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Illegality of Counter Prescribing.

The recent decision given by Judge Rose in the Common Pleas Division of the Divisional Court, Toronto, in refusing to quash a summary conviction by the Police Magistrate, in the case of Mr. S. Howarth, and further, in his judgment, interpreting the law in the case, is of especial interest to druggists as showing where the line of conduct must be drawn in order to be safe.

The alleged offence in this case was indicating a medicine for symptoms described by a customer and selling a bottle of it at the regular price. The defence, instead of being a denial of the charge, was an attempted vindication of the practice by contending that this was not practising within the meaning of the Act, and, even if it was, it was not for gain, and even if it was for gain, the defendant was entitled, as an apothecary, so to practise.

The Court held that there was evidence of practising medicine on which a magistrate might well convict; that it was practising for hire or hope of reward, and that the defendant's registration under the Pharmacy Act did not qualify him to practise in the same way that one registered under the Medical Act as a physician and surgeon could practise. The judge held that a druggist can properly tell a customer the name of a remedy for a disease, or even tell him which of several remedies he deems the best, but cannot legally enquire into the customer's symptoms to ascertain the nature of his ailment and then indicate the remedy.

From this reporting of the case, the defendant's counsel has apparently rested his defence largely on his client's right to practise as an apothecary.

Whether, under our Act, druggists are such, is a matter upon which no special legal interpretation has yet been given, although the judge has apparently had such in mind when he declared that registration under the Pharmacy Act did not grant qualification to practise in the same way that those registered under the Medical Act were entitled to practise.

In referring to the Chemists and Apothecaries' Act, as published by the *Chemist and Druggist* some years ago, considerable light is thrown on the privileges of each by English interpretation of similar cases.

Referring to this Act, the *Chemist and Druggist* says, "The Apothecaries' Act, 1815, is the only statute which protects

any part of medical practice. The Medical Act, 1858, and its subsequent legislative supplements, stringently prohibit the assumption of any titles or descriptions untruly implying qualification or registration, but do not interfere with the practice of medicine or surgery by unqualified persons who make no misleading pretensions of fitness. But it remains illegal to 'act as an apothecary,' and a number of cases against chemists and others have been prosecuted by the Apothecaries' Company. The definition of an apothecary's functions, which the courts have ever since acted upon, was laid down by Mr. Justice Cresswell in the case of the Apothecaries' Company v. Lotinga, 2 M. and R., 495 (tried in 1813), that 'an apothecary is a person who professes to judge of internal disease by its symptoms, and applies himself to cure that disease by medicine. . . . But a chemist is one who sells medicines which are asked for.'"

In February, 1876, the Apothecaries' Company sued a London chemist and druggist, in the Court of Exchequer, for a penalty of £20 for practising as an apothecary without a certificate. The 28th section of the Act was pleaded, and the defendant said that all serious cases were attended by his partner, a duly qualified practitioner, that he never visited, but, that in minor cases, he had inquired the nature of the illness, and had given the most suitable medicine without consulting his partner. Baron Bramwell told the jury that the Act was strict in its terms, and they were bound by it. If a man asked a chemist for something to cure a bad headache, and the chemist gave him a draught, he would be infringing the terms of the Act; but it would be unreasonable in such a case for the Apothecaries' Company to interfere. It was for the jury to say if the defendant had infringed the Act. The jury found for the plaintiffs, and the judge refused leave to move. The Apothecaries' Company subsequently prosecuted a chemist and druggist at Nottingham, and the defence was taken up in this and other cases by the Chemists' Trade Association. The fine was inflicted in the Nottingham County Court, and an appeal (Sir Henry James arguing for the appellants) the Court of Exchequer (Sir Fitzroy Kelly and Mr. Baron Chasby) ordered the case to be retired in that Court. The case was therefore heard before Mr. Baron Pollock on November 7, 1877. It was proved that a witness employed to get up the case had visited the