

1875  
June 29.

EX PARTE YEE QUOCK PING } RE THE MEDICAL BOARD OF  
EX PARTE BOTTRELL' } VICTORIA.

“*The Medical Practitioners Statute 1865*” (No. 262), sec. 9.—*Mandamus to register.*

Before the Court will grant a mandamus to the Medical Board to register a medical practitioner, it must be shown that the applicant has demanded to be allowed personally to attend the Board, and it is not sufficient that a member of the Board has informed him that he need not do so.

*Semble*, that a diploma of a foreign university, conferring the degree of doctor of medicine, is not a sufficient qualification, without proof that the applicant has passed through a regular course of medical study, &c.

THESE cases came before the Court upon two several motions for a rule *nisi* for a *mandamus* to the Medical Board of Victoria, to compel registration of the applicants respectively as duly qualified medical practitioners.

The affidavits, and statutory declarations, upon which counsel in the first case moved, stated that Yee Quock Ping was a naturalised subject of Her Majesty; that, in company with Mr. *Ireland* and Mr. *Branson*, barristers-at-law, he attended personally a meeting of the Medical Board held on Friday, June 4, but was not admitted into the board-room; that Mr. *Branson* applied to the Board to register Yee Quock Ping as a duly qualified medical practitioner, and certain documents were produced, showing his qualifications. The diploma from the College of Chung Low, held by Yee Quock Ping, was translated as follows:—

“At a meeting of the college. We, the doctors of this district, hereby certify that we know you, *Quong Hung San San Neng Yong Ah Kan Oo*, No. 42, *Yee Quock Ping*, and we hereby testify that we have correctly examined you, and find that you have studied for six years, and understand the seven external and eight internal pulses, together with the liver, heart, lungs, kidney, and stomach and bladder, spleen, pericardium, big and small bowels, and their pulses; that you are thoroughly conversant with all the pulses in all parts of the body; and that you have studied medicine for four years. We hereby certify that, having passed your examination satisfactorily, you are entitled to practise as a doctor in every district; and we hereby bear witness to your general and thorough knowledge of medicine and the pulses.”

Here follow the signatures of the doctors, and the date. It was alleged that, in addition to this diploma. the applicant was prepared to prove that he had passed through a regular course of medical study of not less than three years' duration at the

College of Chung Low. He was not questioned by the Board, nor were any witnesses examined in support of his application. Mr. *Branson* said that the Board refused to admit Yee Quock Ping on the grounds that the applicant had not studied anatomy, and stated that there was nothing to prevent him from practising among his own countrymen (the Chinese population) in Victoria. Yee Quock Ping further swore that the college of doctors of the district of Chung Low was duly recognised for the purpose of granting medical diplomas in the empire of China; that he was the person referred to in the diploma quoted above; that the diploma was presented to him, after due examination for that purpose, by the said college of doctors. Several statutory declarations were attached, from Europeans in the neighbourhood of *Ballarat*, who had been suffering from disease, and who declared that they had been cured by the treatment pursued by Yee Quock Ping, after European doctors had declared them to be incurable.

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*Ireland*, Q.C., for the motion—The applicant is clearly entitled to be registered under “*The Medical Practitioners Statute 1865*” (a), and he has satisfied the requirements applicable to licentiates of foreign schools of medicine, as set out in the 13th paragraph of the third schedule to that Act (b). It is proved that the college which granted his diploma was duly recognised in his country as having authority in that behalf. The provisions of the Act are intended to extend to all foreign countries with which Great Britain has treaty relations; and it cannot be contended that China is not a

(a) 28 Vict. No. 262, sec. 9—“Every natural born or naturalised subject of Her Majesty possessed, or hereafter becoming possessed, of any one or more of the qualifications described in the Third Schedule hereto, who shall prove on personal attendance to the satisfaction of the Medical Board that the testimonium, diploma, licence, or certificate testifying to such qualification, was duly obtained by him after due examination from some university, college, or other body duly recognised for such purpose in the country to which such university, college, or other body may belong, shall be and be deemed to be, and shall be entitled to registration as, a legally qualified

medical practitioner, and shall receive from the Medical Board a certificate of qualification.”

(b) Sched. III., par. 13 :—“Any person who shall prove to the satisfaction of the Board that he has passed through a regular course of medical study of not less than three years’ duration in a British or foreign school of medicine, and has received after due examination from some British or foreign university, college, or body duly recognised for that purpose in the country to which such university, college, or other body may belong, a medical diploma or degree certifying to his ability to practise medicine or surgery, as the case may be.”

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civilized country. There was reasonable evidence to satisfy the Medical Board: *Norris v. Smallman*(c). [FELLOWS, J. He does not seem to have made a personal demand upon the Board to register him.] The applicant gave his personal attendance, for he was waiting at the door until he was told by members of the Board that he need not come into the room; and a demand was made by his counsel. He is also a naturalised British subject. No doubt the Board ought to have admitted, or called him into their presence, for, under sect. 6, they may question any person produced before them, upon his solemn declaration. [FELLOWS, J. How can he ask now for a *mandamus*, if he did not demand admission to the board-room? Sec. 9 requires a personal interview with the Board. He does not say even that his representative demanded permission for him to present himself. The effect of what he states is that he was ready and willing to attend the Board personally.] The Board was aware that he was waiting for admission; they gave reasons for their refusal to register, which show that they did not consider his personal presence necessary; they did not consider him qualified, because he had not pursued a course of anatomy. That is not a good ground. But, though the applicant had not practised or studied actual dissection (that not being allowed in his country), he had studied anatomy from accurate and minute plates prepared at one period by certain eminent men, as described in the standard work of *Abbé Huc* upon China. [STEPHEN, J. He has not proved "that he has passed through a regular course of medical study of not less than three years' duration in a British or foreign school of medicine."] The Board has only to be satisfied that he pursued the regular course required in his country, and by the body granting his diploma. His diploma shows that he has studied medicine for four years. [STEPHEN, J. It does not state that he did so in any school of medicine, duly recognised, &c. In *Norris v. Smallman* (c), *Stawell*, C.J., says, "What is a regular course? That which is recognised generally as a regular course of instruction." It is a question whether what is described is a regular course. Much must be, and by the Legislature has been, trusted to the Medical Board,—and, no doubt, rightly; how can

(c) 3 V. R., L. 25; S. C., 3 A. J. R., 32.

this Court judge of such matters?] A *mandamus* should issue to require them to hear the application. Even where a discretion is vested in certain persons, yet if they avowedly act upon wrong grounds, the Court will interfere, as in *Reg. v. Panton, Ex parte Munro (d)*, where justices awarded an extraordinary sum for costs, expressly for the purpose of accomplishing the material object of their order. [FELLOWS, J. That was the case of a Court.] Further, there is no appeal from this tribunal, nor any other remedy than this. A public duty is cast upon a public body, to satisfy itself as to compliance with certain conditions; and that implies a reasonable satisfaction. Here they have declined to hear the applicant in person. What is the value of a diploma, if the Board is to go behind it? The Act does not require that the diploma should state that he has passed through a regular course of medical study for three years, &c.; that may be supplied by other evidence, which he was ready to give if the Board had heard him (e). The discretion of the Board must be exercised reasonably, 5 Rep., 204. [FELLOWS, J. The Court cannot exercise it for them; it can only compel them to hear again.] Under sec. 7 the Board may restore a name to the register if they think fit; in *Reg. v. The Medical Board, Ex parte Matt (f)*, a *mandamus* issued to compel reinstatement on the register. [PER CURIAM That was a merely ministerial act; the *mandamus* was directed to the Board because the officer who omitted to insert the name on the register was not a person to whom a *mandamus* would issue; the Board had not exercised their discretion in striking off the name. You show no demand for a personal interview.] We show that it was dispensed with. [FELLOWS, J. Can that be? See *Rex v. Brecknock Canal Co. (g)*. BARRY, J. Is the act of two members, telling him not to come in, the act of the Board?] The chairman told him he need not come in.

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In the second case an affidavit was filed, setting out that Edwin Horace Trudge Bottrell was a natural born subject of Her Majesty: that during the years 1857, 1858, and 1859

(d) 1 A. J. R., 37.

applicant's personal attendance had been

(e) An adjournment was allowed for production of an affidavit that the ap- dispensed with. This was supplied.

(f) 4 W. W. &amp; A' B., L. 139.

(g) 3 A. &amp; E., 217.

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he attended a regular course of medical study at a British school of medicine. From July, 1859, to March, 1860, he was engaged as assistant to Messrs. Burfield and Roach, who carried on business as pharmaceutical chemists in the Strand, London, and whilst so employed he studied medicine, and also attended a regular course of medical studies in a British school of medicine. In 1860, in consequence of ill-health, he was advised to take a sea voyage, and he joined H.M. ship *Victor Emmanuel*, and acted occasionally as assistant chemist on board of that ship till December, 1861. Subsequently he went through a regular course of study in a British school of medicine, extending over a period exceeding three years. From January, 1870, to August, 1872, he went through a complete course of study in *materia medica*, midwifery, surgery, dressing, minor surgical operations, vaccination, and diseases of every kind, under the tuition of R. H. T. Gilbert, M.A., M.D., M.R.C.S.E. On 10th December, 1872, he was created and appointed a doctor of medicine by the Edinburgh University, Chicago, U.S.A., and obtained a diploma from that university. The Edinburgh University was originally chartered in the year 1862, under the style of the Chicago North-Western College; was re-chartered in the year 1864, and in 1870 again re-chartered, under the name of the "Edinburgh University," by an act of the Legislature of Illinois, entitled an Act for the Incorporation of Colleges and Universities. The university was recognised in America as one qualified to give a diploma entitling the holder to practise medicine. In March, 1874, he attended before the Medical Board of Victoria, and applied to be registered, but his request was refused. He subsequently heard that the reason for the refusal was, that the Board was not satisfied of the existence of such a university, and his solicitors thereupon wrote to the Board offering to furnish statutory declarations of the existence of the university. In reply, the secretary to the Board wrote that the Board declined to register Mr. Bottrell as a legally-qualified medical practitioner, for the reason that his medical qualifications did not meet the requirements of "*The Medical Practitioners Statute 1865.*" The diploma was on parchment, and in Latin. The following is a translation of it:—

"To all whom the present letter may reach, the president, curators, and professors of the Edinburgh University of Chicago, established by the laws of the

Illinois Republic, offer greeting.—Whereas in all academies duly and lawfully established, either here or all over the world, there has existed a praiseworthy and ancient usage, that men who have devoted their attention not less diligently than successfully, either to literature or ingenious arts or to any liberal studies whatsoever, in the meantime conducting themselves correctly and reputably, should be graced by some signal honour, and should be elevated to merited dignity; and whereas we, in accordance with the laws of our republic, possess plenary power for distinguishing and gracing with academic titles, and for advancing to degrees in sacred theology, laws, liberal arts, and medicine, well-deserving men; we therefore, being endowed with this authority, and not unmindful of ancient usage, have decided that the distinguished man, Edwin H. Bottrell, devoted to the most excellent studies, concerning whose erudition in the medical art and irreproachable morals we have sufficient knowledge and ascertainment, is worthy and fit to be honoured, as an accomplished man, with the highest grade of dignity, wherefore we have unanimously both created and appointed him a doctor of medicine, and have granted to him and conferred upon him all the rights and privileges which attach to that grade. In proof whereof we have ordered this letter to be validated by the great seal of our literary university, on this tenth day of the month of December, and in the year of our Lord one thousand eight hundred and seventy-two.—(L.S.)—DOOP, M.A., M.D.; ROBERTS, LL.D.; MILARD, D.D.; SOLON, LL.D.; LUDINGTON, M.A.; EDWARDS, LL.D.; RICHD. M. LACKEY, B.A., President and Curators of the University.”

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*Quinlan* for the motion—No reason has been given for the refusal. If such an answer from the Board had been given to the application of a member of the Royal College of Physicians in England, would it be sufficient? [BARRY, J. It is not stated in what medical school the applicant studied.] The Act does not require it. [BARRY, J. If the applicant can produce evidence that he has passed through a particular medical school or schools, the Board may admit him, upon another application].

BARRY, J. In the first case there is an absence of a specific demand to be allowed to attend personally before the Board. That is necessary before we can grant a *mandamus* to compel the Board to receive the applicant. As to both cases, it is for the Board to be satisfied that the applicants are entitled to be enrolled, and no statements have been made to justify the Court in interfering with the decision at which the Board has arrived.

*Motions refused.*

Attorney for Yee Quock Ping: *De Courcy Ireland.*

Attorneys for Bottrell: *Emerson & Hitchins.*