

PROOF, IN LAW, OF THE LICENCE
TO
PRACTISE AS AN APOTHECARY.

ON the 11th inst., at Barnstaple, a Court of Record was held before the Recorder, when an application was made to the court for a new trial in the case of *Joce v. Shapland*, both of Swymbridge, which was tried at Barnstaple three months since, when the court ordered a nonsuit, on the ground of insufficiency of evidence to support the validity of plaintiff's licence as an apothecary. The attorney for the plaintiff, Mr. CARTER, junior, having obtained of the registrar of the court a rule *nisi* for a new trial, applied to his honour to make the rule *absolute*. Mr. C., in support of his application, recapitulated the evidence which he had adduced on the trial to prove the authenticity of the licence of his client. The three medical gentlemen on whose testimony he relied were Mr. Cutcliffe, Mr. Smith, and Mr. Torr, who had practised several years under licences which they believed to be precisely similar to the plaintiff's, which they examined and certified to be genuine. He submitted to the court that on that evidence the case ought to have been allowed to go to the jury. Seven of the signatures to Mr. Cutcliffe's, and four to Mr. Smith's licence, were identical with the names on the licence of plaintiff. In the analogous case of handwriting, a witness was eligible to prove handwriting even though he had never seen the individual write; his having had correspondence with the party, and proving that the party had acted on the correspondence, was held sufficient to enable him to certify to the identity of the handwriting. The court, however, in Mr. Joce's case, had directed a nonsuit on the ground of the seal.

THE COURT: The genuineness of the certificate was required to be made out, and the court again and again suggested to the barrister who represented the plaintiff on that occasion to carry his proof as far as he could, but he chose to rely on the seal, and had not alluded to the signatures at all.

Mr. CARTER said, that certainly his impression was that the court resolved that *the seal* must be proved by an officer of the company issuing it. In the case of *Walmesley v. Abbott*, the genuineness of the seal was not required to be proved, but it was held sufficient to prove the handwriting of one of the parties signing the certificate.

THE COURT: In that case much more evidence was adduced than in this.

Mr. RICCARD, for the defendant, opposed the motion, hoping the court would refuse it with costs. Mr. Carter had endeavoured to impress on the court, that the evidence on the trial was sufficient to send the case to the jury; but the question raised was not one of *fact* for a jury, but of *law* for the

court. He (Mr. R.) had no doubt of the genuineness of the certificate; but they must be governed by the rules of evidence; and the question was, had the plaintiff adduced such evidence as could justify the court in sending the case for trial, without introducing a principle which was dangerous to public justice? The court had decided in the negative, and there was no pretence for reversing the judgment; either the handwriting of the signatures, or the seal, must be proved. The plaintiff attempted the latter, failed, and was nonsuited. The case of *Walmesley v. Abbott*, put Mr. Carter quite out of court; for there the genuineness of the instrument was proved by witnesses who had been examined at the hall at the same time with the party, and had witnessed and could prove the handwriting. The decision in *Chadwick v. Bunning* laid down that proof was necessary either of the seal or the handwriting, and although the 6 Geo. 4, on which that case was decided, had expired, yet the same principle was held in *Shearwood v. Hay* (5 *Adolphus and Ellis*, 383), and *Moyses v. Thornton* (8th Term Reports), *Sharp v. Wagstaff*, and *Simpson v. Disnure* (*Law Journal* of April last). He submitted that the application must be refused with costs.

HIS HONOUR: There is no ground for the motion. On the trial three gentlemen were produced to prove the certificate; but they were unable to speak to it, excepting that, from a casual view of the seal, they conceived it to be like their own. I have no doubt that twenty persons in court could have asserted their belief of the genuineness of the instrument: I could have said so much myself; but that is not enough. The 6th George 4th has expired, but it is not unimportant to look at the causes which led to its enactment. It recited that the proof was attended with great difficulty; and this difficulty amounted to an impossibility, if several cases happened to come on for trial in different parts of the country at the same time. The 6th Geo. 4th was passed to obviate it, and I should have thought (but for a contrary decision) that its intention was to make the production of the seal sufficient evidence of the authenticity of the instrument. That Act has expired; but if under Act of 1815 (55th George 3rd,) it was enough to call practitioners of the neighbourhood to give such evidence as was produced in the present case, where was the "great difficulty" of which the 6th George 4th spoke? Is it not obvious that other evidence was contemplated? *Collins v. Carnegie* decided what sort of evidence the law required, and by that decision he had felt himself bound. The motion must, therefore, be discharged with costs.

* * We understand that it was universally considered in court, at the trial, that the Re-

corder's request to the advocate of the plaintiff "to carry his proof as far as he could" (the point upon which he was foiled), had entire reference to *the seal*. The announcements now, therefore, respecting the signatures, took the parties by surprise. The following is a copy of counsel's opinion, taken by the plaintiff, averring that there is no necessity in law for proving the seal, of which the Recorder was conscious it would appear by the above report, somewhat too late, however. The plaintiff could have proved the authenticity of the certificate, by comparing it with others than at hand, as well as the handwriting of the examiners, but his counsel was prevented by the Recorder's own words:—"I am quite clear that the seal must be proved." We may add, that Mr. Peacock is a barrister of experience and high reputation in his profession.

Opinion of Counsel on the Case.

"I am clearly of opinion that the plaintiff is entitled to a new trial, for I am of opinion that there was sufficient evidence to have been left to the jury of the authenticity of the seal. I think it was sufficient to prove the seal by a person like the witness Mr. Smith, who swore that he believed the seal to be that of the Apothecaries' Company, from his knowledge of the general character of the company's seal, derived from his having seen other impressions of the seal, which had been acted upon, and that it was not necessary for him ever to have seen the die, or to be able to describe it minutely. The same rule applies to handwriting, where it is sufficient for a witness who has never seen a party write to swear to his belief of the genuineness of a signature from his knowledge of the general character and appearance of the party's handwriting, derived from having seen the handwriting of the same party, or other instances where it has been acted upon.—See Phillips on Evidence, last edition, page 690, et seq., and it would not be necessary for him to be able to describe the form of each particular letter to entitle his evidence to be left to the jury.

"2ndly. I am of opinion that the authenticity of the certificate might have been proved by other means than by proving the seal.—See Walmesley and Abbott, 3 B. and C., 218, the stat. 55 Geo. 3, does not require the certificate to be under seal.

"I am of opinion that the court has power to grant a new trial.—See observations of Lord Mansfield, *Bright v. Egnon*, 1 Burr, Rep. 393. This is also done in the Palace Court, where the same judge, sitting in banco, reverses his own decision at nisi prius, and frequently grants a new trial. I

presume that the action was commenced in the Borough Court, and was not tried there upon a writ of trial.

"B. PEACOCK."

"Temple, Jan. 4, 1843."

BRITISH MEDICAL ASSOCIATION.

EXETER HALL, Jan. 17, 1843, George Pilcher, Esq., in the chair.—A letter was read from Mr. Wakley, M.P., recommending determined opposition on the part of the association to any ill-devised measure for the regulation of the medical profession which might be introduced into the Houses of Parliament in the ensuing session. On the motion of Mr. H. Smith, seconded by Mr. Hooper, it was resolved, "That a deputation do wait on Sir James Graham to ascertain the course which the Government would pursue this year on the subject of medical reform." On the motion of Mr. George Bottomley, seconded by Mr. A. B. Wall, it was resolved, "That a deputation wait on the poor-law commissioners to request them to enforce the universal adoption of their late recommendation, by payment to medical officers on the *per-case* system." The members of the deputations were then named.

The council having completed some routine business, then adjourned.

ROYAL MEDICO-BOTANICAL SOCIETY.

January 11, 1843.

Dr. FARRE in the chair.

PROXIMATE PRINCIPLES OF OPIUM.

MR. RODGERS, the professor of chemistry, delivered a lecture on the proximate principles of opium. After alluding to the exceeding interest of the drug, in a physiological and therapeutical point of view, and the important results that have taken place in vegetable chemistry, from the discovery of its ultimate principle, morphia, he mentioned the comparative analysis of Smyrna opium by Mulder, who, after examining five specimens, gives the following as the average results of his inquiries:—Narcotine, 7.713; morphia, 6.228; codeia, 0.767; narceia, 9.000; meconia, 0.790; meconic acid, 6.121; fat, 2.209; caoutchouc, 4.338; resin, 2.753; gummy extract, 25.370; gum, 1.706; mucus, 18.733; water, 12.108. Two other principles are described by chemists—the thebaia by Couerbe, and pseudo-morphia by Pelletier.

Narcotine is readily obtained from opium by the action of boiling ether, and is procured in crystals, as the ethereal solution cools. Other methods are occasionally adopted, but the above is the readiest mode of preparing it.

Morphia can be obtained from opium by