

tion in Canada, or undergo an examination as to the fitness to deal with such distinctive diseases. . . . A grave injustice will be done to those institutions which resigned their licensing rights in favour of the petitioners if the qualifications of the various licensing bodies in Great Britain and Ireland shall, through the medium of the British *Medical Register*, entitle persons holding the same to practice medicine in the province. . . . The Imperial legislation referred to is practically in opposition to the spirit of the British North America Act, which assumed to leave the people of Ontario to deal with their civil rights."

The petition was supported by a report of a Committee of the Canada Privy Council, which stated—

"The Committee cannot help thinking that these Imperial Acts" (the Medical Act of 1858 and the Act to amend the Law relating to Medical Practitioners in the Colonies, 1868 "were passed without the attention of Parliament having been called to the fact that they infringed upon the legislative powers conferred upon the provinces and the Dominion, and feel assured that on the subject being brought before the notice of Her Majesty's Government, steps will be taken for the repeal of the objectionable provisions. It is obvious that if the legislation be permissible with respect to the medical profession, it might with equal propriety be extended by the Imperial Parliament to every profession, trade, and occupation in Canada, and would thus be subversive of the rights of self government graciously conceded to the people of the Dominion."

The legal opinion of Mr. Jenkyns on the subject was to the following effect.

The petition of the College of Physicians and Surgeons of Ontario is based on an entire misapprehension of the law. The Act of 1858, which was in force at the time when the College of Physicians and Surgeons of Ontario was established, and when the Canadian Federation Act was passed, gave to practitioners registered in the *Medical Register* of the United Kingdom a right to practice throughout the Queen's dominions.

"The Act 31 and 32 Vic., cap. 29, relaxed

the law in favour of the colonies by allowing a colonial legislature to require registered United Kingdom practitioners to be registered in the colonial *Register*, but it preserved the right of those practitioners by allowing them to claim registration as of right. Under this Act, if the Ontario legislature require medical practitioners registered in the United Kingdom to be registered in Ontario, the Ontario Registrar is bound to register them; but otherwise the Ontario Registrar is not obliged to register them, although unable to prevent their practicing without being registered. . . . The Privy Council of Canada omit to notice that at the time the Act of 1858 passed, the Ontario College did not exist. Nor are the Privy Council correct in stating that the Act of 1868 is a greater interference with their self-government than the Act of 1858, because the Act of 1868 does not compel a colony to register United Kingdom practitioners, but authorizes a colonial legislature to do what it could not do under the Act of 1858—namely, require a registered United Kingdom practitioner to be registered in the colony. To preserve the rights conferred by the Act of 1858, it was necessary to provide that if the colonial legislature itself requires such registration it shall not take away those rights, and shall be bound to register such a practitioner without further examination. The interest of Canada would appear to be to maintain the privileges given by the Act of 1858, as, if the pending Bill passes, a holder of an Ontario diploma will be able to be registered in the United Kingdom *Register*, and thus be able to practice under his Canadian diploma throughout Her Majesty's dominions."

The documents having been referred by the President to Mr. Ouvry, for his opinion thereon, he stated that he thought the question might be left where Mr. Jenkyns had put it; that the suggestion of the Ontario College that English registered practitioners are not fit to practice in Canada was peculiar, especially as legislation was contemplated to admit Canadian practitioners here; that the Government must consider the matter as an Imperial question, affecting the relation of the mother country with her colonies; and that it would be a thing to be lamented if, from any action on the part of the colony, freedom to practice should be done away with or limited.