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AFFIDAVIT.

New Jersey Supreme Court

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, Complainant, *Defendant-in-Certiorari,* *vs.* ALSON J. WALKER, Defendant, *Prosecutor-in-Certiorari.*	*On Certiorari.* *Affidavit.*

STATE OF NEW JERSEY,
COUNTY OF MORRIS. } *ss.*

ELMER W. ROMINE, of full age, being duly sworn according to law, upon his oath deposes and says:

I have been substituted as the attorney for Nathan H. Berger in the above-entitled case.

I have conferred with Nathan H. Berger regarding the points raised at the trial and have also examined the proceedings.

A constitutional question was raised at the trial as to whether the complainant can proceed under the Medical Act of 1894 as amended in 1921 against those who do not by their method of treatment employ the use of drugs, medicines or perform surgical operations, as the act under which said complaint was had relates only to the practice of medicine and surgery and does not in the objects expressed in the title include any other form or method of treatment.

Affidavit of Elmer W. Romine.

There was a further question raised as to the right of trial by jury. In such cases a right of trial by jury under the District Court Act, which was the court in which the complaint in the above case was made, entitles a person to a trial by jury, which act relating to district courts so far as the right of trial by jury is permitted, has never been amended or repealed.

It is contended in these proceedings that the Court had no jurisdiction to proceed with the complaint or pronounce judgment under the facts and the evidence as developed.

The defendant in the above proceedings, therefore, desires to have the judgment reviewed and the constitutionality of the act under which the complaint was made determined.

E. W. ROMINE.

Sworn and subscribed to before me this
9th day of June, A. D. 1927.

WILLIAM A. HEGERTY,
An Attorney at Law of N. J.

Writ of Certiorari.

WRIT OF CERTIORARI.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, Complainant, *Defendant-in-Certiorari,* *vs.* ALSON J. WALKER, Defendant, *Prosecutor-in-Certiorari.*	*On Certiorari.*

STATE OF NEW JERSEY, *ss.*

The State of New Jersey to Daniel A. Dugan, Judge of the District Court of the City of Orange, GREETING:

(SEAL)

We being willing for certain reasons to be certified of the determination or judgment given and made before you in a certain proceeding brought against Alson J. Walker in the suit of the State Board of Medical Examiners of New Jersey, do hereby command you that you send under your seal to our Justices of the Supreme Court of Judicature of the State of New Jersey on the 10th day of August next, the proceedings, testimony, exhibits, determination or judgment, aforesaid, with all things touching and concerning the same as fully and entirely as they remain before you by whatever names the party may be called therein together with this writ, that we may further cause to be done what of right we shall see fit to be done.

Writ of Certiorari.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court of Trenton, on the 22nd day of June, A. D. 1927.

EDWARD J. KELLEHER,
Clerk.

ELMER W. ROMINE,
Attorney for Defendant,
Prosecutor-in-Certiorari.

The within writ is allowed this 12th day of July, 1927. Let it be sealed.

LUTHER A. CAMPBELL,
Justice Supreme Court.

Return to Writ.

RETURN TO WRIT.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, *Plaintiff,* *vs.* ALSON J. WALKER, *Defendant.*	*On Certiorari.* *Return.*

To the Honorable, the Chief Justice and Associate Justices of the New Jersey Supreme Court:

The summons, proceeding, testimony, exhibits, determination or judgment herein, together with all things touching and concerning the same as fully and entirely as they remain in the District Court of the City of Orange, I do hereby certify under the seal of the court in the schedule annexed, as within I am commanded.

DANIEL A. DUGAN,
Judge of the District Court
of the City of Orange.

Attest:

HAROLD TRABOLD.

TRANSCRIPT OF CLERK'S DOCKET.

ORANGE DISTRICT COURT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, *Plaintiff,* *vs.* ALSON J. WALKER, *Defendant.*	*On Contract.* *Demand.*

Warrant issued Oct. 11, 26. Ret'ble forthwith.
E. L. Katzenbach, Atty.

Summons returned as follows: I served this summons.

Summons	$ 2.35
Listing Fee	1.50
Attorney's Fee	25.00
Total Cost	$28.85

I return this warrant into court with prisoner, October 11, 1926. John E. Gallagher.

October 11, 1926. Defendant pleading not guilty, was held in bail of $1,000.00, which was furnished, and defendant released from custody.

March 11, 1927. Trial had: A. W. Denham sworn as stenographer. Motion for trial by jury denied. Fostina Hess sworn and testified. Card marked Exhibit P. 1. Motion to strike out denied. Millicent Wheeler sworn and testified. Motion to strike out denied. Hugh S. Cully sworn and testified. Certificate and record marked Exhibit P. 2 and P. 3. Motion for nonsuit denied. Plaintiff rests. Defendant rests. The defendant was found guilty and judgment

rendered for the plaintiff and against the defendant for five hundred dollars penalty and twenty-eight dollars eighty-five cents costs, in default of which penalty the said defendant was sentenced to two hundred days imprisonment in the Essex County Jail.

March 11, 1927. Received of John J. Gallagher, the body of Alson J. Walker.

Richard McGuiness by Thos. Lyons.

ORANGE DISTRICT COURT

OF THE CITY OF ORANGE.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, *Plaintiff,* *vs.* ALSON J. WALKER, *Defendant.*	*Demand for Trial by Jury.*

To the Clerk of the Orange District Court of Orange:

TAKE NOTICE, that the defendant hereby demands a trial by jury in the above-entitled cause, in accordance with the provisions of Section 149, entitled "An Act Concerning District Courts, Revision of 1898, and the acts amendatory thereof and supplemental thereto." This demand is intended to be a general demand, not limited to any one day, but shall be taken as a continuing demand, applying to each day to which this case may be adjourned.

NATHAN H. BERGER,
Attorney for Defendant.

Judgment.

A true copy.

HAROLD TRABOLD,
Clerk.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

BE IT REMEMBERED that on this 11th day of March, A. D. nineteen hundred and twenty-seven, at Orange, in said County, Alson J. Walker, defendant, was by the District Court of the City of Orange, convicted of violating the tenth section of an act of the Legislature of the State of New Jersey entitled, "An Act to regulate the practice of medicine and surgery, to license physicians and surgeons and to punish persons violating the provisions thereof," approved May twenty-second, one thousand eight hundred and ninety-four, as said section was amended by act approved April eighth, one thousand nine hundred and twenty-one, in a summary proceeding at the suit of the State Board of Medical Examiners of New Jersey upon complaint made by Charles B. Kelley, and further that the witnesses in said proceeding who testified for the plaintiff were Fostine Hess, Millicent Wheeler, Hugh S. Cully, and the witnesses who testified for the defendant were none.

WHEREOF, the said Court doth hereby give judgment that the plaintiff recover of the defendant five hundred dollars penalty and twenty-eight dollars eighty-five cents costs of this proceeding.

DANIEL A. DUGAN,
Judge.

Warrant.

And the said Alson J. Walker, neglecting and refusing to pay the amount of the penalty above mentioned, with costs, it is hereby ordered that the said Alson J. Walker be and he hereby is committed to the common jail of the County of Essex for a period of two hundred days unless the said penalty and the costs are sooner paid.

DANIEL A. DUGAN,
Judge.

A true copy.

HAROLD TRABOLD,
Clerk.

ESSEX COUNTY, *ss.*

The State of New Jersey to any Constable of the County of Essex or (SEAL) to the Sergeant-at-Arms of or to the Inspector of the State Board of Medical Examiners of New Jersey:

WHEREAS, Proof has been made before me under oath that during the months of April, May, June and July, A. D. nineteen hundred and twenty-six, at the City of Orange, in the County of Essex and State of New Jersey, one Alson J. Walker, of the City of Orange in the County of Essex and State of New Jersey, did violate the tenth section of an act of the Legislature of the State of New Jersey, entitled "An Act to regulate the practice of medicine and surgery, to license physicians and surgeons and to punish persons violating the provisions thereof," approved May twenty-second, one thousand eight hundred and ninety-four, as said section ten was amended by act approved April eighth, one thousand nine hundred and twenty-one, in that

the said Alson J. Walker, at the time and place aforesaid, did commence and continue the practice of medicine and surgery within the meaning of section eight of said act, as said section eight of said act was amended by act approved April twelfth, nineteen hundred and fifteen, without first having obtained and filed a license for such practice issued by the State Board of Medical Examiners of New Jersey, as provided for under the provisions of said act, contrary to and in violation of said section ten of said act and against the form of said statute.

And it being further alleged that on the nineteenth day of February, A. D. nineteen hundred and twenty-six, said Alson J. Walker was convicted in the District Court of the City of Orange of a violation of said section ten of said act and that the violation first above mentioned is another and a continuation of the violation of which the said Alson J. Walker was previously convicted.

You are hereby commanded to take the body of the said Alson J. Walker, so that you have him forthwith before the District Court of the City of Orange, at the City Hall, in said City of Orange, in the County of Essex and State of New Jersey, to answer unto the State Board of Medical Examiners of New Jersey, who sue for one penalty of five hundred dollars for the aforesaid violation, and that the said defendant may be dealt with according to law.

WITNESS, DANIEL A. DUGAN, Esquire, Judge of the District Court of the City of Orange, this eleventh day of October, A. D. nineteen hundred and twenty-six.

HAROLD J. TRABOLD,
Clerk.

A true copy.

TESTIMONY.

IN THE DISTRICT COURT OF ORANGE, NEW JERSEY.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS,
Plaintiff,

vs.

ALSON J. WALKER,
Defendant.

Transcript of testimony, taken stenographically, at the hearing in the above-entitled cause, held in the District Court of Orange, New Jersey, on Friday, the 11th day of March, A. D. 1927, before Daniel A. Dugan, Esquire, Judge of said District Court, at 10:00 o'clock in the forenoon.

Appearances:

Grover C. Richman, Esq., for the plaintiff.

Nathan H. Berger, Esq., for the defendant.

A. W. Denham, Court reporter, Supreme Court Examiner, Trenton Trust Building, Trenton, N. J., sworn as stenographer.

August 3, 1927.

Mr. Berger: For the purpose of the record I would like to call attention to the fact that the defendant in this case has filed a written demand for a trial by jury. The defendant respectfully urges that he has the right to the trial of this case by jury. I ask that a jury be empaneled to try the case in compliance with our demand.

The Court: It will be denied.

Mr. Berger: I pray for an exception.

FAUSTINA HESS, sworn for plaintiff.

Direct examination by Mr. Richman.

Q Did you visit the defendant in this case? A I did.

Q Where did you go? A 235 Main street, Orange.

Q When did you go? A June 4, 7, 9, 11, 1926.

Q Will you describe the place you went? A It's the Masonic Hall, and to the right of the door—

The Court: Masonic Hall where?

A Main street, Orange. To the right of the door there I saw a sign with black letters, "Dr. Alson J. Walker." Upstairs in the front part of the building on a door there was a sign, "Dr. Alson J. Walker," and office hours. Inside was a waiting room, with wicker furniture, and then another waiting room beyond that, and then to the right of that was the treating room.

Q What was that like? A It had a collapsible table and desk and stool and chair.

Q What do you mean by collapsible table? A That lets down in the center, the center part opens out like, you know.

Q Leather table? A Yes.

Q On your first visit, did you see the defendant? A I did.

Q Do you recognize him now? A Yes.

Q Where is he? A At the end of the table.

Q Sitting next to Mr. Berger? A Yes.

Q On your first visit that's the man you saw? A Yes.

Q What did you say to him? A I told him I had not been feeling very well, had been having trouble with my back, pain in my back, and asked if he thought his sort of treatment would help me, and he said it surely would. He asked me a few questions, the location of the pain, and for how long a time I had the trouble.

Q Did you answer him on these questions? A Yes, I did. I told him the lower part of my back for several days I had had trouble, and at various other times I had trouble with my back; and he told me to disrobe and put on a kimono, open in the back, and then I lay on the table and he took his hands—

Mr. Berger: I object to any evidence as to what the defendant did, on the grounds that the defendant is charged with the practice of medicine and surgery, and this witness has not been proved qualified to testify as to what constitutes the practice of medicine and surgery. Her evidence is irrelevant and incompetent.

The Court: Objection overruled.

Mr. Berger: I pray for an exception.

The Court: Granted.

Mr. Richman: What did he do?

A He took his fingers, and pressed real hard all around the spine, and then went up and down with his fingers and the palm of his hand on my back, and I think talcum powder or something, he sprinkled all over my back, and he pressed real hard about four times on my back and twice on the neck.

Q With what? A With the fingers and palms of his hands, and that was all, I think.

Q What position were you in when he did that? A Face downwards on the table.

Q Did he say anything? A No, he didn't say anything. He did say that it was a cold and a rheumatic condition.

Q Then what happened? A That was all. He said that I was in quite a bad condition, that I would need quite a number of treatments, and would have to take them very regularly in order to notice much improvement.

Q Then what did he do? A Then I paid him.

Q How much? A One dollar.

Q Did he give you anything? A I asked him something about the office hours, and he told me there were on the card. I took one as I went out the door and I have it here.

Q Where were they? A There was some in a dish on the table.

Q Did he see you pick it up? A Yes.

Q This was on your first visit? A Yes.

Q Where did you say they were? A In a little dish on the table in the waiting room.

Mr. Richman: I offer the card.

Mr. Berger: Objected to as immaterial.

The Court: Overruled. It will be admitted. P. 1.

Mr. Richman: Was anyone with you on the first visit.

A No, I was alone.

Q You dressed and left, did you? A Yes.

Q When did you return? A June 7th.

Q How did you come to go back June 7th? A I made an appointment for June 7th.

Q On June 4th, did you make it? A Yes, for June 7th.

Q You made that with the defendant? A Yes.

Q You did go back June 7th? A I went back June 7th.

Q What happened? A He asked me how I was. I said I had not noticed very much improvement, about the same, and he said I would have to take quite a few treatments before I would notice much improvement; and then I disrobed again, and went through really the same thing on the table, had one adjustment on the neck and four on the back, and paid him.

Q How much? A One dollar.

Q When did you return? A June 9th.

Q On the 7th of June did you go alone? A Alone.

Q You returned again June 9th? A Yes, June 9th.

Q Alone? A Yes, I was alone.

Q What happened? A I told him that I thought I had a cold, and he asked me why I thought so, and what the symptoms were. I told him my eyes were running, and my throat was giving me trouble. He said he would fix them up all right, and then I had these adjustments on the table, and he gave me one on the stool that day, a real hard neck adjustment.

Q How did he give you this adjustment? A He takes his hand and twists your neck way round one side, and he gives a real hard push like with the palm of his hand.

Q The adjustments on the back were how, what were they like? A He takes one hand over the other and pushes real hard, and it twists the neck.

Faustina Hess, direct.

Q Did he do anything else that visit? A No, he adjusted me on the table, but previous to that he told me my nerves were very bad.

Q Did he or did he not use any liquid that day? A Yes, he did put something from a bottle, a liquid, I felt it cold, but I could not tell what it was. I felt something real cold on my back. He rubbed it in.

Q With what? A With his hands.

Q Was that before he gave you the adjustments? A Yes, before.

Q Did you pay him on that visit? A Yes, I paid him, and Mrs. Wheeler saw me pay him.

Q Where was she when you were receiving treatment? A In the waiting room.

Q She was not in the treating room? A No, in the waiting room.

Q Did he say anything to you about the effect these treatments would have, on this visit? A He asked me how I was, and that was on the 9th or the 11th. That was on the 9th.

Q On the 9th? A He just said my nerves were bad. I would have to continue for some time. I was in a very bad condition and would need a good many treatments.

Q Did you return after that? A I returned June 11th.

Q What happened on that visit? A There was practically the same thing. On the table four adjustments with his hand on my back, and two on the neck, and he inquired how I was and I told him I thought I was much better; he had helped me quite a lot.

Q Did you pay him? A I paid him one dollar, and Mrs. Wheeler saw me pay him.

Q Were you alone on that visit? A She was in the waiting room.

Q Who? A Mrs. Wheeler.

Faustina Hess, cross.

Q On any of these visits did you notice any other persons in the waiting room? A Yes, there was the last two visits, there was someone else waiting.

Q When you came out of the treating room they were there? A Yes.

Q Were they there when you went in? A One day there was a lady there, on the 9th.

Cross examination by Mr. Berger.

Q Where do you live? A Trenton.

Q Trenton, New Jersey? A Trenton, New Jersey.

Q What is your right name? A Faustina Hess.

Q What? A Mrs. Faustina Hess.

Q Are you the same lady that appeared against Dr. B—, of Jersey City? A Yes.

Q You make a business of appearing in cases of this kind, don't you? You do, don't you? A You might call it that.

Q In other words, you do it for pay? A Yes.

Q You go out to get evidence so you can earn your pay? Is that right? That's what you do? A I don't know. I go to see what they are doing.

Q Isn't it your job to go out and get these doctors? You get paid for it? A I go out to see what they are going.

Q You went to the defendant in this case to get evidence against him? A I went to see what he was doing.

Q To get evidence against him? A No; just to see what he was doing.

Q You went there so you could testify in a case against him, did you not? A I won't say yes to that because I investigate a good many

places where there are no prosecutions. I don't know what evidence consists of.

Q You go to get evidence so that a case could be started?

Mr. Richman: Objected to: She does not go to get evidence.

Mr. Berger: You went to this defendant at the direction of the Medical Board, did you not?

A Yes.

Q You went there to see whether you could get him to treat you for what you said was the matter with you. Isn't that true? A I just went in there and told him what my trouble was and he said he could help me.

Q You were told to go and do that? A Yes.

Q You went there to see if he would treat you or not? A I suppose.

Q You went there, told him your trouble, and got him to treat you for this trouble? Isn't that so? A Just to see what he was doing.

Q You were sent there to tell him about a certain trouble. It was your object to get him to treat you, wasn't it? You wanted him to treat you for this ailment you said you complained of, did you not? A I suppose so.

Q As a matter of fact, did you have such an ailment as that? A I did.

Q Sure of that? A Yes.

Q How is it they had to tell you you had such an ailment? A Nobody told me I had any ailment.

Q Did you ever go to anyone else for treatment, the same treatment?

Mr. Richman: Objected to as irrelevant and immaterial.

The Court: Sustain the objection.

Mr. Berger: Isn't it a fact, Mrs. Hess, that you have paraded the same ailment in the case of a great many defendants in cases of this kind?

Mr. Richman: Objected to as irrelevant and immaterial.

The Court: Sustained.

Mr. Berger: Pray for an exception.

Q When you told the defendant of this ailment, and you asked him to treat you, it was for the purpose of reporting back to the medical society that you had received treatment of the defendant, was it not?

Mr. Richman: Objected to. She has not testified she asked the defendant to treat her.

The Court: I think you might ask her what she did. I will overrule the objection.

A You might call it that, I suppose. I make a report of whatever they do.

Q You make these reports so as to enable the medical society to bring all these cases?

Mr. Richman: Objected to. That calls for a conclusion which the witness cannot make.

The Court: Sustain the objection.

Mr. Berger: You report to the medical society in these cases what the defendant did?

A Yes.

Q They brought a case against him and now you are testifying in that case? A Yes.

Mr. Berger: I move to strike out the testimony of this witness, on the ground that the plaintiff in this case entrapped the defendant to do what they complain of, so as to bring this suit for the collection of a penalty that might be imposed in this case. Under the law of entrapment, in a situation of this kind, the plaintiff cannot trap the defendant into a situation such as was done in this case, and then bring a suit for the recovery of money as a result of such situation; and, therefore, the testimony of this witness cannot be received by the Court under the circumstances and under the admission made by the witness.

The Court: The motion will be denied.

Mr. Berger: I pray for an exception.

MILLICENT WHEELER, sworn for plaintiff.

Direct examination by Mr. Richman.

Q Did you visit the defendant in this case? A I did.

Q When? A June 9th.

Q 1926? A 1926, yes.

Q Where did you go? A I went to 235 Main street, Orange.

Q Who did you go with? A I went alone.

Q On June 9th? A June 9th, yes.

Q Did you see the defendant on that visit? A I did.

Q Do you recognize him now? A Yes.

Q Where is he? A The gentleman sitting at the end of the table.

Q What did you say to him? A I told him I had been having trouble with my back, and a great deal of aching in my legs, and I asked him if he could do anything for me; and he said he thought he could; he was sure he could, and he told me to disrobe and get ready for treatment; and I put on a kimono open in the back, and then he had me sit down on a stool and he examined my back.

Q What did he do then? A I was sitting on the stool, and he ran his fingers up and down my back and pressed along the spine; and then he had me lie down on the table, face downwards, and he pressed very hard on my back in three or four places, and then he—

Q With what? A With his hands; and with his hands he gave me a neck adjustment, quite a severe one.

Q What was that like? How did he do that? A He took his hands on either side of my face and twisted my neck, first to one side and then to the other side.

Q These adjustments on your back, what were they like? A It felt like his hands pressing down hard on the spine.

Q In different places? A In different places, the lower part of the back, the middle and across the shoulders.

Q Did he say anything to you as to the effect of this? A He said my digestion was not acting very well, and my liver was not functioning properly, and this would stimulate those conditions.

Q What else happened? A Then I made an appointment to come back, and paid him.

Q How much did you pay him? A I paid him one dollar.

Q Did he ask you for it? A I asked him what the fee was and he said one dollar.

Q Did he give you anything? A No.

Q Then you returned when? A On June 11th.

Q You did go back on June 11th? A I made an appointment to go back on June 11th.

Q He made an appointment with you? A Yes.

Q Did he fix the time? A Yes, he told me to come in the morning of June 11th.

Q Of June 11th? A Yes, around ten o'clock.

Q Did you go? A Yes.

Q What was said and what happened? A I said that I had felt very good the day after the treatment, but I didn't feel so good the next day. He said that often happened. They call it retracing the old trouble, but that would all clear up as everything began to function properly and taking up the fluid he was stimulating by this treatment.

Q What did he do? A I made ready for the treatment, and then he had me lie on the table and he pressed along my spine in four or five places, and took his hands and adjusted my neck the same as he had done on the first treatment.

Q Did you pay him on that visit? A Yes, I paid him one dollar.

Q Did you have anybody with you? A I had my baby with me at that time.

Q How old? A Not quite two.

Q Did you have a conversation with him about the baby? A He spoke to me about the baby. He noticed the baby's one leg seemed to be a little bit bowed, and he showed me how to

help that by taking my hands around the baby's leg and pressing my thumb on the bone just gently, doing that every night, and that would help straighten out that condition.

Q Did he actually do that to this child? A He took his hands and showed me how to hold my hands on the baby's leg.

Q Did you return after that? A No.

Cross examination by Mr. Berger.

Q Where do you live, Mrs. Wheeler? A I live at 18 Dodd street.

Q Orange? A Bloomfield.

Q Who sent you to Dr. Walker? A I went for the Medical Board.

Q You are employed by them? A Employed by them as an investigator.

Q You were sent to Dr. Walker to get evidence of the practice of medicine? A I was sent to Dr. Walker to see what he was doing.

Q The plan was to go and tell him something was the matter with you and get him to adjust you? A I was to tell him my trouble.

Q Tell him your trouble and see if he wanted to adjust you for it? A If he was giving adjustments.

Q To see if he would give you an adjustment? A I was to tell him my trouble and see what happened.

Q You knew he was practicing and you knew you went there to a chiropractor? A Yes.

Q What he does is adjust one's spine, isn't that right, by pressure, or manipulation? A Yes.

Q You knew that? A Yes, I knew that.

Q You had done this before? You had been round getting evidence against other doctors?

Mr. Richman: I object to that. There's no testimony as to getting evidence at all.

The Court: Objection sustained.

Mr. Berger: You were sent there to get this evidence and bring it back to them, weren't you?

A I was sent there to see what he was doing.

Q And bring back a report? A A report of what I found.

Q You went there, told him your ailments, got him to adjust you, and then you reported back to the medical society that he had adjusted you, for the purpose of bringing this suit here?

Mr. Richman: Objected to. There's no testimony to that effect at all.

The Court: Objection sustained.

Mr. Berger: When you went there, you knew if you found he adjusted you, there would be a suit brought?

Mr. Richman: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Mr. Berger: I pray an exception.

Q You have known of these cases being brought on after you got evidence?

Mr. Richman: Objected to as irrelevant and immaterial.

The Court: Sustained.

Mr. Berger: I pray for an exception.

Q The fact is you have made a business of getting evidence of this kind, haven't you?

Mr. Richman: I object to that, because there's no testimony to that effect.

The Court: Sustain the objection.

Mr. Berger: I pray an exception.

Q You have collected money, have you not, for bringing in this evidence? You have, have you not? A I have been paid for my work.

Q Then your pay depends on whether a case results in a conviction or not? A Most decidedly not.

Q You are paid for delivering the evidence, is that it?

Mr. Richman: I object to counsel repeating the statement that they get evidence. There is no such testimony offered.

The Court: I will overrule the objection on that. I think you may bring it out.

The Court: Are you on a salary?

A I am paid for the work I do, as to the cases I do.

Q You are paid just for the work you do? A Yes.

Mr. Berger: When you do work on this kind of case you are paid for those cases, are you not?

A I am paid for this case and any case I investigate.

The Court: You are paid whether they go to trial or not?

A It doesn't make any difference; I am paid for my report.

Q You are paid to go around and investigate, and you are paid whether there's a trial after, or not? A Yes, it doesn't make any difference about that.

Mr. Berger: Was there, in fact, anything the matter with you when you went to Dr. Walker?

A Yes, there was.

Q Was there anything the matter with your two-year-old baby? A Dr. Walker noticed it himself.

Q Did you follow his advice with the baby? A I used it afterwards, yes.

Q Did it help the baby? A There's still a condition there.

Q Has it made any improvement in this condition? A That's very hard for me to say. That's hard for me to diagnose such a condition.

Q Did he make any charge for that advice? A He just simply spoke of it following my treatment.

Q You say he massaged your spine, did he? A He pressed with his hands on my spine very hard.

Q Have you ever had a massage given you by a masseur?

Mr. Richman: Objected to as immaterial. What difference does that make?

The Court: Objection sustained.

Mr. Berger: She said she had not, if your Honor please. I move that the testimony of this witness be stricken from the record on the ground that by her own admission she was sent by plaintiff for the purpose of getting the defendant to do the

things that they now complain of in this case, and that this constitutes an entrapment, and the law of entrapment provides that the plaintiff cannot sustain this case on evidence of that nature. They cannot go into the defendant's place and trap him into a situation out of which they now seek to get money, in this State.

The Court: The motion will be denied.

Mr. Berger: I pray for an exception.

HUGH S. CULLY, sworn for plaintiff.

Direct examination by Mr. Richman.

Q Did you visit Mr. Walker, the defendant in this case? A Did I visit him?

Q Yes, did you go to see him? A Yes, I saw him occasionally, two or three times a day.

Q Are you employed there at the building? A Yes, I am superintendent of the building.

Q Have you been to him for treatment in his office? A I was in his office once for treatment.

Q When was that? A Last April.

Q 1926? A Yes, 1926.

Q What was your trouble? A He didn't tell me what.

Q Did you tell him? A No, sir.

Q What did you say to him? A I didn't say anything. I went in and asked him to work on my spine, and he worked on my spine.

Q What did he do? A He rubbed my spine as if it was a heavy massage.

Q With what? A Like a heavy massage.

Q With his hands? A With his hands.

Q Why did he do that?

Mr. Berger: Objectd to. That calls for a conclusion.

Mr. Richman: Did he tell you why he did it?

A No, sir.

Q In what position were you when he was doing it? A I was over on my stomach with my head resting on my arms down on the table.

Q Was your back exposed? A Yes, my back was exposed.

Q What did he say to you about the treatment? A He didn't say, sir; he just gave me the treatment.

Q He had no conversation with you at all? A Not over that.

Q You did ask him to give you treatment? A Yes, I asked him.

Q Did you pay him? A No, sir, I did not.

Q Why not?

Mr. Berger: Objected to as immaterial why he didn't.

Mr. Richman: Did he ask you for it?

A No, sir, he did not.

Q You didn't pay him? A I didn't pay him.

Q Are you going to pay him?

Mr. Berger: I object to that as immaterial whether he's going to. We are concerned with what happened, not what's going to happen.

The Court: Did he say anything to you about paying?

A No, sir.

Q You said nothing to him? A No, sir.

Mr. Richman: What kind of place is it, Mr. Cully?

A There's three rooms, three rooms in there.

Q Did you notice any signs anywhere? A There is signs there, "Doctor Walker" on the door, and his hours.

Q These three rooms you speak of, what are they like? A The front room is a very large room, and there's a small room off that, and as you enter the door there's another large room.

Q What's the other large room like, the last one you spoke of? A That's large, too, but not quite as large as the front room.

Q What's in there? A He has apparatus in there.

Q The room where you were lying face downward, what is that like? A It was facing the west, a small room there with a desk in there, and he has a chair.

Q A table? A You may call it a table, or—

The Court: You know a table when you see it; was it a table?

A No, not a table.

Q What was it? A Like this chair that raises up and down.

Mr. Richman: Adjustable?

A You may call it that. I don't really know what you would call it. One of those that you lowers down.

Q Did you return after that visit, or was that the only time you were there? A Yes.

Q You didn't go to see him again? A No.

Q Did he come to your home? A No, sir.

Q That's the only time you have been to see him? A He never has been in my home.

Q That's the only time you have been to see him for treatment? A Yes.

Cross examination by Mr. Berger.

Mr. Berger: No questions.

Mr. Richman: I offer in evidence the record of the conviction of this defendant, Alson J. Walker, on the 19th February, 1926, of this same offense.

I also offer in evidence certificate made evidential under the act of 1924 to the effect that the defendant is not licensed to practice medicine and surgery in this State.

Mr. Berger: I object to this offer of the certificate on the ground that it's irrelevant and immaterial in this case, and I assume that the State rests its case by making this offer, because I would like to reserve the right to argue the case when the State rests, because I don't know whether at this time, whether they have any other evidence which may connect the certificate with the case.

The Court: It will be admitted.

Mr. Richman: The record of the conviction admitted and record of the Court.

Mr. Richman: State rests.

Mr. Berger: If your Honor please, I move for non-suit, or dismissal of the case, whichever is the proper procedure in cases of this kind, on the ground that the evidence of the State, the plaintiff rather, is that the defendant engaged in the practice of the profession of chiropractor, and is not engaged in the practice of medicine

and surgery. I would call your attention to the fact that in case of Stephen Toczko against Otto Schulz, brought in the Hudson County Circuit Court, before Judge Ackerman and a jury, I have here a copy of the opinion of the Court. It's a case, it's a suit involving malpractice on the part of a chiropractor, the parents of the decedent claiming that by reason of the malpractice of the defendant the child dies, and they brought suit for damages. They attempted in that case to put on a witness, a medical doctor, to testify as to the malpractice, and Judge Ackerman refused to hear this witness. I happened to be the attorney for the defendant in that case, and I am familiar with the circumstances of it. He refused to hear the witness on the ground that the practice of chiropractic is not the practice of medicine. He pointed out that the Legislature of this State had adopted an act which regulates the practice of this special class of healing, called chiropractic, and that they are not governed at all by the Medical Act. The proof in this case now before your Honor is that the defendant in this case used his hands in the manipulation of the spine, which has been defined by the State Legislature as constituting chiropractic is, because the Legislature of this State has done so, and it provides, under an act of the Legislature, that they can get a license, and then goes on to state what happens if you don't do so. In this case, your Honor, the plaintiff has proved exactly what I contend, namely, that the defendant in this case has practiced chiropractic and not medicine and surgery, and, therefore, that being so, and I believe it is so, they cannot successfully prosecute a suit in this case for the practice of medicine and surgery, because there is not a scintilla of evidence in this case that would take

it out of the chiropractic act. And, on the contrary, everything they have proved establishes beyond any peradventure, or any doubt, that this man, if he was doing anything at all, was practicing chiropractic. The witnesses admit they went there, knowing he was a chiropractor; they went there looking from chiropractic treatment. They received chiropractic treatment, and there's an act of this State, an act of our own Legislature, which defines that very treatment, and goes on to say that a license should be obtained, and what happens if a license is not obtained. The act regulating the practice of medicine and surgery has been held by a superior court in this State to have no application to chiropractic, and, therefore, I urge respectfully that the plaintiff has failed utterly in establishing a case against the defendant.

I also urge that this case be dismissed upon the further ground that the plaintiff's case rests on the testimony of three witnesses, Mrs. Hess, Mrs. Wheeler and Mr. Cully. The first two witnesses have admitted that they were sent there by the plaintiff to obtain this evidence. They went there to tell the doctor of certain ailments and see what he will do. Their plan was to get him to do something, and then go into court and say he did so and so, and want to punish him for doing it.

The Court: There's no indication they wanted any punishment.

Mr. Berger: I don't say the witnesses. I don't blame anything on the witnesses. I am talking about the plaintiff. I want to be correct. I mean the State Medical Board. I think these witnesses were sent as employees of the State Medical Board to plant this case on the defendant. They came there and told this man certain

stories, according to their own testimony, so as to see what he will do.

The Court: They were sent to investigate, they said, to see what he was doing. You go way beyond that, you say to plant. There's nothing in the evidence—

Mr. Berger: In other words, the law of entrapment, as I understand it, is—

The Court: The only purpose was to find out what he was doing. You don't have to frame a man for that. Framing, or planting a case, that's a very different proposition. That's manufacturing evidence.

Mr. Berger: I urge its dismissal on these grounds:

First: The case of the plaintiff should be a violation of the special license act, the limited license act; and

Second: That the evidence of the State does not sustain the plaintiff's case. The third witness, your Honor, admitted he received a massage; there was no conversation whatever, no diagnosis, no ailment of any kind, no payment of any sort. I don't suppose any man could be accused of practicing medicine and surgery for rubbing another fellow down. I submit there should be a dismissal of this complaint.

The Court: I deny the motion.

Mr. Richman: I pray for an exception.

The Court: Granted.

Mr. Berger: Defendant rests.

Mr. Richman: I move for a conviction on the evidence offered.

The Court: In view of that situation, there is nothing for the Court to do but render a verdict of guilty.

Mr. Berger: I move for a stay of ten days to permit me the time to prepare the papers for a certiorari.

The Court: There will be no stay. There is a sign on the door and on the front of the building. He holds himself out as a doctor defiantly, and with a total disregard for the law. Of course, he can't continue, unless he wants to spend the rest of his life in jail, or paying out in fines most of the receipts that he gets from this illegal practice. I can't help it if he looks at it that way. I have no other recourse but to continue to impose what the law obliges us to do. The more he does it the less entitled he becomes to anybody's sympathy. No man can be defiant of the law in this country and continue to get any sympathy from any man. He has simply got to quit and get in some other line of business if he wants to take his place as a citizen, or as a man. He simply can't go on, that's all, any more than a burglar. He goes on practicing, ignoring the laws of the State, and he will not get away with it. He may once or twice, or thrice, but eventually he will spend most of his time in jail, and all of his resources will be spent in an effort to keep out; but he will never be able to be finally successful in defying the law; it cannot be done.

This defendant does not even ask for a reduction of the penalty. He asks for no mercy; he goes on what he calls his rights, and asks for no consideration. All right; it will be two hundred days.

August 6, 1927.

N. J. State Board of Medical Examiners

vs.

Alson J. Walker.

I certify the foregoing to be a true and correct transcript of the stenographic record taken by me in the above-entitled cause in the Orange District Court, on the 11th day of March, 1927, before Daniel A. Dugan, Esquire, District Court Judge.

A. W. DENHAM.

EXHIBIT P. 1.

HOUSE CALLS MADE

OFFICE PHONE 8392
RESIDENCE 4048

Dr. Alson J. Walker

Mon., Wed., Fri., 10-12, 2-5, 7-8
Tue., Thur., Sat., 10-12, 2-5
and by appointment

MASONIC TEMPLE
235 MAIN ST., ORANGE, N. J.

Reasons.

REASONS.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, Complainant, *Defendant-in-Certiorari,* *vs.* ALSON J. WALKER, Defendant, *Prosecutor-in-Certiorari.*	*On Certiorari.* *Reasons.*

The judgment of the District Court of the City of Orange in the above-entitled case is illegal, erroneous and unlawful for the following reasons:

1. Because said Court was without jurisdiction to hear said cause.

2. Under the law and facts of the case the Court could not pronounce judgment against the defendant-prosecutor as the act entitled "An act respecting the practice of medicine and surgery and the punishment of persons violating said act," approved 1894, with its supplements and amendments, under which the complaint was made, as it applied to the facts and circumstances of the case in question, is unconstitutional and inapplicable.

3. Because under the act respecting medicine and surgery approved 1894, its supplements and amendments, the Legislature could not include forms of healing which did not embrace or include the use of medicine or drugs, as constitut-

Reasons.

ing the practice of medicine, as such objects of the act were not expressed in the title of said act.

4. Because the Court under the act respecting medicine and surgery approved 1894 and its supplements and amendments, being the act under which the complaint was made, was without legal authority to convict prosecutor of practicing medicine and surgery, as the evidence disclosed that defendant at no time ever used any medicine or drugs or performed any surgical operations.

5. Because the Court refused to allow the defendant-prosecutor the right of trial by jury, notwithstanding the defendant demanded the same before the commencement of the trial of said cause, the said Court proceeded to hear and determine said cause without the intervention of a jury.

6. Because said judgment is illegal, erroneous and unlawful for divers other reasons.

ELMER W. ROMINE,
Attorney for Defendant-Prosecutor.

Opinion Supreme Court.

(Filed Feb. 8, 1928.)

NEW JERSEY SUPREME COURT.

No. 276, October Term, 1927.

STATE BOARD OF MEDICAL EXAMINERS,
Plaintiff,
Defendant-in-Certiorari,

v.

ALSON J. WALKER,
Defendant,
Prosecutor-in-Certiorari.

Submitted November 4, 1927; decided February 8, 1928.

On certiorari, etc.

Before Justices TRENCHARD, KALISCH and KATZENBACH.

For the prosecutor-in-certiorari, ELMER W. ROMINE.

For the defendant-in-certiorari, EDWARD L. KATZENBACH, Attorney General.

PER CURIAM:

The prosecutor of this writ of certiorari, Alson J. Walker, was convicted of a second offense before the District Court of Orange upon a charge of practicing medicine and surgery without a license. He obtained this writ of certiorari to review that conviction.

The prosecutor's first point is that the District Court had no jurisdiction to hear the case. We

think it had. Jurisdiction was conferred by Sec. 10 of the Medical Act as amended by Chap. 221 of P. L. 1921, page 708, and the procedure outlined therein was followed precisely.

The prosecutor's next point is that the acts committed by the defendant did not constitute a violation of the statute. We think they did. The Board produced three witnesses who testified they had at various times visited the defendant's offices at 233 Main Street, Orange; that to the right of the door as they entered was the sign "Dr. Alson J. Walker"; that upstairs in the front part of the building on the door was the sign "Dr. Alson J. Walker" and office hours; that the office was divided into a waiting room and a treating room; that the witnesses told the accused of their ailments, and he diagnosed their troubles, and gave to each of them treatments of adjustments, known as chiropractic treatments; that he manipulated the spinal column with his hands.

The proofs made by the plaintiff were not disputed by the defendant. He did not testify in his own behalf. There was no evidence that the accused had any license to practice as a chiropractic. We think that the testimony referred to justified the conviction. State Board of Medical Examiners *v.* Geidroyc, 91 N. J. L. 61; State Board of Medical Examiners *v.* Maza, 132 Atl. 88; State Board of Medical Examiners *v.* Jilson, 132 Atl. 88.

The next point is that the defendant was entitled to trial by jury. It is settled in this court to the contrary. State Board of Medical Examiners *v.* Buettel, 131 Atl. 89.

The judgment will be affirmed, with costs.

Notice of Appeal.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAMINERS,
Defendant-in-Certiorari,
Appellee,

v.

ALSON J. WALKER,
Prosecutor-in-Certiorari,
Appellant.

To the State Board of Medical Examiners:

TAKE NOTICE that the above named Alson J. Walker appeals to the Court of Errors and Appeals from the judgment of the Supreme Court in favor of the State Board of Medical Examiners for the reason that the Supreme Court committed error in sustaining judgment in favor of State Board of Medical Examiners, instead of finding in favor of Alson J. Walker.

ELMER W. ROMINE,
Attorney for Appellant.

New Jersey Court of Errors and Appeals

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,
Complainant-Appellee,

vs.

ALSON J. WALKER,
Defendant-Appellant.

BRIEF OF APPELLANT.

Preliminary Statement.

Alson J. Walker, of the City of Orange, was arrested, charged with the practice of medicine and surgery, his conviction being sustained by the Supreme Court, (pp. 38-39).

No drugs or medicines were offered or prescribed and no surgical operations performed.

All that defendant did was to give massage treatments.

Insistment is made that appellant cannot be subject to a penalty under the Medical Act, as such Act is inoperative except as to those who actually practice medicine and surgery as such is commonly known.

Defendant was by a construction of the statutes and form of proceeding taken entitled to a trial by jury, which was refeused, (pp. 11 and 12).

Facts.

Alson J. Walker was not a medical practitioner in any sense of the word.

All that he did was to press upon the spine, back and neck with his hands, (page 14, lines 1-2; page 21, line 17; page 27, lines 36-38).

He did not prescribe or advise anything.

Defendant was referred to as Doctor Walker and was convicted once before for practicing medicine and surgery for the same methods used.

He now seeks to have the Medical Act construed so that his rights may be determined.

ARGUMENT.

The Medical Law can only apply to those who actually practice medicine and surgery.

This point was raised in the Supreme Court but not decided, what that court said was (page 38):

> "The prosecutor's first point is that the District Court had no jurisdiction to hear the case. We think it had. Jurisdiction was conferred by Section Ten of the Medical Act as amended by Chapter 221 of P. L. 1921, page 708, and the procedure outlined therein was followed."

Insistment is made, however, that the objects of the Medical Act are limited by its title. The title of the Medical Act reads as follows:

> "An Act to regulate the practice of medicine and surgery to license physicians and surgeons and to punish persons violating the provision thereof." (P. L. 1894, page 456).

It has been repeatedly held by our courts that the objects of the act must be expressed in the title of the act in order to have legal effect. Paragraph four of Section Seven of the New Jersey Constitution as amended in September, 1897, reads as follows:

> "To avoid improper influences which may result from mixing in one and the same act, such things as have no proper relation to each other, *every law shall embrace but one object, and that shall be expressed in the title.*"

It was held in Wilson v. Smith, 79 Atl. page 272, that a latter and separate act which does not express in its title a legislative intent to fix the method of selecting officers and there being a prior and different act or statute which prescribes such method of selection, *the latter act which fails to so express the object in its title cannot affect or take precedence over the other and is inoperative and unconstitutional.*

It was held by the Supreme Court in Patterson v. Close, 82 Law, page 160 at page 162, that:

> "In order to make the Legislation valid the title must be broad enough to express the general object sought to be accomplished; and under the constitutional provision referred to the title is not only an indication of the legislative intent, BUT IS ALSO A RESTRICTION UPON THE ENACTING PART OF THE LAW." See Hendrickson v. Fries, Court of Errors and Appeals, 45 Law, page 555 at page 563.

In Dobbins v. North Hampton, reported in 50 Law, page 496, it was held by the court as follows:

> "The constitutional mandate that the object of every law be expressed in its title has given the title of an act a two-fold effect. It has added additional force to the title as an indication of legislative intent in aid of the construction of a statute couched, in

> language of doubtful import, and it also operates as a constitutional limitation upon the enacting part of the law. 'The enacting part of a statute however clearly expressed can have no effect beyond the object expressed in the title. To maintain any part of such a statute, those portions not embraced within the perview of the title must be exscinded; and if, the super-addition to the declared object cannot be separated and rejected the entire act must fail.' "

The Medical Act here under discussion comes within the limitations placed upon legislative acts by our Constitution and decisions of the court.

The manifest purpose and object of the Medical Act as originally enacted by the Legislature in 1894, was to protect the medical profession against quack medical practitioners, that is, persons who professed or attempted to administer drugs and medicines as a cure, and who were not licensed so to do, and in order to substantiate this view the court is directed to Section Eight of the Medical Act of 1894, as contained in Volume 3 Compiled Statutes, page 3332, wherein it was provided that any person shall be regarded as practicing medicine and surgery who, among other things, "shall prescribe, direct, recommend, advise, apply, give or sell, for the use of any person or persons, *any drug or medicine or other agency or application for treatment,* cure or relief of any bodily injury, infirmity or disease."

This act was interpreted by the Supreme Court in the case of the State v. Herring, reported in 70 Law, page 34, the decision being by Justice Dixon, wherein it was held:

> "An Osteopathic Physician whose treatment of his patient consists simply of the manipulation of the body, does not violate

> that provision of the act of May 22nd, 1894. (Compiled Statutes, Volume 3, page 3332), which forbids the applying of any drug, medicine or other agency or application by an unlicensed person."

The purport of this decision clearly indicates that in the mind of the court the Medical Act of 1894 was limited to those only who attempted to practice medicine and surgery in the common and usual manner in which medicine and surgery was practiced, namely, by the giving, offering or prescribing of drugs and medicines or the performing of surgical operations. Further, by the enactment of this legislation there was apparently no occasion for including any other person or of prohibiting the practice of medicine and surgery by any person other than those who attempted to give drugs or medicines without a license and therefore the title of the act was so limited and circumscribed. The "persons" mentioned and referred to being intended to include only those, who, without license, attempted or did prescribe or give drugs or medicines.

In 1915 the Legislature attempted to enlarge the provision of Section Eight of the original Medical Act without repealing the Medical Act or enlarging the title, by providing among other things that any person shall be regarded as practicing medicine and surgery who holds himself or herself out as being able to diagnose, treat, operate or prescribe for any human disease, injury, deformity, or physical condition or who shall either offer or undertake by any means or methods to diagnose, treat, operate or prescribe for any human disease, injury, deformity or physical condition.

It will be noted that in the amendment the limitation to the use of "drugs and medicines" is elim-

inated and a general clause inserted in the place thereof.

If the intendment of the Legislature was by this amendment and enlargement to include those persons who afforded relief by drugless methods such as massage, application of heat, or the adjustment of the spine, or other parts of the body, it is submitted first, that such could not be done because such objects were not fully expressed or comprehended in the title of the Medical Act, and secondly, because such form of treatment was not clearly expressed as being intended to be prohibited by this section. It would be going outside of the realm of medicine and surgery to include some other method or form of treatment.

A close reading of Section Eight as amended by P. L. 1915, page 482, discloses merely, that a person who holds himself out as being able to diagnose treatment, operate and prescribe for human diseases, makes himself or herself amenable to the provisions.

Aside from the point that the objects of the act extending beyond the practice of medicine and surgery are not expressed in the title, can it be said that the treating, operating or prescribing could apply to anyone other than those who were classed under the original act, prescribed the use of drugs and medicines or offered or attempted to perform surgical operations. *In other words, the legislative definition in the Medical Act could not by the limited terms of the act, and especially the title include any form of treatment other than medicine and surgery as such is commonly known and practiced.*

It is further insisted that the phrases in Section Eight as amended in P. L. 1915, applying to those *"who shall either offer or undertake by any means or methods* to diagnose" etc., is of no more legal

effect than the original act, criticism of which was made in State v. Herring, *supra,* by Justice Dixon. it was also held in Moore v. State, 43 L. 203, by opinion of Justice Dixon:

> "There is no rule of interpretation more inflexibly established than that where language is used after it has received a judicial construction, it must be understood strictly in the sense which the courts had previously given it."

In the case of Peer v. Dixon, 83 L. 366, we have somewhat of an analogous principle which might apply with propriety to the situation under discussion.

There the court was construing words "or elsewhere" in an ordinance and the court adhered to the view that the words "or elsewhere" would be that it included any other public place of like character and not private property.

Applying this reasoning to the case at bar it could well be said that the words in the Medical Act "any persons" and "by any means or methods" could go no further than to include any other persons of like character, namely, medical men or those who practice medicine and surgery by the use of drugs and medicines.

The definition attempted to be given of the practice of medicine and surgery by Section Eight of the Medical Act, Chapter 271, page 482, must be limited to medical practitioners, because should it be applied as in its general terms it would lead to absurdity, for it would include dermaticians, hair dressers, etc, also all those who might suggest cure for existing ailments.

In Jensen v. Woolworth, 92 L. 529, the court said in construing a statute, where literal interpretation may lead to absurd results, resort may

be had to the principle that the spirit of the law controls the letter.

The late Thomas McCran, as Attorney General, on November 5th, 1921, gave a written opinion to the Medical Board in which he said in part:

> "The cardinal rule in the construction of legislative acts is that words in common use are to be taken in their ordinary significance." Citing Evening Journal Association v. State Board of Assessors, 47 Law 36.

The defendant could not be convicted of practicing medicine and surgery merely because he assumed the title of "Doctor."

It may be pointed out that Section Eight of the original Medical Act and the amendment of 1915, in addition provided that one may be regarded as practicing medicine and surgery within the meaning of the act "who used the words or letters, 'Dr.,' 'Doctor,' 'Professor,' 'M. D.' or 'M. B.'" in connection with his or her name.

While it is true that the defendant had printed cards and a sign with the name Doctor on the door of his office, yet, according to decisions of our courts, the mere use of the word "Doctor" cannot be held to be the practice of medicine.

The Supreme Court of North Carolina, disposing of a similar situation in State v. MacKnight, 42 Southeastern at page 580, declared:

> "We attach no weight to the argument that the defendant hung out his sign and advertised himself as "Doctor". There are many kinds of Doctors, besides Doctors of medicine—as doctors of laws, doctors of divinity, doctors of physics, and veterinary doctors, and others still. Besides, in this country, so far, at least, as titles go, 'honors are easy.' We know from common knowledge that druggists' clerks are ordinarily addressed as "Doctor"; justices of the peace are usually called "Judge", and a teacher of the saltatory art always styles himself "Professor", while "Yarborough House Colonels" and "Honorables" by courtesy of like tenor are almost as "Thick as autumnal leaves that strew the brooks in Vallombrosa."

In a recent case in New York City, that of Frederick Drake Pridham, charged with practicing medicine and surgery and using the title Doctor, Magistrate Thomas F. McAndrews, of the West Side Court dismissed the charge when it appeared that all the accused did was to administer massage treatments, it being held that anyone might assume the title of Doctor so long as he did not administer medical treatment.

Under our statute it is not an offense unless the use of the title is *"intended to imply or designate him or her as a practitioner of medicine or surgery."* Therefore under the Medical Act the mere use of the title does not constitute the practice of medicine and surgery, but its use must be such as to imply or intend to lead the public by actual practice in prescribing or attempting to prescribe drugs and medicines or their use.

No one could be misled where one who calls himself "Doctor" does not operate or advise or prescribe the use of drugs or medicines, but merely massages or rubs the body.

The evidence did not warrant conviction under the law of the case and the judgment should be reversed and set aside.

The Supreme Court concluded that there was a violation of the Medical Act (page 39) because defendant was said to have diagnosed and given

adjustments known as chiropractic treatments and manipulated the spinal column with his hands without a license.

The findings in this regard would be fundamentally sound if we construe the Medical Act literally as applying to all forms of treatment. Such a conclusion, however, would place in the hands of the Medical Board a monopoly over all forms of treatment, whereas the manifest intention of the Legislature was to limit the exercise of restriction and penalize only those who did in fact treat, operate and prescribe by medicine and surgery as such is commonly known, by giving medicines or drugs or performing surgical operations without a license.

The proceedings of the Orange District Court, (pages 8-9) recites that proof had been made that Alson J. Walker of the City of Orange did violate Section Ten of the Act entitled "An Act to regulate the practice of medicine and surgery to license physicians and surgeons and to punish persons violating the provisions thereof", in that the said Alson J. Walker did commence and continue the practice of medicine and surgery within the meaning of Section Eight, as said Section was amended by act approved April 12th, 1915, without first having obtained and filed a license for such practice issued by the State Board of Medical Examiners of New Jersey.

It is submitted the evidence does not support any such findings under the cases and legal interpretation confining the regulations of the Medical Act strictly to what is termed to be medicine and surgery.

If the Medical Board could construe any and every form of treatment, and especially those where no drugs or medicines were used, to be the practice of medicine, then such finding would be correct, but here no surgical operations were performed, no medicines or drugs were ordered, prescribed or used. All that was done was to press on the back and massage, and possibly express an opinion as to the ailment.

Before determining the question it is necessary to inquire what is the practice of medicine and surgery?

The Legislature of this State in the laws of 1915, Chapter 271, page 482, by Section Eight, provided as follows:

> "Any persons shall be regarded as practicing medicine and surgery, within the meaning of this act, who shall use the words or letters "Dr.," "Doctor," "Professor," "M. D." or "M. B." in connection with his or her name, or any other title intending to imply or designate him or her as a practitioner of medicine or surgery in any of its branches, and who, in connection with such title or titles or without the use of such titles, or any of them, holds himself or herself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, or who shall either offer or undertake by any means or methods to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition; and it is further provided, that the provisions of this act shall apply to all persons professing and attempting to cure diseases by means of the so-called system of "faith-curism," "mind-healing," "laying-on-of-hands," and other similar systems.

This clause appearing in the Medical Act must be restricted to what are commonly known as medical practitioners. Words of definition cannot include persons other than limited by the title of the act.

If his treatments come within the practices of

chiropractic then he would have to be licensed under the act regulating the practice of chiropractic, and not be controlled by the Medical Act.

Construing a similar statute to that of New Jersey, the Supreme Court of North Carolina in State v. Beggs, 46 Southeastern, page 401, held:

> "One who professes to heal 'the sick without the use of medicine' but by placing his hands upon that portion of the body that is affected by pain the healing resulting from magic power given directly from the Lord is not a medical practitioner and such treatment of the sick is not the practice of medicine, as defined and regulated by the statutes of this State.
>
> "*The purpose of the statute regulating the practice of medicine is to protect the public against quack medical practitioners who use drugs and medicine in treating diseases.* THESE STATUTES DO NOT INCLUDE THOSE WHO IN THEIR METHOD OF TREATMENT ESCHEW ALL USE OF DRUGS OR MEDICINES."

Further in Bennet v. Ware, 61 S. E. page 546, the court said:

> "Act 1903, page 1074, C. 697, amending Code 3122, designating who are eligible to practice medicine and surgery, provides that for the purpose of the act the expression practice of medicine or surgery shall be held to mean management for fee or reward of any case of disease, physical or mental, real or imaginary, with or without drugs, surgical operations, surgical or mechanical appliances or by any other methods whatsoever, and excepts only midwives, nurses and persons who administer to or cure the sick or suffering by praying. Held that the act does not confer and is not intended solely to confer protection on the public, but attempts to confer a monopoly on the method of treatment of diseases

> by doctors of medicine or surgeons and is violative of the constitution prohibiting monopoly.
>
> "Patients have a right to use methods of treatments requiring less skill and learning on the part of the practitioners than is required to constitute a doctor of medicine or a surgeon. And a legislative act which attempts to deprive them of such right, not warranted by any legitimate exercise of the police power.
>
> "The defendant was prosecuted for unlawfully practicing medicine and surgery and its branches thereof for fee or reward without a license. *The proof shows that the acts he was convicted of doing were administering massage baths, physical culture, manipulating muscles, bones, spine and solar plexus, and advising his patients as to diet. The proof also shows that he did all those things without prescription being given to the patients, or any drugs or surgery used, that he charged and received the fees therefor and had no license.* Held there is nothing in such treatment that calls for the exercise of the police power, prohibiting such treatment by unlicensed persons."

Although the Legislature by Section Eight of the Medical Act as amended in 1915, Chapter 271, page 482, has attempted to define what shall include and be held to mean the practice of medicine and surgery, such attempted definition is not only general in its terms, but after all, must be limited to medical practitioners and not to those who use methods outside of drugs and medicines.

Attention is also directed to the exemption of certain persons under the Medical Act, P. L. 1921, page 702 at page 707, wherein it excludes those who *"without the use of any drug or material remedy"* treat the sick.

The trial court therefore was without legal

right or evidence of an actual use of or practice of medicine so as to hold defendant guilty of practicing medicine and surgery.

Defendant was entitled to a trial by jury.

The Supreme Court said concerning this point (page 39, line 35) :

> "It is settled in this court to the contrary. State Board of Medical Examiners v. Buettel, 131 Atl. 89".

It is submitted the Buettel case did not comprehend all the legal phases, and therefore is not conclusive as will be shown.

The proceedings were instituted in the District Court. A legal demand for jury was made (page 7). Right of trial by jury was refused and exception taken (pages 11-12).

Without citing the early history of right of trial by jury, reference will be first made to the Curtis case decided by Justice Swayze, 94 L. 324, for the law which it is urged was established.

In the Curtis case it was held that such proceedings under the Medical Act was "A civil suit."

But the court went further and said, page 326:

> *"We are not now concerned with the constitutional question.*
>
> "We have to do only with the statute governing the District Courts. The question is whether in a civil suit, of which jurisdiction is given to the District Court, there is a right to trial by jury.
>
> *"The question seems to be answered by Section 149 of the Act (Compiled Statutes, page 1999) which enacts that either party may demand a trial by jury and that a venire shall be issued.*
>
> *"We find nothing in the District Court act to suggest that any class of cases are not subject to the provision of Section 149. Apparently, that section governs all civil suits brought in the court and only civil suits were then cognizable under the original act."*

The Court of Errors sustained the finding of the Supreme Court, in 95 L. 551.

Following this decision the Legislature amended the Medical Act, P. L. 1921, Chapter 221, at page 709, by providing that the said court shall proceed in a summary manner, *"without a jury,"* to hear testimony, and to determine and give judgment.

Prior to the passage of this amendment the Medical Act was silent as to right of trial by jury, but did provide that *the Court should proceed in a "summary manner"* P. L. 1915, at page 485.

The question arises as to whether the Legislature can provide for proceedings to be had in a District Court where the right of trial by jury exists by statute, and without making any exemption to the statute regulating the practice of such courts, legally declare in another and separate act that such proceedings shall be without a trial by jury.

Justice Swayze, speaking for the Supreme Court in the Curtis case, *supra,* affirmed by the Court of Errors, seemed to have established the principle of right to jury in the District Court irrespective of any contrary contention, when he declared *"We find nothing in the District Court act to suggest that any class of cases are not subject to the provision of Section 149."*

As the District Court act was not amended and this class of case is not exempted, it seems logical that if the Medical Board elects to submit to the

jurisdiction of that court it must abide by the rights of a litigant as afforded by the statute regulating procedure in that court.

If the intention of the Medical Board was to deprive a defendant of a trial by jury it was necessary to have had the District Court act so modified as to exclude the right of trial by jury in such class of case, and if such were done then it might well be maintained that the right of jury would be barred. But this was not done.

An interesting opinion and one that will undoubtedly aid considerably in solving the inconsistencies as pointed out in the above statutes is that of Zweig v. Tiffany, 95 L. 45.

There the court was dealing with the statute concerning Landlord and Tenants as it related to District Courts.

Justice Parker, speaking for the Supreme Court, at page 46, said:

> "Our decision in George Jonas Glass Co. v. Ross, 69 L. 157, is directly in point on this question. In enacting the District Court act of 1898 the Legislature conferred jurisdiction on District Courts to deal with landlord and tenant cases, substantially as justices of the peace had theretofore done. *But the Legislature then went further and undertook to authorize a District Court procedure more liberal to the landlord than under the Landlord and Tenant Act.* Rev. 1877, page 570. * * *
>
> "We then said that the title to the District Court act could not constitutionally support a change in the relative rights and liabilities of landlords and tenants. *This made it necessary to recast the relevant parts of the general Landlord and Tenant Act so as to bring in District Courts as a forum controlled by the general act, and this was done.*

> "The amendment of 1920 falls under the same criticism as the legislation dealt with in the Jonas Glass Company case; it undertakes to extend the requirement of three months notice to quit in cases of indefinite terms, as embodied in the so-called "Fish Act" of 1884 to cases where there is a definite monthly letting and where the proceeding is in a District Court; *for as already noted, it is simply an amendment to the District Court Act and has no applicability elsewhere.*"

While this case deals with the reverse situation it nevertheless establishes the principle that in order for the Medical Board to take advantage of the exclusion of trial by jury in the Medical Act it is quite necessary and essential to recast District Court procedure to comply with that prescribed in the Medical Act in order to make it effectual.

As stated, the Supreme Court relied on the Buettel case as authority for deciding this question adverse to defendant.

Justice Lloyd, in analyzing the situation in the light of the various decisions, concluded that because the Supreme Court by opinion of Justice Swayze in the Curtis case, had said that "there may be cases where it would be competent for the Legislature to prescribe a summary proceeding in a civil suit, even where as at common law and at the time of the adoption of the constitution of 1844 penalties were recoverable by ordinary action of debt," that when the Legislature amended the Medical Act in 1921 by excluding trial by jury, such legislative mandate was conclusive as barring a jury trial in cases referred to as summary in nature.

It is submitted that Justice Swayze in this opin-

ion, approved by the Court of Errors, did not have in mind the situation which develops in the case now under discussion because at the time of the opinion in the Curtis case the existing law, P. L. 1915, at page 485, *provided that the proceedings were summary in nature,* and having this provision of the statute in mind nevertheless declared that such was a "civil proceeding," this being contrary to State Board v. Roache, 132 Atl. p. 86 (a Supreme Court decision).

In support of the conclusions reached in the Buettel case several authorities are cited where the court held that proceedings summary in nature were by reason of the statute triable without a jury, such as violations of the Motor Vehicle Act, and such is the class of cases which Justice Swayze evidently referred to in the Curtis case as being such civil suit wherein the legislature might provide proceeding by summary nature without jury.

It will be noted, however, in such cases the statute provides that the proceedings are to be had before a Judge sitting as a magistrate, such as a Police Justice, or Justice of the Peace, and, of course, are not founded in a court where, by virute of the statute regulating the practice of such court a trial by jury is afforded.

This seems to be the distinguishing feature, for, as admitted in the Buettel case in citing Greeley v. Passaic, 42 N. J. L. 429, the Court of Errors held the right of trial by jury was preserved in an action under a city ordinance because the proceeding was intended to be before a Justice of the Peace holding the small cause court, the provisions of the statute, regulating procedure in such court, according the defendant the right of trial by jury.

While it is true that in the Greeley case the ordinance was passed by authority of legislative act creating charter rights wherein it provided proceedings before a Justice of the Peace holding the small cause court, necessarily implying that jury trials were to be accorded if demanded, it is also a fact that in the amendment to the Medical Act in 1921 provision was made for proceedings for violation in *"the District Courts"* where also there was an unrestricted right of trial by jury if demanded.

While the Legislature may have intended such proceedings to be without a jury, by the terms of the Medical Act they left the rights of a defendant unrestricted under the procedure in District Courts where such cases were triable.

We do not think the decision of the Supreme Court in Medical Board v. Roche, 132 Atl. 86, in any way strengthens the conclusions in the Buettel case or alters the situation.

It will be noted that the Supreme Court in the Roche case concurred in the finding in the Curtis case as to such being a "civil suit", but concluded that because the Medical amendment in 1921 declared such proceedings to be of a summary nature that by reason thereof it lost its civil aspects. It is submitted however, that such provision of proceeding in a summary manner was also in the act of 1915, page 485, and considered at the time of the decision in the Curtis case.

All that the amendment of 1921 did was to provide additionally the words *"without a jury."* Such addition, it seems, should not alter the fact that the proceedings were still civil at any rate, as held in the Greeley case, when founded in a court where a jury was allowable it was error to exclude a jury.

If held otherwise, notwithstanding the opinion

in the Curtis case, then the District Court as a court for the trial of cases, would have no jurisdiction whatever to try such cases. Because if summary in nature to the extent of excluding a trial by jury, the Judge of the District Court sitting as a specially constituted magistrate should be the one delegated to hear the cause and not "the District Court," which is a statutory court with certain forms of procedure rights afforded a litigant.

If the Medical Act had provided for trial, without a jury, before a Police Judge or Justice of the Peace, or a Judge of the District Court sitting as a magistrate, such as appears in cases of violation of the Motor Vehicle Act, the failure to afford a trial by jury, in view of the express mandate in the Medical Act, could not then be questioned.

In the present status of affairs it is respectfully submitted that the Buettel case is not conclusive as an authority in disposing of the claim to jury trial, and until there has been adequate legislation on the subject, notwithstanding the attempt in the Medical Act to bar a right of trial by jury, *that right remains under the statutory authority for proceedings instituted in "the District Courts,"* and for the error in refusing a trial by jury the judgment should be reversed as the trial court was without jurisdiction to proceed as a single judge.

Conclusion.

There are, of course, cases brought under the Medical Act where convictions have been sustained by this court, but in all those cases the question and objections here discussed were not then raised. The application of the Medical Act and the right to enlarge the objects of the act by amend-

ments and not expressed in the title were never raised. The court merely construed the statute literally applying it to a given case where there was diagnosis or treatment as if it applied to all persons, whether drugs or medicines were used, without restriction.

It is submitted that in view of the question now raised the Medical Act is inoperative to go beyond punishing anyone except those who profess to be doctors of medicine or who diagnose and administer drugs and medicines or treat with such, performing surgical operations.

What is to be done with those who assume to practice a form of treatment without the use of drugs or medicines is a matter for other or future legislation. To say that they are guilty of practicing medicine and surgery would be an exaggeration. It is all very well for medical men to assume to regulate those who undertake without license to treat patients in the same way and manner as does the medical man, but it is clearly beyond the bounds of any legal restriction to say that they have the right to regulate some other method or form of treatment not harmful in itself. To be able to do so would be to create a monopoly which is against the policy of the law.

In the case of Toczko v. Dr. Schultz, a chiropractor, Judge Ackerson of the Hudson County Circuit in November, 1926, held that a medical doctor was incompetent to express an opinion as to the practice and method of treatment of a drugless practitioner.

Therefore why should the Medical Board seek to construe drugless methods of treatment as the practice of medicine and surgery or co-relate it with their science.

The judgment of the Supreme Court should therefore be reversed.

Respectfully submitted,

ELMER W. ROMINE,
Attorney for and of Counsel
with Defendant-Appellant.

New Jersey Court of Errors and Appeals

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,
Complainant-Appellee,

vs.

ALSON J. WALKER,
Defendant-Appellant.

Brief for the Complainant-Appellee

FACTS

The appeal in this case seeks to reverse the decision of the Supreme Court on certiorari affirming the conviction of the defendant-appellant before the District Court of Orange, New Jersey, upon the charge of practicing medicine and surgery without a license. The case was tried before the District Court of Orange on March 11, 1927. At the conclusion of the trial the Court found the defendant guilty of a second offense under the statute and upon the defendant's refusal to pay the penalty of $500.00 imposed, he was committed to jail for a period of 200 days. The case was then taken up on certiorari to the Supreme Court and that court by a *per curiam* opinion (Case, P. 38) affirmed the judgment of the District Court.

Counsel for the defendant-appellant (Case, P. 36) assigns six reasons for reversal of the decision of the Supreme Court, but for the purposes of this argument, these reasons will be argued in the following points:

I. The Medical Act applies to those who act-

ually practice medicine and surgery as that offense is defined in the statute.

II. The evidence did warrant the conviction under the law of the case and the judgment should be affirmed.

III. The defendant was not entitled to a trial by jury.

ARGUMENT

I

The Medical Act Applies to Those Who actually practice Medicine and Surgery as that Offense is defined in the Statute.

The defendant-appellant was charged with the violation of section 10, Chapter 221, P. L. 1921. Section 10 in part provides:

> "Any person hereafter commencing or continuing the practice of medicine and surgery in any of its branches in this State without first having obtained and filed the license herein provided for, or contrary to any of the provisions of this act * * * shall be liable to a penalty of $200."

The title of the act (3 Comp. Stat. 3329; P. L. 1894, P. 454) is "An act to regulate the practice of medicine and surgery, to license physicians and surgeons and to punish persons violating the provisions thereof."

The statutory offense—the practice of medicine and surgery without a license—is defined in the Act of 1894 (3 Comp. Stat. 3332) as follows:

> "That any person shall be regarded as practicing medicine or surgery, within the meaning of this act who shall use the words or letters 'Dr.', 'Doctor,' 'Professor,' 'M.D.,' or 'M.B.' in connection with his or her name, or any other title intending to imply or designate him or her as a practitioner of medicine or surgery in any of its branches, and who in connection with such title or titles or without the use of such titles, shall prescribe, direct, recommend, advise, apply, give or sell, for the use of any person or persons, any drug or medicine or other agency or application for the treatment, cure or relief of any bodily injury, infirmity or disease; and it is further provided that the use of any one of the aforementioned titles or the exposure of a sign, circular, advertisement or any other device or information, indicating thereby the occupation of the person or persons, shall be considered prima facie evidence; and it is further provided that the provisions of this act shall apply to all persons professing and attempting to cure diseases by means of the so-called system of 'faithcurism,' 'mind-healing, 'laying-on-of-hands,' and other similar systems."

The Legislature later (P.L. 1915, P. 482; Comp. Stat. 1st Supp. 951) amended the definition in the Act of 1894 and defined the statutory offense of the practice of medicine and surgery without a license as follows:

> "Any person shall be regarded as practicing medicine and surgery, within the meaning of this act, who shall use the words or letters 'Dr.,' 'Doctor,' 'Professor,' 'M.D.,' or 'M.B.,' in connection with his or her name, or any other title intending to imply or designate him or her as a practitioner of medicine or surgery in any of its branches, and who, in connection with such title or titles, or without the use of such titles, or any of them, holds himself or herself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, or who shall either offer or undertake by any means or methods to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition; and it is further provided, that the provisions of this act shall apply to all persons professing and attempting to cure diseases by means of the so-called system of 'faithcurism,' 'mind-healing,' 'laying-on-of-hands,' and other similar systems."

The method of treatment used by the defendant-appellant was what is commonly known as chiropractic treatments. The claim is here made that no person can be found guilty of a violation of the act unless it be shown that they applied or gave drugs and medicines.

The defendant-appellant relies upon the Act of 1894 (3 Comp. Stat. 3332). He argues that the Act of 1915, defining the practice of medicine and surgery, does not apply to the acts committed by him and proven in this case. Counsel cites a number of cases in his brief in an attempt to show that the subject matter of the statute is broader than the title of the act. He attempts to raise the proposition that an act cannot be broader than its title. The fallacy of this position is plain. The offense of practicing medicine and surgery is not a common law offense. It is a statutory offense. It is a police regulation; a regulation in the interest of the protection of the people of the State. It being a statutory offense created by the Legislature, the Legislature has a clear and legal right to define that offense. It did so originally in the Act of 1894. Later, as conditions changed they amended the Act of 1894 and again defined the practice of medicine in the Act of 1915. In defining the offense of practicing medicine and surgery without a license, the Legislature distinctly provided in the Act of 1915 that any person should be regarded as practicing medicine and surgery within the meaning of the act who used the words or letters "Dr.," and who in connection with such title held himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition or who offered or undertook by any means or methods to diagnose, treat, operate or prescribe for any human disease, pain,

injury, deformity or physical condition. The Legislature had a clear legal right to define the practice of medicine under the act.

State, Ex Rel. Walter et al. v. Town of Union, in the County of Hudson, 33 N. J. L. 350.

Easton and Amboy R. R. Co. v. Central R. R. Co., 52 N. J. L. 267.

Smith v. Willetts, 81 N. J. L. 370.

Stagway v. Riker, 84 N. J. L. 201.

Shultise v. O'Neill, 85 N. J. L. 15.

Gillard v. Manufacturers Insurance Company of Philadelphia, 93 N. J. L. 215.

The Supreme Court in the case of *State Board of Medical Examiners v. Johnson,* decided *March 17, 1928,* in discussing and passing upon the very point here raised said:

> "The first point argued for the prosecutor is with reference to the denial of the motion referred to. The prosecutor insists that the medical act can only apply to those who actually practice medicine or surgery and that the amendments are unconstitutional because they have been extended to include offenses not embraced in the original act of 1894. We consider the title broad enough to include the offenses under the amendments to the act. As was said by Mr. Justice Van Syckle in the case of *State vs. Town of Union, 33 N. J. L. 350;* 'The unity of the object must be sought in the end which the legislative act purposes to accomplish and not in the details provided to reach that end.' The same idea was expressed by Mr. Justice Garrison in *Moore v. Burdett, 62 N. J. L. 163,* when he said the title of an act was a label and not an index."

The Act of 1915 defining the practice of medicine and surgery being valid and legal, the only question remaining is whether the acts committed by the defendant-appellant come within its mean-

ing. It is clear that they do and the Supreme Court has so held in other cases heretofore submitted and determined by it.

II

The Evidence did warrant the Conviction Under the Law of the Case and the Judgment should be Affirmed.

The complainant-appellee produced three witnesses who testified that at various times they had visited the defendant-appellant. The defendant-appellant had an established office at 235 Main Street, Orange. To the right of the door, as you entered, there was a sign with black letters "Dr. Alson J. Walker." Upstairs, in the front part of the building, on a door there was a sign "Dr. Alson J. Walker," and office hours. The office was divided into a waiting room and a treating room. He had a collapsible treating table. The witnesses went to the accused and told him of their ailments and he gave to each of them treatments or adjustments known as chiropractic treatments. He manipulated the spinal column with his hands. The facts proven by the complainant-appellee were not disputed by the defendant-appellant. He did not testify in his own behalf. It was admitted at the trial (Case, p. 31) that the defendant-appellant did give the witnesses chiropractic treatments, so that no dispute exists as to the acts complained of. The Supreme Court has held that the giving of chiropractic treatments constitutes a violation of the act regulating the practice of medicine and surgery.

State Board of Medical Examiners v. Giedroyc, 91 N. J. L. 61.

State Board of Medical Examiners v. Maza, 132 Atl. 88.

State Board of Medical Examiners v. Jilson, 132 Atl. 88.

State Board of Medical Examiners v. Coleman, 132 Atl. 88.

III

The Defendant was not entitled to a Trial by Jury.

This question has been settled by the Supreme Court and further argument is not necessary.

State Board of Medicel Examiners v. Buettel, 131 Atl. 89, 3 Adv. 1860.

State Board of Medical Examiners v. Roche, 132 Atl. 86.

State Board of Medical Examiners v. Maza, 132 Atl. 88.

State Board of Medical Examiners v. Jilson, 132 Atl. 88.

State Board of Medical Examiners v. Coleman, 132 Atl. 88.

State Board of Medical Examiners v. Gese, 135 Atl. 920.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

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