

STATE OF ILLINOIS.

COOK CIRCUIT COURT.

Decision rendered by Hon. E. S. Williams, at the October Term of Court, 1878.

NATHAN J. AIKIN,
vs.
STATE BOARD OF HEALTH. } IN CHANCERY.

This bill is filed by complainant, alleging that he is a duly licensed practicing physician in the city of Chicago; that he was regularly educated as a physician, graduated at the Cincinnati College of Medicine and Surgery in 1865; and that in July last a certificate was also issued to him by the State Board of Health as such physician, under the laws of the State of Illinois; that his practice is of great value to him; that while holding said certificate he has received from the State Board of Health a notice that said Board threatened to revoke his license; that the alleged cause of such revocation is the publication by complainant of divers professional notices in divers public newspapers, which notices are set out in full in complainant's bill; that the proposed action of the Board of Health originates from the fact of the publication of these printed notices by complainant, which conduct said Board alleges to be unprofessional and dishonorable, but which complainant claims is neither dishonorable nor unprofessional within the meaning of the statutes, and complainant denies the right of the State Board to revoke his license for any such cause, and prays for an injunction restraining such proposed action upon the part of the State Board of Health.

Upon the argument of the motion for injunction, complainant has insisted that the advertising to which he has resorted is neither dishonorable nor unprofessional conduct within the meaning of the Act of May 29, 1877; that that statute is unconstitutional for various reasons, but principally that it grants exclusive privileges to those physicians who have been in the State of Illinois ten years, and is not uniform in its operation upon the class of persons to whom it refers, and is therefore unreasonable, and that it deprives the person upon whom it is sought to be enforced of his property without due process of law. That part of the law relating to the State Board of Health and physicians which is particularly brought to the attention of the Court by the argument for this injunction, is to be found in Sections 10 and 13 of the Act of May 29, 1877, and is as follows:

"SEC. 10. The State Board of Health may refuse certificates to individuals guilty of unprofessional or dishonorable conduct, and they may revoke certificates for like causes." Section 13 provides for the punishment of any person practicing medicine or surgery in this State without complying with the provisions of the Act, except that it exempts from the operation of the law all persons who "have been practicing medicine ten years within this State."

The State Board of Health is a corporation composed of seven persons appointed by the Governor of the State, by and with the advice and consent of the Senate. It is con-

stituted, among other things, to have charge of medical practice and medical practitioners in this State, and it is its right and duty to have surveillance of the professional conduct of physicians by the language of the act of incorporation. Any persons guilty of unprofessional conduct may be by it refused certificates, and any persons having certificates who were guilty of unprofessional conduct may have their certificates revoked by the Board. The object of the incorporation of the Board is, among other things, to secure a higher professional standard in the medical profession. It is to exclude empirics and empiricism from the profession. The duties of the Board are various, and the interests intrusted to its keeping affect all classes of the community, and affect them in the most vital points. The character of its duties is in part set forth in the second section of the act creating the Board. "The State Board of Health shall have the general supervision of the interests of the health and life of the citizens of the State. They shall have charge of all matters pertaining to quarantine, and shall have authority to make such rules and regulations, and such sanitary investigations as they may from time to time deem necessary for the preservation or improvement of public health," and all police officers, sheriffs and other employes of the State are required to enforce its rules and regulations so far as the efficiency of the Board may depend upon their co-operation. Such a Board must, from the necessity of the case, be vested with a large discretion. And, in the legitimate exercise of its discretions, it ought not to be, and cannot be, properly controlled by judicial tribunals. The duties of the Board, with reference to the sanitary condition of the people, bring it into such relations to the medical profession as fit it to determine the necessary qualifications of its members, and to judge of the propriety or impropriety of their professional department. The law has devolved this and similar duties upon the Board, and it has created no other corporation in the State for a like purpose, nor has it given to any State officer supervision over the Board in the discharge of its appropriate duties and the exercise of its legitimate discretions. A physician may be guilty of unprofessional and dishonorable conduct, and not of criminal conduct. It would have been a work of supererogation in the law-makers to have vested the Board of Health with the supervision of the unprofessional conduct of the medical practitioner, if unprofessional conduct and criminal conduct were synonymous. As a citizen, the physician is, with every other citizen, answerable to the criminal laws, and as an alleged criminal is liable to be arraigned before our Courts. It is only as a physician that he is liable to have his professional conduct inquired into and brought before the State Board of Health. The term unprofessional is therefore far wider than criminal. Many acts would be unprofessional that were not criminal; some acts that were criminal might not be esteemed unprofessional. What is professional conduct can only be determined by bringing the act to the professional criterion, and who so well qualified to judge of the proper professional criterion for the medical profession as a Board constituted as the bill shows this Board to be, of seven gentlemen, five of whom are physicians, and a Board created for sanitary purposes, and accustomed to sanitary investigation? The "unprofessional" conduct which authorizes the Board to exclude a physician from the profession does not, therefore, mean necessarily criminal or immoral acts, but such conduct as is inconsistent with the honorable practice of the profession; and in judging of such conduct, the Board of Health has a wide discretion, and in its exercise Courts ought not to interfere with it. The general principle of law applicable to this, as to all other similar corporations, is laid down in High on Injunction, Section 797, as follows:

"Equity will not interfere by injunction for the purpose of controlling the action of public officers constituting inferior quasi-judicial tribunals, such as Boards of Supervisors, Commissioners of Highways, and the like, on matters properly pertaining to their jurisdiction;

nor will it review and correct errors in the proceedings of such officers, the proper remedy, if any, being at law by writ of certiorari." * * "And where they have exercised their discretion, and made their decision in good faith and without any intention of oppressing or injuring private persons, an injunction will not be allowed against their action."

Independent, however, of the exercise of discretion, it appears in this case as a *matter of fact*, that the advertisements of the complainant were unprofessional. He has set forth some nine different styles of advertisements in his bill, to which, within a short space of time, he admits himself to have resorted, and a large number of the most eminent medical practitioners in this city have made affidavits stating that such advertisements are unprofessional, and some of them have added that they were false. Even a layman would only need to read some of these advertisements to know that they *ought* to be unprofessional; but we have the oaths of a large number of physicians that they are unprofessional, and no affidavit to the contrary. But the complainant insists that this law creating the Board of Health is unconstitutional, because it grants exclusive privileges to certain physicians, and denies the same privileges to others; that it is not uniform, and therefore unreasonable, and that it deprives complainant of his property without due process of law. These objections are all to be determined in view of the answer to the question, What is a license to practice a profession? Is it a constitutional privilege? Is it a property? Is it a contract? The complainant's solicitor earnestly asserts the affirmative. All the learned professions, in this respect, are upon a par with each other, and many other occupations are upon a par with them. In a certain sense, it is true that every man has a natural right to follow out the bent of his inclination, and be a clergyman, a lawyer, a doctor, a scavenger, a peddler, an auctioneer, just as he may choose. But it is not true that a man can practice any one of these professions or occupations except he does it upon such terms as the law imposes, and the law can impose just such terms upon any one of these professions or employments as the legislators, in their discretion, deem most for the interest of the community. The law has always sought to fill the learned professions with learned men, and upright and honorable men. However sadly it may have failed, the attempt has been in the right direction. It therefore has hedged round the professions of law and medicine with licenses, as it has hedged in many other businesses in the same way. Men who have the property and lives of others especially intrusted to their keeping ought to be men of skill and learning in their several departments. More than that: it is of the utmost importance that all dishonor and dishonesty should be expelled from the learned professions, and the tendency of legislation has always been to effect this result. If, then, a man has the natural right to be a lawyer or a doctor, he possesses that right subject to every restriction which the law may have created before, or which it shall create subsequent to his entrance upon the given profession, and which restrictions shall tend to secure for it upright and honorable practitioners, and to elevate that profession and make it more beneficent in its influences upon and relations to society.

In the case of *Cohen vs. Wright*, 22 California, 294, the Court decided that the right to practice law was not a constitutional right, nor an absolute right derived from the law of nature, but a mere creation of the statute, and the license conferred only a statutory right subject to the control of the Legislature; that it was not property, and was not a contract between the Legislature and the attorney within the constitutional meaning of the words "property" and "contract." In no proper sense can these words "property" and "contract" be applied to the right to practice medicine. The right is not descendible

from its possessor to his heir, cannot be bought or sold, and may be lost by misconduct or immorality upon the part of the practitioner.

The Supreme Court of Missouri, in the case of *Simmons vs. The State* (12 Miss., 271), said that it was beyond the power of the most refined sophistry to establish the proposition that a right to practice law was a contract, and held that it was a mere naked grant of a privilege without consideration, which grant the State might revoke, or impose such conditions upon its exercise as are deemed proper or demanded by the public good. To the same effect is the case of *State vs. Gazlay*, 5 Ohio, 22, and of *Goldthwaite vs. City of Montgomery*, 50 Alabama, 486, and not a case can be found reported which holds a different doctrine.

Complainant insists that this law is not uniform, because it exempts from its operation all physicians who have been ten years in practice in the State of Illinois, and therefore is unreasonable and void. It is not necessary, in order to constitute uniformity in the operation of a law, that it should bear equally upon all citizens of the State who stand in the same relation to it, that is, upon all who are under substantially the same facts. (*Smith vs. Judge of 12th District*, 17 California, 555.) A physician who had the advantage of a professional practice of ten years in a State would acquire by that very practice a knowledge of local diseases and their appropriate treatment which could not be possessed by a stranger to the region, however extensive might have been his reading. It would be apparent that the ten-years resident might have obtained by his residence and medical practice a knowledge which would place him in different relations to a sanitary law than a resident of a few weeks. But it is said that a resident of nine years and eleven months would be in no different relations to the law from a resident of ten years. It is said that the rule of exemption is arbitrary. But so must every rule be. Graduation from a medical university establishes no fixed standard of professional knowledge. Different institutions have different standards, and the same institution does not apply the same standard to all its students. Dolts gain admission to all the professions through diplomas issued by famous colleges and universities. A court would hesitate to declare a law unreasonable because it applied to some, under one state of facts, and did not apply to others very dissimilarly situated.

And courts decline to set aside positive enactments of the Legislature merely on the ground that in their opinion the law is unreasonable. (*Dillon on Municipal Corporations*, Section 262.) Whether reasonable or unreasonable is one of the questions properly before the Legislature, and upon which it must be supposed to have passed in enacting the law.

But independent of this question last discussed, inasmuch as the right to practice medicine is a mere statutory privilege subject to be changed at any time by the Legislature, and does not rise to the dignity of a contract or of property, there is no reason why such a privilege should not be denied to one man and extended to another in the discretion of the legislators. In this view, the objection to the law for want of uniformity in its application fails, and to this purport are the decisions of *The People vs. Judge of 12th District*, 17 California, 547, and *Cohen vs. Wright*, 22 California, 321, and other cases.

The prayer for injunction will therefore be denied.

NOTE.—The affidavits above alluded to were presented by the attorneys of the State Board of Health, from representative members of each of the different schools of medical practice. Copies of the Code of the Medical Ethics of the different forms of medical practice were likewise offered in evidence.