

the conviction or order has been appealed against, and a deposit of money made, such justice shall return the deposit into the said court; and the conviction or order shall be presumed not to have been appealed against until the contrary is shewn."

Held, on preliminary objection, that the appeal had not been properly lodged. Without deciding whether or not the scheme of furnishing security by a deposit of money applied to a conviction made under an Ontario statute, or under a by-law founded on such—that the obligation laid on an appellant by the Code extends beyond the mere leaving of the money with the justice; its return by him into court, before the time for hearing the appeal, must, in some way, have been secured; and that even if what was done had been sufficient, it could not be established by affidavit.

Maclaren, Q.C., for appellant. *Du Vernet*, for respondent.

McDougall, Co. J., Chairman.]

[April 3.

LEE, J. ANT, 7. ROSE, RESPONDENT.

Summary conviction—Medical R. S. O. c. 176, s. 49—Practising medicine—Single act of prescribing—Variance in terms of punishment between adjudication and conviction—Inability to amend.

The appellant, with several other druggists, had been convicted by the Police Magistrate of the city of Toronto, on the evidence of one Minnie Warring and an associate employed by the Medical College, to entrap him into the commission of an offence of practising medicine in contravention of R.S.O. c. 176, s. 49, and was fined \$25 and costs. The visitors called once at the appellant's shop, and the chief witness, Minnie Warring, pleading temporary illness, was furnished by him with some preparation, for which the sum of fifty cents was paid. The conviction, which was made in February, directed the appellant, in default of payment of the fine and costs, to be imprisoned for one month, whereas the adjudication imposed 30 days.

Held, that a single act of prescribing for, or attending on, a patient did not constitute practising; and, further, that the award of 30 days' imprisonment exceeded the maximum one month provided by the statute, and could not, on the authority of *Reg. v. Brady*, 12 O.R. 358, and *Reg. v. Hartley*, 20 O.R. 481, be amended, since, to do so, would be formulating a new judgment.

Du Vernet, for appellant. *J. W. Curry*, K.C., for respondent.