

## INDEX.

	PAGE.
Notice of Appeal .....	1
Specification of Determinations of the District Court .....	2
Complaint .....	4
Transcript of Judgment .....	7
<i>TESTIMONY.</i>	
ERMA SPRUCE:	
Direct .....	13
Cross .....	20
AGNES HAMMER:	
Direct .....	24
Cross .....	27
LENA HARZ:	
Direct .....	29
FANNIE HILKE:	
Direct .....	29
Cross .....	31
DELA ORR:	
Direct .....	32
Cross .....	36
FRANCES C. WILKINSON:	
Direct .....	39
GEORGE GESE:	
Direct .....	40
Cross .....	43
Re-Direct .....	45
Motion to Dismiss .....	46
Stenographer's Certificate .....	48
Judge's Certificate .....	48

II.

	PAGE.
Opinion of the Supreme Court .....	57
Rule Dismissing Appeal .....	59
Notice of Appeal to Court of Errors and Appeals .....	60
Grounds of Appeal .....	61

**Notice of Appeal.**

FIRST DISTRICT COURT OF THE CITY OF 10  
JERSEY CITY.

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STATE BOARD OF MEDICAL EXAM-  
INERS OF NEW JERSEY,

*Plaintiff,*

*vs.*

GEORGE GESE,

*Defendant.*

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To :

EDWARD L. KATZENBACH, Esq.,  
Attorney of Plaintiff.

SIR :

Please take notice that the defendant, George 30  
Gese, hereby appeals to the New Jersey Supreme  
Court from the judgment of the First District  
Court of the City of Jersey City rendered in the  
above stated cause on November 10th, 1925.

Yours etc.,

BENJAMIN E. GORDON.  
Attorney of Defendant.

Dated November 13th, 1925.

40

Service of a copy of the within Notice of Ap-  
peal is hereby acknowledged this 17th day of No-  
vember, 1925.

EDWARD L. KATZENBACH,  
Attorney General,  
Attorney of Plaintiff.

**Specification of Determinations of the  
District Court with which defendant-  
appellant is dissatisfied in point of  
law.**

**NEW JERSEY SUPREME COURT.**

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STATE BOARD OF MEDICAL EXAM-  
INERS OF NEW JERSEY,

*Plaintiff-Appellee,*

*vs.*

GEORGE GESE,

20

*Defendant-Appellant.*

The following is a Specification of the Determinations of the First District Court of the City of Jersey City, in the above entitled cause with which defendant-appellant is dissatisfied in point of law:

30 1. The court refused to permit defendant-appellant to have this case tried by a jury and the court proceeded, over defendant-appellant's objection, to try the same without a jury.

40 2. The court at the opening of plaintiff-appellee's case refused to dismiss the complaint on the ground that the same was indefinite and defective in that it charged a violation of section 10 of an Act of the Legislature of the State of New Jersey, entitled "An Act to regulate the practice of medicine and surgery, etc." approved May 22nd, 1894 as amended by an Act approved April 8th, 1921, whereas section 10 aforesaid

*Specification of Determinations of the District Court.*

does not define what constitutes the practice of medicine.

3. The court erred in refusing to dismiss the case and further erred in refusing to give judgment in favor of defendant-appellant on the ground that the statute under which the proceedings were brought, Section 10 of an Act of the Legislature of the State of New Jersey, entitled "An Act to regulate the practice of medicine and surgery, etc." approved May 22nd, 1894 as amended by an Act approved April 8th, 1921, is unconstitutional because it violates:

(a) Article 1, section 7 of the Constitution of the State of New Jersey, which provides among other things, that the right to trial by jury shall remain inviolate. 20

(b) Article 4, section 7 of the Constitution of the State of New Jersey, which provides that laws shall embrace but one subject to be expressed in the title.

(c) The Fifth Amendment of the United States Constitution in that it deprives defendant-appellant of his liberty and property without due process of law.

(d) The Seventh Amendment of the United States Constitution in that it deprives defendant-appellant of his right to trial by jury in a suit at common law wherein the subject matter in controversy shall exceed \$20. 30

(e) The Fourteenth Amendment of the United States Constitution in that defendant-appellant is deprived of his liberty and property without due process of law, and the defendant-appellant is denied the equal protection of the laws. 40

4. The court erred in refusing to give judgment for defendant-appellant on the ground that

defendant-appellant was not guilty of violating section 10 of the Act of 1894 as amended April 8th, 1921, or of any other section of said act.

5. The court erred in giving judgment in favor of plaintiff-appellee despite the objection of the attorney of defendant-appellant.

6. There is no evidence in the case that defendant-appellant violated section 10 of the Act aforesaid as amended April 8th, 1921, or of any other section of said Act, and the court erred in holding defendant-appellant guilty of violating said law on defendant-appellant's own testimony.

BENJAMIN E. GORDAN,  
Attorney of Defendant-Appellant.

### Complaint.

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FIRST DISTRICT COURT OF JERSEY CITY.

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STATE BOARD OF MEDICAL EXAM-  
INERS OF NEW JERSEY,

*Plaintiff,*

*vs.*

30

GEORGE GESE,

*Defendant.*

---

State of New Jersey, }  
County of Mercer, } ss.:

ARTHUR W. BELTING, being duly sworn according to law on his oath says that he is a member  
40 of the State Board of Medical Examiners of New

*Complaint.*

Jersey, and that deponent is informed and believes that during the month of June, July, August and September A. D. Nineteen Hundred and Twenty-five, at Jersey City, in the County of Hudson and State of New Jersey, one, George Gese, of said City of Jersey City, in the County of Hudson and State of New Jersey, did violate section ten 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 the following respect, to wit: that the said George Gese at the time and place aforesaid, did commence and continue the practice of medicine and surgery 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, in that the said George Gese at the time and place aforesaid, did hold himself out as being able to diagnose, treat, operate and prescribe for human diseases, pains and physical conditions, and did offer and undertake to treat, operate and prescribe for human diseases, pains, injuries, deformities and physical conditions, and did at the time and place aforesaid, treat and prescribe for the same, all of which is contrary to and in violation of said section ten of said act and against the form of said statute.

Deponent therefore says that the said George Gese has incurred the penalty of two hundred

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30

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*Complaint.*

dollars prescribed by section ten of the act above mentioned, as such section was amended, as aforesaid, for the aforesaid violation, and prays that the said George Gese may be apprehended and dealt with according to law.

10

ARTHUR W. BELTING.

Sworn and subscribed before me }  
this 21st day of September, A. D. }  
nineteen hundred and twenty-five. }

Florence M. Lebtien,  
Notary Public,  
State of New Jersey,  
Commission expires June 23d, 1928.

20

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**Transcript of Judgment.**

State of New Jersey, }  
 County of Hudson, }  
 City of Jersey City, }

Before:

CHARLES L. CARRICK, Esquire, Judge

10

No 151845

STATE BOARD OF MEDICAL EXAM-  
 INERS OF NEW JERSEY

*Plaintiff,*

*vs.*

GEORGE GESE

*Defendant.*

In Debt.

200

Costs	City	al	
Warrant	1.60		
Service		75	
Mileage		64	
Trial Fee	1.50		300
Witness Fees		16.36	
Atty's allowance	10.		
	3.10	17.75	
Bond	1.00		

EDWARD L. KATZENBACK,  
 Plff's Atty.

BENJAMIN J. GORDON,  
 Def'ts Atty.

400

*Transcript of Judgment.*

September 22, A. D. 1925, the plaintiff filed an affidavit alleging that George Gese did violate section ten 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" &c.

September 22, A. D. 1925, a writ was issued to John A. O'Grady, Constable, against the body of the said defendant returnable forthwith.

September 22, A. D. 1925, said Constable returned said Warrant as follows, viz: I return this warrant having arrested the defendant on this day, and the Court releasing him on bond, for hearing November 10, 1925.

20

JOHN A. O'GRADY,  
Constable.

November 7, 1925, demand for jury filed.

November 10, 1925, Both parties appearing and a jury being denied the trial of the cause was proceeded with as follows:

Upon application of plaintiff A. W. Denhab was appointed and sworn as stenographer.

On the part of the plaintiff—Irna Spruce, Agnes Hammer, Lena Harz, Ranny Hilke, and Delia Orr were sworn and testified. One lot of packages containing tea, 1 bottle of corn cure, 1 prescription and two phamplets and one certificate were offered and received in evidence.

On the part of the defendant—Frances C. Wilkinson and George Gese were sworn and testified.

WHEREUPON, it is on this tenth day of November, A. D. 1925, by this Court considered and adjudged that said George Gese, defendant, is guilty of violating section ten of an Act of the

40

*Transcript of Judgment.*

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" and that the said State Board of Medical Examiners, plaintiff, recover from George Gese, defendant, Two Hundred Dollars penalty and Thirty Dollars and Eighty Cents, costs of suit, and unless said penalty and costs be paid that the said defendant be committed to the common jail of the County.

100

November 13, 1925, Notice of appeal and appeal Bond filed by defendant.

I, B. FRANCES MARRON, Clerk of the First District Court of Jersey City, Charles L. Garrick, Esquire, Judge, do hereby certify that the foregoing is a true copy of the Transcript of a Judgment of the said Court.

200

IN WITNESS WHEREOF, I do hereby set my hand as Clerk of the said Court and affix the seal of the said Court this twenty-fifth day of November, nineteen hundred and twenty-five.

B. FRANCES MARRON,

Clerk.

300

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**Testimony.****FIRST DISTRICT COURT OF THE CITY OF  
JERSEY CITY.**

STATE BOARD OF MEDICAL EXAM-  
10 INERS OF NEW JERSEY,

*Plaintiff,*

*vs.*

GEORGE GESE,

*Defendant.*

20 Jersey City, New Jersey,  
Tuesday, November 10, 1925.

Before:

HON. CHARLES L. CARRICK,

Judge.

APPEARANCES :

30 Grover C. Richman, Esq.,  
Asst. Atty. General of New Jersey, for the  
plaintiff.

Benjamin E. Gordon, Esq.,  
For the Defendant.

MR. GORDON: If the court please, before  
we proceed with this case I asked for a jury  
and I would like to have a ruling as to

40

*Colloquy.*

whether or not the defendant in this case is entitled to a trial by jury.

THE COURT: I will rule that you are not entitled to a jury, and will give you an exception.

MR. GORDON: I would like to have my objection noted. 10

I also ask for a dismissal of these proceedings on the ground that the complaint sets forth that the defendant in this case violated section 10 of the statute in question—being an act to regulate the practice of medicine and surgery. An examination of that section of the act does not disclose what a violation would consist of. It does not define what a violation is. It simply provides for a penalty. I believe section 8 is the section which prescribes or defines what constitutes a violation or what constitutes the practice of medicine. Section 10 does not. In that respect the complaint is defective. 20

THE COURT: What is there about section 10—

MR. RICHMAN: Section 10 is the prohibiting section of the act. It prescribes the penalty for violation of the act. Section 8 30 merely defines the practice of medicine.

THE COURT: I will refuse to dismiss the complaint.

MR. GORDON: In this connection I might suggest that, this being a proceeding under a statute, the statute must be followed strictly and construed strictly.

I would like my objection noted to your Honor's ruling. 40

*Colloquy.*

THE COURT: Your motion is overruled. I give you an exception.

10 MR. GORDON: I also ask for dismissal of these proceedings on the ground that the statute under which they were brought violates Article 1, Section 7, of the Constitution of the State of New Jersey, which provides, among other things, that the right to a trial by jury shall remain inviolate. The act in question here violates the United States Constitution, particularly Amendment 5 thereof, in that it deprives the defendant of his liberty and property without due process of law; and Amendment 7, in that it deprives the defendant of his right under the United States Constitution to a trial by jury in controversies in which the subject matter exceeds twenty dollars; and Amendment 14, section 1, of the United States Constitution in that the defendant is deprived of his liberty and property without due process of law and that the defendant is denied the equal protection of the laws.

20

THE COURT: I will refuse to dismiss on those grounds, and I give you an exception on each ground.

30

MR. GORDON: I also request a dismissal on the ground that this act, with the various amendments and supplements thereof, is so broad as to be unreasonable and void. It also violates section 7, Article 4, of the Constitution of New Jersey, which provides that laws shall embrace one subject, to be expressed in the title; and as I read the statute, the wording of the statute is so comprehensive and includes so many different

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*Erma Spruce—Direct.*

things as to make it apply not only to the practice of medicine and surgery, but to a great many other things as well.

THE COURT: I will refuse to dismiss.

MR. GORDON: May I have an objection noted?

THE COURT: Proceed.

10

ERMA SPRUCE, called as a witness on behalf of the state, being first duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. RICHMAN:

Q. You had occasion to visit the defendant, George Gese, recently? A. I did.

20

Q. When? A. August 14, 17, 21, and September 1.

Q. Where did you go? A. 62 Franklin Street, Jersey City.

Q. Did you on the 14th of August, see the defendant? A. I did.

Q. Do you recognize him now in court? A. He is in back of that man (indicating).

30

Q. In back of Mr. Gordon? A. Yes.

MR. RICHMAN: Is that the defendant?

MR. GORDON: That is the defendant.

## BY MR. RICHMAN:

Q. What kind of place was it? A. It is— it looks like a drug store. It had a lot of packages in a case and a lot of bottles on the shelves.

Q. Who was present on the first visit? A. Mrs. Orr.

40

Q. Who else? A. Only one on the first visit.

*Erma Spruce—Direct.*

Q. Was the defendant there? A. Yes.

Q. What did you say to him? A. I asked him if Doctor Gese was in.

He said he was the doctor. He asked me what my trouble was.

10 I told him I had—I was all tired and weak—had pain in my side.

He told me that he thought he could help me. So he started to explain about the tea that he gives and the liquid. He told me that I had what they called scrofulosis—he said that was inflammation of the glands of the neck— I had kidney trouble, liver trouble, gall bladder weakness, and stomach trouble, that I had thirty pounds of water—too much water in my system—  
20 —that everything I ate turned to water and fat instead of blood and muscle.

He wanted a specimen of my urine the next time I came. He said he would analyze it and tell me more about my condition.

He gave me a bottle of liquid and two packages of tea and told me how to use them.

Q. Do you have them with you? A. Yes.

Q. Will you produce them and unwrap them and let us see them?

30 (The witness produced some articles.)

BY THE COURT:

Q. Did you say “two packages of tea”? A. Yes. This is the liquid (exhibiting a bottle).

BY MR. RICHMAN:

Q. You got that bottle on the 14th of August? A. Yes.

Q. From whom? A. Doctor Gese.

40 Q. What did he say to you about it? A. He says to start with that medicine.

*Erma Spruce—Direct.*

Q. In what way were you to start with it? What were you to do with it? A. With two teaspoonfuls before I took the tea, and to steep a tablespoonful of the tea in a cup of hot water and take it before I went to bed. He said the directions were in here.

Q. Did you get these two packages of tea on that same occasion? A. Yes. 10

Q. What is this pamphlet? A. It describes how to take tea number two and tea number six.

Q. Did he give you tea number two and tea number six? A. Yes.

Q. How do you know that? A. He told me.

Q. Did he give you this pamphlet? A. Yes. 20

MR. RICHMAN: I offer the bottle, the two packages of tea, and the pamphlet in evidence.

THE COURT: Have them marked by the stenographer.

(The articles referred to were received in evidence and collectively marked "Plaintiff's Exhibit 1.")

Q. What did he do to you on that occasion? 30

A. Just gave me the medicine and told me what ailed me.

Q. How long were you there? A. About an hour. Then he gave me some more of the same medicine—the same kind.

Q. Did you return? A. Yes. I went back on the 17th of August and he asked me how I felt. I brought a specimen of my urine. He said he would go in and analyze it.

He went in his room and he brought it out and he said, "The color is not normal; it is green." 40

*Erma Spruce—Direct.*

He said, "it shows that you are excitable and of a worrisome disposition." He said that the specific weight is 1030 points above normal. He said, "You have high blood pressure, too much acid in the blood, and kidney trouble, and stomach and gall bladder weakness."

100 He told me that if I continued with this liquid and with the tea that he could cure me, but I would have to take it regularly and come back regularly; that every time I came—next week at least— I should bring a specimen of urine and he could tell whether or not the medicine was helping me or what other sort I needed or if I needed another kind. He told me to return.

200 Q. How long was he in the adjoining room with the specimen of urine? A. I guess about twenty minutes.

Q. Did he return with the same specimen that you had given him? A. He did return, but he didn't have anything when he came out.

Q. Did he return with the bottle? A. He kept it.

300 Q. He kept it, did he? A. Yes. I told him I had a corn, and could he help that? He gave me this for thirty-five cents (handing a package to Mr. Richman).

Q. That is what he gave you on that occasion? A. Yes.

Q. What did he say to you when he gave you this? A. He told me to put it on.

MR. RICHMAN: I offer it in evidence.

(The article referred to was received in evidence and marked "Plaintiff's Exhibit 2.")

400 Q. On the third visit did you see him? A. I saw him.

*Erma Spruce—Direct.*

BY THE COURT:

Q. What was the date of that? A. August 24.

BY MR. RICHMAN:

Q. You went to the same place? A. I went to the same place with Mrs. Orr and Mrs. Britton. 10

He asked me how I felt. I told him "a little bit better."

He gave me some more. He says, "I think you should continue." He says, "You have gas on your stomach, and liver and gall bladder weakness and kidney trouble." He gave me the same kind again.

Q. Did you take with you at his suggestion, another specimen of your urine on that occasion or not? You don't remember? A. I don't remember. 20

Q. What did he give you? A. He gave me a diagnosis of the case. He wrote it.

Q. This slip of paper is in his handwriting? A. Yes.

Q. You saw him write it? A. Yes.

Q. What did he say to you about it? A. He says I had scrofulosis, which was an inflammation of the glands of the neck—that I had too much acid. I made him write it down so I could remember. 30

MR. RICHMAN: I offer it in evidence.

(The paper referred to was received in evidence and marked "Plaintiff's Exhibit 3.")

THE WITNESS: After he analyzed my urine, he wrote that down. He told me that he found that from the color of the urine. 40

*Erma Spruce—Direct.*

BY MR. RICHMAN:

Q. Did you see him write this paper? A. Yes.

Q. What did he say to you about that? A. He said, I will write that diagnosis on this paper." He says, "I found that out from your urine analysis."

10 BY THE COURT:

Q. Were both papers written on the same visit? A. This one in ink was written on the first visit. That one (indicating) was written on the third.

BY MR. RICHMAN:

Q. The one in pencil was written on the first visit? A. Yes, sir.

20 MR. RICHMAN: I offer that in evidence.  
(The paper referred to was received in evidence and marked "Plaintiff's Exhibit 4.")

Q. And the one in ink was written on the third visit? A. On the 24th of August.

Q. What else did he give you on that occasion?

A. To continue the same medicine.

30 Q. Did he give you this medicine (exhibiting a bottle to the witness)? A. Yes.

Q. That was on the third visit? A. Third.

Q. Also these two packages of what? A. Tea.

Q. That was the visit of August 24th? A. Yes.

Q. What did he say to you about them? A. He said to continue the same medicine; that if I did continue, it would cure me of all my trouble.

40 MR. RICHMAN: I offer these in evidence.  
(The bottle and the two packages referred to were received in evidence and collectively marked "Plaintiff's Exhibit 5.")

*Erma Spruce—Direct.*

Q. How much did you pay him? A. \$2.50.

Q. How much on the second visit? A. Thirty-five cents.

Q. How much on the third visit? A. \$2.50.

Q. Did you return after that? A. Yes, on September 1, with Mrs. Britton and Mrs. Orr.

Q. Were they present when you went in the store? A. They went in with me. 10

Q. What happened on the September first visit? A. He asked me how I felt. I told him "a little bit better." He said he expected it, if I had done what he said.

He asked me if I brought another specimen of urine. I said, "No. I forgot it". He told me to come back and bring it—be sure to bring it, because he could tell more from that. He told me I had kidney and liver condition and gas on the stomach and that this tea and this liquid would overcome it and I would soon be better, and he sold me this (handing two packages and a bottle to Mr. Richman). 20

Q. On September 1 he gave you this bottle of dark-colored substance? A. Yes.

Q. Likewise these two packages of tea? A. Yes.

Q. Then what did he say? A. He told me to continue with the medicine and then come back and tell him how I was. 30

MR. RICHMAN: I offer these in evidence—the bottle and the two packages.

(The articles referred to were received in evidence and collectively marked "Plaintiff's Exhibit 6.")

THE WITNESS: He gave me this (handing a paper to Mr. Richman). 40

*Erma Spruce—Cross.*

BY MR. RICHMAN:

Q. He gave you this paper on August 24th?

A. Yes.

Q. Did he say anything to you when he gave you this? A. He said the tea number two and tea number six—this is directions how to take them, but I forget how to take them. It is on the pamphlet.

Q. I notice that the pamphlets are marked in lead pencil "one" and "two." A. Doctor Gese marked it.

Q. In your presence? A. Yes.

Q. It only occurred on one pamphlet? A. Yes. sir.

MR. RICHMAN: I offer both pamphlets in evidence and ask that they be marked.

(The papers referred to were received in evidence and marked "Plaintiff's Exhibits 7 and 8" respectively.)

Q. After that did you go again? A. No. I was with Mrs. Britton and Mrs. Orr on every occasion that they were in there.

CROSS EXAMINATION BY MR. GORDON:

Q. Where do you live? A. In Mercerville.

Q. Where is that? A. Five miles outside of Trenton.

Q. By whom are you employed? A. The State Medical Board.

Q. In what capacity? A. Investigator.

Q. You are paid by the State Medical Board? A. I am.

Q. Are you paid according to the number of convictions or cases that you have? A. No.

Q. How did you come to go to Mr. Gese's

*Erma Spruce—Cross.*

place of business? A. I was sent there by the Medical Board.

Q. By whom? A. By Mrs. Wilkinson.

Q. What are her duties with the State Medical Board? A. As far as I know, she is the assistant secretary of the Medical Board.

Q. What kind of looking place is this Gese establishment? A. It is a one-story building. It looks to me like a drug store. 10

Q. It is a store? A. It is a store.

Q. Is the name "Doctor" anywhere on the window? A. No.

Q. Are there any diplomas in the store? A. No.

Q. Is there anything about the place that would suggest to you that the man was a doctor? A. Well, there is the words "Star Herb and Botanical Drug"—"The Star Herb Medicine Company." 20

Q. And that is all? A. That is all.

Q. Did you gather from this that the man was a doctor? A. Well, if he gives medicine and prescribes I should think he would be a doctor.

Q. How do you know it was medicine he gave you? A. He told me it was.

Q. You say that when you first went there you told him what your ailments were; is that right? A. No. 30

Q. You have testified so. A. No, I did not.

Q. What did you say to him? A. I said that I felt very weak and dizzy and had a pain in my right side.

Q. What else did you say? A. I asked if he thought he could cure me. He said he knew he could cure me if I did what he said. 40

Q. Then he gave you these preparations? A.

*Erma Spruce—Cross.*

Yes, and he told me what ailed me and what I needed.

Q. He told you what was wrong with you?

A. Yes.

10 Q. You told us about bringing urine to his place and about his going into the back. Did you go in with him? A. No.

Q. How do you know he examined it? A. He told me that is what he went in for.

Q. You don't know whether he did? A. I don't know.

Q. You were not sick when you went there? A. No.

Q. And you were not, on the first time? A. No.

20 Q. You were not sick at any other time? A. No.

Q. You simply went there to get evidence against him? A. I went there to see what he was doing.

Q. You went there to get evidence to bring him to this court? A. I went there to see what he was doing.

30 Q. If he was doing what you thought was right, you would not have brought any evidence here, would you? A. What do you mean?

Q. Just what I said. A. Will you please repeat it?

Q. If you thought that this man, according to your opinion of what was right or wrong with reference to this statute, was doing the right thing, you would not have bought these medicines, would you—or these preparations? A. I would have.

40 Q. Why? A. Because I wanted to see what he was doing there—to find out through that way.

*Erma Spruce—Cross.*

Q. Who is Mrs. Orr? A. Who is she?

Q. Yes. A. She is an investigator.

Q. The same as you are? For the State Medical Board? A. Yes.

Q. Who is Mrs. Britton? A. She is an investigator.

Q. The same as you are? Are you sure that you didn't tell Mr. Gese what was wrong with you? A. Absolutely positive. 10

Q. When you went in and told him that there was something wrong with you, that you were sick, you were not telling the truth, were you? A. That is what I told him.

Q. That was not the truth? A. That is what I told him.

Q. I am not asking you that. It was not the truth, was it? A. I am telling you I told him that. 20

MR. GORDON: I ask that the witness answer the question.

THE WITNESS: I think I did answer it.

MR. GORDON: I don't think that is a responsive answer.

MR. RICHMAN: I object to the characterization. 30

THE COURT: I will let it stand. If the witness said she was sick—she said she was attempting to describe her condition—if that was untrue, he is entitled to an answer whether that was a true statement.

BY MR. GORDON:

Q. Was that a true statement of your condition? A. I told him that I—

BY THE COURT: 40

Q. You were asked whether that statement

*Agnes Hammer—Direct.*

that you made to him was true. Now answer that. A. Well, I was not sick.

BY MR. GORDON:

10 Q. I would like a more definite answer than that. Will you tell us now whether you were telling the truth or whether you were not telling the truth at the time you first talked to him?

BY THE COURT:

Q. Answer the question.

BY MR. GORDON:

Q. That doesn't require any evasion or any deep thought. You know whether you were telling the truth.

20 MR. RICHMAN: I think she said that she was not telling the truth.

THE COURT: I think that she should answer this question. It is a perfectly proper question.

A. Well, it was an untruth, then.

Q. Did you take any of this medicine—did you take any of these preparations? A. No.

30

AGNES HAMMER, 524 Ocean Avenue, Jersey City, New Jersey, called as a witness on behalf of the State, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RICHMAN:

Q. Where do you live? A. 524 Ocean Avenue.

40 Q. Jersey City? A. Jersey.

Q. Do you know the defendant, George Gese?

A. I do.

*Agnes Hammer—Direct.*

Q. Have you visited the defendant? A. Yes, sir.

Q. When? A. Sometime during the summer months.

Q. Of this year? A. Yes, sir.

Q. What month particularly? A. I could not tell you. 10

Q. Were you there in August and September?

A. No; it was earlier in the summer.

Q. Were you there in June and July? A. It might have been June and July. I am not certain of that.

Q. What did you go to him for?

MR. GORDON: I object to that, if the Court please. I object to any testimony on the part of this witness unless she went there during the—unless she can say definitely that she went there during the months of June, July, August, and September, set forth in the complaint. 20

THE COURT: She said she was there in June and July.

MR. RICHMAN: Read the last question.

(The stenographer read the last question.)

A. For poor circulation of the blood. My hand bothered me. I was recommended to him and I went. 30

MR. RICHMAN: Will you read her answer?

(The stenographer read the last answer.)

BY MR. RICHMAN:

Q. When you saw him what did you say to him? A. I told him that I had come from them.

Q. What was that? A. I told him about my hand bothering me in the mornings when I got up. 40

*Agnes Hammer—Direct.*

- Q. What did he say to you? A. Well, he told me that it was caused by poor circulation.
- Q. What did he do? A. Gave me some tea.
- Q. Anything else? A. No, sir.
- Q. What did he tell you to do with the tea? A. Steep it and drink it.
- 10 Q. How often? A. I believe, just at night, going to bed.
- Q. Did you? A. Yes, sir.
- Q. How many times did you go to see him after the first time? A. That I could not answer. I don't know. I didn't keep any track of it.
- Q. You went more than once? A. Yes, I went more than once.
- 20 Q. And on each occasion what did he give you? A. Nothing but the tea.
- Q. You paid him, of course? A. Yes, sir.
- Q. Did you take at any time a specimen of your urine? A. Yes.
- Q. How did you come to do that? A. Well, I had been told that that was what it was.
- Q. Did you give it to him? A. Yes.
- Q. Do you know what he did with it? A. The same as I could have done at home.
- 30 Q. What was that? A. Just examined it with paper—colored paper.
- Q. Did he do it in your presence? A. Yes, sir.
- Q. What did he say to you about it? A. He told me there was uric acid in the blood—the same as he had been telling me before.
- Q. Did he say what he could do with respect to it? A. No. Nothing more than take the tea.
- 40 Q. He did tell you to take the tea? A. Yes.
- Q. Were you there as many as six or eight times? A. I don't think so. No more than six times, I don't think.

*Agnes Hammer—Cross.*

Q. Not more than six? A. No.

Q. How close were your visits to one another? How often did you go? A. Why, about once in two weeks or once in ten days.

Q. Did he ask you to return? A. No, he did not.

Q. Do you remember how much you paid him altogether? A. No, sir; I do not. 10

Q. Do you remember how much you paid at any one time? A. No; not any one specific time.

Q. At any time at all? A. Well, usually fifty cents a package. If I took two it was a dollar; if I took one it was fifty cents.

Q. That is what he charged you? A. Yes.

CROSS EXAMINATION BY MR. GORDON: 20

Q. Who recommended you to Mr. Gese? A. I couldn't tell you. I don't know who it was.

Q. Do you know Mrs. Orr? A. Yes.

Q. Do you know the lady who was testifying before? A. No, sir.

Q. Do you know this lady (indicating)? A. Never saw her but once.

Q. When was that? A. Last Saturday afternoon, I believe. 30

MR. GORDON: Where is Mrs. Britton? Is she here?

MR. RICHMAN: She is.

BY MR. GORDON:

Q. Do you know Mrs. Britton? A. No, sir.

Q. Do you know anybody connected with the State Medical Board? A. No, sir.

Q. How did you come here? A. What is that? 40

Q. How did you come to interest yourself in this case? A. That lady came up and handed me a subpoena.

*Agnes Hammer—Cross.*

Q. How did she know to come to you and hand you a subpoena? A. I don't know.

Q. When you went to Mr. Gese you told him what was wrong with you; is that right? A. Yes, sir.

Q. Did he examine you? A. No, sir.

10 Q. All he did was to give you some tea; is that right? A. Yes.

Q. And he told you how to take it? A. How to take it.

Q. Do you know definitely when you were there? A. No, I do not. It was during the hot weather, the summer months— June or July. Probably in July—June and July. It was hot weather, I know.

20 Q. Who gave you the money to pay him? A. I had my own money.

Q. There is no doctor's sign in this place? A. I don't understand.

Q. There is no doctor's name in the place? A. No, sir.

Q. There is no doctor's sign on the window? A. No, sir.

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*Lena Harz—Direct.*

*Fannie Hilke—Direct.*

LENA HARZ, 208 Central Avenue, Jersey City, New Jersey, called as a witness on behalf of the State, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RICHMAN:

10

Q. Do you know the defendant, George Gese?

A. Yes.

Q. Have you visited him? A. Once.

Q. When? A. It was two years ago, but I could not tell you the month.

Q. Two years ago? A. Two years ago.

Q. Not since then? A. Not since then.

Q. Nor before that? A. No.

MR. RICHMAN: That is all.

20

MR. GORDON: No cross-examination.

FANNIE HILKE, 78 Hancock Ave., Jersey City, New Jersey, called as a witness on behalf of the State, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RICHMAN:

30

Q. Do you know the defendant, George Gese?

A. Yes, sir.

Q. Have you visited him? A. I have.

Q. Do you recall when? A. I don't recall the date. I think it was during July—either July or August. I am not positive.

Q. Of this year? A. Yes, sir.

Q. Where did you go? A. Franklin Street near New York Avenue. I don't know the number.

40

Q. Did you see him? A. Yes.

*Fannie Hilke—Direct.*

Q. Why did you go? A. Well, in the first place, my husband went there to get medicine for a wart——

MR. GORDON: I object to what her husband did.

10 THE WITNESS: That is how I came to go there.

BY MR. RICHMAN:

Q. Why did you go there? A. I went to get—to inquire about this salve that he was using for the warts. At the same time I went for myself.

Q. What was the matter with you? A. I had pains in my back.

20 Q. Was anything else the matter with you? A. No.

Q. What did you say to him about this when you were there? A. I told him I had pains in my back.

Q. What did he say? A. Well, he said he thought that I had kidney trouble and that he could tell by getting a urine examination.

30 Q. Then what did you do? A. I came back again after that and brought a sample of my urine.

Q. Did you give it to him? A. Yes.

Q. What did he do with it? A. He went in the back. I don't know what he did with it.

Q. Then what happened? A. Well, he gave me two packages of tea and a bottle of medicine.

Q. Did he say anything about the urine? A. He said that I had kidney and gall bladder trouble.

40 Q. Then what did he do? A. He gave me two packages of tea and he told me how to take them.

*Fannie Hilke—Cross.*

Q. How were you to take them? A. Well, the one tea I took before going to bed and between meals.

Q. How often? A. Usually three times a day.

Q. Did he tell you to take it that often? A. Yes, sir.

Q. How many times did you go to see him? A. 10  
Twice for myself.

Q. Did he give you tea on both occasions? A. Well, he gave me one tea on both occasions. One I didn't use, so I didn't—only once or twice—so I didn't ask for it again.

Q. On the second visit what did he do to you, if anything? A. Another urine examination.

Q. On the first and second visits? A. Yes.

Q. In other words, he gave you two urine ex- 20  
aminations? A. He gave me two urine examina-  
tions.

Q. What did he say on the second visit? A. He said there was an improvement. He said I could come back in a few weeks.

Q. That is only two times that you went to see him? A. Only two times.

Q. You paid him, of course? A. Yes.

Q. Did you take the tea? A. Yes. 30

## CROSS EXAMINATION BY MR. GORDON:

Q. Did it help you at all? A. I believe it did; yes.

Q. When you went to see this man did he examine your body? A. No.

Q. Do you know any of these ladies connected with the State Medical Board? A. I saw this lady (indicating).

Q. Did she subpoena you? A. Yes. 40

*Dela Orr—Direct.*

Q. Is there any doctor's sign around this place of business? A. I don't think so.

Q. You don't know what Mr. Gese did with the urine that you brought to him, do you? A. No.

10

DELA ORR, called as a witness on behalf of the State, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RICHMAN:

Q. Mrs. Orr, did you visit the defendant in this case? A. I did.

20

Q. When did you go? A. On August 14, 17, 24, and the 1st of September.

Q. Did you go with Miss Spruce? A. I did on the first occasion.

Q. On the first visit, which was August 14? A. Yes.

Q. Where did you go? A. I went to 62 Franklin Street, Jersey City.

Q. Did you see the defendant? A. I did.

30

Q. What did you say to him? A. Well, I told him I was not feeling well and he started to ask me a few things and he decided that I had kidney trouble, nervousness, bladder trouble, and stomach condition.

Q. Did he say that to you? A. He did.

Q. Then what happened? A. And then he gave me some medicine and told me the next time I came in to bring my urine.

40

Q. What medicine did he give you on the first visit? A. A bottle and some herbs (producing a package).

*Dela Orr—Direct.*

Q. Herbs or tea? A. Well, tea—something he told me to make tea out of.

Q. This is the bottle he gave you on the first visit and these are the two packages of tea? A. Yes, sir.

Q. What were you to do with them? A. I was to take—I don't know just how—I don't know; I have forgotten—whatever is inside on the bottle. The tea, I was to make tea of that and drink it at night when I went to bed.

MR. RICHMAN: I offer these in evidence.

(The bottle and the two packages referred to were received in evidence and collectively marked "Plaintiff's Exhibit 9.")

Q. What else did he say to you on that occasion? A. He said that I was very nervous and that the next time that I came in I was to bring urine and he could tell more at that time what my condition was.

Q. You returned on August 17? A. I returned on August 17.

Q. Did you take with you a specimen of your urine? A. I did.

Q. Did you give it to him? A. Yes.

Q. What did he do with it? A. He took it in the back room and said that he examined it and came out and he said that I had an acid condition which was causing my trouble and that it also caused a lot of the nervousness.

Q. Yes? A. So that day he didn't do—I didn't get any medicine from him, but he talked so fast I couldn't understand what he said, because he was telling me about the different conditions of the water—about the greenness and one thing and another. I asked him if he would write

*Dela Orr—Direct.*

that down. I told him I was afraid that I would not remember.

Q. Did he? A. So I had him write down that same day, and I got a salve which he said would cure all corns, and that is the slip he gave me (handing a paper to Mr. Richman).

10 Q. This paper, written in ink, was written in your presence? A. It was.

Q. By the defendant? A. Yes.

Q. What did he say about that? A. He told me the urine was green—all colors. I couldn't tell you all that he said about it, but he said that I had a lot of acid in the system—in the urine—that was the cause of my trouble.

Q. What was this paper that he gave you? A. That was a statement of my condition.

20 Q. Did he tell you that? A. Yes, sir, because he talked so fast I couldn't get what he said.

MR. RICHMAN: I offer it in evidence.

(The paper referred to was received in evidence and marked "Plaintiff's Exhibit 10.")

Q. Where did you get this pamphlet that you have just handed me? A. He gave it to me.

30 MR. RICHMAN: I offer it in evidence.

(The paper referred to was received in evidence and marked "Plaintiff's Exhibit 11.")

Q. What is this package that you have? A. That is the salve he gave to me for the corns. He said that would cure all corns.

40 MR. RICHMAN: I offer it in evidence and ask that it be marked.

*Dela Orr—Direct.*

(The package referred to was received in evidence and marked "Plaintiff's Exhibit 12.")

Q. You returned again, did you? A. I did; on the 24th.

Q. What happened on that occasion? A. On that occasion he said I looked better and I think he said that if I would continue to take the tea and the medicine that he could cure me. He said my condition was not a chronic condition and that he could cure me, but I was still very nervous. 10

Q. Did you ever take any other specimens of your urine? A. Well, he told me that day—he said, "The next time you come in, you bring in another sample of your urine and I can see how your condition is clearing up." 20

Q. Did you do that? A. I did.

Q. On what date? A. That was on the 1st of September.

Q. On your last visit? A. Yes.

Q. Did you give it to him? A. I did.

Q. What did he do with it? A. He took it in the back—on that day, the 24th, he gave us bottles; he gave us bottles to bring my urine in, so that he would be sure that they were sealed. 30

Q. And you returned it in the bottle that he gave to you? A. I did.

Q. What did he say about it to you? A. He said that my condition was better, but that I could still continue with the medicine to clear up the acid in the system, which was causing my trouble.

Q. Did you get more medicine? A. Yes. That day I got medicine. I got medicine on the 24th and on the 1st. 40

*De la Orr—Cross.*

Q. The same kind as before? A. Yes, just about the same as before—a liquid and the tea—and I paid \$2.50 each time for these packages and thirty-five cents on the second visit for the corn salve.

## 100 CROSS EXAMINATION BY MR. GORDON:

Q. Is your name Orr? A. Yes.

Q. This written paper that you gave us calls for Mrs. Moore. How is that? A. That is the name I represented.

Q. You told him you were Mrs. Moore; is that right? A. Yes.

Q. Why did you tell him that? A. I just simply told him; that is all.

20 Q. You are employed as a paid detective or investigator by the State Medical Board? A. Investigator, not detective.

Q. It is the same thing, isn't it? You are a detective aren't you? A. I don't term it that way.

Q. You also didn't tell the truth when you told him you were not feeling well? A. I did.

Q. You did tell the truth? A. I told the truth.

30 Q. You told the truth? A. I did.

Q. You were really sick at the time you went there? A. I wasn't feeling good.

Q. Did you take any of the medicine? A. I did not.

Q. Well, you didn't go there on this day to get medicine or herb mixtures, did you? A. I went to see what he was doing.

40 Q. Yes, you went to see what he was doing. You went to get some evidence so that you could convict him; isn't that so? A. I simply went there to see what he was doing.

*Dela Orr—Cross.*

Q. If you found that he was doing what you thought was right, you would not have paid any more attention to him? A. I simply went there to see what he was doing.

Q. Was there any special purpose for your stating that your name was Moore? A. No.

Q. Who took the names of witnesses out of Mr. Gese's box the days you were there? Who took those slips out with the names on them? A. I didn't see anything.

Q. How did you know the names of these people to subpoena? A. I don't know none of them.

Q. You don't know them? A. I don't know them.

Q. Are you sure that while you were there no one took any names out of his box? A. If they did, I didn't see it.

Q. You would not say that they didn't? A. I would not say that they did.

Q. Mr. Gese didn't examine your body, did he? A. No.

Q. You don't know what he did with your urine, do you? A. I do not.

Q. There is no doctor's sign around his place of business? A. Not that I saw.

Q. Did you look for any? A. Well, I looked around to see the signs that were on the place.

Q. What signs were there? A. The signs were the same as on this little circular that he gave us.

Q. The United States Star Herb Medicine Company? No other signs? A. No.

Q. Did you see any diplomas around the place? A. No.

Q. Were you sent there by the State Board of Medical Examiners? A. I was.

Q. You have no purpose in all this testimony

*Dela Orr—Cross.*

and in offering these exhibits except to have Mr. Gese convicted; isn't that so? A. Myself, I have no purpose at all. I just simply went there to see what he was doing and just bought this medicine.

10 Q. You have no other purpose except to see that he is convicted? A. I have no interest whether he is or whether he is not.

Q. You say you have no interest in the case at all? A. I have no interest whether the man is convicted or not. I simply went to see what he was doing. I brought out my evidence here.

20 Q. If that is not your purpose, why did you so carefully preserve all these exhibits—mixtures, teas, and so on? A. That is my duty. It is my duty to bring forth these things and preserve them.

Q. It is your business, your work? A. I am employed by the State Medical Board as investigator.

Q. You always answer questions so evasively. That is your business, isn't it—to get these things and preserve them and convict these people or try to convict them? A. My business is to find out what he was doing.

30 Q. All right. Let us see if that is so. If you found out that he was doing what you thought was right, you would not have had anything more to do with these medicines and these mixtures or teas? A. Well, I found out that he was doing just what I expected he was.

Q. What you thought was wrong; isn't that right? A. I suppose he was doing wrong.

40 MR. RICHMAN: I offer in evidence a certificate from the State Medical Board that the defendant had no license to practice medicine.

*Frances C. Wilkinson—Direct.*

(The paper referred to was received in evidence and marked "Plaintiff's Exhibit 13.")

MR. RICHMAN: The State rests.

MR. GORDON: I would like to call this lady.

MR. RICHMAN: She is not under subpoena.

THE COURT: That doesn't make any difference. She is present in court and may be called.

10

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FRANCES C. WILKINSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

20

DIRECT EXAMINATION BY MR. GORDON:

Q. What is your business with the State Medical Board? A. Secretary.

MR. RICHMAN: I object.

THE COURT: I will allow it.

BY MR. GORDON:

Q. Did you go to Mr. Gese's place of business with these investigators at any time?

30

MR. RICHMAN: I object to that.

THE COURT: I will allow it.

A. Not in the place. I took them up to the place, but I was not in with them.

Q. How did you get the names of these witnesses?

MR. RICHMAN: I object to that as irrelevant and immaterial.

40

THE COURT: How is that relevant at all?

MR. GORDON: It is a matter that is dis-

*George Gese—Direct.*

cretionary with the Court. Our theory is—  
if your Honor will notice the names of these  
witnesses. They all begin with H—

10 THE COURT: What difference does that  
make? How does it make any difference at  
all how the State has got the names? You  
are simply wasting time.

MR. GORDON: If it doesn't make any dif-  
ference to your Honor, I will withdraw the  
witness.

20 GEORGE GESE, the defendant, called as a wit-  
ness on his own behalf, being first duly sworn,  
testified as follows:

## DIRECT EXAMINATION BY MR. GORDON:

Q. Where do you live? A. On 144 New York  
Avenue. I conduct business at 62 Franklin  
Street.

Q. Are you a citizen of the United States? A.  
Yes, sir.

30 Q. How long have you been in that business?  
A. I have been in business for many years. I  
am established here about five years.

Q. You are in business five years here? A.  
Yes.

Q. What kind of business do you conduct?

MR. RICHMAN: I object, if your Honor  
please.

THE COURT: I will allow it.

40 A. Herbs and botanical drugs?

Q. Herbs and botanical drugs? A. Put it that  
way—herbs.

*George Gese—Direct.*

Q. What kind of place of business have you?

A. It is a regular store.

Q. It is a store? A. Yes, sir.

Q. Is there anything in or about the store that would indicate that you are a doctor? A. No.

MR. RICHMAN: I object.

10

THE COURT: Objection overruled.

BY MR. GORDON:

Q. Do you have any signs in your window calling yourself Doctor Gese? A. No, sir.

MR. RICHMAN: I object to it as leading.

THE COURT: There is nothing here to show that he did it. Why do you waste time on it? It was brought out by the other side. There is nothing here that he held himself out as a doctor.

20

BY MR. GORDON:

Q. Have you any diploma in your store?

MR. RICHMAN: I object to that.

A. No, sir.

Q. Do you know these State witnesses, Mrs. Spruce and Mrs. Orr? A. I don't know them. They have been in with other people, buying tea.

30

Q. Do you remember when they came in? A. Yes, I know they was in the store this year, but I don't know the date.

Q. You know that they were in the store this year? A. They was in the store; yes.

Q. What did they say to you when they came in?

THE COURT: I would take one at a time.

40

BY MR. GORDON:

Q. What did Mrs. Spruce say to you when she

*George Gese—Direct.*

came in? A. I cannot remember just what she said. They got certain troubles they explain to me. They asked if I got anything for it.

Q. And you told her what? A. I got herb preparations.

10 Q. What did you tell her? A. I said one case I got package and they got stomach trouble and I gave them some preparations for the stomach trouble.

Q. Did you examine them? A. I didn't examine them.

Q. Did you examine their urine? A. They brought it around there. I could see by the paper.

20 Q. Did you examine it? A. What? I don't understand what they call "examination".

Q. Did you tell them you made a urine analysis? A. I only tell them that they got certain trouble. I don't know what I told them.

Q. And you gave them these teas? A. Yes, sir.

Q. And herb mixtures? A. And the herb mixtures; yes, sir.

Q. How did you come to write out this thing (handing a paper to the witness)?

30 THE COURT: Showing witness what?

MR. GORDON: Showing Mrs. Spruce's written—I don't know what you call it—written statement of her ailments—Exhibit P-4.

BY MR. GORDON:

Q. Did she ask you to write that? A. Yes.

Q. And you wrote that? A. And I wrote out that—the symptoms what they told me.

40 Q. Did you do the same thing for Mrs. Orr?  
A. Yes, I did the same thing. She complained to me of what I give them the preparations for. I know what the preparations are for.

*George Gese—Cross.*

Q. Every time they came for them did they tell you what was the matter with them or did you tell them? A. They said that they—they only told me that once. If they come in, they got that tea anyhow.

Q. They came in and asked you for tea? A. Yes, they asked me for tea. 10

Q. You gave it to them? A. Yes, sir.

Q. Did you ever during any of these visits tell these people that you are a doctor? A. No.

Q. Did you ever tell them that you practice medicine? A. No.

Q. Did you ever diagnose their cases? A. No, sir.

Q. Did you ever examine their bodies? A. No, sir. 20

## CROSS EXAMINATION BY MR. RICHMAN:

Q. But you did examine their urine? A. (No answer.)

Q. You did, didn't you? A. I don't remember. That was a long time ago.

Q. What for? A. Because they told me their complaint, so that preparation is made so that the human body must regulate the circulation so that there is no examination necessary. 30

Q. You examined Mrs. Spruce's urine, didn't you? A. They showed it to me and I brought it right back.

Q. You examined it? A. What do you call "examine"? I don't know.

Q. What do you call examining it? What did you do to it? A. "Examination"—that is what they call—microscopic—what they ever call it for—I don't know— 40

Q. What do you do? A. I look in the air and put it there in the back.

*George Gese—Cross.*

Q. And then you tell them what is shows? A. I didn't tell them because they tell me what it is.

Q. After you make the examination you tell them what that examination shows, don't you?

A. The urine examination shows the strength of the body.

10 Q. And then you give them this tea and medicine? A. All these preparations is made so that they must come if they do it. That is in the preparations, so it cannot fail, on account of the chemicals of the body, so I don't need any examination at all.

Q. But you do examine the urine? A. That was a long time ago. I don't do it any more, because—

20 Q. Mrs. Hammer was there. You examined her urine, didn't you? A. Yes, I know Mrs. Hammer.

Q. You examined her urine, didn't you? A. Mrs. Hammer was there. I cannot remember if she got water with her or not.

Q. She brought a bottle there, didn't she? A. Mr. Hammer was there. He was suffering from asthma—

30 Q. I am not asking you about Mr. Hammer; I am talking about Mrs. Hammer. Didn't she bring a bottle? A. I cannot remember. There are so many people coming in every day. I don't know.

Q. Did Mrs. Harz bring a bottle to you? A. I don't know the names. There are so many people. They look alike.

Q. Did you see her on the stand? A. Yes, but how can you recognize everybody?

Q. Did you examine her urine? A. I don't know if I got Mrs. Harz's.

40 Q. Did you examine Mrs. Orr's urine? A. I cannot remember the names. There are so many

*George Gese—Re-Direct.*

people. They come to me once or twice and then they——

Q. How many persons' urine do you examine a week? A. I don't know. They mostly come in and ask for a certain herb preparation.

Q. I am talking about——

10

MR. GORDON: I object. I don't think that this witness has ever said that he examined urine.

THE COURT: I will allow it.

By MR. RICHMAN:

Q. How many persons' urine did you examine in the course of one week? A. Only for the herb teas and the medicine. I know what it is about.

Q. What do you do with respect to the urine? A. I take the urine in back there and I only take a paper for to look or examine it. That is all I do.

20

Q. After you look at the urine you find out what they have? A. They tell me their complaints before.

RE DIRECT EXAMINATION BY MR. GORDON:

Q. Do you sell any drugs of any kind? A. Yes.

30

MR. RICHMAN: I object.

A. No, sir.

Q. Do you sell any medicines except these herb mixtures? A. That is all what I sell. I got corn salve. Even the shoemaker sells that.

MR. GORDON: The defendant rests.

MR. RICHMAN: The State rests.

40

*Motion to Dismiss.*

10 MR. GORDON: I now ask for dismissal of these proceedings on the same grounds that I raised before and I ask for a judgment for the defendant on the same constitutional grounds, and on the further ground that there is no evidence in this case of the practice of medicine. Even the State's witnesses did not testify that there was a practice of medicine. Irrespective of whether or not they did, I think they are unworthy of belief. They went to this man and misrepresented themselves. I think that when they did that, their testimony should not be considered. The other witnesses—Mrs. Hammer—and there was only one other witness that comes within the complaint here—Mrs. Hilke—testified that they told him what was wrong and he gave them some botanical preparations and herb mixtures and teas. It seems to me that this being a statute, it must be construed strictly. The practice of medicine has a very definite meaning. In the case of the *State against Herrin* the Court considered that laws of this kind, created by statute and unknown to the common law, must be construed strictly.

20

30

THE COURT: Doesn't the statute itself define what "practice of medicine" means, Mr. Gordon?

MR. GORDON: Yes, I think it does.

THE COURT: Suppose you read that section that defines what the practice of medicine is.

40 (Mr. Gordon read from the statute referred to.)

*Motion to Dismiss.*

MR. GORDON: I say that even under that statute the sale of herbs and botanical preparations does not constitute the practice of medicine. If you were to hold that this defendant is guilty of violating that act, then every grocer is guilty, because I have sometimes—I have known others to go to grocers and say to them, "I have a headache. What is good for a headache?" and he might give you some powders of some kind. Where you get medicine you have an even stronger case. This case must be construed so that the intention of the legislature is put into effect. I certainly think that the legislature did not intend that a man who runs a place as this defendant runs his should be guilty of violating the medical practice act. I therefore ask for dismissal.

10

20

THE COURT: I refuse to dismiss and give you an exception. It seems to me that from the defendant's own testimony and from what he did, he comes within the prohibition of the statute against practicing medicine.

I therefore hold him guilty.

What is the prescribed penalty?

30

MR. RICHMAN: \$200.

THE COURT: There will be a judgment in this case against this defendant.

MR. RICHMAN: I would like to know whether the defendant is going to pay the fine here.

MR. GORDON: I want to take this question up. I would like to have the defendant continued under the same bond that he has been under.

40

MR. RICHMAN: I don't think he should,

unless your Honor imposes sentence against him.

**THE COURT:** I do. I now impose this penalty on him under the statute. I will sign whatever papers are necessary for the purpose of perpetuating that.

**MR. GORDON:** I'd like my objection noted to all these findings.

10

### **Stenographer's Certificate.**

I, RALPH W. BENNETT a stenographer, sworn in the foregoing cause, do certify that the foregoing is a true transcript of the shorthand notes of the testimony taken by me on the trial of the case wherein the State Board of Medical Examiners is plaintiff, and George Gese is the defendant; held on November 10th, 1925 before Hon. Charles L. Carrick, Judge of the First District Court of Jersey City.

20

RALPH W. BENNETT,  
Stenographer.

### **Judge's Certificate.**

I, CHARLES L. CARRICK, Judge, of the First District Court of Jersey City, do hereby certify the foregoing stenographer's transcript of testimony in the case between State Board of Medical Examiners, plaintiff, vs. George Gese, defendant, as the same was tried before me on November 10th, 1925, to be my State of the Case in said action.  
Nov. 18, 1925.

30

CHARLES L. CARRICK,  
Judge.

40

**Exhibit P-1.****STAR HERB TEAS****TEA No. 1**

Für alle Lungenkrankheiten (Asthma, spez.), Erkältungen, bei alten Leiden mit Med. No. 1, sowie Influenza, Fieber mit Husten, Anfang Schwindsucht. 10

**TEA No. 2**

Für Leberleiden aller Art, Milz- und Nierenleiden, Gallen- und Nierensteine, abwechselnd mit Tea No. 4. Bei alten Leiden mit Med. No. 2 und Tea No. 6.

**TEA No. 3**

Für Männer- und Frauenleiden mit Med. No. 1 oder 2. Ausschläge, schmerzhaftes Füsse, bei alten Leiden mit Med. No. 2 und Tea No. 5. 20

**TEA No. 4**

Für alle Blasenleiden, Gries und Steine, Blasen-schwäche, oft treibendes, stechendes Wasserlassen. Bei Harnröhrentzündung, unregelmässiger Menstruation, Med. No. 1 und Tea No. 4.

**TEA No. 5**

Für Frauenleiden, weisser Fluss, akute Entzündungen, bei alten Leiden mit Med. No. 1 und 3. 30

**TEA No. 6**

Für System-Regulation, Verstopfung und Blähungen, natürlich, unfehlbares Mittel, 1 Tasse per Tag, dann immer weniger bis geheilt. Wenn die 40

*Exhibit P-1.*

Teas etwas zu stark, verdünnen mit Wasser und Zucker. Der Geschmack sagt die Stärke mit gleichem Erfolg.

10 *Beiseits führen wir noch eine unübertroffene Hustenmedizin, zum Tea No. 1, welche jeden Husten, auch den Keuchhusten, nach 2 bis 3 Stunden stillt.*

Sowie die Medizin für Durchfall (Diarrhoe), Unterleibserkältung mit heftigem Abweichen, speziell auf Verlangen.

Geben Sie eine kurze Erklärung Ihres Leidens. Wir senden alle Medizin und Tea *C. O. D.* durch die Post nach allen Staaten von Nord-Amerika.

20 *Beachten Sie unsere genaue Adresse, speziell Post Office Box 75, Hudson City Station, Jersey City, N. J., bei Post-Bestellungen.*

## UNITED STAR HERB MEDICINE CO.

G. G. Gese &amp; Bros.

62 Franklin Street Jersey City Heights, N. J.

Phone Webster 4274

Office Stunden: 10 a. m. - 1 p. m.; 3 - 7 p. m.

Sundays: 10 - 1

## PLEASE KEEP FOR FUTURE REFERENCE

30 Contain no Alohcol No Diet Necessary

## MEDICINES AND TEAS

40 All these medicines are compounded from the finest pure Herbs, Roots and Fruits, imported from all parts of the world, mostly from Germany, prepared according to specific formulas of Dr. Schwabe, Germany. No special diet required while taking these Medicines and Teas; you may eat and drink whatever you wish, with the exception of very strong coffee. Where doctors and other medicines have failed, these Medicines and

*Exhibit P-1.*

Teas have effected cures in cases of the longest standing.

These Herb Medicines and Teas contain the neutral chemicals compared with those of the human system, and are therefore readily absorbed by the afflicted organs. For internal and external complaints. Results guaranteed if directions are faithfully followed. 10

*Free Urine Examination gives positive proof of any existing inflammation of any organs of the system.*

## MEDICINE NO. 1

For all Stomach and Nerve Diseases, Eczema, Change of Matter (Food Substance), in conjunction with Tea No. 6. In Diabetes, with Tea No. 2 and No. 4. For extreme Anaemia, Indigestion and Impure Blood. 20

## MEDICINE NO. 2

For all Rheumatic and Neuralgic Diseases, Liver Trouble, to be taken with Tea No. 2 and 6. In Male and Female Complaints, together with Tea No. 3 and 4. Specific for Liver Complaints.

## MEDICINE NO. 3

For all Hemorrhoids (Piles), internal and protruding, to be taken in conjunction with Tea No. 2 and 6. In Female Diseases (Whites) together with Tea No. 5. 30

## STAR HERB STOMACH BITTERS

*An efficient Tonic to attain Perfect Digestion and System Regulation*

Notice.—Regulation of Liver and Gall is the most important part of the system. 40

*Exhibit P-1.*

In chronic Diseases we advise taking the Medicines three times daily after meals and the Tea on retiring at night. One bottle of Medicine or a Package of Tea is sufficient for one week's treatment.

10

## STAR HERB TEAS

## TEA No. 1

For all Lung Diseases, Colds, or Chronic Trouble, to be taken in conjunction with Medicine No. 1. For Influenza, Fever with Coughing and other Inflammation. Asthma Specific.

## TEA No. 2

20

For all Liver Complaints, Gall, Spleen and Kidney Stone, taken in conjunction with Tea No. 4. In chronic cases, with Medicine No. 2 and Tea No. 6.

## TEA No. 3

For Male and Female Diseases, in conjunction with Medicine No. 1 or No. 2. For Eczema, Gonorrhoea and Dysmenorrhoeia (Profuse Menstruation), or Tea No. 5.

30

## TEA No. 4

For all Bladder Diseases, Gravel and Stone, Bladder Weakness. In Amenorrhoea (Absence or Suppression of Menses) in conjunction with Medicine No. 1. For Urethra Diuretic Strangury, with Tea No. 2.

40

*Exhibit P-1.*

## TEA No. 5

For Female Diseases (Whites), Acute Inflammation, Menorrhagia (Profuse Menstruation). In chronic cases, to be taken in conjunction with Medicines No. 1 or 3.

## TEA No. 6

10

For system Regulation, Constipation, Bowel Complaints, 1 cup per day. If tea is too strong, use a little more water than directed and sweeten with sugar. Natural action without griping. *Try our special Cough Medicine* together with Tea No. 1; stops any Cough, Whooping Cough in children, and our Special Medicine for Diarrhoe, Colds of the lower system. Always ready.

20

Write to us, describing your complaints as briefly as possible, and we will send your Medicines and Teas *by mail C. O. D. to any part of the United States. Be sure to address all mail to Post Office Box 75, Hudson City Station, Jersey City, N. J.*

## UNITED STAR HERB MEDICINE CO.

G. G. Gese &amp; Bros.

62 Franklin Street Jersey City Heights, N. J.

30

Phone Webster 4274

Office Hours: 10 a. m. - 1 p. m.; 3 - 7 p. m.

Sundays: 10 - 1

BITTE AUFBEWAHREN

Enthält kein Alkohol Kein Diät erforderlich

MEDIZINEN UND TEAS

Unsere Medizinen und Teas sind zusammengestellt von reinen, erstklassigen Pflanzenkräutern, Früchten und Wurzeln, importiert von Germany und anderen Erdteilen, hergestellt nach den Rezepten von Dr. Schwabe, Germany. Diese Medizinen und Teas erwirken eine vollständige

40

*Exhibit P-1.*

Wiederherstellung aller äusserlich und innerlich erkrankten Körperteile, wenn regelmässig nach Vorschrift gebraucht, Heilung unter Garantie. *Kostenlose und freie Urin-Untersuchung geben*

10 *Ihnen genaue Kenntnis, um die kranken Organe festzustellen, wofür Sie die spezielle Medizin oder Tea erhalten.*

## MEDIZIN No. 1

Für Magen- und Nervenleiden sowie Ausschläge (Stoffwechselstörung), für allgemeine Blutreinigung, mit Tea No. 6. Bei Zuckerkrankheit mit Tea No. 2 und No. 4, sowie Blutarmut (Bleichsucht) und Verdauungsschwäche.

## MEDIZIN No. 2

20 Für alle rheumatischen Leiden, Gicht (Podagra), Leberleiden mit Tea No. 2 und No. 6. Bei Männer- und Frauenleiden (Ausschweifung) mit Tea No. 3 und No. 4, Leiberstörung spez.

## MEDIZIN No. 3

Für Hämorrhoiden (Piles) aller Art zusammen mit Tea No. 2 und No. 6. Bei Frauenkrankheiten (weisser Fluss) mit Tea No. 5.

## 30 STAR HERB MAGEN-BITTERN

*Für System Regulation; Ein unfehlbares Mittel gegen Verdauungs-Störungen.*

*Zur Beachtung: Regulation der Leber und Galle ist von höchster Wichtigkeit.*

40 Um ein schnelles Resultat zu erzielen, empfehlen wir bei jedem Leiden, wenn veraltet (chronisch) Medizin nach jeder Mahlzeit, 3 mal täglich, und den speziellen Tea vor dem Schlafengehen zu nehmen. Eine Flasche Medizin und 1 Packet Tea ist für eine Woche berechnet.

**Exhibit P-3**

Scrofulosis Infl. of Glanes. To much Acid.

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**Exhibit P-4**

10

MISS ENNIS:

Urin Examination.

Color green amber.

Liver & Gall bladder weakness.

Abnormal. Regulation of Food.

Spec weight 1025. Before 1030.

Acid medium high thru Gallbladder weakness.

Divide your Food or meals in three even quantities. Don't have Excitements. 20

---

**Exhibit P-10**

MRS. MOORE:

Color bevor white. 2nd time green amber better.

Spec weight bevor 1008. 2nd time 1020. 30

Acid bevor very high. 2nd time, medium.

Should have no Excitements. Regulation of Liver & Gall.

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**Exhibit P-13**

[LETTERHEAD OF BOARD OF MEDICAL EXAMINERS.]  
 Office of the Secretary  
 30 West State Street  
 Trenton, N. J.  
 November 9th, 1925

10

THIS IS TO CERTIFY that George Gese, being the person charged with practicing medicine and surgery without a license, was not during the months of April, May, June, July, August and September, A. D., nineteen hundred and twenty-five, or at any other time licensed to practice medicine and surgery in the State of New Jersey.

STATE BOARD OF MEDICAL EXAMINERS

20

OF NEW JERSEY,  
 ALEX. MACALISTER,  
 Secretary.

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Note.—Exhibits P-7, 8 and 11 are the same as Exhibit P-1.

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**Opinion of Supreme Court.****NEW JERSEY SUPREME COURT.**

No. 440, January Term, 1926.

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STATE BOARD OF MEDICAL EXAM-  
INERS OF NEW JERSEY,

*Plaintiff-Appellee,**vs.*

GEORGE GESE,

*Defendant-Appellant.*

10

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Submitted January 29, 1926; decided April 23, 20  
1926.

Appeal from District Court.

Before Justices Parker, Minturn and Black.

For the appellant Benjamin E. Gordon.

For the appellee, Edward L. Katzenbach, Attor-  
ney-General andGrover C. Richman, Second Assistant Attorney-  
General.

30

PER CURIAM:

As to matters of procedure, this case is control-  
led by our recent decision in *State Board vs.*  
*Roche*, 4 Adv. Rep. 417, 132 Atl. 86, holding that  
certiorari, and not appeal, is the only proper mode  
of review. The appeal will therefore be dis-  
missed, with costs.

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*Opinion of the Supreme Court.*

In view of the fact that the cited decision was very recently promulgated, we have thought it advisable, notwithstanding the faulty practice, to look into the merits, and discover no meritorious ground of appeal. The matter of trial without jury has already been settled by our decisions; **10** *State Board v. Buettal*, 131 Atl. 89; so also has the question raised as to the constitutionality of the act on which the suit is based; the complaint we deem sufficient; and there was ample evidence that the appellant undertook, ostensibly at least, to diagnose and treat disease by the general methods of the medical profession.

Let a rule of dismissal of the appeal be entered.

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**Rule Dismissing Appeal.****NEW JERSEY SUPREME COURT.**


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STATE BOARD OF MEDICAL EXAM-  
INERS OF NEW JERSEY,

*Plaintiff-Appellee,*

*vs.*

GEORGE GESE,

*Defendant-Appellant.*

---

Action  
at Law.

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This cause having been duly argued at the January, 1926, term of this court by Grover C. Richman Esquire, Second Assistant Attorney General, for the plaintiff appellee, and Benjamin E. Gordon, Esquire, for the defendant appellant, and the Court having considered the same and being of the opinion that the appeal should be dismissed.

20

It is thereupon ORDERED AND ADJUDGED that the appeal from the First District Court of the City of Jersey City be and the same hereby is dismissed, with costs to be taxed, and the record remitted to the court below to be proceeded with according to law and the practice of said court.

30

Entered April 30, 1926,

On motion of

Edward L. Katzenback,  
Attorney General

40

**Notice of Appeal.****NEW JERSEY SUPREME COURT.**

10	STATE BOARD OF MEDICAL EXAM- INERS OF NEW JERSEY,  <i>Plaintiff-Appellee,</i>  <i>vs.</i>  GEORGE GESE,  <i>Defendant-Appellant.</i>	} On Appeal from New Jersey Supreme Court.
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20 To EDWARD L. KATZENBACH, ESQ., Attorney-Gen-  
 eral, Attorney of Plaintiff-Appellee.

SIR:

PLEASE TAKE NOTICE that George Gese, the  
 above-named defendant-appellant appeals from  
 the whole of the judgment entered in the above-  
 entitled cause in the New Jersey Supreme Court  
 on April 30th, 1926, to the Court of Errors and  
 Appeals in the Last Resort in all Causes of the  
 State of New Jersey.

30 Dated June 21st, 1926.

BENJAMIN E. GORDON,  
 Attorney of Defendant-Appellant.

Service acknowledged June 25, 1926.

EDWARD L. KATZENBACH,  
 Attorney of Plaintiff-Appellee.

**Grounds of Appeal.**

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

---

STATE BOARD OF MEDICAL EXAM-  
INERS OF NEW JERSEY,

*Plaintiff-Appellee,*

*vs.*

GEORGE GESE,

*Defendant-Appellant.*

---

On Appeal **10**  
from  
New Jersey  
Supreme  
Court.

The above-named defendant-appellant George Geese assigns the following grounds of appeal from the judgment of the New Jersey Supreme Court in the above case: **20**

1. The trial court refused to permit defendant-appellant to have this case tried by a jury and the court proceeded, over defendant-appellant's objection, to try the same without a jury.

2. The trial court, at the opening of plaintiff-appellee's case, refused to dismiss the complaint on the ground that the same was indefinite and defective in that it charged a violation of section 10 of an Act of the Legislature of the State of New Jersey entitled "An Act to regulate the Practice of Surgery, etc." approved May 22nd, 1894, as amended by an Act approved April 8th, 1921, whereas section 10 aforesaid does not define what constitutes the practice of medicine. **30**

3. The trial court erred in refusing to dismiss the case and further erred in refusing to give judgment in favor of defendant-appellant on the **40**

*Grounds of Appeal.*

ground that the statute under which the proceedings were brought, section 10 of an Act of the Legislature of the State of New Jersey, entitled "An Act to regulate the Practice of Medicine and Surgery, etc.," approved May 22nd, 1894, as amended by an Act approved April 8th, 1921, is unconstitutional because it violates:

10

(a) Article 1, section 7 of the Constitution of the State of New Jersey, which provides, among other things, that the right to trial by jury shall remain inviolate.

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(b) Article 4, section 7 of the Constitution of the State of New Jersey, which provides that laws shall embrace but one subject, to be expressed in the title.

(c) The Fifth Amendment of the United States Constitution in that it deprives defendant-appellant of his liberty and property without due process of law.

30

(d) The Fourteenth Amendment of the United States Constitution in that defendant-appellant is denied the equal protection of laws.

4. The trial court erred in refusing to give judgment for defendant-appellant on the ground that defendant-appellant was not guilty of violating section 10 of the Act of 1894, as amended April 8th, 1921, or of any other section of said Act.

40

5. The court erred in giving judgment in favor of plaintiff-appellee despite the objection of the attorney of defendant-appellant.

*Grounds of Appeal.*

6. There is no evidence in the case that defendant-appellant violated section 10 of the Act aforesaid as amended April 8th, 1921, or of any other section of said Act, and the court erred in holding defendant-appellant guilty of violating said law on defendant-appellant's own testimony.

10

7. The Supreme Court erred in dismissing the appeal from the First District Court of Jersey City.

BENJAMIN E. GORDON,  
Attorney of Defendant-Appellant.

Service acknowledged June 25, 1926.

EDWARD L. KATZENBACH,  
Attorney of Plaintiff-Appellee. 20

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**New Jersey Court of Errors and Appeals**

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STATE BOARD OF MEDICAL EXAM-  
INERS OF NEW JERSEY,

*Plaintiff-Appellee,*

*vs.*

GEORGE GESE,

*Defendant-Appellant.*

---

On Appeal. 10  
from the  
New Jersey  
Supreme  
Court.

**BRIEF FOR DEFENDANT-APPELLANT.** 20

**Statement of the Case.**

The above entitled cause is before this court on an appeal from the New Jersey Supreme Court who affirmed the judgment of the First District Court of Jersey City. The cause was Court who affirmed the judgment of the First District Court of Jersey City to recover a penalty of \$200 against the defendant for violation of Section 10 of "An Act to Regulate the Practice of Medicine and Surgery, etc.," approved May 22nd, 1894, and as amended by an Act approved April 8th, 1921. Upon filing of the affidavit by plaintiff on September 22nd, 1925, in the District Court action. the defendant was arrested and released on bond for the trial which was set for November 10th, 1925. On November 7th, 1925, a Demand for Jury was filed on behalf of the defendant. The Court refused to allow defendant a jury trial, and on November 10th, 1925, the trial was held in the First Dis-

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40

10 tret Court of Jersey City. Defendant was found guilty of violating Section 10 of the Act aforesaid and judgment was entered in favor of the plaintiff in the sum of \$200 penalty, and \$30.80 costs of suit. An appeal was taken by the defendant to the New Jersey Supreme Court who, on April 23rd, 1926, in a per curiam opinion, dismissed the appeal. The formal rule dismissing the appeal was entered in the New Jersey Supreme Court on April 30th, 1926.

### The Questions Involved.

There are four principal questions to be decided on this appeal as follows:

- 20 1. Did the defendant commit any act or acts which constitute a violation of Section 10 or any other Section of the statute entitled "An Act to Regulate the Practice of Medicine and Surgery, etc.,"?
2. Was the defendant entitled to have his case tried by a jury?
- 30 3. Is Section 10 of the Act entitled "An Act to Regulate the Practice of Medicine and Surgery, etc.", approved May 22nd, 1894, as amended by an Act approved April 8th, 1921, unconstitutional?
- 40 4. Is the complaint filed by plaintiff in this case sufficient and does it properly set forth a cause of action?

**Argument.****I.**

**There is no evidence in the case of the practice of medicine on the part of defendent-appellant, George Gese, nor is there any evidence in the case upon which a judgment should have been entered in favor of the plaintiff.** 10

The complaint alleges a violation of Section 10 of the Act of 1894 as amended in 1921, which section as amended is as follows:

“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, and any person who shall practice medicine or surgery under a false or assumed name, or who shall falsely impersonate another practitioner of a like or different name, or who shall buy, sell or fraudulently obtain any diploma as a doctor of medicine, or any medical license, record or registration, or any person, company or association who shall employ for a stated salary or otherwise, or give aid or assist any person not regularly licensed to practice medicine or surgery in this State, to practice medicine or surgery in this State, or who shall violate any of the provisions of this act, shall be liable to a penalty of two hundred dollars, which penalty shall be sued for and recovered by and in the name of the State Board of Medical Examiners of New Jersey. Every District Court in any city or judicial district in any county, and every Court of Common Pleas in any county is hereby empowered, upon filing of a complaint 20 30 40

in writing, duly verified, which said verification when made by any member of the said State Board of Medical Examiners of New Jersey, or by any member of any incorporated medical society of this State or of any county of this State, may be made upon information and belief, that any person has violated any provision of this act to issue process at the suit of the State Board of Medical Examiners of New Jersey as plaintiff; such process shall be either in the nature of a summons or warrant, which warrant may issue without any order of the court or judge first being obtained against the person or persons so charged, with process, when in the nature of a warrant, shall be returnable forthwith, and when in the nature of a summons shall be returnable in not less than five or more than fifteen entire days; such process shall state what provision of the law is alleged to have been violated by the defendant or defendants, and on the return of such process or at any time to which the trial shall be adjourned, the said court shall proceed in a summary manner, without a jury, to hear testimony and to determine and give judgment in the matter without the filing of any pleadings for the plaintiff for the recovery of such penalty, with costs, or for the defendant, and the said court shall, if judgment be rendered for the plaintiff, cause any such defendant, who may refuse or neglect to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for any period not exceeding one hundred days; that the officers to serve and execute all process under this act shall be the officers authorized to serve and execute process in said courts; that said District Court or Court of Common Pleas shall have power to adjourn the hearing or trial in any case from time to time, but in such case, except in cases in which the first process was a summons, it

shall be the duty of the judges of the District Court or the Court of Common Pleas to detain the defendant in safe custody, unless he shall enter into bond to the said State Board of Medical Examiners of New Jersey, with at least one sufficient surety in double the amount of the penalty claimed, conditioned for his appearance on the day to which the hearing shall be adjourned, and thence from day to day until the case is disposed of, and then to abide by the judgment of the said court, and such bond, if forfeited, may be prosecuted by the said board." 10

In this connection it is essential to discuss Section 8 of the Act in question, which defines the practice of medicine and which is 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 system." 20 30 40

The evidence in the case is undisputed, that the place of business conducted by defendant-appellant is a store. There is no "Doctor" sign in or about the place of business. There are no diplomas in the store. There is nothing about the place that would suggest that the owner of the establishment, George Gese, is a doctor. The only signs about the place and store window, read "Star Herb Medicine Company". The defendant-appellant never held himself out as a "Doctor". Defendant-appellant never touched anyone's body. He simply listened to the stories of the people who went to his place of business for teas, herbs, and botanical preparations, and gave them such teas, herbs and botanical preparations as he thought would help them. The plaintiff's attorney stressed the point that defendant was analyzing the urine of people who bought from him, but there is no evidence in the case of real urine analysis. It might be well to quote the testimony of the witnesses on the point. Plaintiff's witnesses testified as follows:

*Erma Spruce*, (Case Page 21-Lines 14-25)

Q. It is a store? A. It is a store.

Q. Is the name "Doctor" anywhere on the window? A. No.

30 Q. Are there any diplomas in the store? A. No.

Q. Is there anything about the place that would suggest to you that the man was a doctor? A. Well, there is the words "Star Herb and Botanical Drug"—"The Star Herb Medicine Company."

Q. And that is all? A. That is all.

*Agnes Hammer* (Case Page 26 Lines 20-

40 33.)

Q. And on each occasion what did he give you? A. Nothing but the tea.

Q. You paid him, of course? A. Yes, sir.

Q. Did you take at any time a specimen of your urine? A. Yes.

Q. How did you come to do that? A. Well, I had been told that that was what it was.

Q. Did you give it to him? A. Yes. ..

Q. Do you know what he did with it? A. The same as I could have done at home.

Q. What was that? A. Just examined it with paper—colored paper. 10

Q. Did he do it in your presence? A. Yes, sir.

*Agnes Hammer* (Case Page 28 Lines 3-15.)

Q. When you went to Mr. Gese you told him what was wrong with you; is that right? A. Yes, sir.

Q. Did he examine you? A. No, sir. 20

Q. All he did was to give you some tea is that right? A. Yes.

Q. And he told you how to take it? A. How to take it.

*Francis Hilke* (Case Page 32 Lines 1-8.)

Q. Is there any doctor's sign around this place of business? A. I don't think so.

Q. You don't know what Mr. Gese did with the urine that you brought to him, do you? A. No. 30

*Dela Orr* (Case Page 37 Lines 24-38.)

Q. Mr. Gese didn't examine your body, did he? A. No.

Q. You don't know what he did with your urine, do you? A. I do not.

Q. There is no doctor's sign around his place of business? A. Not that I saw.

Q. Did you look for any? A. Well, I looked around to see the signs that were on the place. 40

Q. What signs were there? A. The signs were the same as on this little circular that he gave us.

Q. The United States Star Herb Medicine Company? No other signs? A. No.

Q. Did you see any diplomas around the place? A. No.

10 *From the testimony of defendant George Gese, (Case Page 43 Lines 1-20.)*

Q. Every time they came for them did they tell you what was the matter with them or did you tell them? A. They said that they—they only told me that once. If they come in, they got that tea anyhow.

Q. They came in and asked you for tea? A. Yes, they asked me for tea.

20 Q. You gave it to them? A. Yes, sir.

Q. Did you ever during any of these visits tell these people that you are a doctor? A. No.

Q. Did you ever tell them that you practiced medicine? A. No.

Q. Did you ever diagnose their cases? A. No, sir.

Q. Did you ever examine their bodies? A. No, sir.

30 *(Case Page 43 Lines 31-43.)*

Q. You examined Mrs. Spruce's urine, didn't you? A. They showed it to me and I brought it right back.

Q. You examined it? A. What do you call "examine"? I don't know.

40 Q. What do you call examining it? What did you do to it? A. "Examination"—that is what they call—microscopic—what they ever call it for—I don't know—

Q. What do you do? A. I look in the air and put it there in the back.

The Court commented in this case, (Page 41 Lines 20-21), "There is nothing here that he held himself out as a doctor."

From all the testimony in the case, it would appear that the defendant-appellant, George Gese, was engaged in a business which was not essentially different from that of any other store that sold patent medicines or drugs of any kind. It is very common now for patent remedies for colds, constipation, headaches, liver trouble and many other human ailments to be sold by grocers, department stores, druggists, general stores and even, as defendant testified in this case, shoemakers sell corn salve. One of the exhibits which the plaintiff introduced in evidence in this case was corn salve, (Case Page 16 Lines 26-30), and also (Case Page 34 Lines 6-10).

Surely it was not the intent of the Legislature to include within this statute prohibiting the practice of medicine, the sale of patent medicines, drugs, corn salves, teas, herbs and botanical preparations such as defendant sold. The statute in question is very broad, but as Mr. Justice Dixon in the case of *State v. Herring* 70 N. J. Law 34 held, the interpretation of the meaning of statutes of this kind, must be reasonable, and the statute must be strictly construed since it creates and defines offenses unknown to the common law.

In the light of all of the foregoing, the defendant-appellant maintains that the statute in question does not apply to this case, and for that reason the court erred in refusing to give judgment for the defendant at the end of the case when duly requested so to do. (Case Page 46 Lines 1-10).

While it is elementary that the Supreme Court on appeals from the District Court will not consider weight of evidence, credibility of witnesses, etc., the attention of the Court is called to the bias and feeling on the part of the investigators and detectives employed by the plaintiff. Mrs. Spruce repeatedly called the defendant "Dr. Gese", although he never held himself out as a doctor, and both Mrs. Spruce and Mrs. Orr admitted that they misrepresented their names and Mrs. Spruce, her condition, and that they told untruths when they went to see defendant in an effort to obtain from him evidence which they thought would convict him.

From the comment of the trial court as follows:

(Case Page 47 Lines 23-28).

20 "The Court: I refuse to dismiss and give you an exception. It seems to me that from the defendant's own testimony and from what he did he comes within the prohibition of the statute against practicing medicine. I therefore hold him guilty,"

the trial court found defendant guilty from his own evidence. I submit that there is no evidence by defendant sufficient to find him guilty and I also submit that this Court should put its stamp of disapproval upon the acts and methods of the  
30 paid investigators and detectives employed by plaintiff.

## II.

**Defendant was entitled to a trial by jury.**

The Supreme Court has many times decided that actions of this character are civil suits and has further held that defendant is entitled to trial by jury in actions of this character. For decisions in point see: 10

*State Board v. Curtis* 94 N. J. Law 324.  
*State Board v. Giedroye* 91 N. J. Law 61.  
*Lowrie v. State Board* 90 N. J. Law 54.  
*Harman v. State Board* 67 N. J. Law 117.

The above cases were decided before the Act of 1921 which amended the former Act in the respect that thereafter offenders were to be tried without jury, but the amendment makes Section 10 unconstitutional. In support of this argument the above cases are cited and also 20

*State Board v. Zeigler* 32 N. J. Law 262.  
*Raphael v. Lane* 56 N. J. Law 108.  
*McIntyre v. Carter* 48 N. J. Law 113.  
*Katz v. Eldredge* 97 N. J. Law 123.

Quoting from the opinion of Chancellor Walker in the case of *Katz v. Eldridge* above: 30

"No one, I think, will contend that jury trials are restricted to criminal offenses at common law or that for a crime created by statute—no matter how reprehensible the offense or severe the penalty—the offender may legally be tried by a single judge with power to convict and imprison him for perhaps a term of years and fine him perhaps hundreds or thousands of dollars. Such a proposition would violate both the letter and 40

the spirit of our constitutional guarantees of liberty and property, and shock our sense of natural justice as well. Unless the line of demarcation is drawn in strict conformity to constitutional limitation, and if the Legislature is untrammled in the extent to which it may prescribe imprisonment as punishment of offenses triable by a magistrate without a jury, then, of course, it can go all length, as it apparently has done \* \* \*.

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“As I remarked above, if the Legislature can make the imprisonment six months, it can make it six years. And if it can make the fine upwards of \$16 it can make it \$600. Why not? Where is the trammel on legislation if it does not reside in the constitutional provision that the right of trial by jury shall remain inviolate, and if this does not mean that only those prosecutions for petty offenses can be had before magistrates without a jury, which, before the adoption of that instrument were so triable? As I said before, when the Legislature creates a new offense it must of necessity fall within the class of those triable by jury or those triable without jury; and I affirm that in favor of human liberty and due process of law, no newly-created statutory offense can be lawfully made disorderly conduct when the penalties denounced are those impossible for the commission of crime.”

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### III.

#### **Section 10 of the act in question is unconstitutional.**

It violates:

(a) Article 1, section 7 of the Constitution of the State of New Jersey, which provides among other things, that the right to trial by jury shall remain inviolate.

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(b) Article 4, section 7 of the Constitution of the State of New Jersey, which provides that

laws shall embrace but one subject to be expressed in the title.

(c) The Fifth Amendment of the United States Constitution in that it deprives defendant-appellant of his liberty and property without due process of law.

(d) The Seventh Amendment of the United States Constitution in that it deprives defendant-appellant of his right to trial by jury in a suit at common law wherein the subject matter in controversy shall exceed \$20. 10

(e) The Fourteenth Amendment of the United States Constitution in that defendant-appellant is deprived of his liberty and property without due process of law, and the defendant-appellant is denied the equal protection of the laws. 20

With respect to (a) the argument has been set forth above.

With respect to (b) the statute in question should embrace but one subject, to wit; the regulation of the practice of medicine. It should not cover the sale of teas, herbs, botanical preparations, drugs, corn salves and other articles such as are in evidence in this case. If this Court decides that the Act applies in this case, then in reality the Act covers not one subject to be expressed in its title, but covers many other things besides the regulation of the practice of medicine. 30

With respect to (c) under the common law there was no denial of the right on the part of defendant-appellant to sell teas, drugs, corn salves and botanical preparations if he desires. If the statute in question deprives defendant-appellant of his right to sell these teas, herbs, corn salves, and botanical preparations, then it is an unreasonable exercise of the police power and is void. 40

There is nothing in this case to establish that what defendant did was injurious to the health, morals or safety of the public, and he should therefore be permitted to engage in his pursuit without interference.

10 With respect to (d) the action brought in this case is a civil suit to recover \$200 as a penalty and it is apparent that the subject matter in controversy here exceeds \$20. Again since this statute deprives defendant-appellant of his right to trial by jury, it is void for reason (d) above urged.

20 With respect to (e) this defendant appellant is deprived of the right to sell teas, herbs, corn salves and botanical preparations and yet this statute is not sought to be forced against druggists, shoemakers, or the owners of delicatessens, general stores, department stores and other persons who sell similar articles.

#### IV.

#### **The complaint is indefinite and does not set forth a cause of action.**

30 The only violation set forth is that of Section 10 of the Act which is above given at length. Section 10 does not define the violations. It simply prohibits the practice of medicine and provides for a penalty. Section 8 above set forth is the only section which prescribed or defines what constitutes a violation and what constitutes the practice of medicine. For that reason the complaint is defective and does not set forth a cause of action. This point was made on behalf of defendant at the opening of the trial (Case 40 Page 11 Lines 11-40). The Court refused to dismiss on the grounds urged here and urged at the trial. In this regard it is respectfully submitted that the Court erred.

As argued above the complaint and the proceedings thereunder must be strictly construed and followed and if that was done in this case, the defendant would have been entitled to dismissal of the proceedings.

**Conclusion.**

It is respectfully submitted that the New Jersey Supreme Court erred in dismissing the appeal taken by the defendant from the judgment of the First District Court of Jersey City, which judgment of the First District Court of Jersey City is erroneous for the reasons given above, and it is respectfully submitted that the judgment of the Supreme Court dismissing the appeal should be reversed and the conviction of defendant by the First District Court of Jersey City should be set aside and for nothing holden. 10 20

BENJAMIN E. GORDON,  
Attorney of Defendant-Appellant.

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NEW JERSEY  
Court of Errors and Appeals.

STATE BOARD OF MEDICAL EXAMINERS OF  
NEW JERSEY,  
*Plaintiff-Appellee,*  
v.  
GEORGE GESE,  
*Defendant-Appellant.*

} On Appeal.

BRIEF FOR PLAINTIFF-APPELLEE

The defendant-appellant was convicted before the First District Court of the City of Jersey City upon the charge of violating Section 10 of "An act to regulate the practice of medicine and surgery," etc., approved May 22, 1894, as amended by act approved April 8, 1921. The District Court imposed the statutory penalty of \$200 and cost of suit.

The defendant-appellant sought to set aside his conviction on appeal to the Supreme Court from the District Court but the Supreme Court dismissed the appeal and now the defendant seeks to review the finding of the Supreme Court in an appeal to this court.

The defendant-appellant raises four questions on appeal and they will be argued in this brief in their order.

## ARGUMENT

## I

THE DEFENDANT COMMITTED AN ACT OR ACTS WHICH CONSTITUTE A VIOLATION OF SECTION 10 OF THE STATUTE ENTITLED "AN ACT TO REGULATE THE PRACTICE OF MEDICINE AND SURGERY, ETC."

The first point raises a question of fact. It is well settled that the Supreme Court will not review questions of fact on appeal where there is evidence in the case to support the finding of fact by the trial judge. *Martin v. Brown*, 80 N. J. L. 136; *Upton v. Slater*, 83 N. J. L. 373; *Closter Dairy Farms v. N. Y. Central R. R. Co.*, 88 N. J. L. 557; and in *Goldberg v. Reed*, 97 N. J. L. 170, the Chief Justice, at page 172, saying:

"It is entirely settled that the determination of questions of fact by the judge of the District Court sitting without a jury is final between the parties when there is legal evidence to support it."

There is ample evidence in this case to support the finding of the trial judge. The trial court (Case p. 47) said:

"I refuse to dismiss and give you an exception. It seems to me that from the defendant's own testimony and from what he did, he comes within the prohibition of the statute against practicing medicine.

"I therefore hold him guilty."

The plaintiff-appellee called five witnesses. Each witness had called on the defendant and complained to him that they were suffering from some physical ailment. He listened to their complaints and then told them what they were suffering with. Upon his request they furnished specimens of their urine which he analyzed and, after analyzing it, gave them tea and told them to take

it, in what doses and how often. They paid him each time they went to see him.

The defendant-appellant when called as a witness in his own behalf did not substantially dispute the testimony of these five witnesses.

(Case, p. 41):

“Q. Do you know these State witnesses, Mrs. Spruce and Mrs. Orr? A. I don't know them. They have been in with other people, buying tea.

“Q. Do you remember when they came in? A. Yes. I know they was in the store this year, but I don't know the date.

“Q. What did Mrs. Spruce say to you when she came in? A. I cannot remember just what she said. They got certain troubles they explain to me. They asked if I got anything for it.

“Q. And you told her what? A. I got herb preparations.

“Q. What did you tell her? A. I said one case I got package and they got stomach trouble and I gave them some preparations for the stomach trouble.”

(Case, p. 42):

“Q. Did you tell them you made a urine analysis? A. I only tell them that they got certain trouble. I don't know what I told them.”

(Case, p. 45):

“Q. How many persons' urine did you examine in the course of one week? A. Only for the herb teas and the medicine. I know what it is about.

Q. “What do you do with respect to the urine?  
A. I take the urine in back there and I only take a paper for to look or examine it. That is all I do.

“Q. After you look at the urine you find out what they have? A. They tell me their complaints before.”

*Exhibits P 3, P 4 and P 10* (Case, p. 55) show the result of the urine examination in the case of three of the State witnesses.

Section 8, Chapter 271, P. L. 1915, p. 482, defines the practice of medicine in this State 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 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 testimony is clear to the effect that the defendant-appellant did listen to the ailments of the State witnesses as related by them; that he examined their urine and after this examination was made by him he prescribed medicine which was called tea or herb preparation. Therefore, he did diagnose, he prescribed and treated for human diseases or physical conditions. The testimony places the defendant within the spirit and letter of the act and his conviction by the District Court was right and proper and the evidence fully supports the finding of fact by the trial judge.

## II

THE DEFENDANT WAS NOT ENTITLED TO A TRIAL  
BY JURY.

The trial judge refused to allow the defendant-appellant's demand for a jury. The court tried the case without a jury. In this the court was right.

Chapter 221, P. L. 1921, p. 709, provides:

"On the return of such process or at any time to which the trial shall be adjourned, the said court shall proceed in a summary manner, without a jury to hear testimony and to determine and give judgment in the matter without the filing of any pleadings for the plaintiff for the recovery of such penalty with costs, etc."

The Supreme Court has settled this question in the following cases: *State Board of Medical 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*, Decided October Term, 1925; *State Board of Medical Examiners v. Jilson*, Decided October Term, 1925; *State Board of Medical Examiners v. Coleman*, Decided October Term, 1925; *State Board of Medical Examiners v. Gese*, Decided January Term, 1926.

## III

SECTION 10 OF THE ACT IN QUESTION IS NOT  
UNCONSTITUTIONAL.

The constitutional questions raised by counsel for the defendant-appellant are without merit. The statute regulating the practice of medicine and surgery embraces but one object and that is expressed in the title of the act—the regulating of the practice of medicine and surgery—which is a single offense.

An attempt is made in this case to have it cover the sale of teas, herbs, drugs, etc., but the defendant was not charged with the sale, and whether what he did constituted a mere sale is a question of fact which was found adversely by the trial court.

The defendant is not entitled to a trial by jury and our courts have so held.

The statute regulating the practice of medicine and surgery is a proper exercise of the police power of the State. The Legislature in creating the offense—it being a statutory offense—has the right to prescribe the mode of trial and to provide for a penalty for violation of the act. The purpose of the act being to protect the public from incompetents, charlatans and fakes, it is a reasonable exercise of that power. The statute, therefore, comes within the cases supporting the right of the Legislature to enact legislation in this respect. The act is therefore constitutional, and the proper exercise of the police power of the State.

In *State v. Chapman*, 69 *N. J. L.* 464, affirmed by the Court of Errors and Appeals in 70 *N. J. L.* 339, Mr. Justice Fort, who delivered the opinion of the court, said:

“The power of the Legislature to regulate the practice of medicine, dentistry or surgery is undoubted; it is an exercise of the police power of the State for the protection of the health and the promotion of the comfort and welfare of the people. It may provide that only those possessing skill and learned in these professions shall be permitted to practice; may prescribe the nature and extent of the qualifications required and the rules for ascertaining and determining whether those proposing to practice come up to the statutory standard. If the regulations and conditions are adopted in good faith, and they operate equally upon all who may desire to practice, and who possess the required qualifications, and if they are adapted to the legislative purpose

of promoting the health and welfare of the people by excluding from the practice those who are ignorant and incapable, then the fact that the conditions may be rigorous, impolitic and unjust will not render the legislation invalid."

#### IV

##### THE COMPLAINT IS DEFINITE AND SETS FORTH A CAUSE OF ACTION.

Section 10, of Chapter 221, P. L. 1921, page 709, prohibits any person from commencing or continuing the practice of medicine and surgery in any of its branches in this State without having first obtained and filed a license as provided in the act. The section further provides that any person who shall violate any provision of the act shall be liable to a penalty of \$200.00, etc. This section is the prohibitory provision of the act and is the section that should be charged in the complaint, and was so charged in this case.

Section 8 of the act of 1915, quoted herein, is the section of the act which defines the practice of medicine.

In other words, the complaint must charge a violation of section 10, but whether section 10 is violated or not depends upon whether what the accused did comes within the meaning of section 8.

In prosecutions under penal statutes all that is necessary to allege is the particular section violated. The complaint here does more. It sets forth in what respect the defendant did violate section 10 of the act. This principle of pleading in prosecutions under penal statutes is well settled. In the case of *Lowrie v. State Board of Dentistry*, 90 N. J. L. 54, the Supreme Court on a motion to dismiss sustained a similar complaint under the Dental Act and in *State Medical Board v. Lezenby*, decided February 20, 1923 (not reported), the Supreme Court under the same kind of a complaint reversed the District Court and found the defendant guilty. A like complaint

was filed in the case of *State Board of Medical Examiners v. Buettel* and also *State Board of Medical Examiners v. Roche*, *State Board of Medical Examiners v. Maza*, *State Board of Medical Examiners v. Jilson*, *State Board of Medical Examiners v. Coleman*, and *State Board of Medical Examiners v. Gese*, cited *supra*.

## V

THE METHOD OF REVIEW IS BY CERTIORARI AND NOT BY APPEAL.

This point is not raised in behalf of the defendant-appellant but in view of the recent decisions of the Supreme Court the determination of this question is dispositive of the whole case. The defendant-appellant seeks a review of the judgment below by appeal. His remedy is by certiorari. *State Board of Medical Examiners v. Buettel*, *State Board of Medical Examiners v. Roche*, *State Board of Medical Examiners v. Maza*, *State Board of Medical Examiners v. Jilson*, *State Board of Medical Examiners v. Coleman*, and *State Board of Medical Examiners v. Gese*, cited *supra*.

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

GROVER C. RICHMAN,  
Second Assistant Attorney-General;  
EDWARD L. KATZENBACH,  
Attorney-General,  
*Attorneys of Plaintiff-Appellee.*

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