to anyone who by practice had made himself expert. We have seen (p. 55) that licences were granted by the Barber-Surgeons Company to competent persons to practise tooth-drawing. By the seventeenth century at any rate there were specialist tooth-drawers who were consulted by surgeons when extractions were necessary. The description "dentist" was a fancy term introduced in the middle of the eighteenth century, though the really eminent practitioners were still content with the title "tooth-drawer."

The movement which ultimately led to the creation of a dental profession began in London in the first half of the nineteenth century. In 1841 G. Waite published "An Appeal to Parliament, to the Medical Profession and the Public on the present state of Dental Surgery.' He showed how detrimental to the public was the lack

of protection, and proposed that no one should be permitted to practise dentistry without having undergone an examination. Public meetings of dentists were held from this date onwards, and in 1856 the Odontological Society was formed, followed immediately by the formation of a rival society, the College of Dentists of England. Both societies worked for the promotion of legislation to regulate the practice of dentistry. The Odontological Society, however, favoured alliance with the College of Surgeons, while the College of Dentists aimed at a separate dental charter. When the Medical Bills of 1857 were in Parliament the College of Dentists succeeded in obtaining the inclusion of dentists in the saving clause which became Section 55 of the Medical Act of 1858. The Odontological Society also succeeded in introducing an amendment—namely, Clause 48 :

> "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."

The Royal College of Surgeons did not proceed immediately to seek this authority, but instruction in dentistry was nevertheless given at the newly established London School of Dental Surgery and Dental Hospital for London, founded 1859 by the Odontological Society, and from 1860 also at the Metropolitan College of Dental Science, founded by the College of Dentists of London.

In a Medical Act Amendment Bill introduced in 1859, an amendment to provide that licentiates in dentistry should be entitled to registration under the Medical Act was successfully opposed by the non-medical dentists. There were no "licentiates" in existence, but the Royal College of Surgeons would have power to create such licentiates, and the proposed clause would clearly have placed them in a much more advantageous position than non-licensed dentists. The College of Dentists then sought a charter to establish a Royal College of Dentists after the manner of the charters of the Royal College of Surgeons and the Royal College of Veterinary Surgeons, but their appeal failed.

Dental Examinations.—However, as provided by the Medical Act, 1858, a new charter was granted to the Royal College of Surgeons in 1859, enabling it to hold examinations for testing the fitness of persons to practise dentistry, and to grant certificates of such fitness. The first examination under the charter was held in 1860, and forty-three dentists already in practice presented themselves for examination. They all seem to have passed, and by the end of the year one hundred certificates had been granted. The entries then fell off, but by 1870 three hundred certificates had been granted. The certificate gave no immunity from jury service, as did the diploma of M.R.C.S., and it was specially provided that the certificate of fitness should not confer the right to registration under the Medical Act.

The College of Dentists recognizing that the policy of the Odontological Society had succeeded, the two

bodies amalgamated in 1863, and the new society, "The Odontological Society of Great Britain," absorbed 111 members of the College of Dentists.

The first published list of licensed dentists was issued in 1865 as part of the unofficial "Medical Directory." There could not be an official list, for there was as yet no attempt to control the profession. Quacks were far more numerous than qualified persons, and their pretensions, and the extent of their self-praising advertisements, were in inverse ratio to their knowledge and skill. The public had no means of distinguishing, and empiricism flourished to the detriment both of the qualified men who had taken pains to train themselves, and of the suffering public.

The Dental Reform Committee was formed, therefore, for the purpose of promulgating legislation to protect the public against this state of affairs, and at last in 1878 the Dentists Act was passed to make provision "for the registration of persons specially qualified to practise as dentists in the United Kingdom" and to amend "the law relating to persons practising as dentists" (41 and 42 Vict., c. 33).

Dentists Act, 1878.

There is no recognition in the preamble, as in the Medical and Veterinary Acts, that it is expedient to provide the public with a means of distinguishing qualified from unqualified practitioners. All the Act does is to penalize the use by unregistered persons of a title implying registration (Section 3); to confer on registered persons the right to practise in any part of

H.M. Dominions,[1] and to recover fees (Section 5), and to prescribe the qualifications necessary for registration (Section 6).

Section 3 (now repealed) provided that—

> ". . . a person shall not be entitled to take or use the name or title of 'Dentist' (either alone or in combination with any other word or words) or of 'dental practitioner,' or any name, title, addition, or description[2] implying that he is registered under this Act, or that he is a person specially qualified to practise dentistry, unless he is registered under this Act.
>
> "Any person who, not being registered under this Act, takes or uses any such name, title, addition, or description[2] as aforesaid, shall be liable, on summary conviction, to a fine not exceeding £20; provided that nothing in this section shall apply to legally qualified medical practitioners."

Three classes of persons were entitled to be registered under the Act by Section 6:

(*a*) Licentiates in dental surgery or dentistry of any medical authority—*i.e.*, a university or body entitled to choose members of the General Medical Council.

(*b*) Foreign or colonial dentists entitled to be registered under Sections 8 to 10.

(*c*) "Existing practitioners"—*i.e.*, persons bona fide engaged in dental practice in 1878.

Defects of the Act.—Although the Royal College

[1] "Subject to any local law," Medical Act, 1886, Section 26.

[2] It was declared by Section 26 of the Medical Act, 1886, "that the words 'title, addition, or description' in this section include any title, addition to a name, designation, or description, whether expressed in words or by letters, or partly in one way and partly in the other."

of Surgeons had since 1860 granted certificates of fitness to practise as dentists, there were actually very few such licentiates in practice in 1878, and the majority of those placed on the dentists' register were unqualified. By 1888 there were registered 877 licentiates in the United Kingdom, and 3,889 practitioners registered under Section 6 (*c*). By 1918 out of 5,524 persons on the register, 4,214, or 76 per cent., were licentiates, and the remainder, having had forty years' practical experience, may be considered to have become experts. But unregistered persons practising dentistry had increased, and were increasing, for though the dentists had been compelled by the Act of 1878 to register all persons in practice without regard to their knowledge or skill, no provision had been made in the Act to prevent the growth of a similar class of empirics in the future. Dental companies formed under the Companies Acts multiplied rapidly; they advertised largely, sold false teeth to the poor on the instalment plan, and deluded the public by the employment of high-sounding names such as "The Hygienic Institute," "Dental Specialists," "Dental Consultants," "Dental Experts," "Specialist in Operative and Prosthetic Dentistry," "Experts in Dental Surgery," "Dental Surgery," "Dental Institute," "Surgical Dentistry," etc. As is shown by the summary of cases on the provisions of Section 3 given in Chapter X., p. 220, not one of these titles was found to be prohibited by the section. A return was made by order of the House of Commons in 1904 showing the number and names of companies registered

under the Companies Act, 1862, in the United Kingdom for the specific purpose of carrying on medical and dental practices, and in 1905 an attempt was made to amend the law by a Bill to prevent joint stock companies from carrying on practice as dentists except by means of duly qualified persons. The Bill did not pass, and the like fate attended similar Bills introduced in 1905, 1907, and 1908 to prevent joint stock companies from carrying on practice as physicians, surgeons, or medical practitioners.

It was obvious that in such circumstances an ignorant public could not distinguish between qualified and unqualified men, and the decision in Bellerby *v.* Heyworth (1909), 2 Ch. 23, 1910 A.C., 377 (p. 224), on the import of Section 3, finally proved the utter worthlessness of the Act as a protection to the public.

Result of Special Inquiry.—A Departmental Committee appointed to inquire into the extent and gravity of the evils of dental practice by persons not qualified under the Dentists Act, reported in 1919.[1] Referring to Bellerby *v.* Heyworth, the Committee declare that it "constitutes the charter of the unregistered dental practitioner; in effect it seems to bring within the lawful occupation of any man the practice of dentistry, provided he does not use the description of dentist or dental practitioner or any name, title, etc., implying that he is registered under the Dentists Act" (p. 6).

The report further states (p. 11): "Under the existing law any person, however ignorant, unskilled,

[1] Cmd. 33, 1919.

or untrained, can practise dentistry and inform the public that he practises dentistry.[1] The only protection the public has is an action for damages in case of injury, or the fear of a possible prosecution for manslaughter in case of death"; and (p. 17) "the law which allows unqualified dental practice produces amongst other evils (*a*) a lowering of the social status and public esteem of the profession, and (*b*) a great shortage of registered dentists owing to the unattractiveness of the profession."

The Committee expressed the opinion (p. 24) that the registered dental practitioner had to compete with unregistered persons practising dentistry who professed to treat patients in exactly the same way, whereas unqualified medical practice was not in such direct competition with qualified medical practice, and so there was more need to protect the dentist than the doctor. But in unqualified medical practice there must be just the same danger to public health as in unqualified dental practice. In the case of animal medicine, too, treatment by untrained persons must lead to unnecessary pain and suffering and preventable mortality, The decision (p. 42) that any attempt to control unregistered practice by a restriction of title would inevitably fail is sound, and applies both to medicine and veterinary surgery as well as to dentistry. The Committee show that in the Colonies legislation on the principle of restriction of title has proved unsatisfactory,

[1] Moreover the provisions of Section 5 did not prevent an unregistered person from recovering the cost of artificial teeth supplied (Hennan *v.* Duckworth [1904], 20 T.L.R., 436) (*infra*, p. 250).

and that it has been found necessary in the public interests to pass Acts prohibiting under penalty the practice of dentistry by unregistered persons. The same is true in some colonies both of medical practice and veterinary practice.

Though many gross abuses had been found to be associated with the practice of dentistry by incorporated companies, abuses both of malpractice and fraud, the Committee did not recommend that dental practice by limited liability companies should be prohibited, because "it would be difficult to confine such a prohibition to dentistry." "A precedent of this nature would be quoted for use in other professions and trades and would require to be considered by Parliament from a wide standpoint" (p. 10). The model of the Poisons and Pharmacy Act, 1908, Section 3 (4), was suggested as the best means of regulating such practice.

Dentists Act, 1921.

Following this report the Dentists Act, 1921 (11 and 12 Geo. V., c. 21), was passed. As there were some ten thousand unqualified persons engaged in the practice of dentistry, ranging in ability from the sewing-machine canvasser who drew teeth on his round to men with years of experience who were reasonably competent and skilled, it was necessary to provide a means for registering and controlling these, and for preventing the coming into existence of a similar class in the future.

Section 3 of the Act of 1878, which merely protected the use of a title implying registration, was

therefore repealed and replaced by Section 1 of the new Act, laying down that after the appointed day[1] no unregistered person should practise or hold himself out directly or by implication as practising or being prepared to practise dentistry, whether for payment or otherwise, under a penalty of £100 on summary conviction.

The practice of dentistry is by Section 14 (2)—

> "deemed to include the performance of any such operation and the giving of any such treatment, advice, or attendance as is usually performed or given by dentists, and any person who performs any operation or gives any treatment, advice, or attendance on or to any person as preparatory to or for the purpose of or in connection with the fitting, insertion, or fixing of artificial teeth shall be deemed to have practised dentistry within the meaning of this Act."

The right of registered medical practitioners to practise dentistry is, however, saved by Section 1 (3 *a*), and duly registered pharmaceutical chemists or chemists and druggists are allowed in urgent cases to extract teeth, but without anæsthetic (Section 1, 3 *b*). The performance in any public dental service of minor dental work by any person under the personal supervision of a registered dentist is also allowed under special conditions [Section 1 (3 *c*)].

A Dental Board is established (Sections 2, 6, and Schedule 1), having a chairman appointed by the Privy Council, and twelve other representative members, with powers relating to dentistry formerly exercised by the General Medical Council.

[1] November 29, 1922.

By Section 3 the Board must admit to the register kept under the Act of 1878 the following persons:

1 (*a*). Any person of good character over twenty-three years of age who was for five of the seven years preceding the Act engaged as his principal means of livelihood in the practice of dentistry in the British Isles or was admitted to membership of the Incorporated Dental Society[1] not less than one year before the commencement of the Act.

(*b*) Any person as above, in the occupation of a dental mechanic and who within ten years passes the prescribed examination in dentistry.

2. Any person who was at the commencement of the Act engaged as his principal means of livelihood in the practice of dentistry in the British Isles and passes the prescribed examination within two years.

3. A duly registered pharmaceutical chemist or chemist and druggist who had a substantial practice as a dentist including all the usual dental operations.

Section 4 provides that a person registered under the Act of 1878 may use the title of dentist or dental practitioner, but shall not use any title or description reasonably calculated to suggest that he possesses any professional status or qualification other than a professional status or qualification which he in fact possesses. The practitioner without a diploma can therefore be distinguished from the licentiate or graduate in dentistry.

By Section 5 a body corporate[2] carrying on the business of dentistry must carry on no other business except one ancillary to dentistry, and a majority of

[1] A society of unqualified persons practising dentistry, but not registered under the Act of 1878.

[2] Up to 1928 forty-five companies were registered under this section, of which fifteen were incorporated since 1921.

the directors and all the operating staff must be registered dentists. The penalty for breach is £100.

Section 7 provides that the newly established Dental Board shall have power to make regulations *inter alia* for (*a*) making and keeping the register, (*b*) erasure of names and restoration of names, and (*c*) prescribing a fee not exceeding £5 to be charged in respect of the retention on the register of any name in any year.

Regulations of the Board.—Under this section the Dental Board has made regulations[1] following the procedure laid down, which requires the regulations to be submitted for approval in the first instance to the General Medical Council, and then, with or without modification by that body, to the Privy Council. When approved by the Privy Council they are to be laid before Parliament for twenty-one days, during which an address praying for the annulment of any regulation may be presented.

Annual Registration Fee.—Among the regulations thus approved was one providing that the fee to be paid for retention on the register of the name of any person registered should be £5, and that in default of payment before December 31 in any year the Registrar should forthwith remove the name from the register. Despite the elaborate precautions set out above, a doubt arose in 1928 whether this regulation was *intra vires*, but Astbury, J., in Tattersall *v.* Sladen (1928, 1 Ch., 318), a friendly action brought by arrangement, held that it was. It follows therefore

[1] S.R. and O., 1923, Nos. 1615, 1616, 1617; 1925, No. 649; 1926, No. 799; 1928, No. 560.

that non-payment of the annual retention fee results in omission of a practitioner's name from the following year's register, with the consequence that he is then subject to the provisions of Section 1, and is liable if he practises dentistry to a fine on summary conviction not exceeding £100.

This provision is in striking contrast with that of the Veterinary Surgeons Act, 1920, where the fee prescribed is one guinea only per annum, and it is laid down [Section 2 (3)] that if it is not paid it may be sued for and recovered in the County Court, a method which, in respect of the amount of the debt, is uneconomical and practically useless.

Dental Register—Erasure.—Section 8 amends Sections 13 and 14 of the Act of 1878, providing for erasure of the name of a practitioner convicted of crime or guilty of disgraceful conduct, and transfers the powers of the General Medical Council with regard to investigation of cases to the Dental Board, but so that the Board shall report to the General Medical Council their findings and the General Council may either direct the Registrar to erase the name or remit the case to the Board for further inquiry. But the proviso to Section 13 remains, that no person can be removed from the roll merely for holding any particular theory of dentistry or dental surgery, nor on account of a conviction for a political offence outside H.M. Dominions which is either trivial or does not disqualify a person from practising dentistry.[1] Names erased from the register must, in the case of licentiates, be reported to the medical

[1] The latter part of this proviso is peculiar to dentists; there is no similar provision in the Medical or Veterinary Acts.

authority granting the licence, who shall erase the names from the list of licentiates.

Restoration.—Section 8 (2) amends Section 14 of the Act of 1878, to the extent that restoration to the register by the General Medical Council must be on a report from the Dental Board. When a name is restored to the register it is also restored to the list of licentiates.

There is an appeal (Section 9) to the High Court, within three months after a decision to remove a name from the register or a refusal to restore a name, and the decision of the High Court is final. In the case of the Medical Register there is no appeal from a decision of the General Medical Council to erase a name or a refusal to restore a name, but, in the case of dentists, erasure from the register now means prohibition of practice altogether, and not, as in the case of medical practitioners, merely the incapacity to sign certificates or to hold certain public appointments.

Section 11 (i.) amends Section 6 of the Act of 1878, by providing for the registration not only of licentiates but also of graduates in dentistry. Sub-section (ii.) provides that any recognized examining body may transmit to the Registrar certified lists of the persons who are graduates or licentiates of that body, and the Registrar is then, on payment of the prescribed fees, to register those persons. Under the Act of 1878, persons desiring registration had to apply themselves; the new provision brings the procedure into line with that provided by Section 15 of the Medical Act, 1858.

Section 12 simplifies the procedure for removing the

names of persons who are dead or who have ceased to practise.

The constitution and proceedings of the Dental Board are regulated by Schedule 1.

The dental profession is thus a closed profession.[1] Any person who now desires to practise dentistry must pass a recognized examination held by one of the medical authorities having power to grant a surgical degree or licence. His name will then be registered in the Dental Register on payment of the prescribed fee, and will be retained in the register only as long as he continues to pay the annual retention fee.

In the Dentists Act of 1928, passed by the Government of the Irish Free State for the establishment of a separate Register of Dentists in that Dominion, similar provisions have been made for the government of the profession.

Jury Service.—A registered dentist is by Section 30 of the Dentists Act, 1878, exempted from Jury Service "if he so desires." He must therefore make application for exemption before the Jury List is made up. Although the section provides that the name of a registered dentist shall not be returned in any list of persons liable to serve on juries, if, failing such an application, the name of dentist should be included in the list, he will, by Section 2 of the Juries Act, 1922, be liable to serve, unless the Sheriff is willing to excuse him on special application being made in writing under Section 3 of the Act.

[1] This statement is subject to the qualification that registered medical practitioners are entitled to practise dentistry [Section 1 (3 *a*)].

CHAPTER VII

THE VETERINARY SURGEON

THE organization of the veterinary profession in this country dates from 1791, when the London Veterinary College was founded. There had formerly been a class of "Marshals," who seem to have been the forerunners of the modern veterinary surgeon, but for centuries the medical and surgical treatment of horses had fallen into the hands of riding-masters, grooms, or farriers. The latter, as their name implies, were originally ferriers or shoeing-smiths, and gained their medical skill mainly from experience and experiment with the recipes and cures handed down from father to son. In London the system of apprenticeship set up by the Farriers Company helped somewhat to improve practice with horses, but the treatment of other animals, which was in the hands of shepherds or cow-leeches, was often indescribably cruel.

The London Veterinary College instituted a course of scientific training and granted a diploma of competency after an examination by an examining board of medical practitioners, and when in 1823 a Veterinary College was established in Edinburgh the same plan was adopted there, the Highland Society of Scotland conducting the examinations by means of medical

examiners. In course of time competition between the two schools led to abuses; men of little or no education were granted diplomas after a few months' training, and there was sometimes little to choose between the veterinary surgeon so trained and the untrained farrier.

Royal College of Veterinary Surgeons.—At the time when the medical profession was moving for a new Medical Bill in the early forties of last century, the more enlightened practitioners of veterinary surgery combined together in an endeavour to secure control over the professional examinations and the granting of the qualifying diploma, with the result that in 1844 a Royal Charter was obtained constituting the Royal College of Veterinary Surgeons.

By that charter all those persons who held certificates of qualification to practise as veterinary surgeons granted by the London or the Edinburgh College, and all such as should hereafter become students of those Colleges or any other such college corporate or unincorporate as might in future be affiliated to the Royal College, and should pass the prescribed examinations, were declared to form one body politic and corporate by the name of the Royal College of Veterinary Surgeons. The veterinary art was declared to be a profession, and the members of the College solely and exclusively of all other persons were declared to be members of the said profession or professors of the said art, and were to be individually known and distinguished by the name or title of "Veterinary Surgeon."

A Council was constituted with powers to make bye-laws for regulating the times, places, manner, nature and

extent of the examination of students educated at the Royal Veterinary College of London or the Veterinary College of Edinburgh, or such other veterinary college as might become affiliated to the Royal College of Veterinary Surgeons, and for the appointment of examiners, payment of fees on admission, etc.

There was thus set up, in place of the two competing examinations in Edinburgh and London, a single portal through which all aspirants for the qualification of veterinary surgeon must pass.

Veterinary Schools.—At the present time there are five veterinary schools affiliated by Royal Sign Manual to the Royal College of Veterinary Surgeons for the purposes of this charter:

1. The Royal Veterinary College, London, founded in 1791 and incorporated by Royal Charter in 1875. (Its name, which is often confused with that of the corporate body of the profession, the Royal College of Veterinary Surgeons, needs to be clearly distinguished.)

2. The Royal (Dick) Veterinary College of Edinburgh, founded in 1823, and incorporated by Act of Parliament on August 3, 1906.

These are the two schools mentioned in the charter of 1844.

3. The Veterinary School of the University of Liverpool, which was formerly the "New Veterinary College of Edinburgh." Letters mandatory dated November 8, 1873, directed to the Royal College of Veterinary Surgeons, affiliated the new Veterinary College in terms of the provisions of the charter, and declared that the persons who then were and might thereafter become

students of the said new Veterinary College and should pass the prescribed examinations, should become members of the Royal College of Veterinary Surgeons.

The right, it will be observed, was conferred on the *students* of the College, and on their behalf a petition was addressed to the Privy Council in 1904 praying for confirmation of the transfer of the College to Liverpool and of its affiliation to the Royal College of Veterinary Surgeons. This was granted in 1906.

4. The Glasgow Veterinary College, established in 1862, affiliated by Royal Sign Manual to the Royal College in 1863, and incorporated in 1909 under a representative Board of Governors.

5. The Royal Veterinary College of Ireland, established by Royal Charter in 1895, and affiliated by the same instrument to the Royal College of Veterinary Surgeons. It was opened in 1900 and is now administered by the Department of Lands and Agriculture of the Irish Free State.

"One Portal."—These schools are all of them independent bodies, but they are subject to the Royal College of Veterinary Surgeons in respect of the course of training they must provide to prepare students for the qualifying examinations. The Royal College lays down the curriculum, appoints the Board of Examiners, regulates the examinations, grants the diploma of membership to successful candidates in the final examination, and registers their names and addresses in the official Register of Veterinary Surgeons.

This one-portal system of admission to the profession

ensures that every qualified veterinary surgeon in this country, at whatever school he may have been trained, has passed through the same course of instruction, at present covering four years of study, and has at least reached a certain minimum standard of knowledge. This very desirable state of affairs, which does not obtain in the case of the other two professions we are considering, was, however, not attained without long contention.

A Rival Examination.—The provisions of subsequent charters and Acts cannot be properly understood without some explanation of the manner in which the provisions of the charter of 1844 were, so far as they purported to provide a single mode of entry to the profession, temporarily frustrated. The first examination under the new charter took place in Edinburgh in April, 1844, six weeks after the granting of the charter. The newly appointed Council of the Royal College sent delegates to that examination, who reported somewhat harshly on certain alleged defects in the examination. This gave offence to the Principal of the school, and in 1848 he began again to present his students for examination by a reconstituted examining board appointed by the Highland and Agricultural Society, instead of that appointed by the Royal College. This was a flagrant defiance of the provisions of the charter, but though the Highland Society's charter gave it no power to grant a veterinary diploma, yet, since there was no *statutory* restriction of the use of the title Veterinary Surgeon, the Royal College found itself powerless to compel the Edinburgh school to

present its students for examination by the chartered body. This state of affairs lasted until 1879.

Unity Again.—Students of the Edinburgh school began, however, in course of time to present themselves for both examinations, and by 1866, of the 818 holders of the Highland Society's diploma, 575 had also been admitted as members of the Royal College. At last in 1879 an agreement was reached whereby the Royal College undertook to register, without further examination and on payment of certain fees, any of the 1,127 persons who by that time had been granted the veterinary certificate of the Highland Society, and who had not also passed the qualifying examination for admission to the Royal College. The Society undertook not to hold further veterinary examinations or to grant further veterinary certificates. The Royal Charter of 1879 gives the necessary powers to the Royal College for carrying out the agreement. All but a few of the holders of the Highland Society's certificate were admitted in due course, and their names entered on the Register of Veterinary Surgeons. At the present time it is believed there are less than a dozen persons alive holding the Society's certificate who did not apply to be registered, but, though no provision was ever made for keeping trace of them, their rights are preserved in the Veterinary Surgeons Act, 1881.

From 1848 to 1879, therefore, there were again two competing veterinary examinations, and the one-portal system set up by the 1844 charter did not come into complete operation until 1880.

Quackery.—Moreover, until 1881, there being no

statutory prohibition of the use of the title, the declaration in the charter that members of the College "solely and exclusively of all other persons whomsoever shall be deemed and taken and recognized to be members of the said profession . . . and shall be distinguished by the name or title of veterinary surgeon" was ineffective in practice to prevent non-members using the title. The annual report of the College, 1846, stated that the number of those who assumed the title of veterinary surgeons exceeded the number of certified members. Others still more numerous practised under various titles—horse-doctors, horse-surgeons, farriers, cow-leeches, cattle-doctors, castrators, spayers and gelders. But the only remedy of the College against wrongful assumption of the title veterinary surgeon would have been by a series of injunctions in the Chancery Division, a far too dilatory and costly proceeding to be practicable.

Veterinary Bills.—The College therefore early sought to obtain statutory confirmation of the charter, and a Bill was presented to Parliament in 1853, to provide that no person other than a member of the Royal College of Veterinary Surgeons might use the title of veterinary surgeon. It was, however, opposed on behalf of the graduates of the Edinburgh school who had not taken the diploma of the Royal College, and was rejected. A new Bill was introduced into the House of Lords in April, 1866, which sought to prohibit *in the future* any but registered members of the College from using the title veterinary surgeon, but it placed no disability on those unregistered persons

who had assumed the title and were then in actual practice. Moreover it did not seek to prohibit practice by unqualified persons in the future, but merely to protect the title. The Bill passed its first reading in the House of Commons in May, 1866; but again opposition by the Highland and Agricultural Society proved fatal and the Bill was lost. An attempt by the Society to secure a charter giving it power to grant a veterinary certificate was in turn defeated. No further attempt was made to promulgate a Bill in Parliament until the preliminary task of unifying the profession had been completed by the agreement already referred to with the Highland Society, which prepared the way for the Act of 1881.

Supplemental Charters.—Before dealing with this statute it will be well to set out the following additional powers granted to the College by supplemental charters:

1. To grant a diploma of fellowship (1876), and a diploma in veterinary state medicine (1914).

2. To elect honorary and foreign associates (1876), and to grant a diploma of membership to foreign and colonial practitioners (1883). This latter power is as yet unexercised.

3. To keep a register of fellows and members, and to remove the names of members from the register (1876).

4. To make regulations for examining students in general education (1892), confirming the procedure hitherto adopted.

5. To appoint teachers in veterinary schools to be

internal examiners to act in conjunction with the external examiners (1923).

Veterinary Surgeons Act, 1881.—This Act (44 and 45 Vict., c. 62), after reciting that it is expedient that provision be made to enable persons requiring the aid of a veterinary surgeon for the cure or prevention of diseases in or injuries to horses and other animals, to distinguish between qualified and unqualified practitioners, defines "veterinary surgery" to mean "veterinary medicine and surgery." It confirms (Section 14) all previous charters and provides that the Council shall maintain the register of veterinary surgeons [Section 3 (1)].

By Section 6 the power given to the Council by the 1876 charter to remove the names of members from the register is defined and limited. The power may be exercised in respect of any person who is on the register, but in the following cases only :

(*a*) At the request or with the consent of the person whose name is to be removed ;

(*b*) Where a name has been incorrectly entered or has been fraudulently entered or procured to be entered ;

(*c*) Where a person registered has been convicted of a misdemeanour or higher offence ;

(*d*) Where a person registered is shown to have been guilty of any conduct disgraceful to him in a professional respect.

By Section 4 the College is bound to make provision in the manner permitted by the charters for the examination in England, Scotland, and Ireland of veterinary students attending the respective affiliated colleges, and to admit and register successful students as members.

The Council has power by Section 5 to remove

the name of any member who has ceased to practise or who has neglected to notify a change of address and is untraceable.

Section 7 provides for power to restore to the register the names of persons whose names have been removed, but both removal and restoration must be by special resolution of the Council.

Section 8 regulates the proceedings for ascertaining the facts in cases of removal of names from or restoration of names to the register, and provides for an appeal to the Privy Council.

Section 11, which provided a penalty for obtaining registration by a false representation, has been repealed and replaced by Sections 6 to 9 of the Perjury Act, 1911.

Section 13 provides for the registration of colonial and foreign practitioners who are in possession of a diploma recognized by the College for the purpose.

Section 15 provides for the registration of all persons who had been bona fide practising veterinary medicine and surgery for five years before the passing of the Act. Nearly 900 persons were so registered, but they were not to be deemed members of the College and were not made subject to the discipline of the College. This latter defect was remedied by the Act of 1920.

By Section 16 no person who is not a member or fellow of the College may take or use any name, title, addition, or description by means of initials or letters placed after his name or otherwise, stating or implying that he is a fellow or a member of the Royal College, under a penalty of £20. The words "or implying" in this section do not appear in the following section.

Section 17 (1) provides that no unregistered person may take or use the title of veterinary surgeon or veterinary practitioner or any name, title, addition, or description stating that he is a veterinary surgeon, or a practitioner of veterinary

surgery, or of any branch thereof, or is specially qualified to practise the same, under a penalty of £20.

Section 16 came into operation with the passing of the Act, but Section 17 did not come into operation until at least two years later. This led to an important distinction between the meaning of the words "specially qualified" in this Act and the meaning of the same words in the Dentists Act, 1878, on which see the case of R.C.V.S. *v.* Kennard *infra* (Chapter X., p. 234).

By Section 17 (2) no unregistered person is entitled to recover in any court any fee or charge for performing any veterinary operation, or for giving any veterinary attendance or advice, or for acting in any manner as a veterinary surgeon or veterinary practitioner, or for practising in any case veterinary surgery or any branch thereof.

To the provisions of this section there is an exception in favour of those persons who hold the veterinary certificate of the Highland Society and who did not register as members of the Royal College.

Fines and imprisonments under this Act may be recovered and imposed summarily, but the fines do not go to the Royal College as fines recovered under the Medical and Dental Acts go to the General Medical Council. Provision to this effect had appeared in the draft Bill, but in spite of the fact that neither the charters nor the Bill provided for any stable income for the College, the clause was not allowed to pass.

Veterinary Surgeons Act, 1900.

Before 1900 a person holding the veterinary certificate of the Highland and Agricultural Society who had been convicted of a felony could not be deprived of his rights as a veterinary surgeon, for he was on no statutory register, and was specially excepted from the penal clauses of the Act of 1881. On evidence being produced by the College to the Highland Society of several cases of conduct for which a member of the College would have had his name removed from the register, the Society passed a resolution in June, 1899, in favour of provision being made for bringing the holders of their veterinary certificate under the jurisdiction of the College, and declaring that if the College introduced a measure in Parliament the Society would petition Parliament in its favour. Accordingly the Veterinary Surgeons Act Amendment Act, 1900 (63 and 64 Vict., c. 22), was passed, extending the disciplinary power of the College to all persons holding the veterinary certificate of the Highland and Agricultural Society, thus bringing all qualified veterinary surgeons under the control of one central governing body.

Veterinary Surgeons Act, 1920.

The Veterinary Surgeons Act (1881) Amendment Act, 1920 (10 and 11 Geo. V., c. 20), provides that all members of the Royal College of Veterinary Surgeons practising in the United Kingdom, save those admitted in virtue of their possessing the veterinary certificate of the Highland Society, shall pay an annual fee of

one guinea to the Royal College, in order to provide further funds to enable it to conduct examinations, prosecutions, and inquiries authorized by statute, and generally to carry out such other objects or duties as may be considered beneficial to the veterinary profession and necessary for the promotion of the art and science of veterinary medicine and surgery. Payment of the fee can be enforced by the College by an action in the County Court.

The Act further provides by Section 3 that those persons registered as "Existing Practitioners" under Section 15 of the Act of 1881 shall be entitled to style themselves veterinary surgeons, and shall be subject to the jurisdiction of the Royal College, but exempts them from payment of any annual fee. Their number is diminishing, being now less than sixty.

Section 4 provides that companies are to be liable for offences under the Act of 1881 in like manner as individuals, so that the disability under which the College suffered in the Churchill case (Chapter X., p. 233) is removed.

Difficulties of the College.—It was only after a prolonged struggle that the Act of 1920 was obtained. By a strange lack of foresight the charters, which imposed onerous duties on the Royal College, made no provision of financial means to enable the College to discharge these obligations. From 1844 to 1920 the only regular income was the examination fees of students, and these were limited in amount by the terms of the charters. As the number of students diminished, the cost of examinations increased, and

the value of money changed, the financial position became perilous. In 1908 the College, with the consent of all but a few of its members, determined to seek statutory authority to require all practising veterinary surgeons to contribute an annual sum of one guinea, and the Bill incorporating this proposal was first read in the House of Commons in March, 1909. It did not, however, become a statute till 1920, after a delay of over eleven years, causing further serious financial loss to the College.

Opposition to the Annual Fee Bill.—This delay was occasioned in the main by opposition from three quarters :

1. The Highland and Agricultural Society, still jealous of the rights of the holders of its veterinary certificate, though it had formally consented to their being under the jurisdiction of the Royal College (p. 146).

2. The few members of the College who objected on principle to being compelled to pay an annual fee.

3. A small body of unregistered persons who were practising animal medicine.

It is important to state the nature of this opposition, for it raised the whole principle on which the charters of the College and the Veterinary Surgeons Acts are founded. It can best be understood by considering the objections made by each of the three parties mentioned :

1. The opposition of the Highland and Agricultural Society was first aroused because no exemption was made in the first Bill in favour of those holders of the

Society's certificate who had become members in virtue of the agreement of 1879 and the charter of the same year. That point was conceded by the Royal College, but in December, 1908, the directors of the Society resolved that they would still oppose the Bill in Parliament unless a clause were added to the following effect:

> "That nothing in this Act shall prevent the employment of uncertificated persons for minor operations or such other services as have been commonly performed by these persons in the past."

There had been a clause in the Bill when first drafted (Clause 4) which amended Section 17 of the Act of 1881 by introducing the words "or implying" after the word "stating," so as to bring the section into line with Section 16, and also with Section 40 of the Medical Act, 1858, and Section 3 of the Dentists Act, 1878. The Society thought this amendment would deprive stockowners of the right to employ unqualified persons to dock lambs' tails or castrate pigs, but it was plain that the opposition was not merely to the introduction of the words "or implying," but to the principle of the section itself.

It was in vain that high legal authority was invoked to declare that there was nothing in the Bill as drafted which could by any possibility be construed as prohibiting the employment of unqualified persons to perform minor operations on animals or to render such services as have been commonly performed by these persons in the past, and that neither the Act of 1881 nor the Bill contained anything which could prevent an unregistered person doing veterinary work. The

Society declared itself unsatisfied, and in the hope of getting the Society to withdraw its very powerful opposition the College decided to withdraw the proposed Clause 4. As a fact the clause had been inserted with a view, not of giving new power to the College over unqualified persons who performed minor operations, but to strengthen the powers of the College over unregistered persons who not only carried on veterinary practice for a livelihood, but who also used in connection with their practice, for the purpose of misleading the public, such titles as *implied*, but did not actually *state*, that they were specially qualified.

The Society was not, however, satisfied even with the withdrawal of this clause, but proceeded to make further demands. They promised that their opposition would be withdrawn if the Council would agree to amend Section 17 (1) of the Act of 1881 so as to provide that prosecutions under that section should be subject to sanction by the Board of Agriculture.

Again the College produced the highest legal opinion to show that neither Section 17 nor any part of the Act of 1881 forbids or penalizes the employment of unqualified persons for performing operations on animals or for treating or prescribing for diseased animals. The Society still declined to withdraw its opposition, and it was strengthened by that of the other two classes mentioned.

2. The opposition of the small minority of members of the College was, however, withdrawn after a decision of the Council not to ask for power to remove from the register the name of a member who did not pay the

proposed annual fee, but merely to seek power to sue for it as a civil debt.

3. The opposition of the unqualified persons, who had now formed themselves into a society, was implacable. It was based on an alleged belief (erroneous, in fact) that the Bill would prohibit unqualified persons from practising, and it developed into a demand for an agreement whereby the College on the one hand should undertake to place all existing unqualified persons on a register, and the unqualified persons on the other hand would, on becoming registered, support a measure prohibiting in future all practice by unregistered persons.

The College declined to enter into any such dubious compact. After having in 1881 placed on the register all bona fide "existing practitioners," they were being asked to open the door again to a new generation of unqualified and untrained persons who had adopted their means of livelihood in full knowledge of the fact that the only way to obtain the advantages of registration was by passing the required examinations. The registration of unqualified persons might well accompany, as it did in the case of the Dentists Act, 1921, the closing of the profession to all but registered practitioners, but to ask for registration *before* such an enactment was a proposition which the College could not but decline.

Settlement.—The opposition of these persons and of the Highland and Agricultural Society was, however, withdrawn at the eleventh hour, after the intervention of the then Minister of Agriculture, in the

following manner. The Council of the College, in the usual course of their oversight of the profession, were engaged in 1919 in revising some of the byelaws, and among these was one dealing with the employment of unqualified assistants by members of the College. The byelaw, No. 54, ran as follows :

> " If any veterinary surgeon shall permit his name to be used by any unqualified or unregistered person, or do or permit any other act whereby an unqualified or unregistered person may pass himself off as, or practise as, a veterinary surgeon, he shall be deemed guilty of conduct disgraceful in a professional respect within the meaning of Section 6 of the Veterinary Surgeons Act of 1881."

This byelaw was found to be too general. Strictly interpreted, it gave the Council power to strike a member's name off the register if he employed a bona fide veterinary student during a vacation to help him in his practice, or even if he employed an unqualified person to dress a wound or administer a medicine. The Council therefore proposed to follow the precedent set by the General Medical Council in a similar byelaw, and to set out in clearer language and in greater detail what it was intended to prohibit. The following byelaw was therefore duly passed in 1919 :

> " Any of the following practices on the part of a veterinary surgeon is considered by the Council to amount to conduct disgraceful in a professional respect within the meaning of Section 6 of the Veterinary Surgeons Act, 1881 :
>
> . . . (iii.) Covering or by his presence, countenance, advice, assistance or co-operation knowingly enabling an unqualified person (whether described as

an assistant or otherwise) to attend or treat any patient or otherwise to engage in veterinary practice. Nothing in this paragraph shall, however, prevent a qualified veterinary surgeon from employing a bona fide student or articled pupil provided that he is not employed in such a way as to lead the public to suppose he is qualified."

The new byelaw being published in the veterinary press came to the notice of the body of unqualified persons referred to, and was seized on by them as evidence that the Council were taking to themselves more drastic powers to stop unqualified practice. It was vain to explain that the Council could not confer upon itself by byelaw new powers beyond those given by charter and statute ; even the Minister of Agriculture was so far pressed by the opposition that he urged the Council to withdraw the byelaw. Under such pressure the Council agreed to do so, and to re-enact the old byelaw to which there had been no objection. The Minister, after consulting with the opposition, approved of this course, but in order to secure the passage of the Bill before Parliament rose for the autumn recess, it was held by the Minister to be necessary that the Council should at once give an undertaking in writing to carry out this promise, stating categorically that they had no intention of making fresh rules to restrict unqualified practice. Although it seemed absurd to require the Council to make a solemn promise that it would not do what it had no power to do without the sanction of Parliament, a letter giving the following undertaking was addressed to the Minister on June 1, 1920, and was accepted by the opponents of

the measure as a satisfactory guarantee that their rights were not to be infringed :

(*a*) That the byelaw relating to covering in its new form should be withdrawn and the old byelaw, No. 54, re-enacted, and that no alteration in this byelaw should be made in future without consultation in the first instance with the Ministry of Agriculture ;

(*b*) That there was nothing in the Amendment Bill which would interfere, nor had the Council any intention to interfere, with the work of unregistered persons of any description in the performance of operations on or the treatment of animals, provided they did not infringe the provisions of the Veterinary Surgeons Act, 1881.

This undertaking may prove important in the future, and it is therefore necessary to note that it gives away no power of the College. It is evidence of two things only :

(*a*) That the Council did not think it wise, for a mere matter of words, to risk the rejection of the Bill, by refusing to withdraw a byelaw which in effect gave no new powers but merely expressed with greater clearness the nature of the prohibition against the employment by members of the College of unqualified assistants, a prohibition which had been in force for nearly forty years.

(*b*) That the Council's opinion was that, since it possesses no power to interfere with the practice of veterinary medicine and surgery by unqualified persons, there could be no harm in saying so, and that since in the more important sphere of human medicine no monopoly of practice was enjoyed by registered practi-

tioners, the introduction of legislation for the complete suppression of irregular practice in veterinary medicine was very unlikely.

Fight for the 1923 Charter.—A controversy of a different kind, but equally important, was aroused by the proposal of the College in 1921 to seek the powers ultimately granted by the Charter of 1923. The main provision of this Charter is the power given to appoint internal as well as external examiners. The occasion led the Universities of Liverpool and London to petition the Privy Council not to grant the Charter except on condition that degrees in veterinary science granted by any University in the United Kingdom should be recognized as qualifying the holder to be placed on the Register of Veterinary Surgeons without first having to pass the examinations of the College, following the analogy of the relation of the medical corporations, and the Universities which grant medical degrees, to the General Medical Council. These petitions were opposed by the College because it was felt that to concede the request would be to break down the system by which the profession had secured one uniform examination for admission to membership. In any case, to impose this condition would involve repealing in part Section 17 of the Veterinary Surgeons Act of 1881, and the relevant byelaws made under that statute.

The analogy which may be drawn between the General Medical Council and the Royal College of Veterinary Surgeons extends only to registration and the control of professional etiquette. The General Medical Council has no power to conduct professional

examinations as has the Royal College of Veterinary Surgeons.

Moreover, the only Universities which grant degrees in veterinary science are the Universities of Edinburgh, Liverpool and London, and no evidence was adduced to show either that other Universities desired to institute such degrees or that the examinations of the Royal College were insufficient. The Departmental Committee on the Public Veterinary Services reported, 1912, that "the standard of the qualifying examination has from time to time been raised, and the length of the course of study increased, and the evidence which we received goes to show that in order to qualify as a veterinary surgeon a student has to obtain a knowledge of veterinary science which is quite sufficient for the purposes of private practice."

The proposal to add indefinitely to the number of institutions training students to be veterinary surgeons was calculated to do considerable injury to the five existing veterinary schools, which are more than enough to provide the necessary number of qualified veterinary surgeons to meet the needs of the country.

As has been shown in Chapter V. (p. 113), the system by which the General Medical Council under the Medical Acts has to register the holders of twenty-four or more different diplomas and degrees has never been regarded as satisfactory by the medical profession. The Royal Commission of 1882 had recommended the establishment of one uniform final examination for admission to the register, and for many years, until the Great War, there had been a strong agitation in favour

of establishing a uniform medical curriculum and a uniform examination qualifying for registration. The power, therefore, which the Universities wished to take away from the veterinary profession was precisely that which the medical profession desired to obtain, in the interests both of medicine and of the general public.

The opposition of the Universities was backed up by a petition from the same body of unqualified persons as had opposed the Amendment Bill in 1919 and 1920. They appealed to the Privy Council to compel the College to register them without examination. Such a procedure would not of course have added to the number of properly qualified veterinary surgeons, but would merely have tended to confuse the public and to degrade the status of the veterinary profession to the position it occupied before the Veterinary Surgeons Act of 1881.

Charter Granted.—The Privy Council, after hearing the parties on July 19, 1922, came to the conclusion that the modification of the terms of the draft supplemental charter in the way proposed by the Universities of London and Liverpool was *ultra vires*, and could only be effected by legislation. The supplemental charter was duly granted on January 29, 1923.

Legislation is at the moment of writing in preparation in the Irish Free State for the establishment of a separate Register of Veterinary Surgeons for that Dominion. The Royal College of Veterinary Surgeons will, however, continue to conduct the qualifying examinations.

Jury Service.—Neither the charters of the College

nor the Veterinary Surgeons Acts provide for exemption of veterinary surgeons from jury service, nor are they included in the classes exempted by the Jury Acts. Attempts have been made on many occasions since the charter of 1844 to obtain statutory exemption, but without success. The original charter sets forth that "veterinary surgeons are so fully occupied in the discharge of the duties of their profession, and they are so continually at the call of the public, as to be very ill qualified to discharge, with due regard to the interests of the public, the parochial and other services which the law at present enforces on them." The charter did not, however, grant them exemption from jury service in spite of this recital. In 1862[1] the House of Lords sent back a Juries Bill to the Commons with an amendment providing for the exemption of veterinary surgeons from serving on juries, but on a division there was an equality of votes (53, 53), and the amendment was lost by the casting vote of the Speaker, who voted against the amendment in accordance with the rules of the House. Since veterinary surgeons are called upon at all hours of the day and night to relieve suffering in animals, and their absence on jury service might endanger the lives of animals with consequent loss and damage to their owners, and as the exemption would mean the loss of at most 2,000 potential jurymen in Great Britain, it seems to be a not unreasonable demand that, when the Juries Act is next amended, provision should be made for the inclusion of duly qualified veterinary surgeons in practice in the list of persons

[1] *Hansard*, July 24, 1862.

exempted. Individual veterinary surgeons in Great Britain have obtained personal exemption by making special application to the Sheriff on the grounds named above.

In Ireland practising members of the Royal College of Veterinary Surgeons are entitled to exemption from jury service on the ground that they are "licensed medical practitioners." In 1903 an order was made against C. Allen for payment of a fine of £2 for his non-attendance as a juror at the Commission Court, Green Street, Dublin. In claiming exemption he cited the charter of 1844, and gave evidence that he had been practising for over thirty years as a veterinary surgeon in Dublin and was still so practising. He claimed that he came within the description of persons exempted under Section 20 of the Act 39 and 40 Vict., c. 78, and in the Schedule to that Act, as being a "licensed medical practitioner." The majority of the judges decided that he was entitled to exemption and to a remission of the fine (*re* C. Allen, C.C.R., 37 Ir. L.T.R., 154).

Decisions of the Irish Courts, though entitled to the highest respect, are not binding on English judges (*re* Parsons [1890], 45 C.D., 62; *re* MacKenzie [1899], 2 Q.B., 577), but it has been the practice in Northern Ireland, in view of the decision in Allen's case, to remove the names of all practising veterinary surgeons from the jury lists on proof of their registration.

The difference between the results in the English and Irish cases seems to have been occasioned by a difference in the wording of the respective Juries Acts.

For although in Ireland the jury laws are substantially the same as in England, the words of the exemption relating to medical practitioners in the Irish Act are "*licensed* medical practitioners," whereas in the English Act they are "*registered* medical practitioners." Mr. Allen successfully claimed that by his veterinary surgeon's diploma he was *licensed* to be a medical practitioner for animals, but no veterinary surgeon has succeeded in an English Court in a claim to be a "*registered* medical practitioner."

CHAPTER VIII

JURISDICTION OF THE PRIVY COUNCIL

THE jurisdiction of the Privy Council in matters of medical, dental, and veterinary registration and education differs in each case in nature and extent.

General Medical Council and Dental Board.—Its jurisdiction in regard to medical and dental matters falls under four heads:

1. *Constitution of Council.*—The Privy Council nominates five of the members of the General Medical Council, but the Council appoints the President (Medical Act, 1858, Section 4, amended by Medical Act, 1886, Sections 7 and 9). The Privy Council also nominates the three additional dental members of the General Council (Dentists Act, 1921, Section 16), and appoints the chairman of the Dental Board (Schedule I., Sections 2 and 4).

2. *Approval of Examinations.*—The Privy Council may suspend the right of registration in respect of any medical or dental qualification granted by one of the examining bodies, on representation being made by the General Medical Council that the course of study and examinations are defective, and may revoke such suspension when the defects have been made good

(Medical Act, 1858, Sections 21 and 22; Medical Act, 1886, Section 4; Dentists Act, 1878, Sections 23 and 24). An appeal to the Privy Council against rules made by the General Medical Council respecting examinations was provided by Section 28 of the Dentists Act, 1878, but this section is not to be deemed to be in force until so declared by an Order in Council (Medical Act, 1886, Section 26).

There is no right of interference with examinations qualifying for registration in the Register of Veterinary Surgeons, no doubt for the reason that there is only one qualification, the standard of which is settled by the governing body, the Council of the Royal College.

3. *Approval of Registration Regulations.*—By the Dentists Act, 1921, Section 7, the Privy Council must approve of regulations made by the Dental Board with regard to the register of dentists, the removal of and the restoration of names, fees to be charged, and other purposes. After approval by the Privy Council the regulations must be laid before Parliament within twenty-one days.

There is an appeal to the Privy Council in respect of the registration of colonial and foreign dentists, (Dentists Act, 1878, Section 10). So also in the case of colonial and foreign medical practitioners (Medical Act, 1886, Section 13). The application of Part II. of the Medical Act, 1886, relating to colonial and foreign practitioners is made by Order in Council (Section 17).

4. *Power of Veto.*—The Privy Council has also the right to issue an injunction to any medical authority which may have attempted to impose on any candidate

for examination an obligation to adopt or refrain from adopting any particular theory of medicine or dentistry, directing them to desist from such practice, and in the event of their not complying therewith, to order that such body shall cease to have the power of conferring any right to be registered under the Medical and Dentists Acts so long as they shall continue such practice (Medical Act, 1858, Section 23; Dentists Act, 1878, Section 26).

Royal College of Veterinary Surgeons.—The jurisdiction of the Privy Council over the Council of the Royal College of Veterinary Surgeons extends only to:

1. *Special Byelaws.*—The byelaws for the disposition of the money received in respect of annual fees must, by the Veterinary Surgeons Act, 1920, Section 2 (5), be approved by the Privy Council, but no provision was made in the earlier Act for the general byelaws of the College to be so approved.

2. *Register.*—The registration in, or the removal from, the register of the name of—

(*a*) a member of the College, or
(*b*) foreign or colonial veterinary surgeons, or
(*c*) an "existing practitioner."

Applicants aggrieved may appeal to the Privy Council (*a*) under Section 8 (2), (*b*) under Section 13 (4), and (*c*) under Section 15 (3) of the Act of 1881.

The Privy Council has no power to direct the Council of the Royal College to register the names of holders of other British diplomas or degrees, so that the Council has the exclusive right of determining who are legally qualified veterinary surgeons in this country.

Incorrect Definitions of "Veterinary Surgeon."—This point is of importance in view of certain statutory definitions of the words "veterinary surgeon" and "veterinary inspector." For example, the Diseases of Animals Act, 1894, Section 59, defines the expression "veterinary inspector" as meaning "a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Board of Agriculture" or in Ireland (Section 65) by the Privy Council. This section might be thought to give to the Privy Council or the Ministry of Agriculture power to approve of the appointment of persons as veterinary inspectors who are not duly registered veterinary surgeons. But that is not so. The Diseases of Animals Act, 1894, is only a consolidating Act, and the provision for the approval of persons having other qualifications than that of membership of the College is taken from Section 5 of the Act of 1878. Now at that date, and indeed until 1881, there were persons holding veterinary diplomas and practising veterinary medicine and surgery who were not licensed by the Royal College, and therefore not registered in the Register of Veterinary Surgeons, but who (at that time not illegally) used the title "Veterinary Practitioner." It was to enable the Board to employ such persons as veterinary inspectors that the section was required in the Act of 1878. But three years later the Veterinary Surgeons Act, 1881, enacted by Section 17 that the only persons who might in future be described as veterinary practitioners, other than members of the College, were :

(i.) Persons registered under Section 15 as "existing practitioners," and

(ii.) Persons holding the veterinary certificate of the Highland and Agricultural Society.

The power of the Privy Council, therefore, or of the Ministry of Agriculture to approve of the appointment of non-members of the College as veterinary inspectors must since 1881 be exercised within these two categories of persons.

In a number of statutory rules and orders since issued under the Diseases of Animals Act, 1894, whenever reference is made to a veterinary surgeon, the words used are almost invariably "veterinary surgeon or veterinary practitioner." But now, since the Veterinary Surgeons Act of 1920, Section 3, provides that "veterinary practitioners" registered under Section 15 of the Act of 1881 are entitled to be styled "veterinary surgeons," there is no longer any need for such an alternative designation. "Veterinary surgeon" is a sufficient and comprehensive expression; it includes all persons who are legally qualified to practise.

The Animals (Miscellaneous Provisions) Order of 1927,[1] Section 11, enacts that in the absence of the qualification conferred by membership of the Royal College, by the veterinary certificate of the Highland Society, or by registration under Section 15 of the Act of 1881, it is a sufficient qualification for a "veterinary practitioner" to be a veterinary inspector if he was "previous to May 10, 1883 . . . employed by the

[1] S. R. and O., 1927, No. 4426.

local authority as an inspector or veterinary adviser under the Contagious Diseases Act, 1869." The necessary inference from what has been said is that this is *ultra vires*.

A wider interpretation still is contained in Section 19 of the Milk and Dairies (Consolidation) Act, 1915, where the expression "veterinary inspector" means "an inspector, being a member of the Royal College of Veterinary Surgeons, or having such other veterinary qualification as may be approved by the Board (now Ministry) of Agriculture and Fisheries." Nevertheless, as there is no veterinary qualification save that which is conferred by registration in the Register of Veterinary Surgeons, it is submitted that the restriction contained in Section 17 of the Act of 1881 applies in all these cases, and that the Ministry cannot appoint a person as a veterinary inspector unless he comes within the categories of persons defined by Section 17.

In the Milk and Dairies (Scotland) Act, 1914, Section 3 (1), it is enacted that "local authorities shall . . . appoint one or more members of the Royal College of Veterinary Surgeons to act as veterinary inspector or inspectors," and no provision is made for the appointment of persons holding any other qualification. This follows the provision in the Public Health (Scotland) Act, 1897, Section 3, where the expressions "veterinary surgeon" and "qualified veterinary surgeon" mean a member of the Royal College of Veterinary Surgeons. In view of the fact that the only "qualified veterinary surgeons" who are not members of the College are those recognized by

Section 17 of the Act of 1881, of whom very few remain and those very aged men, it would seem to be unnecessary to provide in future Acts of Parliament or Orders any other definition of "qualified veterinary surgeon" than that given in the Public Health (Scotland) Act.

There is not such difficulty in the case of doctors, for Section 34 of the Medical Act, 1858, enacts that "the words '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." It would tend to clarity if a similar provision, *mutatis mutandis*, were made in any future Act amending the Veterinary Surgeons Acts.

CHAPTER IX

PROFESSIONAL DISCIPLINE

THE general purpose of the statutory legislation we have considered is to protect the public by enabling them to distinguish between qualified and unqualified practitioners.[1] Registration under the Medical, Dental, and Veterinary Acts provides an official register of qualified persons, and all unregistered persons suffer certain disabilities—*e.g.*, they may not use a professional title, or sue for fees, or hold certain offices. Moreover qualified persons, whose conduct has been such as to render them unfit to belong to the corporate body, are, by being struck off the register, placed in the same category as unqualified persons, and suffer the same disabilities.

This power to strike off the register is obviously essential to the maintenance of a high standard of public service.

Medical Practitioners.—The jurisdiction to exercise disciplinary powers over medical practitioners is conferred upon the General Medical Council by the Medical Act, 1858, Section 29:

> "If any registered medical practitioner shall be convicted in England or Ireland of any felony

[1] *Vide* preambles to Medical Act, 1858, and Veterinary Surgeons Act, 1881, pp. 103, 143.

or misdemeanour or in Scotland of any crime or offence, or shall after due inquiry be adjudged by the General Medical Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the Registrar to erase the name of such medical practitioner from the register."

It will be noticed that the General Medical Council has power to inflict one punishment only,[1] and that, as it were, a *capitis deminutio*. The very fact that the statutory punishment is so severe has tended to cause the Council to use the utmost care and circumspection in exercising its power. In fact, the Council have evolved a procedure by which, having come to their decision on the facts, they may, even if they find the charge proved, postpone their judgment to a later date in order that the practitioner may be given an opportunity to show by his good conduct in the interval that he is repentant and willing to obey the rules of the profession. It thus may become unnecessary to proceed to the extreme measure of removing his name. The Council has appointed a special committee and has settled by standing orders a course of procedure for the consideration of the so-called penal cases.

Procedure.—The procedure is as follows:

When it is reported to the Council that a registered medical practitioner has been convicted of any felony or misdemeanour, or has been under the censure of any judicial or other competent authority in relation to his

[1] The College of Physicians may, however, punish by reprimand or by fine.

professional character, or when complaint is made that he has been guilty of conduct which prima facie constitutes infamous conduct in a professional respect, the matter is referred to a Penal Cases Committee which consists of four members in addition to the president, with a quorum of three. In cases of convictions the Committee does nothing more than find whether the conviction has been proved. If, however, the practitioner can show that the offence for which he was convicted was of so trivial a nature as not to warrant the erasure of his name, the Council may not proceed further. Nevertheless, Section 29 gives the Council *power* to remove a name from the Medical Register for any misdemeanour however trivial; it is not necessary for it to be an indictable misdemeanour (Pickup *v.* Dental Board, L.T., 165, p. 436). In charges of unprofessional conduct unless the complaint is made by or on behalf of a Government Department or public body, or a constituent body of the Council as defined by Section 10 of the Medical Act, 1886, a complaint charging a practitioner with infamous conduct must be formulated in writing and accompanied by one or more statutory declarations, in a specified form, as to the facts of the case. The practitioner is usually asked to furnish an explanation of his conduct, and the Committee has power to cause further investigation to be made and further evidence to be obtained.

If the Committee are of opinion that a prima facie case is not made out, the investigation does not proceed further, but if the case is one in which an inquiry ought to be held, directions for the institution of an inquiry

are given. Notices are sent to both parties accompanied by a copy of the standing orders, and the parties are entitled on payment to copies of statutory declarations and other documents which may have been put in.

The inquiry is opened in public, but the Council may decide to conduct the remainder or any part of the inquiry in private. The parties are usually represented by solicitor with or without counsel. After hearing the evidence the Council deliberates in private, and may adjourn the hearing to a later sitting. Further evidence in relation to the conduct of the accused subsequent to the first hearing of the charge may be received at the postponed meeting, but, except by leave of the Council, no further facts or evidence presented or tendered by a party to the inquiry may be received or acted upon by the Council unless a statement thereof has been furnished to the Council's solicitor.

If the Council decides to remove the name of a practitioner from the register, the registrar is so instructed, and it is his duty to inform the practitioner accordingly, and also the body or bodies from which the practitioner received his qualification or qualifications The registrar also notifies the constituent bodies of the Council, the branch registrars, the Dental Board, and the Registrars General of the United Kingdom. As a further precaution, the attention of each constituent body of the Council is called to the recommendation of the Council that any person whose name has once been removed from and has not been restored to the Medical Register should not, without previous reference to the

Council, be admitted to examination for any new qualification which is registrable either in the Dentists' Register or the Medical Register.

The Council may, of course, remove the name of a practitioner at his own request, but will not do so without first ascertaining whether the licensing body concerned has any valid objection to offer. The name will not be removed unless the practitioner gives an undertaking that he has ceased to practise.

Warning Notice.—For the purpose of bringing to the knowledge of medical practitioners the nature of the acts or conduct which will be regarded as "infamous," the Council issues a warning notice. This is in the form of a summary of the resolutions and decisions of the Council upon the forms of professional misconduct which have from time to time been brought before them, and which render a medical practitioner liable to have his name erased from the Medical Register. These are :

1. The signing or giving under his name and authority and in pursuance of a statutory duty any certificate, notification, report or document of a kindred character, which is untrue, misleading, or improper.

2. The employment of an assistant in connection with his professional practice who is not duly qualified or registered, and the permitting of such unqualified person to attend, treat, or perform operations upon, patients in respect of matters requiring professional discretion or skill.

3. Covering an unqualified or unregistered person, that is to say, by his presence, countenance, advice, assistance or co-operation knowingly enabling an unqualified or unregistered person—

(*a*) To attend, treat, or perform any operation upon a patient in respect of any matter requiring professional discretion or skill;

(*b*) To issue or procure the issue of any certificate, notification, report or other document of a kindred character required to be given under a statute or order, or

(*c*) Otherwise to engage in professional practice as if the said person were duly qualified and registered.

It is, however, provided that this last prohibition does not apply to the legitimate employment of bona fide students, dressers, midwives, dispensers, and surgery attendants, under the immediate personal supervision of a registered medical practitioner.

4. The employment, for his own profit, and under cover of his own qualifications, by any registered medical practitioner who keeps a medical hall, open shop, or other place in which scheduled poisons are sold to the public, of assistants who are left in charge but are not legally qualified to sell scheduled poisons to the public.

This is an offence under the Pharmacy Act, 1868. It is to be noticed, however, that it does not affect a medical practitioner who does not keep open shop or sell poisons to the public. A medical practitioner may employ an unregistered person to dispense, for use in his own practice, medicines which contain scheduled poisons.

5. Any contravention of the provisions of the Dangerous Drugs Act, 1920, and the regulations made thereunder, whether it result in a conviction on a criminal charge or not.

6. Consultation with unqualified persons, or assisting, either by administering anæsthetics or other-

wise, an unqualified or unregistered person to attend, treat, or perform an operation upon any other person in respect of matters requiring professional discretion or skill.

7. Advertising, whether directly or indirectly, for the purpose of obtaining patients or promoting his own professional advantage; or, for any such purpose, procuring or sanctioning or acquiescing in the publication of notices, commending or directing attention to the practitioner's professional skill, knowledge, services, or qualifications, or depreciating those of others; or being associated with or employed by those who procure or sanction such advertising or publication.

8. Canvassing, or employing any agent or canvasser for the purpose of obtaining patients, or sanctioning or being associated with or employed by those who sanction such employment.

9. Associating with uncertified women practising as midwives—*e.g.*, by his countenance or assistance, or by issuing certificates, notifications, or other documents of a kindred character, knowingly enabling uncertified women on pretence that such women were under his direction, to attend women in childbirth.[1]

The above-mentioned instances of professional misconduct are not set out by the General Council as constituting a complete list of offences which may be punished by erasure of a practitioner's name from the

[1] The Midwives Acts (2 Ed. VII., c. 17; 5 and 6 Geo. V., c. 91; and 7 and 8 Geo. V., c. 59) enact that "no woman shall habitually and for gain attend women in childbirth otherwise than under the direction of a qualified medical practitioner unless she be certified under this Act." The Midwives and Maternity Homes Act, 1926 (17 and 18 Geo. V., c. 32), amends this provision to the extent that if the attention was given in a case of sudden or urgent necessity no fine may be imposed.

register. From time to time the Council considers and deals with any form of misconduct which may be brought before it, and by resolution may declare that it comes within the meaning of "infamous conduct in any professional respect." The Council has held, for example, that where immorality involving the abuse of professional relationship is proved, the guilty member will be liable to have his name erased from the register. No cognizance would be taken of adultery unless the adultery followed, or was contemporaneous with, professional relationships.

The General Medical Council may indeed remove the name of a practitioner who abuses his position of trust by making love to a married woman patient even though this is not actually followed by adultery. A doctor must do nothing which will lessen the trust that a husband is entitled to place in him when he calls him in to attend his wife or any member of his family (Dr. Strickland's case; minutes of G.M.C., May, 1928).

The same rule would no doubt be applied to a woman practitioner who should be proved to have used her professional means of access into a family to be false to the trust placed in her by the family.

"Infamous Conduct."—As to what constitutes evidence of infamous conduct in a professional respect the Council has been guided by the ruling of the Master of the Rolls in Allinson *v.* General Medical Council (1894), 1 Q.B., 750: "I am prepared to adopt," he said, "a statement of one ground of guilt, amounting at all events to infamous conduct in a pro-

fessional sense, which has been drawn up by my brother Lopes. It is this: 'If a medical man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council, if that be shown, to say that he has been guilty of infamous conduct in a professional respect.'" On this question the decision of the Council will be left untouched by courts of law.

Separate powers are possessed by the Royal Colleges of Physicians and the Royal Colleges of Surgeons under their charters, and by the Society of Apothecaries under the Apothecaries Amendment Act, 1874, Section 4, to remove the name of a member or fellow or licentiate from the registers for unprofessional conduct.

Dentists.—The Dental Board of the United Kingdom has drawn up regulations for the conduct of dentists similar to those in force for medical practitioners. The powers under which the Board exercises its disciplinary jurisdiction are given in Section 13 of the Dentists Act, 1878, as amended by the Dentists Act, 1921, Section 8:

> "Where a person registered in the Dentists' Register has . . . been convicted . . . of a . . . felony or misdemeanour,[1] or been guilty of any infamous or disgraceful conduct in a professional respect, that person shall be liable to have his name erased from the register.

[1] Not necessarily an *indictable* misdemeanour (Pickup *v.* Dental Board [1928], Sol. Jl. 72, 369; L.T., v. 165, p. 436).

"The Board may, and on the application of any medical authority shall, cause an inquiry to be made into the case of a person alleged to be liable to have his name erased under this section, and if the Board on any such inquiry are satisfied that the name of that person ought to be erased from the register, they shall forward a report to the General Medical Council setting out the facts proved at the inquiry and the finding of the Board.

"The General Medical Council, after receiving any such report and after hearing any observations which the person affected or the medical authority may desire to make with reference to the report, may make an order directing the registrar to erase from the register the name of the person affected."

It is also provided "that no such action shall be taken merely because the dentist has adopted or refrained from adopting any particular theory of dentistry, or on account of a political offence abroad, or a trivial offence unconnected with the practice of dentistry."

It will be noticed that the wording of this Act differs from that of the Medical Act by the introduction of the words "or disgraceful" after the word "infamous" to describe unprofessional conduct. In the Veterinary Surgeons Act the word "infamous" does not appear.

The fact that the practice of dentistry except by registered persons, and not the mere use of a title, is prohibited by the Dentists Act, 1921, makes it more important in the case of dentists than in the case of doctors that no unregistered person shall be employed by a registered dentist to carry out dental practice. Accordingly the Dental Board prohibits—

1. The employment by any registered dental practitioner in his professional practice of an assistant who is not registered either in the Dentists' Register or in the Medical Register, if the employer permits him to practise dentistry and in particular to do any of the things specified in Section 14 (2) of the Dentists Act, 1921.[1]

2. Covering, or by his presence, countenance, advice, assistance, or co-operation knowingly enabling an unregistered person, whether described as an assistant or otherwise, to practise dentistry or to do any of the things specified in the section quoted above.

The Dental Board adopts the regulations of the General Medical Council with regard to offences under the Dangerous Drugs Act, 1920, and with regard to advertising and canvassing, and applies them to dentists.

With regard to the use of titles, the Dentists Act, 1921, Section 4, provides[2] that a registered dentist must not use any title other than that to which he is in fact entitled, but no penalty is provided by the Act itself for breach of this rule. Any registered dentist, however, who infringes the section may be held liable to have his name erased from the register, and any person who has obtained registration in virtue of having passed the "prescribed examination" under Section 3 of the Act of 1921, and who makes use of any words or abbreviations calculated to give the impression that his registration was obtained by passing a qualifying examination, or that he was admitted to the prescribed examination as a student of a recognized

[1] See p. 129. [2] See p. 130.

hospital or school, will also be liable to have his name erased.

"Important Notice."—In amplification of these regulations the Dental Board issue an important notice to dental practitioners explaining the following prohibited acts :

1. *Covering.*—This includes permitting any unregistered person, whether a dental student or not, to attend to patients for any purpose whatever, including attendance in connection with the fitting of artificial teeth.

2. *Advertising.*—This includes (*a*) the use or exhibition of any sign, other than a sign which in its character, position, size, and wording is merely such as may reasonably be required to indicate to persons seeking them the exact location of and entrance to the premises at which the dental practice is carried on.

(*b*) The publication of any announcement for the purpose of informing a dentist's patients of his change of address or the days on which he will make periodical visits to a town, if it includes the word "dentist" or any other description indicating his profession.

(*c*) The issue of circulars notifying a change of professional address or hours of attendance not sent under cover and to persons other than bona fide patients of the practice.

3. *Canvassing.*—This includes calling, with a view to giving advice or treatment, on persons who are not already patients of the practice, unless actually called in by them.

Procedure.—The Dental Board has power to erase names from the Dentists' Register which have been incorrectly or fraudulently entered, and if such names

are restored it must be by the Board [Dentists Act, 1878, Section 13, as amended by Dentists Act, 1921, Section 8 (1*a*) and (2)].

In charges of disgraceful conduct, when an inquiry has been held as provided by Section 8 of the Act of 1878, the Dental Board submits its *report* and *finding* to the General Medical Council, and the Council proceeds to consider the case in the same manner as cases of medical practitioners. If after consideration the dentist is adjudged guilty of conduct which is infamous or disgraceful in a professional respect, the Council may order the registrar to erase the name of the dentist from the register. It is then the duty of the registrar to take the same action with regard to notifications as in the case of medical practitioners (p. 171).

The Dentists Act, 1921, Section 9, provides that any person aggrieved by the removal of his name from the register, or by a refusal to register his name, may appeal to the High Court, whose decision shall be final. This, however, does not apply to a refusal to register a person as a colonial or foreign dentist, appeal in which case must be made to the Privy Council (Dentists Act, 1878, Section 10).

Veterinary Surgeons.—The exercise by the Council of the Royal College of Veterinary Surgeons of the power to remove the name of a member from the register under Section 6 of the Veterinary Surgeons Act, 1881 (p. 143), or of an "existing practitioner" under Section 3 of the Act of 1921, is regulated by byelaws. What constitutes "conduct disgraceful in a professional respect" within the meaning of the Act

has not been defined by the Council, but certain Acts are declared (Byelaw 53) to be such as to bring the doer within the section; *e.g.*—

1. Advertising, or causing or permitting other persons to advertise for him, whether by paid advertisement or by editorial or other notice in the public press, or distributing or causing or permitting to be distributed circulars, books, or cards relating to his professional attainments or abilities or charges, or in respect of medicines or appliances prepared or sold by him;
2. Touting, or canvassing for practice, whether by himself or by others;
3. The permission by a veterinary surgeon for his name to be used by an unqualified or unregistered person, or the doing or permitting any other act whereby an unqualified or unregistered person may pass himself off as or practise as a veterinary surgeon;
4. Meeting an unqualified person in consultation;
5. Giving testimonials in favour of proprietary or patent preparations, medicines or appliances.

It is stipulated that the above-mentioned practices constituting professional misconduct are given as instances only, and that every complaint made against a veterinary surgeon will be dealt with on its merits.

Procedure.—For the purpose of exercising the power of removing a name from or restoring a name to the register, it is provided by Section 8 (i.) of the Act of 1881 that the Council shall ascertain the facts by a committee, with a quorum of three, and that the report of the committee, after hearing the person concerned if he so desire, shall be . . . conclusive as to the facts, but so that the Council shall form their own

judgment on the case independently of any opinion of the committee. By Byelaw No. 50 the Council have delegated this duty to a committee which consists of all the members of Council, and no action can be taken for removing or restoring a name except by a special resolution of the Council. To the same committee is delegated the work of investigating cases falling under Sections 16 and 17 of the Act.

Byelaw 52 provides that at the hearing of any inquiry by the committee on an application for the removal of a name from the register under Section 6 of the Act, the person against whom the complaint is made may appear in person or by his counsel or solicitor; and that nothing in the byelaws shall be taken to prevent the committee from proceeding in the absence of either the party complaining or the party complained of, though not represented, if having regard to all the circumstances of the case they are of opinion that such absence is immaterial or the result of gross negligence or of an intention to avoid or delay proceedings. The inquiry may, at the election of the accused, be held in public on ten days' notice being given to the Secretary.

By Section 8 (2) of the Act a person whose name has been removed from the register, or whose name the Council has refused to restore thereto, has the right of appeal to the Privy Council, and the Privy Council, after communication with the Council of the Royal College and the appellant, may either dismiss the appeal or order the Council not to remove the name of the appellant or to restore his name as the case may require.

As a general rule in cases of members being convicted of a misdemeanour or higher offence the Council on receiving a report from the committee that it finds the charge proved, proceeds to direct the registrar to remove the member's name from the register, but there have been exceptional cases where such drastic action did not follow. The Council reserves to itself the right to come to an independent decision in all cases, and if it thinks the circumstances warrant such a proceeding, it will decide either to dismiss the case or to censure the accused, or to defer the case for six months or more, putting the accused on his good behaviour in the meantime. If in such a case the accused produces satisfactory evidence of his good conduct since the previous hearing, the Council may decide to impose no further penalty.

The majority of cases, however, are concerned with charges of some breach of professional etiquette, and as a general rule it suffices to call the attention of the accused to the complaint made for him to give an undertaking that the offence will not be repeated.

* * * * *

It will be seen that the byelaws of the three professions dealing with professional conduct are very much alike. They have one identical aim—namely, to safeguard the interests of the public by ensuring as far as possible that a practitioner shall not secure employment by thrusting himself upon clients by undignified and unprofessional methods, and that unworthy practitioners shall be eliminated from the profession altogether. Since the byelaws tend to promote smooth and friendly

working between practitioners, this also conduces to the good of the client.

Advertising.—That the prohibition of advertising is desirable cannot be gainsaid, for it is clearly in the public interest that the doctor shall be allowed to have, not that reputation which can be made by self-advertisement, but that alone which comes from the care and skill he shows in the exercise of his art.

Unqualified Assistants.—The prohibition of the employment of unqualified assistants is for the same purpose. The client who employs a doctor or dentist or veterinary surgeon ought not to be asked to accept in lieu thereof the services of an untrained and unqualified person ; it would be scandalous if, when he expected to get the services of a qualified man, an unqualified person, under cover of the qualified man's name, was really attending to him.

Lay Experts.—But there can be no objection, and in fact no objection is made by the General Medical Council, to registered medical practitioners employing expert lay assistance to carry out special treatment under their direction. In this way the services of radiologists, electro-therapeutists, masseurs, bone-setters, etc., may be made use of. As there is at present no statutory regulation of the qualifications of such lay experts, it is obvious that their knowledge and skill must vary considerably. But if the medical practitioner, after diagnosis, decides that treatment of a kind that can best be given by such experts is called for, he is entitled to employ such assistance as he may choose. This is quite a different case from that of Dr. Axham

referred to at p. 192, for there the registered medical man was *employed by* an unregistered person, who, however expert an operator he may have been in his own special line, could make no claim to qualification in diagnosing disease or injury generally.

At the instance of the British Medical Association the Society of Apothecaries has now instituted a qualifying diploma for lay assistants in electro-therapeutics, and has established a register. Medical practitioners will henceforth be relieved from anxiety in their choice of lay assistants in this special form of treatment, and it is probable that similar action will in due course be taken with regard to other special forms of treatment.

As the qualified medical practitioner may not employ in his general practice an unqualified assistant, he is for similar reasons prohibited from meeting an unqualified man in consultation. To do so would be tantamount to giving professional recognition to the unqualified person as being equally competent to diagnose and prescribe, and so to confuse the mind of the ordinary plain man, who is never very clear about the connotation of professional qualifications.

Patent Medicines.—For a registered practitioner to give testimonials in favour of proprietary or patent medicines, etc., is to run two dangers:

1. The danger of lending his name to a commercial article, usually a secret remedy, manufactured on a commercial scale and launched on the public by means of advertisements claiming fantastic results, and thus misleading the public into believing that the remedy is

a panacea. The sale of secret remedies can flourish only on the view that every member of the public is competent to diagnose his own complaint and to select an appropriate remedy, and no trained practitioner should subscribe to such an erroneous assumption.

2. The danger that his own name may be advertised with the advertisements of the remedy. Though advertising is a virtue in commerce, it is a vice in a professional man.

Restoration of Names to the Registers—Medical Practitioners.—Power to restore names to the dental and veterinary registers is specially provided for in the Dental and Veterinary Acts. No such provision is made in the Medical Acts regarding the Medical Register, but if the name of a medical practitioner has been removed, he can if otherwise eligible obtain the re-registration of his name on the same conditions as applied to his first registration—namely, by producing to the registrar the document conferring or evidencing the qualification, or other satisfactory evidence that he is entitled to the qualification in respect of which he seeks to be so registered (Medical Act, 1858, Section 15, see p. 103). Where a practitioner's name has been erased by order of the Council provision is made by the standing orders of the Council against his becoming entitled, without the concurrence of the General Council, to re-registration in respect of a newly acquired qualification from some different examining body (see p. 171).

Where a name has been removed either at the practitioner's own request, or as a consequence of its

having been found impossible to get into communication with him, the applicant for restoration must submit a statutory declaration that he is the person originally registered, and that he holds a registrable qualification which must be specified. The declaration must be made before a commissioner to administer oaths, or a justice of the peace, and must be accompanied by two certificates certifying as to the identity of the applicant and his good character. These certificates may be signed by registered medical practitioners, or one may be signed by a J.P. The prescribed forms can be obtained from the registrar.

If the name has been removed by order of the Council on account of a conviction, or of "infamous conduct," restoration can be affected only by order of the Council, and applications of this nature are considered at the November session of the Council only. The application must be made in writing, addressed to the Council and signed by the applicant, stating the grounds on which the application is made. It must be accompanied by a statutory declaration in a prescribed form, signed by the applicant, and attested by a magistrate or a commissioner for oaths. The declaration must show the identity of the applicant with the person whose name has been removed, state the date of the inquiry at which the name was directed to be erased, the applicant's occupation in the meanwhile, and his intention if restored. This must be accompanied by at least two certificates of identity and good character signed by a J.P. and a registered medical practitioner, or by two registered medical practitioners,

in a prescribed form. After receipt of such an application, the registrar must ascertain from the licensing bodies whose qualifications were held by the applicant at the time his name was erased if he still possesses any of his qualifications ; if not, his name cannot be restored. The person or body (if any) on whose complaint the applicant's name was erased must also be notified of the application. Any objection to the restoration must be submitted along with the application to the Executive Committee of the Council for consideration. After consideration of the application, the committee reports to the Council, making a reasoned recommendation thereon. This report is considered by the Council in private, and, if restoration is decided upon, the President announces the decision in public.

Dentists.—By Section 14 of the Dentists Act, 1878, names may, unless they were or might have been erased by order of the Council, be restored to the Dental Register on application and on payment of the prescribed fee. The General Council is also empowered to restore names after erasure by the Council, but in such cases only upon a report given by the Dental Board [Dentists Act, 1921, Section 8 (2)]. The procedure is similar to that outlined above regarding the Medical Register. If the name has been erased on account of a conviction or for infamous or disgraceful conduct, however, the application must be addressed to the Dental Board. The Dental Board, after consideration of the application, reports to the General Medical Council, and the application is then dealt with as in the case of a medical practitioner.

Veterinary Surgeons.—Whether the name of a veterinary surgeon has been removed at the practitioner's own request, or in consequence of neglect to notify a change of address to the registrar, or by order of the Council after inquiry into a charge of disgraceful conduct, it may be restored only by order of the Council. Power is given by Section 7 (3) of the Veterinary Surgeons Act, 1881, for the restoration of a name which has been removed by the registrar at the request or with the consent of a member, merely on his application and on payment of a registration fee, but in practice one procedure only is followed in all cases, viz. :

1. The applicant must submit a statutory declaration on a prescribed form, declaring his identity with the member whose name was removed, giving the date and cause of removal, together with a statement of the grounds of his application. This must be attested by a third party certifying to the identity of the applicant and to his good character. The declaration must be signed by a commissioner for oaths or a justice of the peace.

2. The application is then considered by the Registration Committee of the Council, which makes a report and recommendation.

3. The Council considers the report, and if a resolution is passed at a meeting when two-thirds of the members are present and with a majority of at least three-fourths of the members so present, the registrar is instructed to restore the name to the register.

Consequences of Removal from the Registers.

Erasure of a practitioner's name from the medical, dental, and veterinary registers does not involve the same degree or quality of punishment in the three professions.

Medical Practitioners.—In the case of the Medical Register the effect of removal varies according to the medical licence held. Some of the medical authorities—*e.g.*, the four Scottish Universities, the Universities of Oxford, Cambridge, Durham, Manchester, and the Royal University of Ireland—have no power to withdraw a medical qualification once granted. Erasure from the Medical Register of the name of the holder of such a diploma does not therefore deprive the practitioner of his qualification, and a practitioner may and does continue to practise and use his degree (*Lancet*, 1896, i., 1687). If in such a case the Medical Council decide afterwards to re-register the name, there is no need for the concurrence of the licensing authority.

Other licensing bodies—*e.g.*, the Royal Colleges of Physicians and the Royal Colleges of Surgeons of London and Edinburgh—have power to withdraw their diploma, but they take such action only after full consideration of the case, and not automatically on a decision of the General Medical Council. Byelaw 177 of the Royal College of Physicians, for example, provides that the President and Censors may admonish, reprimand, or inflict a fine not exceeding £10, or if

they deem the case of sufficient importance may report it to the College, who by a two-thirds majority may declare the accused not to be a fellow, member, or licentiate, as the case may be, for a limited period or altogether. This power of punishment by fine was given in the charter of 1518, and confirmed by 14 Hen. VIII., c. 5, and 1 Mary, Sess. 2, c. 9. The Royal College of Surgeons has power to remove names for any act prejudicial to the College or disgraceful to the profession of surgery. In the case of diplomas of these bodies, therefore, removal from the register may follow (1) the withdrawal of the registrable qualification by the licensing body, or (2) an inquiry by the General Medical Council, in which case, on the decision of the General Medical Council, the licensing body would withdraw the qualification.

In the former case, if the licensing body should restore the qualification, the practitioner's name may be restored to the register by the registrar on receipt of the prescribed documents (see p. 187).

In the latter case the name cannot be restored to the register until the licensing body has first considered an application from the practitioner and has restored the qualification. The practitioner must then make application to the General Medical Council in the prescribed form (see p. 187). Where two independent bodies have thus to be applied to, there is obviously the chance that though one may accede to the application the other may refuse.

The power exercised by the Society of Apothecaries

under the Apothecaries Act, 1874, Section 4, is power to strike off from the list of licentiates the name of any person convicted of a misdemeanour, or who has been judged by the General Medical Council to have been guilty of infamous conduct. It has no power itself to inquire into questions of conduct, and its action usually follows the decision of the General Council. The Society's power to restore names is to be exercised not after an inquiry of its own, but "with the consent in writing of the General Medical Council" (Apothecaries Act, 1907, Section 6). In such a case a difficulty arises when a practitioner seeks the restoration of his name to the Medical Register, for here the question of the desirability of restoration should in the first place be considered by the body which, when the name was erased, held no inquiry of its own into the cause. In practice, however, such cases will be considered first by the Executive Committee of the General Medical Council, and if it considers that restoration can be recommended to the Council, this will be made known to the representative of the Apothecaries Society on the Council. The licensing body is thus assured that consent will be given to the restoration of the name, and can apply for that consent to be made in writing as provided by the Act of 1907. Once it has restored the qualification, restoration to the Medical Register is rendered possible.

Axham's Case.—In an action brought by a Mr. Thomas against Mr. Herbert Barker[1] it was proved that a registered medical practitioner, Dr. F. W.

[1] *The Times*, February 21, 22, 23, 1911.

Axham, had associated himself with Mr. Barker, an unregistered person who practised bone-setting, and had assisted him in that practice by administering anæsthetics on his behalf. He gave evidence on behalf of his employer, who was being sued for damages for the loss of a leg, unsuccessful treatment having followed an alleged incorrect diagnosis. Dr. Axham, who was a member of the Royal College of Surgeons of England and a licentiate of the Royal College of Physicians of Edinburgh, was notified by the General Medical Council of his breach of the byelaws, and was summoned to appear to answer a charge, under Section 29 of the Medical Act, 1858, of "infamous conduct" in a professional respect brought against him by the Medical Defence Union. Dr. Axham did not deny the offence. He was seventy-two years of age, and had given up his own practice. When he was told of the decision of the Council to remove his name from the register unless he terminated his association with the unregistered practitioner, he said he was not prepared to give a promise do so, and he must put up with whatever the Council decided. His name was therefore removed,[1] but the removal did not affect his employment, for, as an unregistered man, he continued his association with Mr. Barker until 1921, when he retired at eighty-two years of age. Five years later, when he was eighty-seven, with no desire to take up private practice, he was instigated to apply for the restoration of his name to the register. He was supplied with the proper forms and instruc-

[1] May, 1911.

tions, but his application was not complete in November, 1926, when the General Medical Council held its half-yearly meeting. His diplomas had not at that time been restored, and the Medical Council had no power to re-register his name until one of his qualifications entitling him to registration was restored. The application had perforce to be deferred until the following meeting. In the meantime Dr. Axham died, but there is no doubt that not only was the action of the Council correct, but that this was the only procedure they could legally adopt.

Dentists.—The withdrawal of a diploma by a licensing authority must not be followed by automatic removal of name from the register. An inquiry must be held by the Dental Board (see Partridge's case, *infra*, p. 197), and as a rule no difficulty of procedure arises.

Veterinary Surgeons.—As the registering body and the licensing body is one and the same, the question of the withdrawal of a diploma does not arise. But a veterinary surgeon who, in addition to his diploma of membership of the Royal College of Veterinary Surgeons, which is his qualification for registration, holds a degree in veterinary science of a University, cannot be deprived of that degree by the action of the Council in removing his name from the register. The degree is not, however, a licence to practise, and a person holding such a degree whose name had been removed would be debarred by Sections 16 and 17 of the Veterinary Surgeons Act from making use of any veterinary title.

Apart from these differences in procedure arising from different methods of licensing, the disabilities resulting from erasure also differ in the three professions. A medical practitioner whose name is erased may still practise, but he cannot sign death certificates and other statutory certificates, nor hold certain public appointments, nor can he sue for his fees. But if he confines his practice to non-serious cases, and secures payment in advance, he may be even better off financially than before, for he may increase his practice by advertising, he may canvass for clients, he may employ unqualified assistants, all of which may be to his pecuniary advantage, though it be to the detriment of the public.

A veterinary surgeon in the same case may also still practise, if he avoids the use of a prohibited title, and like the doctor, being no longer under discipline, he may extend his practice by unprofessional means.

A dentist, before the Dentists Act of 1921, suffered practically no detriment if his name was removed; instead of being a punishment, it was rather the removal of fetters which hindered his prosperity in a field exploited mainly by quacks. But since 1921 a dentist whose name is removed, is by that fact deprived of all right to practise his profession. If he should continue to practise he is subject to prosecution under Section 1, even if his name was removed merely in consequence of the non-payment of the annual retention fee (Tattersall *v.* Sladen [1928], 165 L.T., 557).

Disciplinary Powers confirmed by the Courts. —Decisions by the General Medical Council under the

byelaws above mentioned have been litigated in a few instances, and the following rules have been established:

Medical and Dental Registers.—1. That the power given by Section 26 of the Medical Act, 1858, to erase any name which may have been fraudulently or incorrectly entered, extends to cases of names registered under Section 46 (see p. 106), relating to persons already in practice, but not qualified, as well as those registered under Section 15 (p. 103), relating to persons holding recognized qualifications (R. *v.* General Medical Council [Organ's case] [1861], 30 L.J. [Q.B.], 201).

2. That the General Medical Council may refuse to allow a practitioner to be represented by counsel at the hearing of a case (R. *v.* General Medical Council, *supra*). The Council does not, however, use this right; the standing orders specially provide for the accused to be represented by counsel.

3. That the Council may use its powers to remove a practitioner's name from the register in respect of unprofessional conduct committed before registration (R. *v.* General Medical Council, *supra*).

4. That the Court has no power to interfere with a decision of the Council made after due inquiry (*ex parte* La Mert [1863], 33 L.J. [Q.B.], 69, and Allbutt *v.* General Medical Council [1889], 23 Q.B.D., 400).

5. That the Court will not compel the General Medical Council to rehear a case (*ex parte* C . . . A . . . B . . ., *The Times*, June 21, 1900, p. 12).

6. That the publication by the General Medical Council of their decision to erase a practitioner's name from the register, if true, accurate, bona fide, and

without malice, is privileged, and the practitioner cannot maintain an action of libel against the Council (Allbutt *v.* General Medical Council [1889], 23 Q.B.D., 400).

7. That a subscriber to a Society which reports cases of unprofessional conduct to the General Medical Council may adjudicate as a member of the Council on a charge brought by the Society, provided he is not on the Council of the Society, and has taken no part in making the charge (Leeson *v.* General Medical Council [1889], 43 Ch.D., 366; Allinson *v.* General Medical Council [1894], 1 Q.B., 750).

8. That the General Medical Council has no power under the provisions of the Dentists Act, 1878, Section 11, without holding a formal inquiry, to erase the name of a dentist whose diploma has been withdrawn by the licensing authority[1] (*ex parte* Partridge [1887], 19 Q.B.D., 467). In the case of a medical practitioner whose name has been removed from the list of a college or licensing body, the General Medical Council may, on the fact being officially reported to them, direct the registrar to erase the name from the Medical Register without a formal inquiry (Medical Act, 1858, Section 28). If the qualification withdrawn is the only qualification the practitioner held, then the registrar must erase the name.

9. That no action will lie against the Council for wrongful erasure provided it is done bona fide and without any indirect motive (Partridge *v.* General Medical Council [1890], 25 Q.B.D., 90).

[1] This decision has not been affected by the Dentists Act, 1921.

10. That no mandamus will lie to compel the Council to restore a name, unless it can be shown that there was no evidence on which the Council could reasonably have acted (Partridge *v.* General Medical Council and Miller [1892], 8 T.L.R., 311).

11. That an order of the General Medical Council to erase the name of a dentist for infamous conduct is admissible in a court of law as prima facie evidence of disgraceful conduct, subject to the production of rebutting evidence (Hill *v.* Clifford, Clifford *v.* Timms, Clifford *v.* Phillips [1907], 76 L.J. [Ch.], 627). This case, which ultimately went to the House of Lords, arose out of an action to determine whether a partnership had been properly determined by a notice given under the terms of the partnership, which provided that if a partner should be guilty of "professional misconduct," the others might determine the partnership by notice. In the lower Court it was held that the order of the General Medical Council was not admissible as evidence on the question whether the plaintiff had been guilty of professional misconduct, it being *res inter alios acta*. Warrington, J., said that so far as he could see it was not contrary to any rule of professional conduct to employ an unregistered assistant, and that advertising was admittedly allowed in the profession (Clifford *v.* Timms [1906], 76 L.J. [Ch.], 265). His lordship, however, seems to have been unaware of the fact that more than fourteen years before this date the General Medical Council had prohibited the employment of unqualified assistants, and that twelve years before advertising had been prohibited by a byelaw. In any

case, it is clear that the question of what constitutes disgraceful conduct in a dentist was a matter left in the hands of the General Medical Council. On appeal it was held that the order was admissible as prima facie evidence, and that no distinction could be drawn between "conduct disgraceful in a professional respect" and "professional misconduct" within the meaning of the articles of partnership. In the House of Lords it was held that the publication of statements by a dentist expressed in terms of profuse self-praise and of disparagement of other practitioners constituted professional misconduct such as to justify a partner in demanding dissolution and the decision of the Court of Appeal was affirmed (Clifford *v.* Timms, Clifford *v.* Phillips [1907], 77 L.J. [Ch.], 91 H.L.).

As to the employment of unqualified assistants by doctors, not only is this prohibited by the byelaws of the General Medical Council, but any unqualified person who was employed by a doctor to attend patients in the way in which a medical practitioner ordinarily attends them would in fact be acting as an apothecary, and would be liable to a penalty under the Apothecaries Act, 1815, Sections 14, 20 (Davis *v.* Makuna [1885], 29 Ch.D., 596).

Veterinary Register.—Action by the Council of the Royal College of Veterinary Surgeons under Section 6 of the Veterinary Surgeons Act, 1881, has not yet been challenged in a court of law, but it may be taken that the rules set out above,[1] with the exception of the first and the eighth, would apply equally to action under this statute.

Pp. 196-198.

With regard to the first point, the Veterinary Surgeons Act provided that persons registered as "existing practitioners" (corresponding to medical practitioners registered under Section 46 of the Medical Act) were not to rank as members of the College [Section 15 (4)], and no provision was made for the removal from the register of the names of persons other than members (Section 6). This was, however, set right by the Veterinary Surgeons Act of 1920, Section 3 of which enacts that these practitioners shall be liable to have their names removed from the register for unprofessional conduct.

The absence of litigation on decisions of the Royal College of Veterinary Surgeons is sufficiently accounted for by the fact that provision is made in the Veterinary Surgeons Act for appeals to the Privy Council, not only in regard to registration of "existing practitioners" [Section 15 (3)] and foreign and colonial practitioners [Section 13 (4)], but also in case of removal of names from or refusal to restore names to the register [Section 8 (2)].

Appeals in Regard to Registration.—The rule as to appeals against a decision not to restore a name to the register thus differs in the three professions. The probable reason for this diversity is to be found in the origin of the power to register.

This power was granted to the Royal College of Veterinary Surgeons by charter, and it is natural therefore that the Act of 1881 confirming this power should provide an appeal to the Privy Council.

The power to establish a register in the medical and

dental professions is given by statute, the Medical Act of 1858 and the Dentists Act of 1878, and no provision was made in those Acts for any appeal except in the case of applications for registration from foreign and colonial dentists (Dentists Act, 1858, Section 10), where an appeal is allowed to the Privy Council, no doubt because of the special jurisdiction of the Privy Council in foreign and colonial matters. But the Dentists Act of 1921 provides an appeal, in the case of dentists practising in this country, to the High Court.

Disciplinary Inquiries—Defective Machinery.—The medical, dental, and veterinary statutes are defective in this further respect that no machinery has been provided to enable the disciplinary bodies to carry out in a judicial manner investigations into charges of unprofessional conduct such as are necessary if justice is to be uniformly administered. No authority has been given them to subpœna witnesses, or to pay their expenses, nor can witnesses be put on oath.[1] These are grave handicaps, for the power to administer so severe a punishment as expulsion from a profession needs to be accompanied by ancillary powers such as have been found necessary in the Common Law Courts to secure the eliciting of reliable evidence.

It not infrequently happens that a charge cannot be investigated because witnesses are unwilling to attend. Moreover, if numerous witnesses are in fact brought by either side, the absence of the power to put them on oath renders the task of the Councils extremely difficult.

[1] Per Cotton, L.J., in Leeson *v.* General Medical Council 43 Ch.D., 371.

The Councils may and do require that the evidence to be given by any witness must first be submitted in the form of an affidavit, but since the witness, when he is examined on his evidence and cross-examined, cannot be put on oath, evidence which would be inadmissible in a court of law cannot very well be excluded. The adoption of strict rules as to the admissibility of evidence would, indeed, in the absence of the powers mentioned, tend to nullify all proceedings. But, as we have seen, the Councils have laid down an order of procedure, following very nearly the procedure before a Court, and so long as the Councils act honestly within their jurisdiction, and without malice, no Court will interfere with their decisions. "The jurisdiction of the domestic tribunal which has been clothed by the legislature with the duty of discipline in respect of a great profession must be left untouched by courts of law" (per Bowen, L.J., in Leeson *v.* General Medical Council [1889], 43 Ch.D., 366).

This attitude of the Common Law Courts to the professional tribunal is consistent with that adopted in the early cases in which actions by the College of Physicians were litigated in the Courts (see especially Groenvelt's case, pp. 75-77). There Sir John Holt, C.J., expressed the opinion that the Censors of the College were empowered, as a necessary consequence of their judicial powers, to administer an oath. Two medical and dental Acts recently passed by the Parliament of the Irish Free State, establishing medical and dental registers, expressly confer this power on the respective disciplinary boards. These Acts are (1) the

Medical Practitioners Act, 1927, of which Section 29 gives any person whose name has been erased from the Free State Medical Register a right of appeal to the High Court, and Section 30 gives power to the Free State Medical Registration Council to summon witnesses to attend inquiries regarding unprofessional conduct, to examine them on oath, and to compel them to produce documents; and (2) the Dentists Act of 1928, where a similar provision is made in Section 34.

A strange situation, however, arises on these enactments. With a view to preventing the holding of simultaneous inquiries into professional misconduct by the General Medical Council and the Free State Medical Registration Council, it has been agreed (see appendix to the Medical Practitioners Act, 1927) that the one body shall report to the other when an inquiry is proposed into the conduct of a person registered in the register controlled by the other body, and each shall, on receiving such report, defer their own inquiry in the meantime. If the name of a person registered in both registers is struck off the Free State register by the Free State Council, the General Medical Council may consider the advisability of removing his name from the Medical Register. But as the General Medical Council has no power, as the Free State Council has, to subpœna witnesses or put them on oath, it will probably accept the decision of the Irish Council. If, on the other hand, the General Medical Council removes from the Medical Register the name of a person which is on both registers, the Free State Council will receive a report based on an inquiry conducted without the

power of summoning witnesses or hearing evidence on oath, and consequently may decide, with its better machinery, to hold an independent inquiry.

This anomaly calls for amendment whenever the Medical Acts are next before Parliament. The same remarks apply to the Dental Boards. Legislation with regard to veterinary surgeons in the Free State is now being promulgated, and these new powers will probably be given to any Veterinary Board that may be set up in the Free State.

If the defects here mentioned are ever amended in this country a consequential provision should be made to enable the Councils to award costs against the guilty or unsuccessful party. This would have the effect at once of discouraging frivolous charges, and of encouraging persons interested to report to the disciplinary bodies concerned all bona fide cases of misconduct, many of which at present are not reported owing to the cost involved to the complainant in carrying the case through to its conclusion.

CHAPTER X

UNQUALIFIED PRACTICE

In all medical legislation since 1511 there has been introduced some attempt to restrict practice by unqualified persons, but in no case has the attempt been really effective. Even the later laws, passed ostensibly for the protection of the public, are found to be easy of evasion, and this is due partly to the lack of definition in the language of the respective sections, and partly to the nature of the prohibition aimed at. When it is merely the prohibition of the use of a personal title, little ingenuity is required to circumvent it.

The provisions directed to the restriction of practice in the statutes now in force are briefly as follows:

Apothecaries Act, 1815, Section 14 (see p. 93 for complete text).—". . . It shall not be lawful for any person . . . to practise as an apothecary . . . unless he . . . shall have . . . received a certificate . . ." of qualification from the Society of Apothecaries after examination.

Medical Act, 1858, Section 40 (see p. 106 for complete text).—Any person who shall wilfully and falsely pretend to be or take or use a medical title or any name, title, addition, or description implying that he is registered or recognized by law as a medical prac-

titioner shall upon summary conviction . . . pay a sum not exceeding £20.

Dentists Act, 1921, Section 1 (see p. 129 for complete text).—No unregistered person shall practise or hold himself out as practising dentistry. Penalty £100.

Veterinary Surgeons Act, 1881, Section 16 (see p. 144 for complete text).—No unqualified person may use words or letters stating or implying that he is a member or fellow of the R.C.V.S. **Section 17:** No unregistered person may take or use a veterinary title or state that he is specially qualified to practise.

Action may be taken by a private person under the Apothecaries, Medical and Dental Acts, but not under the Veterinary Act except with the written consent of the Council. Yet though the last-named body must thus undertake the burden of prosecution, it may not receive or share the penalty, as is allowed in the case of the Apothecaries and Medical Acts.

The Dentists Act, 1921, Section 17, specially enacts that the provisions of Section 6 (3) authorizing the Dental Board to institute prosecutions for offences under the Acts of 1878 and 1921 shall not apply to Scotland. The Procurator Fiscal will therefore institute proceedings in Scotland as part of his ordinary duties. As no special provision is made in the Medical and Veterinary Acts regarding prosecutions in Scotland, this duty may or may not be undertaken by the Procurator Fiscal. The procedure is that the case is submitted in the first instance to the Procurator Fiscal. If he is not willing to take it up, it must be carried on

by the professional body concerned, in which case the concourse or concurrence of the Procurator Fiscal will be required, in prosecutions before the inferior Courts, but this will be granted as a matter of course. If the case is taken before the High Court of Justiciary, the concourse of the Lord Advocate is required.

As the Dental and Veterinary Acts do not make provision for the destination of the fines, it is assumed that any imposed by the Scottish Courts will go to H.M. Exchequer; in the case of prosecutions under the Medical Act, the fines will go to the General Medical Council (Act of 1858, Section 42).

The variations in the provisions made by the four statutes we are considering may be better seen in the following table:

PROVISIONS OF THE STATUTES AGAINST UNQUALIFIED PRACTICE

Statute.	*What must be proved.*	*Who may prosecute.*	*Amount of penalty.*	*Penalty goes to.*
Apothecaries Act, 1815, Section 14.	Practising though uncertificated.	Anybody.	£20	Half to informer, half to Society.
Medical Act, 1858, Section 40.	Wilfully and falsely taking title implying registration.	The G.M.C. or a private person.	£20	G.M.C. (but in London to police).
Dentists Act, 1921, Section 1.	Practising, or holding out as being prepared to practise, though unregistered.	Dental Board or a private person (in Scotland the Procurator Fiscal only).	£100	The Court.
Veterinary Surgeons Act, 1881, Sections 16, 17.	Taking title stating he is a veterinary surgeon, or is specially qualified.	The R.C.V.S. or a private person, but only with the written consent of the Council.	£20	The Court.

Apothecaries Act.—Cases of infringement of this statute have already been considered at pp. 96-99. Though Section 14 is still unrepealed, action against unregistered persons is now usually taken under the Medical Act, 1858, Section 40, and it is not often that the provisions of the Act of 1815, Section 14, are now invoked.

Medical Act.—In 1856 a Mr. Hodgson had been charged with forging and uttering a diploma of the College of Surgeons. He had hung the forged diploma in his surgery, and told two other medical practitioners that he was qualified, showing them the diploma. Later he had applied for appointment as a vaccination officer, and had informed the appointing body that he had his qualification and would show it if required. In the lower Court he was found guilty, but on appeal it was held that he was not guilty of forgery, for he had had no intent to defraud anybody when he actually forged the diploma (R. *v.* Hodgson [1856], Dearsand B., 3).

Hodgson escaped on a technical point, but he had clearly been guilty of falsely representing himself to be a qualified medical practitioner. Section 40 of the Medical Act, 1858, makes such an action a specific offence, and after that date prosecutions under this section were fairly common for some time. They are as a rule instituted by the General Medical Council, but as has been said, they may be instituted at the suit of a common informer. In the case of Clarke *v.* McGuire (1909), 2 I.R., 681, McGuire had been prosecuted at the suit of one W. Clarke, and the summons was

dismissed on the ground that the General Medical Council alone could prosecute. But it was held on appeal that a private person can institute a criminal prosecution under the Act, for the statute, which created a new criminal offence, did not in express words prohibit the common informer, so that his common law right remained. "The true construction of Section 40 is not to benefit medical practitioners, but the public, by preventing persons having no medical qualifications from representing themselves as qualified, and thereby committing frauds upon the public."

But decisions on Section 40 are very conflicting. It is not necessary to consider the few early prosecutions which proved abortive (Ladd *v.* Gould [1860], 24 J.P., 357; Pedgrift *v.* Chevallier [1860], 8 C.B.N.S., 246; Steele *v.* Hamilton [1860], 3 L.T., 322). In 1872 a conviction under the section was obtained against an unregistered person who called himself "M.D.," but who had purchased his diploma from an American University (Andrews *v.* Styrap [1872], 26 L.T., 704). In an earlier case (Ellis *v.* Kelly [1860], 6 H. and N., 222), the defendant, who had a genuine German medical diploma, had been acquitted, for he had not "wilfully and falsely" assumed the title. But Andrews, who knew his diploma was worthless, was held to have wilfully and falsely used the title, and was convicted. Martin, B., said there was ample evidence that the appellant wilfully (for he did it on purpose) and falsely (because he pretended thereby to be on an equal footing with any regularly bred and registered physician or M.D. in England) took and assumed the title of M.D.

Where a man exhibited a diploma of Doctor of Medicine of a New York medical college, it was held by the magistrate that this was no offence within the section, and the Exchequer Division upheld this decision on the ground that he had not falsely and wilfully pretended to be something which he was not (Carpenter *v.* Hamilton [1877], 37 L.T., 157). This follows Ellis *v.* Kelly.

So where, on a summary complaint charging A. E. with "calling himself physician and surgeon, professor, American eclectic, medical specialist, and 'A.M.S.,'" the accused had been convicted in the Sheriff's Court of wilfully and falsely taking and using the title "A.M.S.," implying that he was recognized by law as a practitioner of medicine contrary to Section 40, the Court of Session suspended the conviction on the grounds that the complaint was irrelevant and that the conviction was a conviction of an offence not charged on the complaint (Eastburn *v.* Robinson [1898], 1 Fraser [J.C.], 14).

Again in R. *v.* Lewis and Bridgwater (1896), 60 J.P., 392, and in R. *v.* Lewis and Frickhart (*ibid.*), magistrates' decisions to the same effect were upheld on appeal. In the first case Bridgwater described himself on handbills and on his window-blind as "M.D., U.S.A.," and displayed an American diploma. The magistrate dismissed the summons under Section 40 because there was no "proof of wilful and false pretence," and it was held by the Divisional Court that the magistrate could not be called on to state a case as his determination had proceeded solely

on a question of fact. In Frickhart's case the defendant was a lady doctor whose name had been removed for unprofessional conduct from the roll of the Royal College of Physicians of Ireland, and consequently from the Medical Register, but she still held the degree of M.D. of the University of Zurich. The magistrate dismissed the summons against her for falsely using the title M.D., and the Divisional Court confirmed his decision, holding that there was no proof of wilful and false pretence.

It is doubtful, however, whether these were strictly questions of fact and not questions of law. If a person has a non-registrable title, as Bridgwater had, and knows that his title is non-registrable, and then takes and uses the title "Dr. Bridgwater, M.D., U.S.A.," it would seem on the authority of Andrews *v.* Styrap, *supra*, that the magistrate had good ground to hold that Bridgwater wilfully (for he did it on purpose) and falsely (for he pretended thereby to be on an equal footing with any regularly bred and registered physician or M.D. in England) took and used the title of M.D. contrary to Section 40.[1]

Where a licentiate of the Society of Apothecaries described himself as "Physician and Surgeon" and the magistrates convicted, on an application for a rule for *certiorari* the rule was discharged, as he had no higher degree within the meaning of Section 30 of the

[1] These decisions can be explained only on the ground that when a magistrate has come to a conclusion on the question of fact, superior Courts have always been unwilling to overrule his finding if there is reasonable evidence to support it.

Act of 1858, which provides for the insertion in the register of higher degrees (R. *v.* Justices of Aston [Birmingham], [1891], 8 T.L.R., 123). As we have seen, until the passing of the Medical Act of 1886, a licentiate of the Society of Apothecaries was entitled to practise as an apothecary only. In R. *v.* Baker (1891), 56 J.P., 406, where S., registered as a licentiate of the Society of Apothecaries, described himself as physician and surgeon, and had signed certificates as M.D., he was convicted under Section 40 of falsely pretending to be a physician, surgeon, and doctor respectively, and on appeal the conviction was confirmed, though he also held an American diploma which was not registrable in this country. But as he had also used the title "Physician and Surgeon," Lord Coleridge, C.J., gave his decision on the ground that "calling yourself a physician and surgeon when you are an apothecary is a fraud on the public."

Another licentiate of the Society of Apothecaries was held not entitled to the description of "Physician," although he was registered under the Medical Act, 1886, and therefore entitled to practise the three branches of medicine, surgery, and midwifery; but as he had not used the title *wilfully* as well as *falsely* he was not convicted (Hunter *v.* Clare [1899], 1 Q.B., 635).

Under the Apothecaries Act, 1907, the Society of Apothecaries may now grant a qualification of licentiate in medicine and surgery, so that it is no longer illegal for a L.S.A. to call himself a physician.

A working collier who signed death certificates with

the title "M.D., B.C.," holding a certificate of the "General Council of Safe Medicine, Botanic College," a bogus American diploma, was convicted for having wilfully and falsely described himself as M.D. contrary to Section 40 of the Medical Act, 1858 (Steel *v.* Ormsby [1894], 10 T.L.R., 483); so also was an unregistered person who held a diploma not registrable in this country—viz., M.D. of the University of Philadelphia—and used the letters "M.D., U.S.A." (R. *v.* Ferdinand, 12 T.L.R., 135). These two cases are in strange contrast with R. *v.* Lewis and Bridgwater, *supra*, but the inconsistency is to be explained on the grounds mentioned in the footnote to that case (p. 211). The self-styled University of Philadelphia had had its charter revoked in 1879, nearly twenty years before this case was heard (*Lancet*, 1896, i., 181).

The following conclusions seem to be justified:

(*a*) The offence must be shown to have been committed "wilfully and falsely." This restriction applies only to cases under the Medical Act, for these words form no part of the provisions of the sections on this point in the Dental and Veterinary Acts.

(*b*) If the accused merely uses letters describing a genuine diploma which he actually possesses, and which do not indicate that it is a registrable diploma, he is out of the section.

(*c*) If he uses letters which imply the possession of a registrable diploma which he does not in fact possess, he is within the section.

It is clear that Section 40 gives less protection to the public in regard to unqualified medical treatment

than was given by the Dentists Act in regard to dental treatment, or is given by the Veterinary Surgeons Act in regard to medical and surgical treatment of animals. Section 3 of the Dentists Act, 1878, now repealed, made it an offence to take or use any title implying registration, and it was not necessary to prove that it was done wilfully and falsely. Sections 16 and 17 of the Veterinary Surgeons Act similarly make it an offence for any person to take or use either a registrable title or a title stating that he is specially personally qualified to practise, and a person who used the title "M.D., U.S.A.," in connection with the title "Specialist" and "Veterinary Sanitorium" was restrained by injunction from using these titles as being a representation contrary to Section 17 (A. G. *v.* Churchill's Veterinary Sanitorium, Ltd. [1910], 2 Ch., 401).

If an unregistered person practising medicine has only to add to the letters "M.D." words or letters suggesting a source of origin of his degree, which make it not registrable in this country, even if it is a diploma of no reputable body, to keep him outside Section 40, then it cannot be said that the public is adequately protected. The only vestige of protection left is that provided by Section 14 of the Apothecaries Act, 1815, but if the impostor avoids giving treatment for internal disease or compounding his own remedies and prescribing and supplying them, he is apparently safe. Moreover, the penalty imposable for the wrongful assumption of a medical title, which remains as it was in 1858, at *not exceeding* £20, is now a ridiculously inadequate penalty. In the Dentists Act, 1921, the

penalty for irregular practice is £100, and clearly the Medical Acts require amendment in this respect.

From time to time since the Medical Act, 1886, the medical profession has endeavoured to secure better protection for the public, and a draft Bill was drawn up for this purpose and submitted by the British Medical Association to the General Medical Council in 1894.[1] No further progress has been made with it, but it is thought worth while to set out its terms below:

"Whereas in order that persons requiring medical or surgical aid should be better enabled to distinguish between qualified and unqualified practitioners, it is expedient to extend and amend the Medical Act, 1858, Be it therefore enacted, etc.

"1. This Act may for all purposes be cited as the Medical Act Amendment Act, 189 . . .

"2. If after the passing of this Act any person other than a person whose name is for the time being on, or entitled to be on, the Medical Register, or who, prior to the passing of the Medical Act, 1886, would have been entitled to be registered, shall take or use the name or title Physician, Doctor of Medicine, Licentiate in Medicine or Surgery, Bachelor of Medicine, Surgeon, General Practitioner, Medical Practitioner, Apothecary, Aurist, Oculist, Accoucheur, or any title, style, addition, or description, directly or indirectly implying that he is registered under this Act, or that he is specially qualified to practise medicine or surgery or any branch thereof, he shall, upon a summary conviction for any and every such offence, pay a sum not exceeding £ . . . It is hereby declared that the words 'title, style, addition, or description,' where used in this Act, include any style, title, addition to

[1] Minutes of G.M.C., xxxi. 51.

a name, designation, or description, whether expressed in words or by letters, or partly in one way and partly in the other.

"3. With respect to the offence of a person not registered or entitled to be registered under the Medical Acts for the time being taking or using any name, title, addition, or description as above in this Act mentioned, the following provision shall take effect:

"He shall not be guilty of an offence under this Act (*a*) if he shows that he is not ordinarily resident in the United Kingdom, and that he holds a qualification which entitles him to practise medicine or surgery in a British possession or foreign country, and that he did not represent himself to be registered under the Medical Acts; (*b*) if he shows that he has been registered, and continues to be entitled to be registered, under the Medical Acts, but that his name has been erased on the ground only that he has ceased to practise.

"4. Any penalty to which under this Act any person is liable on summary conviction may be recovered by the General Medical Council or by any person with their consent in the manner provided by Section 41 of the Medical Act, 1858, and any sum or sums of money arising from recovery of penalties as aforesaid shall be paid to the treasurer of the General Medical Council or person suing with their consent; anything contained to the contrary in the Metropolitan Police Acts or any Act passed before the passing of this Act notwithstanding."

An Act containing such provisions, though an improvement on the existing Acts, would not, however, provide a completely satisfactory protection of the public against the evils of quackery. As has been found in the case of dentistry, nothing short of pro-

hibition of practice by unqualified persons will effect that.

Other Statutory Restrictions.—The public is protected to some extent by the provisions of a large number of statutes passed in the interests of public health, which impose special duties on qualified practitioners to the exclusion of unqualified persons—*e.g.*, the Births and Deaths Registration Acts, 1836 to 1926; the Cremation Act, 1902, and Regulations, 1903; the Infectious Diseases (Notification) Act, 1889; the Vaccination Acts, 1867 to 1907; the Public Health Acts, 1875 to 1925; the Lunacy Acts, etc. Special mention must be made of the following:

1. The Poisons and Pharmacy Act, 1868 (31 and 32 Vict., c. 121), which provides (Section 1) that no person not registered under the Act (other than a qualified apothecary or registered veterinary surgeon, Section 16) may sell or keep open shop for retailing, dispensing, or compounding poisons.

2. The Dangerous Drugs Act, 1920 (10 and 11 Geo. V., c. 46), the Dangerous Drugs and Poisons (Amendment) Act, 1923 (13 and 14 Geo. V., c. 5), and the Statutory Rules and Orders made thereunder,[1] which provide that only duly qualified medical practitioners, registered dentists, and registered veterinary surgeons[2] are authorized to be in possession of dangerous drugs for the purpose of their practice, subject to strict compliance with regulations, including

[1] See especially S. R. and O., 1928, No. 981.

[2] In veterinary practice, however, the Secretary of State has licensed a number of unqualified persons to be in possession of certain dangerous drugs.

the keeping of proper records. The onus of proving the fact of a licence or authority in cases of prosecution is on the defendant (R. *v.* Scott, 86 J.P., 69).

3. The Venereal Diseases Act, 1917 (7 and 8 Geo. V., c. 21), which provides (Section 1) that in any area in which the section is in operation a person shall not, unless he is a duly qualified medical practitioner, for reward either direct or indirect, treat any person for venereal disease, or prescribe any remedy therefor, or give any advice in connection with the treatment thereof, whether the advice is given to the person to be treated or to any other person. The section may be applied by the Ministry of Health to any district where an approved scheme for the gratuitous treatment of persons in that area suffering from venereal disease is in operation. Section 2 prohibits advertisements of treatment for venereal disease. The penalty for a conviction under either section by indictment is imprisonment with or without hard labour for a term not exceeding two years, or on summary conviction a fine not exceeding £100 or imprisonment with or without hard labour for not exceeding three months. A duly qualified chemist, who had for some years before 1917 advertised a specific which he sold as a remedy for syphilis, and his assistant who served the medicine, were prosecuted under this Act on the ground that a recommendation of a medicine as "good" for venereal disease is "advice" within the meaning of the section. They were convicted, sentenced to a term of imprisonment, and the chemist was fined £100. On appeal the convictions were

affirmed, but the period of imprisonment was reduced (R. *v.* Shadforth [1919], 14 Cr. App. R., 77, 63 S.J., 799 [C.C.A.]).

4. The Midwives Acts, to which reference has already been made (p. 174).

The restrictions on medical practice imposed by the above Acts, since they leave unqualified persons free to treat such prevalent diseases as tuberculosis and cancer, cannot be said to be sufficient for the protection of the public.

In the few important European countries where the practice of medicine by unqualified persons is not entirely prohibited—namely, Germany, Norway, and Sweden—much more serious restrictions are placed on unqualified persons. In Germany unregistered persons are not only prevented from using medical titles, from holding official medical positions, and from vaccinating, but they are prohibited from practising as itinerant doctors, they must report to the district medical officer, and may only prescribe remedies for which there is a free sale. In Norway any quack who treats contagious or epidemic diseases is subject to a fine. In Sweden the quack must not treat contagious diseases, tuberculosis, or cancer.[1]

Dentists Acts.—Athough Section 3 of the Dentists Act, 1878, has been repealed, and now under the Dentists Act, 1921, no person may practise dentistry unless registered, nevertheless decisions under the old Section 3 (as amended by Section 26 of the Medical Act, 1886) are still of importance as help-

[1] *Rev. Int. de Méd. Prof. et Soc.*, ii., No. 3, 1929, p. 9.

ing to settle the law generally as to the false assumption of a professional title, and to point out certain important distinctions.

Section 3, which was in force until November 29, 1922, provided that "A person shall not be entitled to take or use the name or title of 'dentist' (either alone or in combination with any other word or words) or of 'dental practitioner,' or any name, title, addition, or description implying that he is registered under this Act, or that he is a person specially qualified to practise dentistry, unless he is registered under this Act.

"Any person who, not being registered under this Act, takes or uses any such name, title, addition, or description as aforesaid shall be liable, on summary conviction, to a fine not exceeding £20, provided that nothing in this section shall apply to legally qualified medical practitioners."

By Section 26 of the Medical Act, 1886, the words "title, addition, or description" are declared to include any title, addition to a name, designation, or description, whether expressed in words or by letters, or partly in one way and partly in the other.

An unregistered person practising in Scotland used the following descriptions: "American Dentistry," "Dental Office," "American Dentistry . . . A. Emslie, Manager," and exhibited a diploma conferring upon him the "Degree of Master in Dental Surgery of the Dental Society of New York." He was charged with contravening Section 3, in so far as, not being a person registered under the Act, he had taken

or used a name, title, addition, or description implying that he was a person specially qualified to practise dentistry. It was held, on appeal, quashing a conviction, that he had not committed an offence under the section, since the descriptions did not imply that he was registered under the Act, or that he was a person specially qualified to practise dentistry. It will be seen that he had described the work he did, and the place in which the work was done, but did not use a personal description, and there was nothing in the words used implying special qualification. The question of the display of the American diploma was not, however, considered, on the technical ground that the charge had not been sufficiently specified. The Lord Justice Clerk said: "What the Act strikes at is asserting that he has *special* qualifications for practising dentistry, and whatever that may mean I am unable to hold that the use of the words 'American Dentistry' . . . or calling his place of business a dental office, can be held to be taking or using a name or title, addition or description, implying that he has a special qualification as distinguished from an assertion that he is qualified" (Emslie *v.* Paterson [1897], 24 Rettie [J.C.], 77; 34 Sc. L.R., 674).

Where an unregistered person purchased a registered dentist's practice and continued to use his plate, which bore the initials "R.D.S., England," and was charged with a breach of Section 3, the magistrate held that he did not take and use a description implying that he was registered. On appeal the Divisional Court came to the conclusion, though with reluctance,

that they could not interfere with the magistrate's decision not to convict. It was clear that the defendant had tried to benefit by the display of his predecessor's title, but on the question of fact whether he had done anything implying that he was registered under the Act, the magistrate had declined to convict. Lord Alverstone, C.J., said, however, that if there was evidence that the respondent was passing himself off as the registered dentist, then it would be using not only the name and description, but the name of the registered practitioner with the description (Brown *v.* Whitlock [1903], 19 T.L.R., 524).

A series of dental company cases followed, and prepared the way for the rapid spread of the practice of dentistry by unregistered persons practising as joint stock companies.

Two Irish cases settled (i.) that the word "person" in Section 3 does not extend to corporations and companies (O'Duffy *v.* Jaffe [1904], 2 I.R., 27), and (ii.) that consequently a company cannot be a "registered dentist" under the Act, and therefore the name of a limited company including the word "dentist," there being no person in the company entitled to be so styled, could not be registered by the Registrar of Joint Stock Companies, and no mandamus would be issued to assist a fraud (R. *v.* Registrar of Joint Stock Companies for Ireland [1904], 2 I.R., 634).

In Panhaus *v.* Brown (1904), 68 J.P., 435, an unregistered person who used the description "German Dental Institute. West Central Dental Institute, Ltd.," appealed against a conviction under Section 3.

It was proved or admitted that he also used the title "West Central Registered Zahnaerztliches Institut." Lord Alverstone, C.J., held that there was abundant description to bring the appellant within the section, and dismissed the appeal, Wills and Kennedy, JJ., concurring.

Where a one-man company was duly registered under the title of "Mr. Appleton, Surgeon Dentist, Ltd.," Mr. Appleton being the managing director and unregistered, an injunction was granted to restrain the company and the directors and signatories from carrying on business and from taking or using the title which the company had adopted, or any other name or title implying that the business of the company was carried on by persons registered under the Dentists Act (Att. Gen. *v.* Mr. Appleton [1907], 1 I.R., 252. This case was followed in Att. Gen. *v.* Churchill, *infra*, and in Att. Gen. *v.* Myddletons, Ltd. (1907), 1 I.R., 471, where the facts where similar, except that, whereas in Appleton's case fraud was admitted, in Myddleton's case everything had to be proved. Evidence was, however, adduced to show that Myddleton used the title "Dentist," and it was held that, though after Jaffe's case a company was exempted from the penalties imposed by the section, it was not thereby privileged to make false representations calculated to mislead the public as to the qualification of the individuals whom it comprised or employed. An injunction was granted to the same effect in Att. Gen. *v.* G. C. Smith, Ltd. (1909), 2 Ch., 524.

A case of the highest importance from the point

of view of the protection of the public was that of Barnes *v.* Brown (1909), 1 K.B., 38. Barnes, who was unregistered, displayed the following notice: "Barnes, artificial teeth at moderate prices. Extractions. Advice free. Hours 10 to 7. English and American teeth. Advice free. Painless extractions." No evidence was produced to show that he had taken or used the name of dentist or dental practitioner. He was convicted under Section 3, and the Divisional Court dismissed his appeal. The Court laid down that the words of the section "specially qualified to practise dentistry" referred to special personal qualifications acquired by study and practice, and not to special qualifications or professional hallmarks such as those mentioned in other sections of the Act. This decision was opposed to the decision in Emslie *v.* Paterson, *supra*, and it was overruled in Bellerby *v.* Heyworth (1909), 2 Ch., 23 (1910), A.C., 377, a year later. The last-named case took the form of a partnership action to settle a dispute between three partners, a clause of the partnership deed providing that anything done by one of the partners contravening the Dentists Act should be ground for dissolution. Bellerby claimed that a notice exhibited by Heyworth in the name of the partners: "Finest artificial teeth; painless extractions. Advice free. Mr. Heyworth attends here," was a contravention of Section 3 on the authority of Barnes *v.* Brown (1909), 1 K.B., 38. The Chancery Division decided that there was a breach of the partnership articles. The Court of Appeal, however, reversed this decision, and

overruled Barnes *v.* Brown, and the House of Lords confirmed the decision. It was now affirmed that the words "specially qualified to practise dentistry" in Section 3 import a professional qualification entitling the holder to registration under the Act, and not merely professional skill or competence. There is nothing in the Act which prevents any man from doing dentist's work and informing the public that he does such work, without being registered under the Act, provided he does not take a personal description implying that he is registered or specially qualified to be registered.

As a result of this decision, from 1910 to 1921, unregistered dentists increased in numbers and prospered, but, as is shown in Chapter VI. (p. 125), very much at the public expense. So long as he did not, by using the title *dentist* or *dental practitioner* or by other titles, imply that he was registered, any unregistered and untrained person could proclaim his personal qualifications and skill, could advertise to any extent he liked, and could employ such unqualified assistants as he pleased.

For example, in Byrne *v.* Rogers (1910), 2 I.R., 220, an unregistered person, described as "The world's expert adaptor of teeth," who had been convicted by the magistrate under Section 3, appealed on the strength of Bellerby *v.* Heyworth, and succeeded. In Minter *v.* Snow (1910), 74 J.P., 258, where words were used similar to those in Panhaus *v.* Brown (1904), 68 J.P., 435,[1] the House of Lords decided in favour of the

[1] *Ante*, p. 222.

defendant, the case being treated as being governed by Bellerby *v.* Heyworth. In neither case did the descriptions used imply special qualification by the holding of a licence or diploma.

The case of Robertson *v.* Hawkins (1913), 1 K.B., 57, shows, however, that the limit had been reached. Robertson had gone to Hawkins in the belief that he was a registered dentist, and, having had his teeth examined, he handed to Hawkins a form of certificate required to be signed by a registered dentist. Hawkins said he had "given hundreds of such certificates to the post office," and promised a certificate when Robertson returned next day to have his teeth finished. Robertson did not return, and no certificate was in fact given. Moreover, Hawkins did not at any time in writing or orally use the words "dentist" or "registered dentist," or state he was a person specially qualified to practise dentistry. Yet it was held that he had taken and used a description *implying* that he was registered, and that he was therefore liable to a penalty. Lord Alverstone, C.J., held that "such certificates" in the statement made by Hawkins meant certificates which could only be given by a registered dentist—*i.e.*, that Hawkins was qualified to give such certificates. Avory, J., said: "If a person says, 'I have given hundreds of such certificates,' and that he is prepared then to do what only a registered dentist can do—*i.e.*, give the certificate—the proper inference is that he was . . . taking a description implying that he was registered."

The futility of the provisions of Section 3 had, how-

ever, now been fully disclosed, and no further action was possible. The public could not be protected without an amendment of the law, and this was obtained by the Dentists Act, 1921, which prohibits all practice by unregistered persons. Since the passing of this Act there have been prosecutions, which have succeeded at first instance, of unregistered persons who have either practised or held themselves out as being prepared to practise. None of these decisions have been contested, and as the wording of Section 1 of the Act appears to be so categorical as to preclude the possibility of evasion, it would seem that the public are now completely protected from the dangers of unqualified dental practice.

Veterinary Surgeons Act. — The first legal actions entered into by the Royal College of Veterinary Surgeons under the powers of the Act of 1881 were directed against farriers and shoeing-smiths who used the description "Veterinary Forge" to describe premises where horses were shod. As, until recently, the horse was the chief patient of the veterinary surgeon, and as a large number of his ailments were found in practice to be due to faulty shoeing, it was common for qualified veterinary surgeons to carry on a horse-shoeing establishment in connection with their veterinary practice. In emulation of qualified veterinary surgeons, farriers and shoeing-smiths began to describe their premises by the title "Veterinary Forge."

After several successful suits in the lower Courts a decision was given against the College by Mr.

A. C. Plowden in a case where John Robinson, an unqualified person, had displayed on his business premises and on bill-heads the words "Veterinary Forge." The magistrate did not think that these words constituted an "addition or description stating that the defendant was specially qualified to practise a branch of veterinary surgery" within the meaning of the Act and dismissed the information, but stated a case for the High Court.

Hawkins, J., decided that there ought to be a conviction. Quoting the preamble of the Act: "Whereas it is expedient that provision be made to enable persons requiring the aid of a veterinary surgeon for the cure or prevention of diseases in or injuries to horses and other animals to distinguish between qualified and unqualified practitioners," he said: "Nothing is so likely to produce injury to a horse as unskilful treatment of its feet and improper shoeing. . . . The defendant was charged with having unlawfully used and taken an addition and description stating that he was specially qualified to practise a branch of veterinary surgery. What he did in fact was to carry on a shoeing forge, and to use before the word 'forge' the word 'veterinary.' No one seeing those words 'Veterinary Forge' could fail to come to the conclusion that he was carrying on at that forge a business which in fact he was not specially qualified to carry on."

Wills, J., in concurring, said: "I think that the word 'qualified' is used in the section in its popular and not its technical significance. I have no doubt

that these words 'Veterinary Forge' do imply that any person taking horses to the forge would get the benefit of veterinary skill. That is precisely what the Act of Parliament intended to stop, as is evident from the preamble" (Royal College of Veterinary Surgeons *v.* Robinson [1892], 1 Q.B., 557).

It is to be noted, however, that Section 17 of the Act under which this prosecution was instituted prohibits the use of a description "*stating* that he is a veterinary surgeon," etc., and does not provide for the case of a description which only *implies* special qualification.

But when this case was decided a large number of qualified veterinary surgeons were carrying on shoeing forges in addition to their veterinary practice, and the title "Veterinary" was displayed over their forges. It was more likely, therefore, at that time, that the words "Veterinary Forge" would mislead the public into thinking it was a veterinary surgeon's forge. Although this case has been adversely criticized in later judgments, there were substantial grounds for the decision in the circumstances prevailing at the time.

In consequence of this decision shoeing-smiths all over the country were compelled to take down signs bearing the words "Veterinary Forge." Those who did not comply with the demand of the College were prosecuted, and the decision in Robinson's case secured convictions with substantial fines in some instances. No case of the kind has, however, occurred since 1906, and the offence is not likely to recur.

In the following year, 1893, Groves, a chemist, who had published a book dealing with diseases of horses, described himself as a pharmaceutical and veterinary chemist, and was prosecuted under Section 17 of the Act. The contention of the College, however, relying on the Robinson case, that this description was an infringement of the section, failed (Royal College of Veterinary Surgeons *v.* Groves [1893], 57 J.P., 505).

The most important case on the interpretation of Section 17 is Royal College of Veterinary Surgeons *v.* Collinson (1908), 2 K.B., 248, 77 L.J. (K.B.), 689.

The defendant, an unqualified person, described himself and his business in these words: "Canine specialist. Dogs and cats treated for all diseases." The justices held that these words did not infringe the section, and dismissed the case. On appeal, Lord Alverstone, C.J., Ridley and Darling, JJ., gave judgment for the appellants. The Chief Justice gave strong expression to his opinion that the decision of the lower Court was wrong. He held that the object of the Act was that "in respect of animals who cannot speak for themselves, the people who are to treat them should be persons who have received some recognized qualification." He declared that Section 17 deals with cases "where the man does not call himself a veterinary surgeon nor a practitioner of veterinary surgery, but where he indicates that he is specially qualified to practise the same by some addition to his name or other description. . . . The mischief aimed at is the misleading description by people as to their qualification for treating animals. . . . The words

'Canine Specialist' when used in reference to the words that follow, 'Dogs and cats treated for all diseases,' means that he is a specialist in the diseases of dogs, and therefore is within the section." "The section was intended to stop as far as possible persons from treating animals unless they are qualified veterinary surgeons, and to prevent unqualified persons from treating them unless they really tell the public that they are not veterinary surgeons."

(Here it is respectfully submitted the Lord Chief Justice was giving too wide an interpretation to the section. It is not for the purpose of stopping persons from treating animals unless they are qualified, but to stop them from using a professional title and so causing the public to be unable to distinguish that they are not qualified persons.)

Both the Lord Chief Justice and Ridley, J., expressed doubt whether they would have decided the *Robinson* case in the same way, but agreed that this was a much clearer case. Ridley, J., expressed the view that the words "specially qualified" in Section 17 must be taken in the *technical* sense—*i.e.*, specially qualified as a veterinary surgeon, contrary to Wills, J., in the *Robinson* case.[1] After quoting the respondent's notice: "Canine specialist. Dogs and cats treated for all diseases," Ridley, J., said: "If I were asked when I saw a notice of that kind, 'Do you think it is a veterinary surgeon who put up that notice?' I should say 'Certainly not; he is a quack.'" Here it is sub-

[1] See remarks of Scrutton, J., in Royal College of Veterinary Surgeons *v.* Kennard, *infra*, p. 235.

mitted the learned judge was scarcely applying a true canon of reasoning. He would have been on firmer ground if he had considered the impression made by the notice upon the mind, not of a learned lawyer, but of an ordinary member of the poorer classes such as would be likely to take his dog to such an establishment. So when he goes on: "But many a quack is a good doctor, and I suspect there is many a person who knows about dogs and their diseases, and who gives them very good treatment, who is not a veterinary surgeon . . . sometimes it is a long way to where the veterinary surgeon's abode is, and the wretched animal has to be taken a long distance . . .," here, too, the learned judge seems to be applying the wrong test. It is not whether Mr. Collinson ought to be prevented from treating dogs, but whether he ought to use the title he did use. His lordship further said he would be inclined "to say that so long as a person does not pretend to a skill such as qualified the real veterinary surgeon, he ought not to be held to be within these provisions," adding, "However, my lord thinks otherwise, and I suppose I am wrong in taking that view." It is respectfully submitted that the question is not, "Does the unqualified person pretend to a skill such as qualifies the real veterinary surgeon?" Any unqualified person is entitled to pretend to such skill as he has got, whether it is as good as that of a qualified veterinary surgeon or not. But the Act says he must not use "any name, title, addition, or description stating that he is specially qualified to practise veterinary surgery or any branch thereof," and this is

the provision which the Court held to have been infringed. Darling, J., said "He (Collinson) claims to be a specialist to do with regard to dogs something which would cure them of diseases. That seems to come within the words of the section."

After this decision one James Churchill, who had been convicted in 1905 for using the title "Canine and Feline Surgeon and Specialist," and who had since then called himself "Canine Specialist," gave an undertaking to the College that he would discontinue this title. He, however, in 1909 registered a company, "Churchill's Veterinary Sanitorium, Ltd.," to carry on his former business "as naturalists, taxidermists, dog and animal dealers, veterinary surgeons, to manufacture and sell all kinds of veterinary medicines and preparations." On the window was inscribed "James Churchill, Managing Director, M.D., U.S.A." Churchill in a few months became the sole director and manager of the company, and it became a "one-man company." The company could not be sued as a *person* under the Veterinary Surgeons Act[1] (Pharmaceutical Society *v.* London and Prov. Supply Assoc. [1880], 5 App. Cas., 857). The College therefore applied for an injunction to restrain the company and Churchill from holding out the company as qualified or as being conducted by persons who were qualified to practise the art of veterinary surgery, on the ground that this was a fraud on the public.

Neville, J., held that the use of the title "Doctor" and "Specialist," in connection with the name "Churchill's

[1] But see now Veterinary Surgeons Act, 1920, Section 4 (p. 147).

Veterinary Sanitorium," must mean "Veterinary Specialist," which was a representation or description contrary to Section 17 of the Act. The plaintiff was therefore granted an injunction restraining both the defendants from using any description of Churchill stating that he was a veterinary surgeon or a practitioner of veterinary surgery or any branch thereof (A. G. *v.* Churchill's Veterinary Sanitorium, Ltd. [1910], 2 Ch., 401).

In Royal College of Veterinary Surgeons *v.* Kennard, (1914), 1 K.B., 92, the College sought to prevent Mr. A. E. Kennard, an unqualified person, from using the description "A. E. Kennard, Canine Surgery," but it was held that these words do not constitute a description stating that the person was specially qualified to practise a branch of veterinary surgery.

This case followed the decisions in Bellerby *v.* Heyworth (1909), 2 Ch., 23, and Emslie *v.* Patterson, (1897), 24 R. (J.C.), 77—namely, that if the person is not described as qualified, but a description is given to the acts he does, or to the place where he does them, the case does not come within the meaning of Section 3 of the Dentists Act, 1878.

A point of the highest importance was, however, settled by this case—namely, whether the words "specially qualified" in Section 17 of the Veterinary Surgeons Act, 1881, mean, as Wills, J., held they did mean, "personally qualified" (R.C.V.S. *v.* Robinson, *supra*, p. 228), or whether they mean "technically qualified"—*e.g.*, by holding the diploma of the College, as held by Ridley, J., in Collinson's case (p. 231), and as

the similar words of Section 3 of the Dentists Act, 1878, were held to mean in Bellerby *v.* Heyworth (p. 225). The point is a fine one. Scrutton, J., draws attention to the fact that Section 16 of the Veterinary Surgeons Act, 1881, forbids any person who is not a fellow or member of the College taking or using any name, title, addition or description stating or implying that he is a fellow or member, and that that section comes into effect with the passing of the Act. "Section 17," he says "for some reason comes into operation more than two years later, and prohibits persons not on the Register of Veterinary Surgeons from taking or using the title of veterinary surgeon or veterinary practitioner, or any name, title addition, or description stating that he is a veterinary surgeon or a practitioner of veterinary surgery or of any branch thereof, or is specially qualified to practise the same." "I think Section 17 must go further than Section 16. It comes into operation at a different time, and I therefore do not think that 'taking or using the title of veterinary surgeon or practitioner' can be limited to statements that the person is on the existing register."

The reason for the different date of the coming into effect of these two sections is as follows: Section 16 forbids unqualified persons from styling themselves members or fellows of the College; there was no reason why that should not be enforced at once. Section 17 forbids unregistered persons from using a professional title, but the Act by Section 15 set up machinery for registering unqualified "existing practitioners," and gave them a "reasonable time there-

after" for producing their title to registration. It was to give time for these persons to get themselves registered that the operation of Section 17 was deferred for two years.

Scrutton, J., was therefore justified in believing that Section 17 goes further than Section 16, and does not merely mean that to bring a person within the section the title he uses must be one stating he is a fellow or member of the College. He held that, veterinary treatment by unqualified persons not being prohibited, the statute does not prevent an unqualified person from saying he is ready to perform operations on animals; but if he calls himself a specialist, the Court will hold him to mean that he is specially qualified, bringing him within Section 17.

This decision differs from that in Bellerby *v.* Heyworth, but the Dentists Act, 1878, differs from the Veterinary Surgeons Act, 1881, in this particular respect. Section 3 of the former Act was limited to one class of persons—namely, those using words (or letters) *implying registration* under that Act. The Veterinary Surgeons Act is directed against two classes of persons: (*a*) by Section 16, those who use words or letters *stating or implying* that they are members or fellows of the College—*i.e.*, entitled to registration under the Act—and (*b*) by Section 17, those who, without implying that they are registered, use words *stating* that they have special personal skill.

The distinction drawn in Kennard's case is important in the interests of the public who desire to employ qualified persons to treat their animals.

These cases show, however, how true was the declaration of the Committee which inquired into the evils of dental practice by unqualified persons that any attempt to control unregistered practice by restricting the use of titles will inevitably fail, and cannot be relied on to protect the public interests (see p. 127). If veterinary practice was as lucrative as dental practice, and if the demand for veterinary treatment was as great as the demand for dental treatment, the Veterinary Surgeons Acts would be as powerless to stop the growth of veterinary quackery as was the Dentists Act, 1878, to stop dental quackery. The Medical Acts, too, as we have shown, are ineffectual in this respect, but in medical practice it is not the Medical Acts alone which provide the real protection of the public; it is the statutory provisions for the registration of deaths, coupled with Section 37 of the Medical Act, 1858, which provides that no certificate required by statute from a medical practitioner shall be valid unless the signatory's name is on the Medical Register.

The Dentists Act, 1921, provides the only way in which any real and lasting protection can be afforded to the public against the acknowledged evils of quackery. If ever the question of unqualified practice in human and animal medicine is investigated on the lines of the investigation into the evils of unqualified dental practice similar discoveries will be made, and a similar solution will be called for.

There is a further provision which appears to be necessary. Parliament has, it will be seen, left it

either to the common informer to lay the information in case of breach of these statutes, or has specified that it is to be the professional body itself which institutes the prosecution. The common informer is not a very active person in these days, and the professional bodies are ill-equipped to carry out police duties of this nature. Their energies ought to be devoted without distraction to fostering a high standard of training, maintaining the integrity of the statutory registers, and preserving a high ideal of conduct amongst members. The extraneous and incongruous duty of prosecuting empirics in the Courts—to do which effectively means the expenditure of funds which the professional bodies do not all possess—ought not to be placed on them. The matter should be one for the Public Prosecutor. The public interest is clearly concerned, and due prosecution is not certain to take place without his intervention.

CHAPTER XI

RECOVERY OF FEES

I. Qualified Practitioners.—The physician had at first been a priest, and he would no more *demand* a pecuniary reward for his ministrations to the sick body than he would as a priest ministering to spiritual needs. This honourable tradition survived and became a recognized custom, so that at common law a physician could not sue for his fees unless he made a special contract.[1] "The fees of a physician are honorary and not demandable of right" (Lord Kenyon in Chorley *v.* Bolcot [1791], 4 Term Rep., 317). And a surgeon who posed as a physician had to submit to this disability, though he could recover as a surgeon (Lipscombe *v.* Holmes [1810], 2 Camp., 441). Where he was both a physician and a surgeon he could only recover at law his fees for his surgical services, though he gave medical services as well (Battersby *v.* Lawrence [1841], Car. and M., 277). Surgeons could always recover for surgical services and external medicines and appliances, and dentists could recover for work done and appliances supplied. Apothecaries could sue for medicines supplied. A veterinary surgeon would, in the absence of a

[1] See Poucher *v.* Norman (1825), 3 B. and C., 744; Veitch *v.* Russell (1842), 3 Q.B., 928, 12 L.J. (Q.B.), 13.

contract, be able to sue upon a *quantum meruit* for services and medicines (Sewell *v.* Corp [1824], 1 C. and P., 392).

The Apothecaries Act, 1815, Section 21, provided that no uncertificated apothecary should be allowed to recover fees in any Court unless he could prove he was in practice before August, 1815. A person who had a certificate from the College of Surgeons, but not from the Apothecaries Company, could not recover charges for attending a case of fever (Allison *v.* Haydon [1828], 4 Bing., 619, 621). Moreover, the onus was upon the apothecary to prove his certification (Apoth. Soc. *v.* Bentley [1824], 1 C. and P., 538). The apothecary who relied on practice before 1815 must prove his ability to dispense the prescriptions of physicians (Apoth. Soc. *v.* Warburton [1819], 3 B. and Ald., 40, 47). An apothecary could charge for either medicines or attendances, but not for both (Towne *v.* Gresley [1829], 3 C. and P., 581). This case laid it down for the first time that the apothecary had a right to charge for his attendances, provided he made no charge for the medicines he supplied.

The Medical Act, 1858, Section 31, provided that every person registered should be entitled . . . to demand and recover in any Court . . . reasonable charges . . . but with the proviso that if any College of Physicians by byelaw prohibited its fellows or members from suing for fees, that byelaw might be pleaded in bar to any action. This proviso did not interfere with the right of a physician, not a fellow of the Royal College of Physicians, to sue for fees.

When a member of the College of Physicians sued for fees and obtained a verdict, a rule to enter a non-suit on the ground that a physician could not recover without a special contract was discharged, Pollock, C.B., saying that formerly the presumption was that a physician expected a fee, but as an honorarium, the practice being honorary, and so far gratuitous that physicians could make no legal claim. But since the Medical Act the presumption is the other way, and a physician practising is entitled to be paid unless restrained by some byelaw of the College of Physicians (Gibbon *v.* Budd [1863], 32 L.J. [Ex.], 182).

Members and licentiates of the College of Physicians are not so restrained, but fellows are, by a byelaw (No. 159) made pursuant to Section 31 of the Medical Act of 1858, and continued pursuant to Section 6 of the Act of 1886. The byelaw reads: "No fellow of the College shall be entitled to sue for professional aid rendered by him."

Neither the Dentists Act, 1878, nor the Veterinary Surgeons Act, 1881, contains any declaration similar to Section 31 of the Medical Act, 1858, that dentists and veterinary surgeons may recover reasonable fees, but their right at common law remains.

II. Unregistered Persons—Medicine.—After the Apothecaries Act, 1815, many actions were brought against their patients by uncertificated persons practising as apothecaries. This Act (Section 21, see p. 94) not only disentitles uncertificated persons to sue for fees, but also (Section 14) prohibits them from practising as apothecaries. Nevertheless, the question

whether an uncertificated person could recover for medicines and attendances in a case of cancer was held to be "too doubtful to be decided at *nisi prius*" (Hupe *v.* Phelps [1819], 2 Stark., 480). This was, however, an action in assumpsit, and it was held that though a regular practitioner might recover, even if unsuccessful in his treatment, an irregular practitioner who professed to be able to cure cancer by sovereign remedies within a specified time was in a widely different case, and it was a question whether he had not induced the patient to allow the treatment by means of fraudulent misrepresentations. An uncertificated person practising as an apothecary, who sued on a promissory note for £180 payable in consideration of his care and medical attendances bestowed on the maker of the note, consented to a non-suit when it was held that evidence was admissible to show that the consideration was medicines and services performed as an apothecary, but that if that was proved the plaintiff being uncertificated would be precluded by Section 21 of the Act from recovering (Blogg *v.* Pinkers [1824], Ry. and Moo., 125).

An uncertificated person practising as an apothecary, if he could not prove he was bona fide in practice before 1815, could not recover even for the phials, since they were used in the course of illegal practice as an apothecary (Steed *v.* Henley [1824], 1 C. and P., 574).

The Medical Act, 1858, Section 32, provides that—

> No person shall be entitled to recover 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.

Though this section, as we have seen (pp. 109-111), operated before the Medical Act, 1886, to prevent certain duly qualified and registered practitioners from recovering for medical services rendered, because they were registered as surgeons only under the Act of 1858, it has not prevented wholly unqualified and unregistered persons from recovering at any rate part of their charges. The main questions at issue have been, What is an operation? and What is advice or attendance?

In the case of Thistleton *v.* Frewer (1861), 31 L.J. (Ex.), 230, the question whether the application of galvanism by galvanic wires to diseased parts of the body was the performance of an operation within the section was left undecided.

But in Hall *v.* Trotter (1921), 38 T.L.R., 30, a lady osteopath successfully sued for fees for "manipulative treatment of the tissues of the body." She held an American osteopathic diploma, but was not registered as a medical practitioner. In the County Court she said she did not profess to have medical or surgical skill, or to diagnose disease, and that osteopathy was "a manipulative treatment of the tissues of the body." She gave treatment only and did not advise. In the County Court it was held that osteopathic treatment was not within the section. On appeal, Horridge, J., also held that it did not fall within the section, declining "to be led into definitions" as to what was an operation. Shearman, J., said "she did not profess to

advise anyone what was the matter, but . . . she applied her knowledge of anatomy to help her to determine the part of the body to which she should apply the treatment which she had been specifically called in to give."

Now to be outside the section it must be proved that manipulative treatment of the tissues of the body for the express purpose of curing a patient's malady is neither (*a*) medical or surgical advice or attendance; nor (*b*) the performance of any operation.

(*a*) Shearman, J., held it was not medical or surgical advice or attendance, but there seems to be little if any difference between "applying knowledge to determine the part of the body" to which treatment should be applied, and "advice or attendance." The osteopath must have diagnosed that the condition could be best treated by doing what she did, while by doing what she did she gave attendance to the patient. She did no less and no more than a registered practitioner does as a general rule. He applies his knowledge to determine what treatment to give, and he proceeds to give it. If that is considered to be giving advice and attendance in a registered practitioner, there seems no reason why it should not be considered to be advice or attendance, by conduct, in the case of an unregistered person.

(*b*) Horridge, J., held that it was not an operation, but if "manipulative treatment of the tissues of the body" is not the performance of an operation, what else can it be? Manipulation may properly be defined as "the art of operating skilfully upon anything with

the hands." A surgical operation is nothing different in essence and original meaning. But the section does not specify any particular kind of operation, though it is clear it must mean an operation upon the human body for the purpose of effecting a cure or remedying a defect.

The decision in this case was followed in the case of MacNaghten *v.* Douglas (1927), 2 K.B., 292, 96 L.J., K.B., 738, 43 T.L.R., 525. The plaintiff had an American degree of Doctor of Osteopathy, but no British medical degree, and the County Court judge had stopped the case, in spite of Hall *v.* Trotter, and entered judgment for defendant with costs, relying on Section 32. On appeal the Divisional Court ordered a new trial on the ground that the claim was for manual treatment and not for advice given. In this case the plaintiff's scale of charges was £3 3s. for "a consultation" and £2 2s. for each single visit, including treatment. If "consultation" in a case where treatment is sought for the cure of a bodily ailment is to be construed to mean something other than the seeking and giving advice, it would seem to be stretching the plain meaning of the words against the very people whom the section was intended to protect.

Acton, J., said that it would have been useful to know "whether the plaintiff in Hall *v.* Trotter undertook any diagnosis or gave any advice as distinct from actual manual or manipulative treatment, and if so how far the claim was based on the former."[1] In sending

[1] But it is difficult to see by what process *other than diagnosis* the osteopath came to apply her skill to that part of the body which required treatment.

the case back, the judge said that it might be that if the plaintiff's charges were analyzed, and if it were proved that any part of the charges was for advice given, he would not be able to recover in respect of that portion, but he would express no opinion on that. Talbot, J., said that if it had not been for Hall *v.* Trotter a very strong argument in support of the County Court judge's judgment might have been urged.

On retrial, however, the County Court judge gave judgment against the plaintiff on the ground that his treatment could not have achieved any beneficial result, and that his services were wholly useless. A clear decision on this question, therefore, has yet to be reached. MacNaghten *v.* Douglas proves nothing on the question whether an osteopath may sue for fees, nor does it do anything towards settling the question whether movement of bones for the purpose of effecting a cure is an operation within the meaning of Section 32. The fitting of artificial teeth in the mouth of a patient has been held, however, to be a dental operation within the meaning of the similar section of the Dentists Act, 1878 (Hennan *v.* Duckworth, *infra*, p. 250).

Doubt has been expressed whether such a severance of the charges as that suggested by Acton, J., would be legal, on the ground that if part of the fee charged was found to be for advice given, the contract ought to be held altogether void, following the rule in Pickering *v.* Ilfracombe Ry. (1868), L.R., 3 C.P., 250, where Willes, J., said : " The general rule is that where you cannot sever the illegal from the legal part of a con-

tract, the contract is altogether void, but where you can sever them, whether the illegality be created by statute or common law, you may reject the bad part and retain the good." Since in a medical contract there can never be a clear severance between advice and treatment, if the advice is illegal in the sense that it cannot be charged for, it is suggested that the same rule ought to apply to the treatment (*Law Quarterly Review*, xliii., 434).

The question at issue is, however, whether these contracts are in reality medical contracts. In Hall *v.* Trotter, Shearman, J., held the charge was not for medical or surgical advice or attendance, and Horridge, J., that it was not for an operation. In MacNaghten *v.* Douglas the Divisional Court ordered a new trial on the ground that the charge was for manual treatment and not medical or surgical advice. But assuming it was a composite charge, part for medical or surgical advice and attendance and part for manual treatment, then two questions arise:

1. Is it possible to sever the charge?

2. Is the charge for medical or surgical advice or attendance illegal?

1. The charges made by an unregistered person practising dentistry have been held to be severable (Hennan *v.* Duckworth *infra*, p. 250), but that involved defining what was a dental operation and what was dental attendance or advice, and definitions were duly given. In cases under the Medical Act the Courts appear to have avoided entering into definitions, but it is a necessary preliminary to any question of severance.

2. Whether the charging of fees for medical or surgical advice or attendance by an unregistered person is illegal or not depends on the intention of the statute. In this connection the judgment of Parke, B., in Cope *v.* Rowlands (1836), 2 M. and W., 149, is important: "It is perfectly settled that where the contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common or statute law, no Court will lend its assistance to give it effect. It is equally clear that a contract is void if prohibited by a statute, though the statute inflicts a penalty only, because such a penalty implies a prohibition. And it may be safely laid down, notwithstanding some dicta apparently to the contrary, that if the contract be rendered illegal, it can make no difference in point of law whether the statute which makes it so has in view the protection of the revenue or any other object. The sole question is whether the statute means to prohibit the contract."

Now it might be argued that the Medical Act inflicts a penalty on unqualified practice by disentitling unregistered persons to recover their fees in a court of law, and that this penalty is imposed for the protection of the public. That argument, however, would not in this case carry with it the implication that a contract with an unregistered person to give medical or surgical advice is illegal. The Medical Act was passed to provide a means whereby the public might distinguish between qualified and unqualified practitioners, but it does not prohibit unqualified practice. The effect of Section 32 is really that if unqualified persons do

practise they cannot count on the help of the Court to recover their charges. The contract to give medical and surgical advice and attendance is therefore not illegal, but unenforceable,[1] and the question of severance does not rest on the rule in Pickering *v.* Ilfracombe Ry., but on the practicability of severance between attendance and advice on the one hand, and treatment on the other, in a matter where advice and treatment are so intimately bound up. If it is practicable, then the rule in Seymour *v.* Pickett, *infra*, p. 251, will apply.

In both Hall *v.* Trotter and MacNaghten *v.* Douglas the point was made that the patients chose of their own free will to go to the osteopath, but it is submitted that that is irrelevant. Section 32 does not make any exception of the case where the patient consults an unregistered person knowing him to be unregistered.

The point would be covered if in any revision of the Medical Acts there were included in Section 32, before the word "unless," part of the corresponding section [Section 17 (2)] of the Veterinary Surgeons Act, 1881, *mutatis mutandis*—*i.e.*, "or for acting in any manner as a medical practitioner, or for practising in any case medicine or surgery or any branch thereof." It cannot be the intention of the legislature that the public should have less protection against unqualified medical practice than the owners of animals have against unqualified veterinary practice.

Section 32 operates to prevent unregistered persons recovering fees even where a third party, not the patient,

[1] Seymour *v.* Pickett (1905), 1 K.B., 715.

is sued, as in the case of an unregistered practitioner who sued a registered practitioner for medicines supplied to and attendance upon the patients of the latter at his request (De la Rosa *v.* Prieto [1864], 16 C.B., N.S., 578). In this case a medical officer of a Peruvian vessel of war lying in the Thames engaged the plaintiff, an unregistered practitioner, to attend the crew and troops during his temporary absence. It was held that the plaintiff could not recover, for by whatever law the contract was to be interpreted the remedy must be governed by the *lex fori.* The statute was passed in the interests of the public, and Section 32 will protect the patient even though the payment of fees is not due from him but from a third party.

Dentistry.—By Section 5 of the Dentists Act, 1878, unregistered persons practising dentistry were prevented from recovering any fee or charge in any Court for the performance of any dental operation, or for any dental attendance or advice. This did not, however, prevent them from recovering the price of artificial teeth supplied (Hennan *v.* Duckworth [1904], 90 L.T., 546). In that case the distinction was drawn between dentistry as a branch of surgical science, and dentistry as the mere mechanical making and fitting of false teeth. Making teeth is neither a dental operation nor dental advice, and so is outside the section. Dental operation[1] is defined as an operation in the surgical sense on the mouth of the patient, and dental attendance as "advising on the condition of the mouth and treatment."

[1] What constitutes a "dental operation" is now defined by statute (Dentists Act, 1921, Section 14 [2], *ante*, p. 129).

The charges for fitting the teeth and operating on the patient's mouth were disallowed.

In Seymour *v.* Pickett (1905), 1 K.B., 715, the important rule was laid down that the section does not make illegal any contract which may have been entered into for dental work to be done, but merely prevents the recovery of the debt by an action in the Courts. The defendant paid a cheque on account of services by an unregistered person, which services were partly for teeth supplied, partly for advice and fitting. The defendant paid a second cheque in complete settlement of the account, but stopped payment of this cheque. The plaintiff appropriated the first cheque to the work for which he could not recover under the Act, and claimed for the supply of the teeth, including mechanical work. It was held that he could do so, though the appropriation was made at the very last moment—*i.e.*, in the witness box.

Veterinary Surgery.—Though the law as laid down in these cases is now obsolete so far as dentists are concerned, it is probable that the decisions would be followed in any action which might be taken under Section 17 (2) of the Veterinary Surgeons Act which disentitles unregistered persons from recovering charges for veterinary operations, attendance, advice, or for acting as a veterinary surgeon or practising any part of veterinary surgery. Before the recognition of veterinary surgery as a profession, in 1844, there was no general usage that veterinary surgeons were entitled to charge for attendance as well as medicines. A farrier (*i.e.*, not a person trained at the Veterinary College,

otherwise he would have called himself a veterinary surgeon) who brought an action to recover charges for attendance on two horses, and for medicines administered to them, was allowed by Lord Ellenborough to recover his whole demand, on the ground that any species of work and labour might be given in evidence on such a claim, and the medicines might be considered as materials employed by the plaintiff in and about the business of the defendant (Clark *v.* Mumford [1811], 3 Camp., 37). Now by the Act of 1881 unregistered persons are not entitled to recover, so that Clark *v.* Mumford is no longer law in so far as it applies to attendance by unregistered persons.

CHAPTER XII

NEGLIGENCE

General.—Negligence in law is the omitting to discharge the duty which the law imposes in a particular case to exercise such skill and care as is usual and reasonable in the circumstances.

Whether a duty exists in the particular circumstances is a question for the judge. The amount of care which is usual and reasonable is a question for the jury.

Professional men may be liable both to prosecution under the criminal law and to actions for damages in respect of negligence, but in order to establish criminal liability the evidence must show that the degree of negligence was so gross as to amount to recklessness. What might amount to actionable negligence in a civil action would not necessarily suffice to warrant a conviction on a criminal charge.

Criminal Liability. — The earliest mention of criminal liability in regard to doctors usually referred to in the lawbooks seems not to deal with negligence happening in the course of ordinary medical treatment. Britton (1290) in the chapter on Homicide (Chapter V.) says: "Et pur ceo que ceste felonie pora estre fete par colour de jugement per male volunte de juge et par autre colour sicum par faus phisiciens et par mauveys

surgiens et par poyson et en meynte maneres, volom nous qe tretouz ceux soint enditez par qi teles covertes felonies ount este fetes."[1]

On this Coke comments as follows: "If one that is of the mystery of a physician take a man in cure and giveth him such physic as within three days he die thereof without any felonious intent and against his will, it is no homicide; but Britton saith that if one that is not of the mystery of a physician or surgeon take upon him the cure of a man and he dieth of the potion or medicine, this is, saith he, covert felony"[2] (Coke, 4 Inst., 251).

But Britton's reference to "faus physiciens et mauveys surgiens" does not aim at distinguishing between regular and irregular practitioners. In his day no such distinction was possible. Britton's aim is to show that whether the felony of homicide is committed under colour of a pretended act of justice by a wicked judge, or under colour of giving physic by persons pretending to be physicians or surgeons, it is nevertheless indictable.

Sir Matthew Hale is in this a better guide than Coke.[3]

[1] "And as this felony can be committed under colour of a judgment by the ill-will of a judge and by other means as by false physicians and bad surgeons and by poison and many other ways, it is our will that all those by whom such covert felonies have been committed should be indicted."

[2] Hullock, B., in R. *v.* Van Butchell (1829), 3 C. and P., 630, interrupted counsel when quoting this passage from Coke, saying, "It is so said in Lord Coke's Institutes undoubtedly, but there has never been any decision of the kind."

[3] "It is not to be expected that in the vast aggregation of authorities of all ages brought together by Coke the true features

He says: "If a physician gives a person a potion, without any intention of doing him any bodily hurt but with an intent to cure or prevent a disease, and contrary to the expectation of the physician it kills him, this is no homicide, and the like of the surgeon. And I hold their opinion to be erroneous that think if he be no licensed surgeon or physician that occasioneth this mischief, that then it is felony. And physic and salves were before learned physicians and surgeons, and therefore if they be not licensed according to the Statute of 3 Hen. VIII., c. 11, or 14 Hen. VIII., c. 5, they are subject to the penalties in the statute, but God forbid that any mischief of this kind should make any person not licensed guilty of murder or manslaughter."[1]

Blackstone's statement of the law is to the like effect, but he too appears to have accepted Coke's summary of Britton without verifying it.[2]

Of the cases of homicide recorded in Bracton's Note Book (*circa* 1218, 1242), none were the result of criminal negligence by doctors. The first mention of such criminal negligence in the Year Books appears to be under date 1368, when it was said by Thorpe, Chief Justice of Common Pleas, that he had seen a case where a doctor was indicted "qu'il avait empris un homme d'un malady et qui occist le homme par defaut de sa cure" (Y.B., 43 Ed. III., f. 33, p. 38). An attempt was made in 1687 to indict a physician for not curing an ulcerated throat of the plaintiff in three weeks

---

of the jurisprudence of more remote times can be discerned" (Maitland, Introd. Bracton's Note Book, xxix.).

[1] Hale, Pl. Cr 429. [2] Bl. Comm., 4, c. 14.

contrary to his undertaking, but the indictment was quashed, the legal remedy, if any, being by civil action (R. *v.* Bradford [1687], 3 Salk., 189, 1 Ld. Raym., 366).

Negligence, in a criminal sense, in order to be culpable, must be of such a nature and of such degree as to convince the jury that it ought to be punished. If a practitioner, qualified or unqualified, bona fide and honestly exercising his best skill to cure a patient, performs an operation which causes the patient's death, he will not be held guilty of manslaughter (R. *v.* Van Butchell [1829], 3 C. and P., 629, 634).

Where, for example, a person was in the habit of acting as a man-midwife, and tore away a part of the prolapsed uterus, thinking it to be a part of the placenta, and his patient died, it was held that there was no evidence to go to the jury to convict of murder, and that to convict of manslaughter the accused must have been proved guilty of criminal misconduct arising either from grossest ignorance or the most criminal inattention. Lord Ellenborough said: "If the jury should find the accused guilty of manslaughter, it would tend to encompass a most important and anxious profession with such dangers as to deter reflecting men from entering into it" (R. *v.* Williamson [1807], 3 C. and P., 635).

But a blacksmith who acted as a man-midwife, and who was drunk and so completely ignorant of the proper steps that he neglected what was absolutely necessary after the birth of the child, was convicted of manslaughter. There Tindal, C.J., said to the jury: "You are to say whether, in the execution of that duty which the prisoner had undertaken to perform, he is proved to

have shown such a gross want of care, or such a gross and culpable want of skill, as any person undertaking such a charge ought not to be guilty of, and that the death of the patient was caused thereby" (R. *v.* Ferguson [1834], 1 Lewin., 181).

The notorious quack St. John Long, who had already been convicted of manslaughter and fined £250, was in 1831 again indicted for the manslaughter of a woman by the application of a corrosive liquid to her body. This time he was acquitted. Parke, B., put it to the jury that if a man be guilty of gross negligence in attending to his patient after he has applied his remedy, or of gross rashness in the application of it, and death ensue in consequence, he will be liable to a conviction for manslaughter. "But," he added, "it would be a dreadful thing if a man were to be called in question criminally whenever he happened to miscarry in his practice. There must be either gross ignorance or gross inattention to the patient's safety" (R. *v.* St. John Long, [1831], 4 C. and P., 423. For the previous prosecution of Long, see 4 C. and P., 398).

On the question of negligence by unqualified persons, Bayley, J., said in R. *v.* Nancy Simpson (1829), 4 C. and P., 407, 1 Lew., 262: "If a person not of medical education, in a case where professional aid might be obtained, undertakes to administer medicine which may have a dangerous effect, and thereby occasions death, such person is guilty of manslaughter. There may be no evil intention, there may be even a good one, but an unregistered practitioner has no right to hazard the consequences in a case where qualified medical

treatment may be obtained." This dictum deserves emphasis.

It might well be, however, that the treatment given by the unqualified person was no other than would have been given by a qualified man, and proof of that fact would negative any allegation of negligence. But the Court will not go into instances of former cures treated by the prisoner (R. *v.* Whitehead [1848], 3 C. and K., 202). Yet where an unqualified person took upon himself to treat a child of two years who had been attended unsuccessfully by two physicians and a surgeon for a disease of the scalp, and applied a plaster of corrosive and dangerous ingredients, so that the child died from the injuries so caused, the jury found a verdict of not guilty. Bolland, J., had, however, correctly stated the law, saying that "Any person, qualified or unqualified, who takes on himself to treat patients, is bound to show competent skill, and to treat his patients with care and attention and assiduity, and if a patient dies for want of either, the practitioner will be guilty of manslaughter" (R. *v.* Spiller [1832], 5 C. and P., 333).

Two years later another case of malpractice by an unqualified person brought about the death of the patient. Webb, a publican and an agent for Morison's pills, prescribed a dose of twenty pills at a time as a cure for smallpox, the pills containing aloes, gamboge and other noxious substances. In this case proper medical attendance could have been had, but a person totally ignorant of medicine took upon himself to administer a violent and dangerous remedy to a sick man, and the

judge left it to the jury to say (1) whether death was occasioned or accelerated by the medicine administered ; (2) whether in so administering the medicine the accused acted with a criminal intention or from very gross negligence. A verdict of guilty was given (R., *v.* Webb [1834], 1 M. and Rob., 405. 2 Lew., 196).

A wheelwright, suffering from carcinoma of the lip, had been treated by a surgeon, but when a second growth appeared the surgeon declined to operate again, saying it would be fatal to do so. A blacksmith then took on the cure, and administered corrosive sublimate to the cancer ; the patient died, after nine days of great agony. On the prisoner being tried for manslaughter the judge directed the jury to find him guilty if they thought he took the responsibility of treating the cancer when he was not qualified for the purpose, for if he used dangerous applications he was bound to bring proper skill to their use, and the prisoner's want of education made the use of this dangerous substance almost amount to a want of skill. The blacksmith was found guilty, and sentenced to three months' imprisonment (R. *v.* Crook [1859], 1 F. and F., 521).

A herbalist who administered a dangerous medicine and caused the death of a child was acquitted because no negligence was proved and the child had for a time been better after the medicine. The Court directed the jury that "it would be fatal to the whole efficiency of the medical profession if no one could administer medicine without a halter round his neck" (R. *v.* Crick [1859], 1 F. and F., 519). Both in this case and in those of Williamson and St. John Long, where so much

judicial solicitude is expressed for the practitioners of medicine, the accused were quacks.

If, however, an unregistered person, owing to his ignorance of the properties and scientific application of dangerous drugs, administers an improper dose, this degree of ignorance makes him criminally liable (R. *v.* Webb, *supra*); yet a herbalist who prescribed for a cold an ounce of bruised colchicum seeds dissolved in brandy, one tablespoonful to be taken—about forty times the proper dose!—and whose patient died from sickness and exhaustion in two days, was acquitted by the jury. Willes, J., said in this case: "A person who, with ignorant rashness and without skill in his profession, used such a dangerous medicine, acted with gross negligence. . . . If a man knew that he was using medicines beyond his knowledge, and was meddling with things above his reach, that was culpable rashness. A person who so took a leap in the dark in the administration of medicine was guilty of gross negligence" (R. *v.* Markuss [1864], 4 F. and F., 356).

Another herbalist who administered arsenical ointment to a woman having a tumour, but gave her no caution or directions as to its use, would have been found guilty of culpable negligence if it had been proved either that he did not know the effect of the ointment, or knowing it neglected to give adequate directions (R. *v.* Chamberlain [1867], 10 Cox, Cr. C., 486).

The above are all cases against unqualified persons, but there is no difference between the licensed and the unlicensed person holding himself out as licensed, in regard to liability for negligence.

If a qualified medical man cause the death of a person by grossly unskilful or grossly incautious treatment, he is guilty of criminal negligence. Spilling, in attending a woman in childbirth, improperly used a dangerous instrument and inflicted such injuries that she died in three hours. He was found guilty of manslaughter (R. *v.* Spilling [1838], 2 M. and Rob., 107).

But a qualified medical man who administered strychnine by mistake for another drug was acquitted because there was no proof of such gross and culpable negligence as would amount to a culpable wrong and show an evil mind (R. *v.* Spencer [1867], 10 Cox Cr. C., 525).

Mistakes by chemists in supplying poisonous drugs in place of drugs ordered led to criminal prosecutions in R. *v.* Tessymond (1828), 1 Lew., 169, and in R. *v.* Noakes (1866), 4 F. and F., 920, and in both cases the jury were warned that a verdict of manslaughter could only be given if there was such a degree of negligence as the law meant by the word "felonious."

A mere error of judgment will not be held to be culpable negligence. So where a medical man gave prussic acid to his mother in error, and it did not appear distinctly that the quantity was too great to be safe, he was acquitted, though the dose killed her almost immediately (R. *v.* Bull [1860], 2 F. and F., 201). And where a doctor administered an overdose of morphine to his wife, Denman, J., directed the jury that if they were satisfied that death was caused by morphine, and if it was administered without proper skill and caution, and without a proper knowledge of

morphine by the accused, that would be clear negligence, and if so manslaughter. But if the drug was administered without want of skill and intending to do for the best, and if the jury thought it was some error of judgment which anybody might have committed, the accused should be acquitted (R. *v.* MacLeod [1874], 12 Cox Cr. C., 534).

To justify a charge of criminal negligence in administering medicine it is not sufficient to show some want of care and caution; there must be gross negligence and want of that degree of skill which everybody who undertakes the exercise of any particular profession is bound to bring to each particular case (Tindal, C.J., in Edsall *v.* Russell [1842], 4 M. and G., 1090, 1099).

Civil Liability.—The civil liability of doctors arises out of the early rule that "it is the duty of every artificer to exercise his art right and truly as he ought" (Fitzherbert, Natura Brevium, 94D, 208D). A breach of this duty would in very early times be reported by the Gilds to the Mayor and Aldermen in the City. In 1354 the Masters of the Surgeons Gild were sworn before the mayor and aldermen and sheriffs to certify "as to a certain enormous and horrible hurt on the right side of the jaw of Thomas de Shene appearing, whether or not such injury was curable at the time when John le Spicer of Cornhulle took the same Thomas under his care to heal the wound." The surgeons on oath said that "if John le Spicer . . . had been expert in his craft or art, or had called in counsel and assistance . . . he might have cured the injury"; and they further said "that through want of skill on

the part of the said John le Spicer the injury under his care had become apparently incurable."[1] The liability of the apothecary was clear.

The farrier who shod horses was as early as 1372[2] considered to have assumed a "common calling" like that of an innkeeper or a carrier, who were liable by the custom of the realm if, on being tendered reasonable remuneration, they did not perform their duties and carry them out with care and skill. But charges of negligence against the "Mareschal" who treated horses for injuries or diseases, or against physicians or surgeons, did not in the earliest cases succeed unless it could be proved that the defendant actually began the treatment and did it badly. The action was an action on the case in tort, and was begun by a writ originating under the clause "In consimili casu" of the statute of Westminster II., 1285.

Amongst the earliest cases in the King's Bench may be noted that of a "Marshall," the forerunner of the veterinary surgeon, who was sued by William de Waldon in 1369 for that he so negligently treated a horse as to cause its death (Y.B., 43 Ed. III., f. 33, pl. 38). In the case of surgeons, the fellowship or gild was required in 1369 to report their lack of skill to the mayor and aldermen at Guildhall (see p. 16). But a case came before the King's Bench in 1374 on a writ of trespass on the case against J. Mort, surgeon, who had undertaken to cure a wounded hand, but by reason of the negligence of the surgeon "the plaintiff's hand was so impaired that it was maimed to his injury

[1] Riley, 273. [2] Y.B., 46 Ed. III., f. 19, pl. 19.

and damage." Here the defendant escaped because the plaintiff had brought a defective writ, but it was clearly laid down that if negligence was proved the law will give a remedy. If, however, the surgeon does as well as he can and employs all his diligence to the cure, "it is not right that he should be held culpable" (Y.B., 48 Ed. III., f. 6, pl. 11).

In 1433 another case in the King's Bench was heard between the Prior of Gisburne and Brother Richard Ayreton, his Canon, and Mathew Rillesford of York, a "Leche." The writ alleged that the said Mathew had undertaken well and competently to cure a certain infirmity in Richard's left leg for a certain sum of money, to wit 40s. paid to him at Gisburne, yet Mathew so neglected his cure that the leg became putrid and corrupt, and Richard despaired of his life to the damage of the Prior and of Richard of £40. The defence was an alleged agreement that all disputes between the parties were to be submitted to the arbitration of Robert Belton, an apothecary, who had decided that Mathew should apply his remedies and cure to Richard under Belton's supervision, and that the Prior and Richard should relinquish all actions against Mathew up to the date of the arbitration. The plaintiffs denied the arbitration, and the matter went to the jury, with what result we do not know (De Banco, Mich., 12 Hen. VI., m. 615, Yorks. Arch. Soc. Rec., Ser. XVII. [1894], p. 78). This is an interesting case as showing that the surgeon was willing to take instructions from an apothecary and that arbitration was resorted to.

In 1441 another "Marshall" was sued for having

taken upon himself to cure a horse of a certain disease and that "adeo negligenter et improvide imposuit medicinas suas" that the horse died. The case went to the jury on the question whether the Marshall had really undertaken the cure (Y.B., 19 Hen. VI., f. 49, pl. 5).

In 1472 in an action of deceit on the case, Choke said: "If a man undertakes to cure me of a certain malady and if he gives me a medicine which makes me worse, I shall have an action on my case against him" (Y.B., 11 Ed. IV., f. 6, pl. 10).

The Court of Chancery was also appealed to in matters of surgical negligence, as the following case shows: Ralph Fryday prayed for a writ in Chancery directing John West of Leicester to appear before the King in Chancery under pain of £40 to be examined by the surgeon of our lord the King and by other efficient surgeons for that, having undertaken at Wigston well and truly to cure and save Ralph's arm which had been broken, he had set about his cure so improperly through the malice and covin of the enemies of the suppliant that the arm mortified and became incurable.

The suppliant gave as his reason for his request for such a writ that he could have no remedy at common law, unless he was aided in this way by reason of the great maintenance against the suppliant in those parts. His remedy would of course have been by writ of trespass on the case in the King's Bench (Sel. Cas. in Chancery, S.S., p. 123, case 128 [1435]).

On other special grounds Peter Blank, a surgeon, who had had an action of trespass brought against him,

prayed for the interference of the Chancery. His petition is as follows :[1]

To the most reverend Father in God John Cardenall Archebisshop of Caunterbury and Chaunceller of Englond,

Shewith unto your moste gracious lordshipp Petyr Blank, Surgeon, that whereas in the viith yere of the reigne of the Kyng our sov'agne lord, Simon Lynde of London, stacioner, having a child which was diseased in the ie w^t^ a pynne and a webbe, willyd and desyred yo^r^ seyd oratour to cure the seyd child, and thereupon yo^r^ sayd oratour indevored hym self to do all that was in hym to cure the same child, and so p'mysed to do, so that the seyd Simon wold cause the seyd childe to be p's'ved and kepte from mysbehavyng hym self w^t^ his hands in toching and robbyng of the seyd ie, and so ministred medecynes unto the seyd child and so it was, most gracious lord, that the same child for lak of due kepyng and diligent attendance misbehavyd hym self w^t^ his hands in suche wise that yo^r^ seyd oratour cowde not do his cure in saving of the seyd ie, whereuppon the seyd Simond, for very malice brought an action of trespas ageynst the seyd Petyr before the Shireves of London in the seyd viith yere and the seyd Simond, seying then that he cowde not justifye the seyd action, ne opteyn his p^r^pose in that behauf, discontynued his sute, and nev^r^ callyd uppon the seyd action, and intendyth to have yo^r^ seyd oratour condempnyd, and theruppon p'poseth to have execuc'on ageynst oon Aldebrandyn merchaunt of Jeane, whiche is oon of the suertees of yo^r^ seyd oratour, contrary to all reason and good conscience, in consideracion whereof it may please yo^r^ seyd grace, the p'missis considered, to graunt a certiorari to be directyd to the seyd shireffs,

[1] Proc. in Chancery in the reign of Henry VII. (*circa* 1492-1500), vol. i., cxxiv.

co'maunding theym by the same to c'tyfye the seyd action before the Kyng in his Chaunc'ry there to be examyned and det'myned according to conscience.

Negligence in the sense that the physician omitted to attend the patient was never a good ground of action, unless he had already taken the cure in hand and then by neglect discontinued his treatment. There is, however, a case where a physician, who had a life contract to attend to a patient for £20 a year and sued for his fee, seems to have failed on the ground that he had given no services. Simon of Bredon, Doctor of Physic, sued the Prior of Lewes for payment of an annuity of £20 which was granted to him for the term of his life "pro consilio et auxilio suo habendo." Simon had refused to go when called in by the Prior, alleging that the deed did not say he was to travel to the Prior, but to give him counsel, and that the Prior must come to him. The case was adjourned, and though, on analogy of a previous similar case where a "man of law" was held not compelled to travel to his client (10 Ed. III., f. 34, pl. 33), it was urged that judgment should be given in favour of the physician, it was again adjourned and no decision seems to have been recorded (Y.B., 41 Ed. III., f. 6, pl. 14, and Y.B., 43 Ed. III., f. 19, pl. 3).

These old cases have been set out at some length to show the nature of the responsibility laid upon doctors and marshals in these early days. The reports are more concerned with the nature of the pleadings than the result, and in some cases it is clear that the defendant must have succeeded in escaping liability

on the ground that there was no proof of an actual "undertaking" of the work.

In 1597, however, it was clearly laid down that the negligence, and not any undertaking in the sense of contract or consideration, was the essence of the action. A farrier undertook to cure a horse, but so negligently and carelessly carried out his treatment that the horse died. His negligence was held to be the ground of the action, and not the undertaking[1] (Powtuary *v.* Walton, Trin., 39 Eliz., B.R., 1 Roll. Abr. 10, pl. 5).

It follows that in an action of negligence the person injured has the right of action, irrespective of any question of contract. This point was made clear in Pippin and Wife *v.* Sheppard (1822), 11 Price, 400, where a surgeon was sued for an injury to the wife by improper and unskilful treatment, and demurrer was made because it was not stated in the averment that the defendant was retained and employed as a surgeon for reward, by whom he was so retained, or by whom he was to be paid, nor was it stated that the defendant undertook . . . properly and skilfully to conduct himself in and about the treatment. This was held to be no ground for a demurrer; it was sufficient to aver that the defendant was retained as a surgeon and entered upon the cure. Richards, L.C.B., said: "The defendant being a surgeon undertakes to the

[1] "Si un farrier assume sur lui a curer mon chival que est gravelled en ses pies, et puis ita negligenter et improvide heald le dit chival que ceo morust, action sur le case gist sur cette matter sans alleger aucun consideration car son negligence est le cause del action et nemy l'assumpsit."

public to cure wounds and other ailments of the human system, and professes himself ready to be employed by any one for that purpose. The only person who can properly sustain an action for damages for an injury to the person of the plaintiff is the plaintiff himself, for damages could not be given on that account to any other person." This case was followed in Edgar *v.* Lamont (1914), S.C., 352.

Even an infant has a cause of action against a doctor for misfeasance, as was settled by the case of Gladwell *v.* Steggall (1839), 5 Bing. N.C., 733, where it was held that it was immaterial by whom defendant was employed, and that if material, plaintiff's submission to the defendant's treatment was sufficient proof of the allegation of employment by her.

A further step forward in the definition of liability for negligence is made in the case of Slater *v.* Baker and Stapleton (1769), 2 Wils., 369, where an omission to follow the general rule of the profession with regard to a method of operation was held to be sufficient evidence of negligence to warrant a verdict for the plaintiff.

Mr. Baker, who had been first surgeon at St. Bartholomew's Hospital for twenty years, was sued by Slater, who alleged that he had employed him as a surgeon with Stapleton, an apothecary, to cure his leg which had been broken and set, and that Baker had "ignorantly and unskilfully" broken and disunited the callus after it was formed, by a procedure contrary to the rule of the profession, and that plaintiff had not been told beforehand what was to be done. It appeared

that this procedure was in the nature of an experiment,[1] and if so it was held to be a rash action. "He who acts rashly acts ignorantly, and although the defendants in general may be as skilful in their respective professions as any two gentlemen in England, yet the Court cannot help saying that in this particular case they have acted ignorantly and unskilfully contrary to the known rule and usage of surgeons." The plaintiff was awarded £500 damages.

So severe a rule is not, however, applied to anyone who, though unqualified, acts gratuitously and on request. "If the patient applies to a man of a different employment for his gratuitous assistance, who either does not exert all his skill, or administers improper remedies to the best of his ability, such person is not liable. It would be attended with injurious consequences if a gratuitous undertaking of this sort should subject the person who made it, and who acted to the best of his ability and knowledge, to an action (Heath, J., in Shiels *v.* Blackburn [1789], 1 Hy. Bla., 157. See also R. *v.* MacLeod, *supra*, p. 262).

The unlicensed person is not liable for mere lack of skill, but the surgeon, even if he acts gratuitously, is liable for lack of reasonable skill, because his licence implies skill in surgery. Where a surgeon was employed to reduce a dislocated elbow, and fractured the arm of the plaintiff by alleged negligent and unskilful manipulation, the judge had directed the jury that unless negligence was proved, they could not examine into want of skill. The verdict was in favour of the

[1] *Vide* Groenvelt's case (p. 75).

defendant, and a motion for a new trial was lost because no want of skill had been imputed to the defendant by the evidence. Yet if want of reasonable and proper skill had been proved, there would have been an action, for even "the farrier who undertakes to cure my horse must have common skill at least in his business, and that is implied in his undertaking" (Seare *v.* Prentice [1807], 8 East, 348).

But if no negligence or gross incompetence is proved, the law will not hold either the qualified or the unqualified person liable either civilly or criminally.

Liability will depend neither on the absence of qualification nor on the absence of special competence, but only on the proof of negligence. But the undertaking of a task for which a man has no skill or competence may be held to be such rashness as to be gross negligence. A plea of ignorance will not excuse the unqualified man if such negligence is proved, and the qualified man will not be able on his qualification alone to defeat an allegation of negligence.

It is not enough, however, to render a medical man liable for negligence to prove that he has shown less skill than some other medical man might have shown, or a less degree of care than even he himself might have bestowed, nor is it enough that he himself acknowledges some degree of want of care. There must have been a want of competent and ordinary care and skill and to such a degree as to have led to a bad result (Rich *v.* Pierpoint [1862], 3 F. and F., 35, 40).

These two qualities, skill and care, may be further examined separately.

Degree of Skill Required.—A person holding himself out as a physician, surgeon, dentist, or veterinary surgeon impliedly warrants his possession of reasonable skill and competence to act in his profession. It is an undertaking to all the world that he possesses the required skill and ability (Harmer *v.* Cornelius [1858], 5 C.B.N.S., 236).

He will therefore be liable for negligence if he in fact lacks that degree of skill. The rule is "spondet peritiam artis, et imperitia culpæ adnumeratur." The rule applies to qualified and unqualified alike, with the reservation that in the case of an unqualified man, if he has led the patient to think him qualified, he will be required to show the skill of a qualified man, whereas if the patient knows him to be unqualified he will be liable only for such skill as might reasonably be expected of an unqualified man in the circumstances, or the skill which he professed or announced himself to have (Dickson *v.* Hygienic Institute [1910], S.C. 352, Court of Session [a dental case]).

The degree of skill expected will vary according to the status of the practitioner, what is reasonably to be expected in the circumstances being the criterion. This is clearly stated by Tindal, C.J., in Lanphier *v.* Phipos (1832), 8 C. and P., 475, 479: "Every person who enters into a learned profession undertakes to bring to it the exercise of a reasonable degree of care and skill; he does not undertake if he is an attorney that at all events you shall gain your case, nor does a surgeon undertake that he will perform a cure, nor does he undertake to use the highest possible skill.

There may be persons who have a higher education and greater advantages than he has, but he undertakes to bring a fair, reasonable and competent degree of skill," and in an action against him by a patient the question for the jury is whether the injury complained of must be referred to the want of a proper degree of skill in the defendant or not.

There may thus be said to be three degrees of skill —(1) of the unqualified, (2) of the qualified, and (3) of the specialist; because it is reasonable to expect a higher degree of skill from the qualified than from the unqualified, and a higher degree still from the specialist.

The quack, however, frequently pretends to be a specialist, and to put himself on a higher plane than a mere general practitioner. If he falsely and fraudulently holds himself out as duly qualified and competent to cure and by so doing induces the patient to consult him instead of a duly qualified medical man, the patient will be able to obtain substantial damages for injury due to his negligence and want of skill (Johnson *v.* Halls Hygienic Co., *The Times*, February 24, 1908, p. 15). The jury may, however, take into consideration the fact that the plaintiff voluntarily submitted to the treatment of an unskilled person (Jones *v.* Fay [1865], 4 F. and F., 525). The unqualified man may have to prove that the injury is not due to his incompetence and improper treatment (Ruddock *v.* Lowe [1865], 4 F. and F., 519).

Degree of Care Required.—Beyond skill, there must be reasonable care. It would not be held to be

negligence if a man did not exert his utmost care. He must, however, be able to prove that he showed such care and diligence as would be displayed by other practitioners of the same grade as himself in similar circumstances.

Part of his duty of care is in providing himself beforehand with the consent of the patient to an operation (Slater *v.* Baker, *supra*). Even in examining a patient the doctor must not act without the patient's consent, but in order to succeed in an action for assault it has been held that a woman patient must prove that the doctor used threats of force or violence, or that she had reasonable cause to believe that he was threatening violence (Latter *v.* Braddell [1880], 50 L.J. (Q.B.), 166). But if during the course of an operation the surgeon finds conditions which necessitate a more extensive operation than has been consented to, he will not be liable if, in order to save the patient's life, he exceeds the permission given to him (Beatty *v.* Cullingsworth, *The Times*, August 11, November 17 and 18, 1896; *British Medical Journal*, November 21, 1896).

He must give the patient, or the nurse in charge of the patient, all necessary instructions and warnings as to the nature of the medicines supplied or instruments used. He will not, however, be held responsible for the negligence of nurses or attendants, who, in their own sphere of duties, must be held liable (Perionowsky *v.* Freeman [1866], 4 F. and F., 977). The care of hot-water bottles, for example, is within the nurse's duties, and in a case where the nurse was

employed and paid by the patient, and by her alleged negligence in placing a hot-water bottle the patient was injured, the surgeon operating was not held responsible (Beckh *v.* Sinclair, *The Times*, November 3, 1927).

A medical man may render himself liable to damages if through gross negligence or remissness he induces or permits a patient to continue under a course of treatment which, though beneficial at first, becomes injurious and dangerous if continued too long. Where a doctor ordered certain treatment and promised to call again, but omitted to do so, and serious consequences followed, he was held liable (Farquhar *v.* Murray [1901], 3 F., 859-864, 38 Sc.L.R., 642). A doctor would not, however, be liable if the failure of his treatment was due solely to some particular constitutional defect of the patient which he had not diagnosed, if its existence might reasonably have escaped discovery (Hancke *v.* Hooper [1835], 7 C. and P., 82).

No responsible surgeon should, however, undertake a task if the circumstances are unfavourable, without giving due warning. Pollock, C.B., in an unreported case of negligence in 1833 against a farrier for pricking a horse, said: "If you go to any place and call in a surgeon or a farrier or any person to perform an operation, if the time is inconvenient and if the light be not sufficient, and if the occasion be not suitable, he is bound to say 'I will not do it.' If he does it, he is answerable unless, indeed, he distinctly and explicitly says, 'I do it at your urgent request, but I will not be

responsible for the consequences '" (Collins *v.* Rodway, *Veterinarian*, vol. xix., p. 102).

A surgeon is responsible for an injury to a patient proved to be due to want of proper skill in his assistant, for he is bound to avoid introducing into his practice persons not of competent skill (Hancke *v.* Hooper [1835], 7 C. and P., 82).

Dentists.—The duty of dentists is the same as that of medical men, but there appear to be few reported cases. They must show such reasonable skill and care as is normally to be expected from qualified practitioners. A dentist must, moreover, look to the consequences of any untoward accident during his treatment, and take steps to avoid them. An action was brought by a father for damages for the death of his daughter, due to alleged negligence on the part of the dentist in extracting teeth. A tooth slipped down the patient's throat, and the dentist omitted to take steps to find out where it had lodged. It had in reality passed down the windpipe into the lung, causing pneumonia, and death supervened after an operation. McCardie, J., laid it down that the duty of dentists in such a case is to tell the patient what has happened, and to take steps by X rays to locate the foreign body, and have it removed if it were in a place of danger to the patient (Cooper *v.* Mirron, *The Times*, June 22, 1927).

Veterinary Surgeons.—The same degree of skill is required of veterinary surgeons as of doctors and dentists (Barney *v.* Pinkham [1890], 26 Am. St. Rep., 389). It was held in the County Court of Penzance

that a veterinary surgeon who after a negligent examination gives to an intending purchaser a certificate stating that a horse or other animal is sound may be held liable to the purchaser for damages through his horse being unsound. But it must be proved that he had acted as no intelligent and properly qualified veterinary surgeon would have done, and did not exercise a reasonable amount of skill and intelligence (Mann *v.* Stephens [1881], before Montague, Q.C., *Veterinarian*, vol. liv., p. 655). This rule is in accordance with the ordinary principles of the law of negligence; if the veterinary surgeon exercises care and skill he will not be liable for a mere error of judgment (Clements *v.* Stanley [1881], *Veterinarian*, vol. liv., p. 142).

Summary—Civil and Criminal Liability.—The law relating to the liability of medical men for negligence is summarized by Hewart, C.J., in R. *v.* Bateman, C.C.A., 94 L.J. (K.B.), 791, 41 T.L.R., 557; 133 L.T., 730; 19 Cr. App. R., 8; 89 J.P., 162. Referring to *Civil Liability*, he says:

"If a person holds himself out as possessing special skill and knowledge and he is consulted as possessing such skill and knowledge by or on behalf of a patient, he owes a duty to the patient to use due caution in undertaking the treatment. If he accepts the responsibility and undertakes the treatment accordingly, he owes a duty to the patient to use diligence, care, knowledge, skill and caution in administering the treatment. No contractual relationship is necessary, nor is it necessary that the services be rendered for reward. It

is for the judge to direct the jury what standard to apply and for the jury to say whether that standard has been reached. The jury should not exact the highest or a very high standard, nor should they be content with a very low standard. The law requires a fair and reasonable standard of care and competence. This standard must be reached in all the matters above mentioned.

"If the patient's death has been caused by the defendant's indolence or carelessness, it will not avail to show that he had sufficient knowledge, nor will it avail to prove that he was diligent in attendance if the patient has been killed by his gross ignorance and unskilfulness.

"As regards the cases where incompetence is alleged . . . the unqualified practitioner cannot claim to be measured by any lower standard than that which is applied to a qualified man.

"As regards cases of alleged recklessness, juries are likely to distinguish between the qualified and the unqualified man. There may be recklessness in undertaking the treatment, and recklessness in the conduct of it. It is no doubt conceivable that a qualified man may be held liable for recklessly undertaking a case which he knew or should have known to be beyond his powers, or for making his patient the subject of reckless experiment; such cases are likely to be rare. In the case of the quack, where treatment has been proved to be incompetent and to have caused the patient's death, juries are not likely to hesitate in finding liability on the ground that the defendant undertook and continued

to treat a case involving the gravest risk to his patient when he knew he was not competent to deal with it, or would have known if he had paid any proper regard to the life and safety of his patient."

With regard to *Criminal Liability* he says: "To support an indictment for manslaughter the prosecution must prove the matters necessary to establish civil liability (except pecuniary loss), and in addition must satisfy the jury that the negligence or incompetence of the accused went beyond a mere matter of compensation between subjects, and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving of punishment. . . . The issue is not negligence or no negligence, but felony or no felony."

Put more concisely:

In a civil action, where A has caused the death of B, the plaintiff must prove (in addition to pecuniary loss)—

(1) that A owed B a duty to take care;
(2) that the duty was not discharged, and
(3) that the default caused the death of B.

If it is proved that A fell short of the standard of reasonable care required by law, it matters not how far he fell short of that standard. The extent of his liability depends not on the degree of negligence, but on the amount of damage done.

In a criminal prosecution, the prosecution must prove the three things above mentioned and must satisfy the jury in addition—

(4) that A's negligence amounted to a crime.

The amount and degree of negligence are here the determining questions.

Influence of the Jury—Criminal Cases.—That is the theory of the law as judges must expound it to juries. It is for the jury to find whether negligence was in fact shown, and if they have been properly directed and there was evidence which if they believed would support their finding, once their verdict has been given no appeal against it will succeed. Yet the verdict of a jury is a variable criterion. It may, as Lord Hewart suggests, show discrimination in favour of the plaintiff where an incompetent quack has caused a patient's death. It will sometimes, however, on a criminal charge be more merciful to the unqualified than to the qualified man, as in the case of a herbalist who, for the purpose of removing teeth, administered chloroform to a patient after she had had a heavy meal, in consequence of which she died in a few minutes. No other person was present to render assistance. On an indictment for manslaughter the jury were directed by Wright, J., that the prosecution was perfectly proper; it had called attention to the dangerous results that may arise from allowing ignorant persons to practise a skilled profession. The question was whether it had been made out that this man was administering what he knew or ought to have known was a dangerous drug without taking the necessary precautions of having assistance ready and of properly preparing the patient as he ought to have known were necessary. The jury must say whether he was guilty of criminal negligence in using chloroform when he did not know

more about it. After two and a half hours the jury were unable to agree, their difficulty being, in the words of their foreman, "We think the indictment is too hard." The judge then explained that if a majority was in favour of the prisoner he was entitled to the benefit of any doubt, and the jury then returned a verdict of not guilty (R. *v.* Priestley [1896], *The Times*, March 11, 1896; *Lancet*, 1896, i., 1730). In a case like this any duly qualified medical man or dentist who without any assistance administered chloroform to a patient sitting in a chair with a stomach full of food would almost certainly be held to be guilty of gross negligence.

Civil Cases.—Moreover, in civil cases involving a nice discrimination between (*a*) what is mere error of judgment in a difficult matter (which would not be actionable), and (*b*) what is a sufficient departure from the reasonable care and skill which the physician or surgeon must show, to constitute actionable negligence, it is, in the words of Scrutton, L.J., "a matter very difficult to explain to a jury, and very difficult for a jury, who are not professional men themselves and have to have professional matters explained to them, to follow" (Tyndall *v.* Alcock, *The Times*, March 14, 1928).

In that case a little girl's arm, which had been broken at the elbow, was set by a surgeon who took the precaution of performing the operation with the assistance of a radiologist. A skiagram was taken before the operation, and while the doctor was manipulating the arm to bring the bones together the X rays were used to show him how to reduce the fracture, and lastly when

the arm was strapped up a further X-ray view was obtained which seemed to the doctor and the radiologist to show that the arm was properly set. It happened, however, either from something which occurred before the doctor tried to set it, or from something caused by his not sufficiently reducing it, or from the slipping of a bone after he had properly set it, that Volkmann's contracture supervened and the arm became paralyzed. The evidence as to what was the exact meaning of skiagraphs produced was very conflicting, and the jury had difficulty in reaching a unanimous verdict. It would seem that they wished to provide some compensation for the little girl, whose promising career as a pianist had thus been cut short, without saying positively that the doctor was negligent. It was only after it was explained to them that a verdict for the plaintiff must inevitably involve a verdict against the defendant that they brought in a verdict of negligence against the doctor, with damages assessed at £1,500. The Court of Appeal, on the ground that there had been no misdirection by the judge, and there was evidence which if the jury believed would justify their verdict, refused to send back the case for retrial.

In these cases, therefore, where injury happens to the patient, the verdict of the jury is the variable factor which makes it impossible to draw a line showing clearly where the doctor will be exonerated from blame and where he will be involved in the payment of damages.

Secrecy.—A medical practitioner must keep secret all things affecting his patients which may come to his knowledge in the course of his practice. Without the

consent of his patient he must disclose nothing, and he would be wise to have the consent in writing. It was held in A B *v.* C D (1851), 14 D. (Court of Sessions), 177, that secrecy is an essential condition of the contract between a medical man and his employers, and that every breach of secrecy affords a relevant ground for an action of damages. In the case of Kitson *v.* Playfair, where Dr. Playfair had communicated certain information concerning Mrs. Kitson to her relatives, he was held guilty of a breach of the implied covenant of secrecy, and damages were assessed at £12,000 (*The Times*, March 23, 24, 25, 26, 27, 28, 31, and May 1, 1896).

The doctor must, however, reveal what he knows if required in a court of law (Duchess of Kingston's case, [1776], 20 St. Tr. 355, 537, and R. *v.* Gibbons [1823], 1 C. and P., 97). As a witness he is absolutely privileged in giving evidence pertinent to the case, and cannot be subjected to an action of damages for slander for what he says in a court of justice (A B *v.* C D [1905], 7 Fraser [Court of Sessions], 72).

The question is, however, still in process of settlement, and a Bill was introduced in Parliament in 1927 for the purpose of giving to medical men in certain cases the privilege of the attorney. The immediate question arose on the interpretation of the Public Health (Venereal Diseases) Regulations, Article II. : " All information obtained with regard to any person treated " at a venereal disease clinic " shall be regarded as confidential." A circular accompanying these regulations lays it down that it is essential for the

success of any measures designed to deal with venereal diseases that patients should be fully assured as to the secrecy of the arrangements. In an anonymous case, where a wife petitioned for a divorce, a doctor was subpœnaed to give evidence concerning the treatment of her husband in a hospital for venereal diseases. He protested against giving evidence in view of the regulations mentioned, but McCardie, J., though he agreed that the medical profession was normally under the duty of keeping inviolate the secret knowledge that its members might gain from treating patients, insisted that in a court of law the doctor had no privilege similar to that of a solicitor, and must answer questions put to him as a witness. With regard to the regulations enjoining secrecy, McCardie, J., said: "Doctors are not in a specially privileged position because they are acting in a department under control of the Ministry of Health through the local health committees. Nothing in the regulations saved a doctor from the obligation of disclosing, if ordered by the Court, all the information he might have of the facts he had gained while acting under the regulations" (*The Times*, July 19, 1927).

The doctor is therefore torn between two loyalties. The official regulations under which he acts enjoin strict secrecy; the law courts insist on full disclosure. The regulations are made in the interest of the health of the community, for confidence in the doctor's secrecy is essential to the success of the scheme. The rule of the Court is equally in the interests of the community, for in matrimonial causes it may be a matter

of the life and death of the appellant that he or she should prove the grounds on which he or she seeks either separation or divorce. The difficulty can perhaps only be solved if the doctor, when subpœnaed as a witness, is allowed to make a secret statement to the judge, and without appearing in Court.

Negligence in Certifying Lunatics.—Under the Lunacy Acts medical practitioners are called upon to examine patients alleged to be lunatics, and to certify whether or not they ought to be detained in an institution for lunatics. It is not within the scope of this treatise to consider in detail the requirements of the lunacy laws, but the duties laid upon medical practitioners by these Acts are so important, involving as as they do the assumption of responsibility, in part at least, for depriving a person of his liberty, that some consideration must be given to the ways in which a practitioner may become involved in an action for negligence. The relevant sections of the Lunacy Acts are given in the Appendix to this chapter.

The Lunacy Act of 1890 was passed for the purpose *inter alia* of protecting medical men and others against vexatious actions where they have acted in good faith, and, in order to give security against any possible abuse of the discretion given to medical men, a judicial inquiry was provided for and a judicial decision required before a person could be permanently confined as a lunatic. In spite of these provisions medical men are frequently subjected to vexatious actions in the Courts.

The practitioner must, of course, exercise "reason-

able care" in satisfying himself that the person is of unsound mind and needs to be detained in an institution under care and treatment. He must also, in his own interests, exercise the greatest care in making out his certificate, though carelessness in this respect does not necessarily prove that he was careless in his examination.

If a medical practitioner signs a certificate without taking reasonable care and making a proper examination, he is liable for the consequences to the patient (Hall *v.* Semple [1862], 3 F. and F., 337). This was, however, before the protection given by Section 330 of the Lunacy Act, 1890, and in this case Crompton, J., said to the jury: "Take me then as telling you that if a medical man assumes under the statute (16 and 17 Vict., c. 96) the duty of signing a certificate of insanity which is untrue without making and by reason of his not making a due and proper examination and such inquiries as are necessary, and which a medical man in such circumstances ought to make and is called upon to make, not in the exercise of the extremest possible care, but in the exercise of ordinary care, so that he is guilty of culpable negligence, and damage ensue, then that an action will lie, although there has been no spiteful or improper motive, and though the certificate is not false to his knowledge. . . . The question is whether there has been a neglect of that duty which a person in a case of this kind owes, not to interfere in a matter which touches the liberty of his fellow-citizen, without taking due care and making a careful examination and inquiry" (pp. 355 and 365 of the Report).

The Lunacy Act, 1890, Section 20, authorizes a judicial officer, or even a relieving officer, to detain, if satisfied that the case is one for detention, and no action will lie against the Guardians unless it is proved that the relieving officer had not reasonably satisfied himself (Harward *v.* Hackney Union [1898], 14 T.L.R., 306).

Where a medical practitioner gave a certificate acting on a statement made by the patient's wife, and from his own knowledge of the patient's previous history, but had not himself seen the patient for eighteen months, the plaintiff secured a verdict against the doctor for negligence, with £25 damages. But the practitioner succeeded on appeal in obtaining a reversal of the decision, on the ground that under Section 20 the responsibility for the detention was on the relieving officer (see Harward *v.* Hackney Union, *supra*). Though the doctor's action was the *causa sine qua non*, it was the action of the relieving officer that was the *causa causans*; there was the intervention of a responsible third party (Thompson *v.* Schmidt [1899], 8 T.L.R., 120, 56 J.P., 212).

In another case where the plaintiff had been detained for three days under the authority of Section 20, and the medical officer in charge then made an order under Section 24 authorizing a further detention of fourteen days, the plaintiff, being discharged after six days, brought an action for false imprisonment against the master of the workhouse. It was held, however, that since there was no evidence of want of good faith and reasonable care on the part of the medical officer,

he was protected by Section 330, even though he might have misconstrued the Act, and done things he had no jurisdiction to do. Per Vaughan Williams, L.J.: "The protection afforded by this section is not protection after there has been an action, or after the action has been tried; it is protection which relieves officers from liability *before* the action has been tried" (Shackleton *v.* Swift [1913], 2 K.B., 304).

Section 330 applies to any person who acts in pursuance of the Act, but where, as in these cases, detention is dependent on the co-operation of medical officer and civil official, the question may arise whether the action of the latter only follows as a matter of course on the certificate given by the former. The plaintiff may go against both parties, as in the case of Everett *v.* Griffiths (1920), 3 K.B., 163. In that case the chairman of the Board of Guardians, empowered by the Lord Chancellor under Section 25 of the Act of 1891 to sign orders for the reception of pauper lunatics, signed a reception order under Section 16 of the Act of 1890, after an inquiry and upon the certificate of a medical practitioner. Though it was admitted they both had acted in good faith, Everett brought an action against both for negligence, and claimed damages for false and unlawful certification, causing him to be unjustifiably taken to an asylum though of sane mind. The action was heard before the Lord Chief Justice and a special jury. The jury disagreed on the question whether the defendants used reasonable care, and the Lord Chief Justice entered judgment for the defendants on a point of law

on the grounds that the chairman was acting in a judicial capacity, and therefore was not liable, and that the doctor's certificate was not the cause of the detention, because it was upon the judicial authority that the onus of ordering the detention lay.

The plaintiff appealed, but by a majority the Court of Appeal dismissed the appeal, holding that the chairman was not liable because he was honestly satisfied, and so protected by Section 16 of the Act of 1890 (Harward *v.* Hackney Union, *supra*), and that therefore it was immaterial whether he used reasonable care. With regard to the doctor it was held that, since there was no evidence of want of reasonable care, he was entitled to judgment. Bankes, L.J., said that to adopt the view that a medical man, called in by a magistrate to express an opinion in reference to a person alleged to be a lunatic, may be liable in damages for making an incorrect diagnosis, though he may have acted in perfect good faith and used all the care at his command, is to adopt a view which may render the working of the Act in many cases extremely difficult if not impossible, a result which the Legislature must have intended to avoid. The Legislature intended that a person having the qualifications laid down in the statute should be entitled to express an honest opinion arrived at with reasonable care on a matter of extreme difficulty and about which opinions might well differ without exposing himself to the risk of having his skill called in question before a jury, and being possibly mulcted in heavy damages. A medical man is under a duty towards the alleged lunatic to act

in good faith and with reasonable care, but . . . the degree of skill possessed by him or brought to bear upon the examination cannot be called in question."

Scrutton, L.J., said that "honest forming of opinion, given as evidence for an independent authority, gives no cause of action to the person certified, even if negligently formed, provided the opinion was honest, because there was no legal relation between the medical practitioner and the subject of the opinion. The act of the chairman was a *novus actus interveniens*, taking away the liability of the doctor." The view that there was no legal relation between the doctor and the patient in this case was not shared by the other members of the Court.

Atkin, L.J., in a dissenting judgment, held that both the doctor and the chairman owed a duty to the lunatic to employ reasonable care and skill, and that the chairman was not exercising judicial but administrative functions. The Court was, however, agreed that Section 330 (1) does not deprive persons of any protection they may have apart from that section.

The plaintiff thereupon took the case to the House of Lords (1921, 1 A.C., 631), where Lord Atkinson held that the chairman in discharging his duties under Section 16 was undoubtedly doing a judicial act, and not merely an administrative act, in making the order for detention, and was therefore protected from an action for negligence. For this rule he relied, among other cases, on Leeson *v.* General Medical Council (*supra*, p. 197). He held also that the chairman was entitled to judgment on the same grounds as applied

to the doctor—namely, that there was no evidence of any want of care on his part.

The Law Lords differed as to the exact liability of the doctor. Viscount Haldane thought that he was under a duty to the appellant to exercise care, though the precise nature of the duty would require consideration before it could be exactly defined. It could not arise out of contract, but it might be dependent on an obligation existing on the part of the doctor to abstain from acting tortiously towards the patient, so as to give him a right to an action on the case. The measure of the care required from the doctor would then need defining, and that would involve research into the distinction between the measure of liability in tort as contrasted with that based on assumpsit.

Viscount Finlay held that since the reception order was, by the Act of 1890, to be made only by a judicial authority—a vital change made in the law—and the judicial authority may either make an order on a petition for the detention of an alleged lunatic, or dismiss the petition, the Justice of the Peace and the Chairman were relieved from liability if they acted honestly. As to the responsibility of the doctor he was unable to concur with the Lord Chief Justice that his certificate was not a cause of the detention. The certificate was a condition precedent to the making of the order, and may have had an important effect in leading the justice to his decision, and the doctor must, when he gave the certificate, have had in contemplation the consequences of his act. The question, however, whether the doctor owed to the patient the

duty of ordinary care was assumed but not decided (p. 669). The omission of the doctor to state on the certificate all the facts on which he formed his opinion did not show that the opinion was negligently arrived at. "The certificate may be defective in form and style without showing that there was negligence in the diagnosis of insanity." "A doctor cannot be made liable for a mere mistake; there must be something further, such as *mala fides* or negligence."

Viscount Cave (p. 680) agreed with this latter opinion, and held that the case against the doctor broke down for want of evidence of negligence. Everett therefore lost his appeal on all points.

A later case, in which three doctors were involved, was twice considered, on different grounds, in the House of Lords. Mr. Harnett, who in October, 1912, had been ill and delirious, owing, as he believed, to treatment with tuberculin given him by an unqualified man, was certified by Dr. Fisher on November 12, 1912, as of unsound mind, and a proper person to be taken charge of and detained under care and treatment. He was taken under a reception order made on the same day to a licensed house kept by Dr. Adams, the owner and manager. About a month afterwards he was allowed to leave the asylum provisionally under Section 55 (3) (*b*) of the Lunacy Act, 1890. The order granting this leave empowered the manager of the asylum to take back the patient at any time if his mental condition required it. On the second day of his leave, December 14, 1912, he visited the Commissioner in Lunacy, Dr. Bond, who

formed the opinion that he ought to be returned at once to detention, and informed the manager accordingly by telephone. He detained Mr. Harnett until he was sent for by Dr. Adams, who received him back into the asylum, and he was thenceforward kept under detention in that asylum and in other institutions for lunatics for nearly nine years until he escaped in 1921. Mr. Harnett then brought an action for false imprisonment against Dr. Adams on the ground that he had detained him without lawful authority, and against Dr. Bond on the ground that he had acted without proper care. The jury found as a fact that Mr. Harnett was not of unsound mind when he was taken back into detention; that the Commissioner, Dr. Bond, was alone responsible for his detention; that the manager, Dr. Adams, honestly believed (i.) that the plaintiff was of unsound mind, (ii.) that it was in plaintiff's own interest that he should be taken back. Also, though without evidence, that the Commissioner, Dr. Bond, did not honestly believe that the plaintiff was of unsound mind, and that he and Dr. Adams had not exercised reasonable care. The judge directed the jury that they might in assessing the damages take into consideration the whole period of the plaintiff's detention if they thought it was the direct consequence of what the defendants did on December 14, 1912. The jury returned a verdict for £25,000 damages against the two defendants jointly, and one for £5,000 against Dr. Bond alone in respect of the detention of the plaintiff in his office pending his return to Dr. Adams' house. The judge directed judgment to be

entered against Dr. Bond for £5,000 and against the two defendants jointly for £20,000.

Application was then made by the defendants for judgment or a new trial, and it was held in the Court of Appeal that there was misdirection by the judge, and that the Commissioner's act was not the cause of the subsequent detention, there having been intervening acts of responsible managers of other institutions; that the manager was justified in retaking and detaining the patient, and was absolved from further liability under Section 330 of the Lunacy Act, 1890, having acted in good faith and with reasonable care, and in the honest belief that the plaintiff's mental condition required his detention. A new trial was ordered of the claim against Dr. Bond, and judgment was entered for Dr. Adams (Harnett *v.* Bond [1924], 2 K.B., 517).

The plaintiff then appealed to the House of Lords (1925, A.C., 669), where it was held:

1. That although on the findings of the jury as to the plaintiff's mental condition the Commissioner, Dr. Bond, was liable in damages for wrongful detention, the subsequent detention of the plaintiff (at the various institutions for lunatics) was not the direct consequence of the Commissioner's wrongful act; that the resumption of the control by the manager, Dr. Adams, was a *novus actus interveniens*, and consequently the liability of Dr. Bond did not extend beyond the detention at the Commissioner's office.

2. That there was no foundation for the charge against the manager, Dr. Adams, of detaining the

plaintiff without lawful authority; power had been reserved by the leave of absence to retake the patient, and the patient could then be detained under the existing reception order.

3. That there was no evidence to support the findings of the jury that the manager had failed to exercise reasonable care.

The plaintiff in this case, seven months after his escape from detention, brought an action also against the medical man, a country doctor, who had signed the certificate under the Lunacy Act stating that he was of unsound mind and a proper person to be detained. The plaintiff alleged negligence in certifying him to be insane, and the doctor relied on Sections 330 and 331 of the Lunacy Act, 1890, and also pleaded that the action was barred by Section 3 of the Limitation Act, 1623. To this the plaintiff replied that under Section 7 of the same statute the action was not barred, for he was *non compos mentis*. Horridge, J., held (i.) that a medical man who undertakes the statutory duty of giving a certificate under Section 4 of the Lunacy Act, 1890, must use reasonable care, and if he fails to do so he is liable for the damage caused to the person in respect of whom he gave the certificate; (ii.) that the negligent giving of the certificate was a direct cause of the reception order and the detention of the plaintiff; but (iii.) that the action was barred by Section 3 of the Limitation Act, 1623, as, in view of the jury's finding that he was not of unsound mind, he could not claim to come within the protection of Section 7 of the Act of 1623 as a person *non compos mentis*, although for certain

purposes a person detained under a reception order was referred to as a lunatic in the Lunacy Act, 1890.

On appeal the Court of Appeal held that detention under a receiving order did not put the plaintiff in the position of a lunatic so found as to entitle him to claim disability as a person *non compos mentis* within Section 7, and that therefore his remedy was barred by Section 3 (Harnett *v.* Fisher [1927], 1 K.B., 402; 42 T.L.R., 745).

The plaintiff then appealed to the House of Lords, where the question was raised whether the Limitation Act proper to the case was not the Public Authorities Protection Act, 1893. A majority of the House (Lords Sumner, Atkinson, Wrenbury, and Carson; Lord Blanesburgh dissenting) held that the action was not an action for neglect in the execution of an Act of Parliament, but was an action on the case for negligence in examining into the patient's mental state, and that the Limitation Act, 1623, applied. Their lordships were unanimous in holding that, after the finding of the jury, the appellant could not maintain that he was *non compos mentis* during his detention, within the meaning of Section 7, and that consequently the limitation of six years ran from the date of the certificate. Lord Sumner said: "If the appellant never had been *non compos mentis* he could not bring himself within the statute of James. True it was impossible for the appellant to begin his action until he had escaped, but no provision was made for that in the statute." "The gist of the action was not the signing of the prescribed form of certificate, but the lack of care in examining into the

appellant's mental state and in forming an adverse opinion about it. The claim was not for a breach of a statutory duty but of a common law duty." Lord Blanesburgh was of the opinion that it was an action for a breach of duty under the Lunacy Act, and that therefore the Public Authorities Protection Act was sufficient to bar the action (Harnett *v.* Fisher [1927], A.C., 573).

If the plaintiff can bring evidence sufficient to disclose a prima facie case of negligence, even though a good defence exists, Section 330 (2) of the Act of 1890 is not a complete protection to a medical practitioner. Even if a stay of action is granted by a Master of the King's Bench, and affirmed by a judge in Chambers, it may yet be overruled by the Court of Appeal, in spite of the decisions recorded above (see Everett *v.* Griffiths). This happened in Hume Spry *v.* Smith and Watson, where, however, after a trial lasting over fifteen days, the case was stopped by the jury and a verdict given for the defendants (*The Times*, March 3-23 ; *Lancet*, 1927, i., 900).

Even where there is no allegation of bad faith against a medical practitioner, there may still be an action on the want of reasonable care. In De Freville *v.* Dill (1927), 43 T.L.R., 702, 99 L.J. (K.B.), 1056, the defendant, Dr. Dill, had been called in by the plaintiff's father-in-law while she was on a visit to him, and, after examination, Dr. Dill formed the opinion that her mental condition was such as to warrant his certifying her as a person of unsound mind. He sent for the Relieving Officer and certified her to be suffering from acute mania, with the result that she

was taken to Gloucester County Asylum under the provisions of Section 16 of the Lunacy Act, 1890, after being seen by a J.P., who made out a summary order for her reception in a mental hospital. In two days she was released on the ground that there was no cause for detention. The plaintiff brought an action claiming damages for negligent certification. In addressing the jury, McCardie, J., said: "It was a serious matter that the Lunacy Acts contained no definition of insanity, unsoundness of mind, or lunacy . . . nor did any medical textbook or authority give any definition of these things. The jury must remember that the Lunacy Acts had to be administered and certificates given not only by London specialists and other experienced practitioners, but also often by ordinary country doctors. It was one thing to come to a decision whether a certificate should have been given in the present case after a seven days' hearing of the evidence on both sides and the addresses of counsel. . . . It was another thing to come to a decision in a room in a country vicarage." A verdict for the plaintiff was given with damages £50. On entering judgment with costs for the plaintiff at a later sitting, McCardie, J., pointed out that Dr. Dill was not employed by the plaintiff, but by her father-in-law. Two questions thereupon arose:

1. Did the doctor owe a duty to the patient?

2. Was the doctor's certificate the cause of the plaintiff's detention?

If he owed no duty to her, it would be difficult to frame an action on the case for negligence. The case

was different from the case of the physician or surgeon who administered medicine or performed an operation. There there was clearly a duty to show care and skill. Here the doctor only expressed in a certificate his honest view that she was a person of unsound mind, and a proper person to be taken charge of and detained under care and treatment. If he owed her the duty of care with respect to certification, it was curious if he would not be liable to the patient for negligence in *not* certifying her if she had been of unsound mind and had afterwards inflicted injury on herself. But in view of the weight of opinion expressed in the decisions in the other cases (here gathered together) he must hold that Dr. Dill did owe the plaintiff the duty to take reasonable care in coming to the conclusion that she was of unsound mind, though no contractual relationship existed between them.

The question whether the doctor's certificate was the cause of the plaintiff's detention McCardie, J., would have decided in the negative, on the view that under Section 16 the final decision lay with the justice, that the effective cause was his reception order, and that the doctor's certificate, though an essential requirement, was a mere opinion, which possessed of itself no operative force. But he held that the balance of opinion in Everett *v.* Griffiths was in favour of the view that the doctor's certificate was the cause, and that that balance was increased by the decision of Horridge, J., in Harnett *v.* Fisher, 1927, 1 K.B., 402. The learned judge decided accordingly, but added that he hoped the House of Lords would some day

give a clear and final decision both on the question of duty and care, and on the effect of the doctor's certificate as a cause of the detention, especially in view of the judgment in Harnett *v.* Bond.

The law on these points plainly needs to be more explicitly declared, for the two questions put by McCardie, J., cannot be said yet to be satisfactorily settled.

It would seem in accordance with principle that medical men must be held to be under a duty to take reasonable care in all cases of certification under the Lunacy Acts, but the present remedy for alleged negligence is open to abuse and is being abused. If the duty of the medical practitioner as to notification of infectious bodily disease under statutory orders is compared with his duty to certify mental disease when called in for that purpose, it is to be noticed that in each case restraint may follow, in the interests both of the patient and of the public. The public is, however, more critical of the exercise by the doctor of the duty of certifying mental disease than it is of his notification of diseases of the body. Presumably this is because a stigma attaches to a patient who has had an attack of mental disease, but none to one who has had an attack of physical disease (unless it be venereal disease). But a man may quite well suffer from an attack of mental disease through no reprehensible fault of his own, in which case he deserves sympathy, not contempt. Strangely enough the temporary mental disease called delirium which occasionally results from physical disease does not bear this stigma. Nevertheless, it

seems to be merely the public prejudice which makes this distinction that is the cause of the extremely precarious position of the doctor under the lunacy laws.

If, again, we consider the doctor's position as a witness in a court of law giving evidence which leads to a prisoner's incarceration ; he is immune from liability for these consequences, there being the *novus actus interveniens* of the judicial authority. In certifying as to unsoundness of mind, however, the doctor is allowed no such immunity. Is it reasonable that he should be given equal responsibility with the judicial officer in the matter, but without the judicial officer's protection if he acts honestly? If the doctor is to run so much greater a danger the result may well be that the fear of ultimate consequences to himself will make him decline to certify at all, in which case the Lunacy Acts would fail. The doctor's certificate cannot in justice to him be made the *causa causans* of the detention, unless when the duty is imposed upon him he is protected, if he acts bona fide and with reasonable care and skill, from liability to an action.

The Royal Commission on Lunacy and Mental Disorders, 1926, reported that it was not fair to ask medical practitioners to perform their essential functions in connection with the Lunacy Acts under the menace of litigation, which even if unsuccessful may spell financial or professional ruin, and that further protection should be given to medical men in the discharge of their professional duties in relation to insanity. The Commission recommended also that Section 330 (1) of the Lunacy Act, 1890, should be amended so as to

provide that the persons indicated therein shall not be liable to any civil or criminal proceedings "unless such person has acted in bad faith or without reasonable care," and that Section 330 (2) should be amended so as to enact that proceedings shall upon summary application to the High Court or a judge thereof be stayed upon such terms as to costs or otherwise as the Court or judge may think fit, unless the Court or judge is satisfied that there is substantial ground for alleging that such act was done in bad faith and without reasonable care.

This amendment would place upon the plaintiff the onus of proving bad faith or negligence. At present, contrary to the apparent intention of the section, the burden is placed on the doctor to prove his own good faith and reasonable care.

A further recommendation of the Royal Commission was that the magistrate should be compelled in all cases to see the patient and wherever possible the relatives of the patient, and in any case of doubt one or other of the certifying practitioners, and that every possible step should be taken to ensure that the intervention of the judicial authority, once it is evoked, is effective. This provision would be strengthened still further if the recommendation of the British Medical Association (*British Medical Journal* Supplement, 1927, ii., 84) were adopted, that the judicial authority must satisfy himself that the medical practitioner has exercised reasonable care and that words to this effect be introduced into the form of any judicial detention order.

The doctor in cases such as these has clearly two duties, one to his patient, and the other to the public. The consequences of a mistake either way are serious: to the patient, wrongful incarceration; to the public, the danger of attack from a violent lunatic. The latter danger is much the more serious, and as a servant of the public the doctor should be protected if in such cases he chooses the lesser of two possible evils, and decides in the interests of the public to certify a patient who may, if not detained, do harm either to himself or to someone else.

It is submitted therefore that the doctor's certificate should be held to be, not the *causa causans* of the detention, but merely the *causa sine qua non*. The Lunacy Acts already provide that the magistrate, before he signs the reception order, *may* call upon both the medical practitioner and any other witness to appear before him and give their evidence on oath. If, having this power, he accepts the doctor's certificate, it would seem that he takes the responsibility for detention upon himself alone.

It is also to be remembered that at common law every sane man is supposed to have had in contemplation the necessary and probable consequences of his own acts, and where a plaintiff complains of negligence he may disentitle himself from recovering if negligence of his own contributed as a direct and proximate cause to the injury, even though the defendant has also failed in his duty to take care. The statutory protection given to the doctor under Section 330 of the Lunacy Act would not seem to take away from him the right to this

additional common law defence in cases where he is sued for negligence. If a plaintiff, who is really of sound mind, has allowed himself to behave in such an abnormal way, either through passion or from any other cause, as to lead those about him to believe that his mental state demands the putting into operation of the provisions of the Lunacy Acts, and if he continued such behaviour so as to lead a qualified medical practitioner acting with reasonable care to the opinion that he was insane, and still further to bring the justice to concur in that opinion and to make out a reception order, then he has surely himself contributed to the injury of which he complains. Liability in the case of contributory negligence falls on that party who had the last opportunity of avoiding the injury complained of. The doctor could of course avoid giving the certificate, but it is his duty to give a certificate in every case where he is called in by the magistrate and is reasonably satisfied that the patient's condition warrants it. The patient has a later opportunity, after the doctor's certificate has been given, of changing his behaviour before he is seen by the magistrate, and if he fails to do so and so gives the magistrate no cause for thinking that further inquiry is necessary, his detention seems clearly to be proximately due to his own acts, and a jury might well find therefore that he was not entitled to recover damages against the doctor.

APPENDIX

Lunacy Act, 1890

Section 13 (2). Provides, in the case of a lunatic not under proper care and control, or where he is cruelly treated or neglected :

That the justice may himself visit the alleged lunatic and shall, whether making such visit or not, direct and authorize any two medical practitioners whom he thinks fit to visit and examine the alleged lunatic and to certify their opinion as to his mental state, and the justice shall proceed in the same manner so far as possible and have as to the alleged lunatic the same powers as if a petition for a reception order had been presented by the person by whom the information with regard to the alleged lunatic has been sworn.

Section 13 (3). If upon the certificates of the medical practitioners who examine the alleged lunatic, or after such other and further inquiry as the justice thinks necessary, he is satisfied that the alleged lunatic is a lunatic and is not under proper care and control or is cruelly treated or neglected by any relative or other person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, the justice may by order direct the lunatic to be received and detained in any institution for lunatics to which, if a pauper, he might be sent under this Act, and the constable, relieving officer, or overseer upon whose information the order has been made, or any constable whom the justice may require so to do, shall forthwith convey the lunatic to the institution named in the order.

Section 16. The justice before whom a pauper

alleged to be a lunatic or an alleged lunatic wandering at large is brought under this Act shall call in a medical practititioner, and shall examine the alleged lunatic, and shall make such inquiries as he thinks advisable, and if upon such examination or other proof the justice is satisfied in the first mentioned case that the alleged lunatic is a lunatic and a proper person to be detained, and, in the secondly mentioned case, that the alleged lunatic is a lunatic and was wandering at large and is a proper person to be detained, and if in each of the foregoing cases the medical practitioner who has been called in signs a medical certificate with regard to the lunatic, the justice may by order direct the lunatic to be received and detained in the institution for lunatics named in the order, and the relieving officer, overseer, or constable who brought the lunatic before the justice, or in the case of a lunatic wandering at large any constable who may by the justice be required so to do, shall forthwith convey the lunatic to such institution.

Section 20. If a constable, relieving officer, or overseer is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic with regard to whom it is his duty to take proceedings under this Act that the alleged lunatic should before any such proceedings can be taken be placed under care and control, the constable, relieving officer, or overseer may remove the alleged lunatic to the workhouse of the union in which the alleged lunatic is, and the master of the workhouse shall . . . receive and relieve and detain the alleged lunatic therein, but no person shall be detained for more than three days, and before the expiration of that time the constable, relieving officer, or overseer shall take such proceedings with regard to the alleged lunatic as are required by this Act.

Section 24. Except in the cases mentioned in this Act no person shall be allowed to remain in a work-

house as a lunatic unless the medical officer of the workhouse certifies in writing—

(*a*) That such person is a lunatic, with the grounds for his opinion, and

(*b*) That he is a proper person to be allowed to remain in a workhouse as a lunatic, and

(*c*) That the accommodation in the workhouse is sufficient for his proper care and treatment separate from the inmates of the workhouse not lunatics, unless the medical officer certifies that the lunatic's condition is such that it is not necessary for the convenience of the lunatic or of the other inmates that he should be kept separate.

(2) A certificate under this section shall be sufficient authority for detaining the lunatic therein named against his will in the workhouse for fourteen days from its date.

(3) No lunatic shall be detained against his will or allowed to remain in a workhouse for more than fourteen days from the date of a certificate under this section without an order under the hand of a justice having jurisdiction in the place where the workhouse is situate.

(4) The order in the last preceding sub-section mentioned may be made upon the application of a relieving officer of the union to which the workhouse belongs, supported by a medical certificate under the hand of a medical practitioner not being an officer of the workhouse, and by the certificate under the hand of the medical officer of the workhouse hereinbefore mentioned.

Section 28 (1). Every medical certificate under this Act shall be made and signed by a medical practitioner.

(2) Every medical certificate upon which a reception order is founded shall state the facts upon which the certifying medical practitioner has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts

communicated by others; and a reception order shall not be made upon a certificate founded only upon facts communicated by others.

(3) The medical certificate accompanying an urgency order shall contain a statement that it is expedient for the welfare of the alleged lunatic or for the public safety that he should be forthwith placed under care and treatment, with the reasons for such statement.

(4) Every medical certificate made under and for the purposes of this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the certifying medical practitioners on such facts as if the matters therein appearing had been verified on oath.

Section 29 (1). A reception order shall not be made unless the medical practitioner who signs the medical certificate, or where two certificates are required each medical practitioner who signs a certificate, has personally examined the alleged lunatic in the case of order upon petition not more than seven clear days before the date of the presentation of the petition and in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required a reception order shall not be made unless each medical practitioner signing a certificate has examined the alleged lunatic separately from the other.

(3) In the case of an urgency order the lunatic shall not be received under the order unless it appears by the certificate accompanying the order that the certifying medical practitioner has personally examined the alleged lunatic not more than two clear days before his reception.

Section 55 (1). Any two visitors of an asylum with the advice in writing of the medical officer may permit a patient in the asylum to be absent on trial so long as they think fit. . . .

(3) The manager of any hospital or licensed house may with such consent as hereinafter mentioned. . . . (*b*) permit a private patient to be absent upon trial for such period as may be thought fit. . . .

(4) The consent required shall be . . . in the case of a house licensed by justices, that of two of the visitors.

Section 330 (1). A person who before the passing of this Act has signed or carried out or done any act with a view to sign or carry out an order purporting to be a reception order or a medical certificate that a person is of unsound mind, and a person who after the passing of this Act presents a petition for any such order or signs or carries out or does any act with a view to sign or carry out an order purporting to be a reception order, or any report or certificate purporting to be a report or certificate under this Act or does anything in pursuance of this Act, shall not be liable to any civil or criminal proceedings whether on the ground of want of jurisdiction or on any other ground if such person has acted in good faith and with reasonable care.

(2) If any proceedings are taken against any person for signing or carrying out or doing any act with a view to sign or carry out any such order, report or certificate, or presenting any such petition as in the preceding subsection mentioned, or doing anything in pursuance of this Act, such proceedings may upon summary application to the High Court or a Judge thereof be stayed upon such terms as to costs and otherwise as the Court or Judge may think fit, if the Court or Judge is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care.

Section 331 (1). Any action brought by any person who has been detained as a lunatic against any person for anything done under this Act shall be commenced within twelve months next after the release of the party bringing the action and shall be

laid or brought in the county or borough where the cause of action arose and not elsewhere.

(2) If the action is brought in any other county or borough or is not commenced within the time limited for bringing the same judgment shall be given for the defendant.

Lunacy Act, 1891.—Section 25 provides that the Lord Chancellor may empower the Chairman of a Board of Guardians to sign reception orders in respect of pauper lunatics as if he was a justice.

BIBLIOGRAPHY

Anstey, H. Munimenta Academica. 1868.

Auden, G. A. Gild of Barber Surgeons of York. Proc. R.S.M. Vol. xxi.

Barrett, C. R. B. History of Society of Apothecaries. 1905.

Blackstone, W. Commentaries on the Laws of England. 1765.

Brewer, J. S. Letters and Papers of Henry VIII. 1884.

British Museum Collected Papers : 777, l., i; 551, d., 19; 551, a, 32.

Britton. *c.* 1290.

Champney, T. Medical and Surgical Reform. 1797.

Chaplin, H. Proc. R.S.M. Vol. xiii.

Chevalier, T. Observations in Defence of a Bill, etc. 1797.

Cockayne, O. Anglo-Saxon Leechdoms. 1865.

Coke, Sir E. Institutes of the Laws of England. *c.* 1628.

Corfe, G. The Apothecary, Ancient and Modern. 1885.

Davies, F. The Unity of Medicine. 1870.

Garrison, F. H. History of Medicine, 3rd edition. 1921.

Garth, S. The Dispensory. 1649.

Gairdner, J. Letters and Papers of Henry VIII. 1901.

General Medical Council. Minutes and Standing Orders.

Goddard, J. Discourse concerning Physic. 1668.

Good, J. M. History of Medicine. 1795.

Goodall, C. Royal College of Physicians of London. 1684.

Gunther, R. T. Early Medical and Biological Science. 1926.

Hale, Sir M. Pleas of the Crown. 1739.

Halle, J. Historiall Expostulation against the beastlye abusers, both of Chirurgerie and Physyke, in oure tyme, with a goodlye Doctrine and Instruction, necessarye to be marked and folowed of all true Chirurgiens. 1565. (Percy Soc. Reprint, 1844, No. 11).

Harper, C. J. S. Legal Decisions on Medical and Dental Acts. 1912.

Hefele, C. J. von. Conciliengeschichte. 1873-90.

Jenkins, J. Observations on Present State of Medicine. 1810.

Jusserand, J. A. A. J. English Wayfaring Life. 1920.

Kerrison, R. M. Inquiry into the Present State of the Medical Profession. 1874.

Kidd, J. Observations on Medical Reform. 1841.

Maitland, F. W. Bracton's Notebook, 3 vols. 1887.

Merrett, C. Collection of Acts of Parliament. 1660.

Morton, J. N. Laws relating to Medical Practitioners. 1912.

Munk, W. Roll of Royal College of Physicians, 3 vols. 1878.

Petyt's MSS. (Inner Temple Library).

Pitt, R. Frauds and Villanies of the Common Practice of Physic. 1705.

Power, D'Arcy, and South. Memorials of the Craft of Surgery. 1886.

REPORTS :

Select Committee of House of Commons respecting the separate incorporation of Barbers and Surgeons. 1744.
Select Committee appointed to inquire into the Manner of obtaining Subjects for Dissection in the Schools of Anatomy, etc. 1828.
Select Committee appointed to inquire into and consider the Laws, Regulations, and Usages regarding the Education and Practice of the Various Branches of the Medical Profession. 1834.
Select Committee on Medical Registration and Medical Law Amendment. 1847-8.
Committee to whom the Medical Act, 1858, Amendment (No. 3) Bill (Lords), Medical Act Amendment Bill, Medical Appointments Qualification Bill, and Medical Act (1858) Amendment (No. 2) Bill were referred. 1878-9.
Committee on Medical Act (1858) Amendment Bills and Medical Appointments Qualification Bills. 1880.
Royal Commission on Grant of Medical Degrees. 1882.
Royal Commission on City Livery Companies. 1884.
Unqualified Practice Prevention Committee (G.M.C.), with a digest of the Laws in force in the British Empire and Foreign Countries. 1908.
Royal Committee on Practice of Medicine by Unqualified Persons. 1910.
Departmental Committee on the Public Veterinary Services. 1912.
Select Committee of Inquiry into the Sale of Patent Medicines. 1914.
Committee appointed to inquire into Extent and Gravity of the Evils of Dental Practice by Persons not qualified under the Dentists Act. 1919.
Royal Commission on Lunacy and Mental Disorder. 1926.

RILEY, H. T. Memorials of London. 1868.
ROYAL COLLEGE OF VETERINARY SURGEONS. Byelaws.
RYMER'S Foedera.
SIMON, SIR J. English Sanitary Institutions. 1897.
SOUTH (see POWER).
WAITE, G. Appeal to Parliament, the Medical Profession, and the Public on the Present State of Dental Surgery. 1841.
WILLCOCK, J. W. Laws relating to Medical Profession. 1830.
WITHINGTON, E. T. Medical History from the Earliest Times. 1894.
WOOD, A. History and Antiquities of Oxford. 1792.
WOOTTON, A. Chronicles of Pharmacy. 1910.
Y. B. (Year Books). Reports of Cases in King's Courts, thirteenth to sixteenth centuries.
YORKS. Archæological Association. Record Series, XVII.
YOUNG, S. Annals of the Barber Surgeons. 1890.

BRITISH MEDICAL ASSOCIATION LIBRARY
11 MAY 1940

INDEX

ADVERTISING, 99, 184, 186
medical practitioners, 174
dentists, 179
veterinary surgeons, 181
Agriculture, Ministry of, 153, 154
Amendments to statutes, necessary, 5, 158, 167, 201, 204, 214-216, 237, 238, 283, 301-303
Anatomy, bodies for, 2, 40, 41, 87, 100
Annual fees, 92, 116
dentists, 131
veterinary surgeons, 132, 146
Appeals, registration:
medical, 162, 201
dental, 133, 162, 201
veterinary, 144, 163, 200
Apothecaries, 10, 39, 47, 60, 67, 78, 92, 98, 112
Acts, 93, 103, 108, 109, 112, 199, 205
compared with Medical Act, 108, 109
defects of, 95
Charters, 25, 67
and College of Physicians, 38, 48, 68, 82
duties of, defined, 80, 81, 98
examinations, 67, 93, 112, 118
jury service, 79
as medical practitioners, 47, 60, 79, 80, 118
negligence, 262
register, 119, 176
Society, 67, 80, 92, 118
and surgeons, 67, 96
Army surgeons, 16, 71, 89
Assistants, unqualified, 99, 184, 276
medical, 172, 173, 184, 199
dental, 178, 179
veterinary, 18, 181
Axham, Dr., 192

Bald's "Leech-book," 10
Barbers, 12
Gild, 14, 15, 25, 27, 59
not to practise surgery, 41, 58
Barber surgeons, 15, 32
Act, 40
Charter, 25, 26, 61
Barber Surgeons Company, 26, 40, 57
prohibits unlicensed practice, 55, 61
registers surgeons, 57
separation, 85
Barker, Sir H., 192
Bishop's licence, 11, 31, 34, 35, 57, 59, 107
Bone-setters, 184, 193
Bracton's Note-book, 255
British Medical Association, 100, 102
Medical Bills, 101, 102, 215

Cambridge University, 12, 31, 95
licences, 14, 51, 64, 73, 84
Canvassing:
medical, 174
dental, 179
veterinary, 181
Care, duty of, 253, 258, 262, 268-271, 273-276, 286
contract to take, 37, 264, 266
Certificates, medical, 1, 106, 172, 285-304
Certification of lunatics, 8 (*see* Lunatics
Certified midwives (*see* Midwives)
Chemist and druggist, 80, 97, 98, 102, 107, 129, 130
negligence, 261
Coke, Sir E., 64, 77, 254
College of Dentists, 121, 122
Colonial legislation, 5, 127
Colonial practitioners:
medical, 106, 115, 162
dental, 124, 162
veterinary, 144, 163
Companies, joint-stock:
medical, 126
dental, 125, 126, 128, 130
veterinary, 147, 233
"Composition," the, 26
Conjoint Examining Board, 116, 118
Conjoint faculty, 24, 25
Consent of patient, 274
Consultations:
medical, 173, 185
veterinary, 181
Coursus de Gangeland, 10

Covering:
medical, 152, 172
dental, 178, 179
veterinary, 152, 181
Craft Gilds, 9, 28
Apothecaries, 25
Barbers, 14, 15, 20, 24, 25, 27
Farriers, 17, 27, 60
Grocers, 25, 48
Physicians, 24
Surgeons, 16, 21, 26, 32

Dangerous drugs, 1, 173, 217
Dental Board, 129, 133, 134, 161, 180
Colleges, 121
Companies, 125, 126, 128, 130
discipline, 131, 176-180
duty of care, 276
prohibition of practice, 1, 6, 128, 132
Reform Committee, 123
registration, 123, 124, 128, 130, 132, 133, 176
registration fee, 131, 133
regulations, 131, 176
removal, 131, 132, 176, 197
restoration, 131, 188
restriction of title, 123, 127, 130, 178
unregistered persons, 128
registration of, 128, 130
Dentistry, definition of, 129
Departmental Committee's Report, 6, 126-128
examinations, 107, 121, 122, 130, 134, 162
history, 14, 25, 26, 41, 55, 59, 120-122
licences, special, 55
quackery, 121, 123, 125, 127
Dentists Acts, 123, 128
Disciplinary inquiries:
medical, 169-176, 193
dental, 176-180
veterinary, 180-183
procedure, 169, 179, 181
defects in, 201-204
Discipline:
medical, 24, 33, 63, 168-176, 193
dental, 131, 176-180
veterinary, 144, 152, 180-184
Disgraceful conduct:
medical (*see* Infamous)
dental, 132, 176-180
veterinary, 143, 152
Dispensaries, 79, 81, 82

Electro-therapeutists, 184, 185
Erasure of names (*see* Removal)
Etiquette (*see* Discipline)
Examinations, early provisions, 15, 20, 23, 26, 30, 34, 37, 50, 53, 57, 61, 64
apothecaries, 67, 68, 92-94, 112, 116, 118
medical, 102, 104, 112, 113-118, 156, 161
dental, 107, 121, 122, 130, 134, 162
lay assistants, 185
veterinary, 135-140, 142, 155
midwifery, 85, 102, 115, 118
physic, 13, 23, 30, 34, 37, 49, 50, 51, 53, 63, 64, 68, 69, 73, 91
surgery, 15, 24, 26, 30, 50, 51, 61, 71, 73, 86, 89
uniformity of, 108, 113, 115, 138
"Existing Practitioners," registration of, 23
medical, 107, 108
dental, 124, 125, 130
veterinary, 144, 147, 151, 200

Farriers, 17, 135, 141
Company, 60, 78, 135
Gild, 17, 27, 77
negligence, 263, 268
recovery of fees, 251
regulations, 77
Fees, recovery of, 97, 105, 109, 110, 239-252
medical, 105, 110, 239
dental, 124, 127, 247, 250
veterinary, 145, 251
Fellows of R.C.P., 105, 114, 241
severance of charges, 246-249
unqualified persons, 110, 127, 145, 241
Fines for infringements of statutes, 30, 33, 34, 43, 48, 62, 64-66, 68, 70, 72, 94
medical, 94, 106, 145, 206, 207, 214, 218
dental, 124, 129, 145, 206, 207
veterinary, 145, 206, 207
Foreign degrees and diplomas:
medical, 107, 115, 162
dental, 124, 162
veterinary, 144, 163
Foreign practitioners, 106, 115

Garrett Anderson, Mrs., 112, n.
General Medical Council, 102, 114
appointment of examiners, 104
control of examinations, 103, 104, 115, 119, 155

General Medical Council and dentistry, 129, 197
duties of, 103
erasure of names, 104, 131
powers, 104, 155, 195
publication of, 196
established, 102
incorporated, 111
oath, no power to administer, 201-204
prevention of unqualified practice, 5
registration, 103, 119
of students, 119
Goodwin's case, 83
Grocers' Company, 10, 25, 48, 60, 67 (*see* Apothecaries)

Herbalist, 259, 260
High Court appeals, 133
Highland and Agricultural Society, 135, 139, 140, 142, 145, 146, 148-151
Homicides, 253-260
Hunterian Collection, 88

Illegal practice, apothecaries, 95
dentists, 129
medicine, 1, 22, 30, 37, 41, 53, 56, 62, 64, 69-71
Infamous conduct, 104
definition of, 175
what constitutes, 17
(*see* Disgraceful)
Informer, common, 206, 208
Infringements of statutes:
apothecaries, 205, 208
medical, 205, 208-216
dental, 206, 219-227
veterinary, 206, 227-237
Irish Free State, Medical Register, 119
dental, 134
disciplinary inquiries, 202-204
veterinary, 157

John le Spicer, 10, 262
Jury service:
apothecaries, 79
barbers, 15, 25, 32
dentists, 134
medical practitioners, 105
physicians, 34, 105
surgeons, 15, 25, 32, 61, 105
veterinary surgeons, 157-160

Lambeth Degrees, 35, 58, 107
Lateran Council, 12
Lay experts, 184, 192
Licences to practise, 42, 43, 99, 104, 113, 114, 118
dentistry, 121, 124, 130
special, 35, 42, 43, 51, 52, 55, 58
veterinary surgery, 138, 140
Licentiates of R.C.P., 110, 241
Linacre, 28, 29, 32, 34
Liverpool University Veterinary School, 137
and R.C.V.S. Charter, 155
London University and R.C.V.S. Charter, 155
Lunacy Acts, 285, 305-310
Lunatics, certification of, 285-304
care, 286
effect of certificate, 286, 289, 291
protection of doctor, 285, 288, 289, 290, 294, 297, 299, 301-303

Malpractice, 53, 56, 64, 75, 76, 77, 269
Manslaughter, 253-262
Marshals (see Farriers)
Masseurs, 184
Medical education, 2, 3, 91, 99, 101
practitioners, privileges, 104, 114
definition, 105
jury service, 105
not to be pharmacist, 102
right to practise dentistry, 124, 129
Register (*see* Register)
Medicine, control of practice, 5, 91
Midwifery, 85, 91, 101, 102, 115, 118
Midwives, 1, 174
Monopolies Act, 70

Navy and Merchant Service, 71, 89
Negligence, 2, 16-18, 78, 253-304
by omission to attend, 267
certification of lunatics, 285-304
civil liability, 262, 277
criminal liability, 253, 279
juries, 280, 282
midwifery cases, 256, 261
qualified persons, 261, 262, 270
unqualified persons, 256-260, 271
Nurses, their duties, 274

Oath of apothecary, 39
Oath, power to administer, 77, 201
College of Physicians, 77
General Medical Council, 201-204
in Ireland, 203
Odontological Society, 121
Operation, definition, 129, 243, 244, 250

Osteopath, recovery of fees, 243-247 (*see* Bonesetters)
Oxford, apothecaries, 10, 39
University, 12, 31, 37, 95
licences, 13, 49, 50
physicians, 50, 84
statutes, 13, 50
surgeons, 50

Patent medicines, 82, 83, 90, 99
Select Committee on, 6
testimonials for, 181, 185
Penal cases, 169 (*see* Discipline)
Penalty on use of title:
medical, 106, 207, 214, 215
dental, 124, 129, 207, 215
veterinary, 144, 207
Pharmaceutical chemist, 80, 97
Society, 98
Pharmacy Acts, 102, 111, 217
Physic, includes surgery, 39, 110, 118
examinations in, 13, 22, 30, 37, 50, 53
Physicians:
as apothecaries, 110
College of, 33, 34, 38, 39, 48-55, 62-70, 72-85, 92, 93, 113
Charter, 32, 68
examinations, 33, 63, 68, 116, 117
fellowship, 74, 75
jury service, 34, 105
licentiates, 110, 241
powers of, 33, 48, 54, 62, 65 68, 82, 85, 176
prosecutes apothecaries, 50, 72
quacks, 49, 50, 69
surgeons, 50, 55
unlicensed persons, 53, 64, 69, 71, 90
recovery of fees, 105, 114, 240, 241
removal from register, 169, 175, 176, 190
rules, 63, 65
special licences, 51, 85
early, 11, 13
not to sell medicines, 97, n.
and surgery, 12, 39
Privy Council and G.M.C., 103, 131, 161
appeals, 162, 163, 201
byelaws, dental, 131, 162
veterinary, 163
dental examinations, 161, 162
Dental Register, 133, 162, 201
Medical Register, 162
Privy Council, veterinary Charters, 157
veterinary examinations, 162
Veterinary Register, 144, 163, 200
Professional etiquette (*see* Discipline)
Protection of public, 2-8, 13, 18, 22, 23, 37, 71
statutory, 30, 93, 103, 106, 123, 127, 144, 168, 205-238
by byelaw, 172, 176, 181, 183
Public prosecutor, 238

Quackery, 3, 4, 19, 30, 47, 50, 74, 84, 90, 95, 96, 97, 99, 101, 109
dental, 123, 125, 127
veterinary, 140, 150
Quacks, prosecution of, 19, 49, 52, 66, 68, 71, 73, 95, 109, 205-238
Qualified (*see* " Specially ")
Qualifying examination, medicine, 93, 99, 103, 112-116, 118, 161
dentistry, 121, 122, 130, 161
veterinary surgery, 136, 139, 142, 143, 155

Radiologists, 184
Recovery of fees, 97, 105, 110
dentists, 124, 127
veterinary surgeons, 145
Register, apothecaries, 94, 112
dentists, 130, 132, 162
medical practitioners, 103, 104, 107, 114, 162
surgeons, 57
veterinary surgeons, 138, 140, 142, 143, 162
Registration, annual fee, 131
fee, physicians, 64
privilege conferred by, 114
Regius Professor, 37
Removal of names from Register:
medical, 104, 168-176
dental, 132, 176
veterinary, 143, 180-183
consequences of, 190
Renaissance, 28
Restoration of names:
apothecaries, 112, 192
medical, 104, 186
dental, 131, 188
veterinary, 144, 189
Royal Commissions, 6, 113, 156

Salerno rules, 20
Sanitary Acts, 19, 20
Secrecy, duty of, 282
Select Committee on Patent Medicines, 6

Sicily, control of practice in, 20
Skill, duty of, 2, 253, 258-262, 268, 272, 276
degree of, 272
Specialist, 273
Specially qualified, meaning of, 145
Surgeons, 14, 40
as apothecaries, 97
and barbers, 14, 15, 20
Charters, 25, 26, 70, 88, 101, 122
Company, 21, 26, 61, 87
dissolution, 87
contract, 37
diploma, 26
Gild, 14, 21, 26
jury service, 15, 25, 32, 61, 105
licence to practise, 35, 39, 55, 99, 114, 118
military, 16
Royal College of, 88, 121, 122, 176
separate from barbers, 85
not to be barbers, 41, 42, 58
not to practise physic, 39, 54
Surgery, restriction of practice, 15, 54
examinations in, 30

Title, protection of, 237
medical, 106, 205, 208-216
dental, 123, 124, 125, 127, 128, 130, 206, 219-227
veterinary, 136, 141, 144, 150, 206, 227-236
"Tooth drawing," 14, 15, 25, 26, 41, 55, 59
Touting (*see* Canvassing)
Treves, Council of, 11

University degrees in medicine, 13, 23, 35, 49, 63, 73
dentistry, 124, 130
veterinary science, 155, 156
Unqualified persons practising, 2, 4, 22, 31, 44, 52
assistants, 99, 184, 199
dentistry, 2, 123, 125-128, 219
Unqualified persons practising medicine, 2, 22, 52, 99, 103, 109, 219
report of G.M.C., 5
veterinary science, 2, 135, 141, 148-157
(*see* also Chapter X., p. 205 *et seq.*)

Venereal disease, 1, 41, 58, 59, 218
regulations, 283
Veterinary Colleges, 135, 137
medicine and surgery, 17, 60, 77, 143
services, report on public, 156
surgeons, history, 135, 139, 141
Acts, 143, 146
annual fee, 132, 146, 148
certificates, 277
Charters, 136, 142, 155, 157
colonial and foreign, 144
examinations, 137, 142, 143, 147, 155
"one portal," 137, 138, 155, 156
"existing practitioners," 144, 147, 151, 200
fees, recovery of, 251
Highland Society Diplomas, 135, 139, 140, 142
inspector, definition, 164-166
jury service, 157-160
negligence, 276
quackery, 140, 148
qualification, 136, 139, 144
Register of, 138, 142, 144
removal of names, 143
restoration, 144
restriction of title, 144
surgery, definition, 143
Privy Council, 144, 163-165, 200

Warning Notice of G.M.C., 172, 179
Women medical practitioners, 22, 30, 45, 52, 84, 112 n.
surgeons, 16, 47, 56, 59

York, Surgeons Gild, 59, 70

PRINTED IN GREAT BRITAIN FOR BAILLIÈRE, TINDALL AND COX, BY BILLING AND SONS LTD., GUILDFORD AND ESHER

WELLCOME INSTITUTE LIBRARY