

No. 3,466. This is another case against the same man for another and different offence, under two sub-sections of sec. 88, *i. e.*, for illegally assuming the title of doctor, physician, or surgeon, or any other name implying that he is legally authorized to practice medicine or surgery, etc., or for assuming in an advertisement, a written or printed circular, or on business cards or signs, a title, name or designation of such a nature as to lead the public to suppose or believe that he is a registered or qualified practitioner of medicine, etc.

There is a demurrer pleaded to this action; but I think the allegations are sufficient. They say that the defendant held himself out as a practising physician by printed labels on bottles of medicine which he sold, by using the words *Dr. Chivé* on them. But there is besides a specific allegation that he has assumed a designation of a nature to cause it to be supposed that he is practising as a physician. Therefore, if he has by these labels or otherwise assumed that designation to himself, so as to have the effect alleged, it is sufficient. The plea to the merits is the same as in the other case.

There are two labels on which the words "*Dr. Chivé*" appear: one on a bottle of "*extract of tobinambour for flavoring ice cream, custards, etc.*" The other is said to have been removed from a bottle, and reads "*Pharmacie normale. Elixir bechique pulmonaire du Dr. Chivé, ex interne des hopitaux de Rouen, remède souverain pour la guérison des toux, etc., etc.*"

The questions are, did defendant assume a designation for himself, or were the printed labels of a nature to cause it to be supposed that he was a practising physician here? It could not be doubted, I think, that this man, who pleads and proves that he is a licensed druggist, has a right to sell flavoring extracts or cough remedies. The only possible doubt would be whether in selling and labelling them in this manner he meant to pass himself off as a licensed doctor here. The words "*Dr. Chivé*" are there on the two bottles. Do they refer to himself or to another *Dr. Chivé* of Rouen? or if they refer to himself cannot he say lawfully that he was once *Dr. Chivé* of Rouen, (and I have no doubt of the fact from the certificate of the mayor of Candelier, which is produced), and that he now

sells under his druggist's license here the things he learned to make there? There are three other bottles also produced. They neither of them have the words "*Dr. Chivé*" on them, but "*Dir. Chivé*," which is said to signify that he is, and wants to be known as *directeur* of this "*Pharmacie Normale*," which he keeps, and has a right, under his license, to keep. It may be, perhaps, a device or trick—and that is what is contended for by the prosecution; but there are two reasons why I do not act upon that view of the case. First, in a penal action, I want clear proof; second, the principal witness in the case, and indeed, admittedly, the instigator of it, is *Dr. Thayer*, who says he bought out this man's business a couple of years ago on condition he was not to return and resume it, but that he has returned and resumed the business, and is now being sued by this same person for \$10,000 damages. That is not evidence of a kind that I can implicitly rely upon to convict of an offence against this statute, where the intent of the party is to be made apparent, an intent which is only attempted to be shown, not so much by direct proof as by the inferences and reasoning of this witness. I think there is a fair doubt whether the defendant meant to pass himself off as a doctor, or merely to vend under his druggist's license, things that were made by another, or even by himself in another country where he could truly call himself a doctor. There is a case very much resembling this one, reported in last February's *Canada Pharmaceutical Journal*, and where the Court took the same view of the matter that I do now, and I agree with what was said there, that I do not interpret the act as applying to such cases; and I do not think that it is in the interests of the public to have such restrictions placed on the sale of medicines as would result from the success of such a case as this.

Upon the whole case—and considering the whole extent of the evidence, I think that the defendant cannot fairly be held to have assumed to practice as a doctor here because he said on his labels that when he was in France, he had been a doctor there, and made stuff which he sells here under his license as a druggist.

Both actions are dismissed with costs.

B. Nantel, for plaintiff.

Archambault, Lynch, Bergeron & Mignault, for defendant.