WOODSIDE v. BALDWIN.

Case No. 17,995.

{4 Cranch, C. C. 174.}[1]

Circuit Court, District of Columbia. May Term, 1831.

PHYSICIAN'S LICENSE.

A physician, practising in Washington, D. C, without a license from "the Medical Society of the District of Columbia," may maintain an action at law for his services, if, during the time of those services, there was no existing "medical board of examiners of the District of Columbia."

This was an appeal from the judgment of a justice of the peace for the county of Washington in favor of the appellee {Ethan Baldwin} for § 48, for the balance of an account for medical attendance and services from March, 1829, to March, 1830. Upon the appeal, one of the parties demanded a trial by jury, who found a verdict for the appellee for the amount claimed, subject to the opinion of the court upon the question whether the appellee had a right to maintain an action for his medical services without having obtained a license, or diploma, as required by the 5th section of the charter of the Medical Society of the District of Columbia, granted by the act of congress of the 16th of February, 1819 (6 Stat 221), entitled "An act to incorporate the Medical Society

of the District of Columbia." The 3d section of the charter provides: That it shall and may be lawful for the said Medical Society, or any number of them attending (not less than seven), to elect by ballot five persons, residents of the District, who shall be styled the Medical Board of Examiners of the District of Columbia; whose duty it shall be to grant licenses to such medical and chirurgical gentlemen, as they may, upon a full examination, judge adequate to commence the practice of the medical and chirurgical arts, or as may produce diplomas from some respectable college or society; each person so obtaining a certificate, to pay a sum not exceeding ten dollars, to be fixed on or ascertained by the society." By the 4th section, any three of the examiners shall constitute a board for examining candidates; and any one of the examiners may grant a license to practise until a board can be held. By the 5th section it is "enacted that after the appointment of the aforesaid medical board, no person, not heretofore a practitioner of medicine or surgery within the District of Columbia, shall be allowed to practise within the said District, in either of the said branches, and receive payment for his services, without first having obtained a license, testified as by this law directed, or without the production of a diploma as aforesaid, under the penalty of fifty dollars for each offence, to be recovered from the county court where he may reside, by bill of presentment and indictment, one half for the use of the society, and the other for that of the informer." By the 2d section the officers, namely, president, two vice presidents, one corresponding secretary, one recording secretary, one treasurer, and one librarian, were to be appointed at the annual meeting in January, forever; but no time was designated for the election of the board of examiners by the society. It was proved or admitted that there had not been any election of the officers of the society for several years, nor any proceedings by the society; and that there was no existing board of examiners during all the time of the appellee's services for the appellant (James D. Woodside).

Mr. Baldwin, for himself, contended, that the 5th section contained no prohibition of practice, and only gave a penalty to the society, which they only could recover by presentment or indictment; that his practice was not a malum in se, even if there had been a board of examiners to whom he could apply for a license. But there was no such board, and consequently he could not have offended against the 5th section of the charter, as it was impossible for him to obtain a license. Nobody has a right to interfere but the society. The act does not forbid any one to practise gratuitously, nor to receive fees without practising. The Maryland statute of 179S, c. 105, §§ 3, 4, 5, and 6, is exactly like the act of congress incorporating the society; and the Maryland act of 1821, c. 217, shows that plaintiffs could before that act, recover notwithstanding the act of 1798, c. 105. Berry v. Scott, 2 Bar. & G. 92, in the year 1827. He contended also, that the society was not in existence. It had become extinct by nonuser. 2 Kent, Comm. 238; Head v. Providence Ins. Co., 2 Cranch (6 U. S.) 127; De Wolf v. Johnson, 10 Wheat (23 U. S.) 393.

Mr. Coxe, contra. The charter makes the practice and the receiving of payment therefor unlawful, and a contract to pay for such services cannot be maintained. The object of the 5th section of the act was the preservation of the public health; and although the corporation may not exist, yet that section remains in force. 2 Kent, Comm. 245251. But the corporation has never ceased to exist; and, if it had, the board of examiners would still remain. It is not subject to annual election, as the officers are. But, if the corporation is extinct, the Maryland act of 1798, c. 105, is revived, and the practice is unlawful under that act. The act of 1821, c. 217, only guards against surprise, by the defendant's availing himself of the defence given by the act of 1798. It contains no prohibitory words.

THE COURT (THRUSTON, Circuit Judge absent) affirmed the judgment, with costs.

[1] {Reported by Hon. William Cranch, Chief Judge.}