

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS.. DOMINADOR GOMEZ JESUS, DEFENDANT AND APPELLANT.

G. R. No. 9651. August 04, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 17th day of July, 1913, C. A. Sobral, assistant prosecuting attorney of the city of Manila, presented a complaint in the Court of First Instance of said city, charging the defendant with the crime of practicing medicine without a license, in violation of section 8 of Act No. 310 of the Philippine Commission. The complaint alleged:

"That in, during, and between the months of January, 1911 and June, 1913, in the city of Manila, Philippine Islands, the said Dominador Gomez Jesus having been suspended from the practice of medicine on or about August 28, 1909, by the Board of Medical Examiners, in accordance with the provisions of section 8 of said Act No. 310, and while his license as a physician and surgeon was revoked by the said Board of Medical Examiners, did then and there willfully, unlawfully, and feloniously treat, operate upon, prescribe, and advise for the physical ailments of one Margarita Dolores and other persons, for a fee, and presented himself by means of signs, cards, advertisements, and otherwise as a physician and surgeon, duly admitted, empowered, and allowed to practice medicine, in the city of Manila, Philippine Islands, when in truth and in fact as the said Dominador Gomez Jesus well knew, he was not allowed to practice medicine in any way in the city of Manila, or anywhere in the Philippine Islands, for a fee, and when, as he well knew, the rendering of medical and surgical services by him to the said Margarita Dolores and other persons in the city of Manila was for a fee, and not in a case of emergency, or in the administration of family remedies, or through a call in consultation with other duly admitted physicians or surgeons."

On the 22d day of July, 1913, the defendant appeared and demurred to the complaint, upon the following grounds:

"(1) That the complaint was not in the form required by law; (2) that the facts stated in said complaint did not constitute a crime; (3) that the complaint itself contains allegations which in truth would constitute a justification or legal exemption for the accused."

After hearing the arguments for the defense and the prosecution on said demurrer, the Honorable Jose C. Abreu, in a very interesting opinion in which he discusses fully said demurrer, reached the conclusion that the complaint was sufficient, and overruled said demurrer.

On the 26th day of August, 1913, the defendant was duly arraigned and pleaded not guilty. The cause was brought on for trial before the Honorable George N. Hurd, on the 9th of September, 1913.

After hearing the evidence, the said judge, in a very interesting and well-reasoned opinion, found the defendant guilty as charged in the complaint, and sentenced him to pay a fine of P200, with subsidiary imprisonment in case of failure to pay the same or any part thereof, and to pay the costs. From that sentence the defendant appealed to this court and made the following assignments of error:

"I. The court erred in declaring that the provisions of section 8 of Act No. 310 are not ,in conflict with the provisions of the Philippine Bill enacted by the Congress of the United States on July 1, 1902.

"II. The court likewise erred in declaring to be valid and effective that portion of section 8 of Act No. 310 which empowers the Board of Medical Examiners to revoke the certificate of a physician who may have been convicted of any offense involving immoral or dishonorable conduct or for unprofessional conduct.

"III The court likewise erred in considering to be final the decision of the Board of Medical Examiners revoking the certificate of the herein defendant, notwithstanding the appeal carried to the Board of Health and not yet heard and finally decided thereby as section 8 of Act No. 310 provides.

"IV. The court also erred in sustaining the objection of the prosecution to the evidence adduced by the defense tending to demonstrate that the defendant's certificate as doctor of medicine represents a value greater than P600.

"V. The court likewise erred in holding that the "Hotel Quirurgico" is Doctor Gomez himself and that such institution exists only to cloak the violation of the law by the defendant.

"VI. The court erred, finally, in sentencing the defendant to pay a fine of P200 or, in default thereof, to suffer subsidiary imprisonment and to pay the costs of the trial."

The facts disclosed by the record are as follows:

- That some time prior to the 28th day of August, 1909, the defendant had been admitted, or had been licensed, to practice medicine in the Philippine Islands.
- That some time prior to the said 28th day of August, 1909, the defendant had been accused, arrested, tried, and found guilty of a violation of the Opium Law.
- That in the month of August, 1909, the defendant was cited to appear before the "Board of Medical Examiners for the Philippine Islands," to show cause why his license to practice medicine should not be revoked, in accordance with the provisions of section 8 of Act No. 310.
- That on the date set, the Board proceeded to make an investigation of the question of the revocation of the license of the defendant to practice medicine, based upon the fact that he had been theretofore convicted of an "offense involving immoral or dishonorable conduct."
- That after the conclusion of said investigation, the Board reached the conclusion (a) that the defendant had been guilty of an "offense involving immoral or dishonorable conduct;" and (b) adopted a resolution revoking his license to practice medicine.
- That the defendant was duly notified of the action of said Board.
- That later the defendant appealed to the Director of Health, which appeal was finally withdrawn by him.
- That later, and after the license of the defendant to practice medicine had been revoked, he did practice medicine in the Philippine Islands by treating, operating upon, prescribing for the physical ailments of various persons, for which he charged a fee, and that said treating, operating, and prescribing medicine for said various persons were-not in cases of emergency, or in the administration of family remedies.
- That the defendant is not a medical officer of the United States Army, the United States Navy, the United States Marine Hospital Service, nor a physician or surgeon from other countries called in consultation, nor a medical student, practicing medicine under the direct supervision of a preceptor who is a registered doctor of medicine.

Upon the foregoing facts, the lower court imposed the fine indicated above.

The appellant, in support of his first assignment of error, argues that section 8 of said Act No. 310 is in conflict with the provisions of the Philippine Bill (Act of Congress of July 1, 1902), and is, therefore, void. Act No. 310, among other things, provides:

- (a) For the creation of "A Board of Medical Examiners for the Philippine Islands." (b) That said Board shall examine candidates desiring to practice medicine in the Philippine Islands, and to issue a certificate of registration to such persons who are found to be qualified, in accordance with the provisions of said law, to practice medicine, etc.
- That after the 1st of March, 1902, it shall be unlawful for any person to practice medicine, surgery, etc., in any of its branches in the Philippine Islands, unless he hold such certificate of registration.
- That said Board of Medical Examiners may refuse to issue such certificate of registration to any individual convicted by a court of competent jurisdiction of any offense involving immoral or dishonorable conduct.
- That said Board might revoke any certificate of registration theretofore granted to any person in case he should be convicted of any offense involving immoral or dishonorable conduct, or for unprofessional conduct.
- That any person shall be regarded as practicing medicine, who shall treat, operate upon, prescribe, or advise for any physical ailment of another for a fee, or who shall represent himself, by means of signs, cards, advertisements, or otherwise, as a physician or surgeon.
- That said law did not apply to the rendering of services in case of emergency or the administration of family remedies, or to medical officers of the United States Army, of the United States Navy, or of the United States Marine Hospital Service, or to a physician or surgeon of other countries called in consultation, or to a medical student, practicing under the supervision of a preceptor who is a registered doctor of medicine.

It is the power of the Board of Medical Examiners to revoke a license, once granted, to which the appellant especially directs his argument, in support of his contention that said Act is in conflict with the said Act of Congress.

Sections of Act No. 310 provides: "The Board of Medical Examiners may refuse to issue any of the certificates provided for therein [in this Act] to an individual convicted by a court of competent jurisdiction of any offense involving immoral or dishonorable conduct. In case of such refusal, the reason therefor shall be stated to the applicant in writing. The Board may also revoke any such certificate for like cause, or for unprofessional conduct, after due notice to the person holding the certificate, and a hearing, subject to an appeal to the Board of Health for the Philippine Islands, the decision of which shall be final."

That part of the Act of Congress upon which the appellant relies to show that Act No. 310 is void is paragraph 1 of section 5. Said paragraph reads as follows: "That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

The appellant gives three reasons why section 8 of Act No. 310 is void. They are: (a) That the provisions of section 8 of Act No. 310 deprive the herein defendant of his rights or property without due process of law. (b) That the power to revoke the certificate of a doctor of medicine resides solely in the Courts of First Instance and the Supreme Court of the Philippine Islands, (c) That the power granted to the Board of Medical Examiners to revoke the certificate of a physician has been repealed by section 88 of the Philippine Bill. While the assignments of error present various questions, the real questions presented are three:

- The right of the state to require of those who desire to practice medicine and surgery, etc., certain standards of

morality and general and special scholarship, as a prerequisite to practice said professions.

- The right of the state to revoke such a license, once granted; and
- The right of the state to punish, by fine or imprisonment, or both, those who attempt to practice the professions of medicine, surgery, etc., without a license, and in violation of the law.

The appellant argues, in support of his first assignment of error:

- That section 8 of Act No. 310 is null and void because it deprives him of a right or of property, without due process of law;
- That the Board of Medical Examiners has no authority or right to revoke his license; that right, if any exists at all, belongs to the courts; and
- That said section 8 has been repealed by section 88 of the Act of Congress of July 1, 1902 (The Philippine Bill).

Generally speaking, with reference to the general and inherent power of the state, we think the following propositions are so well established that they no longer admit of dispute or discussion:

- The state has general power to enact such laws, in relation to persons and property within its borders, as may promote public health, public morals, public safety, and the general prosperity and welfare of its inhabitants. (New York City vs.. Miln, 11 Pet. (U. S.), 102, 139; Passenger Cases, 7 How. (U. S.), 283, 423; Slaughter House Cases, 16 Wall., 36, 62; Beer Co. vs.. Mass., 97 U. S., 25; Mugler vs.. Kansas, 123 U. S., 623; Dent vs.. W. Virginia, 129 U. S., 114 (25 W. Va., 1); Hawker vs.. N. Y., 170 U. S., 189; Case vs.. Board of Health, 24 Phil. Rep., 250.)
- To make reasonable provision for determining the qualifications of those engaging in the practice of medicine and surgery, and punishing those who attempt to engage therein in defiance of such provisions. (Dent vs.. W. Virginia, 129 U. S., 114 (25 W. Va., 1); Hawker vs.. N. Y., 170 U. S., 189; Reetz vs.. Michigan, 188 U. S., 505; State vs.. Webster, 150 Ind., 607.)

This power of the state is generally denominated the police power. It has been held that the state cannot be deprived of its right to exercise this power. The police power and the right to exercise it constitute the very foundation, or at least one of the corner stones, of the state. For the state to deprive itself or permit itself to be deprived of the right to enact laws to promote the general prosperity and welfare of its inhabitants, and promote public health, public morals, and public safety, would be to destroy the very purpose and objects of the state. No legislature can bargain away the public health, public safety, or the public morals. The people themselves cannot do it, much less their servants. Governments are organized with a view to the preservation of these things. They cannot deprive themselves of the power to provide for them. (Stone vs.. Mississippi, 101 U. S., 814, 816.)

It has even been held that a constitutional prohibition upon State laws impairing the obligation of contracts does not restrict the power of the State to protect the public health, public morals, or public safety, as the one or the other may be involved in the execution, of such contracts. Rights and privileges arising from contracts with a State are subject to regulations for the protection of the public health, the public morals, and the public safety, in the same sense and to the same extent as are all contracts and all property, whether owned by natural persons or corporations. (New Orleans Gas Light Co. vs.. Louisiana Light Co., 115 U. S., 650, 672.)

In order to enforce the police power of the state, it may, under certain conditions, become necessary to deprive its citizens of property and of a right providing for the continuance of property, when the property or the exercise of the right may tend to destroy the public health, the public morals, the public safety, and the general welfare and prosperity of its inhabitants. For example, a tannery, a slaughterhouse, or a fertilizing establishment may be

located in such proximity to the residence portion of a city as to become a menace to the public health and the welfare of the inhabitants. In such a case the discontinuance or the removal of such institutions may be ordered, under the police power of the state, even though it amounts to depriving persons of their private property. (Slaughter House Cases, 16 Wall., 36, 62; Fertilizing Co. vs.. Hyde Park, 97 U. S., 659.)

Mr. Chancellor Kent, in his valuable commentaries, in discussing the police power (2 Kent's Commentaries, 340) says: "Unwholesome trades, slaughterhouses, operations offensive to the senses, the deposit of powder, the application of steam power to the propelling of cars, the building with combustible materials, and the burial of the dead may all be interdicted by law, in the midst of dense masses of population, on the general and rational principle that every person ought so to use his property as not to injure his neighbors, and that private interests must be made subservient to the general interest of the community."

This power is called the police power of the state. (Commonwealth vs.. Alger, 7 Cush. (Mass.), 53, 84.) The police power is so extensive and so comprehensive that the courts have refused to give it an exact definition; neither have they attempted to define its limitations. Upon the police power of the state depends the security of social order, the life and health of the citizens, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. It extends to the protection of the lives, limbs, health, comfort. and quiet of all persons and the protection of all property within the state. Persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state. (Thorpe vs.. Rutland & B. R. Co., 27 Vt., 140, 149; New York City vs.. Miln, 11 Pet. (U. S.), 102; Slaughter House Cases, 16 Wall, 36, 62.)

Neither will it be denied that the owner of a building, which, by reason of its decayed condition, becomes a menace to public safety, may be ordered to destroy the same, and thus be deprived of his property. He may be ordered to repair or destroy it. Private property, under the police power, may be destroyed to prevent the spread of a conflagration in order to save lives and property. The existence of bawdy houses which tend to greatly affect the morals of the people of a community may be destroyed or may be removed. A manufacturing plant, so located in a thickly settled community as to greatly disturb the peace and comfort of the inhabitants, may be ordered closed or removed. The state, under its police power, may regulate or prohibit the manufacture and sale of intoxicating liquors as a beverage within its borders. Such a law may destroy the established business of thousands of its inhabitants. (Mugler vs.. Kansas, 123 U. S., 623; License Cases, 5 How., 504.) If any state deems that the retailing or trafficking in ardent spirits is injurious to its citizens and calculated to produce idleness, vice, or debauchery, there is nothing in the Constitution of the United States to prevent it from regulating and restricting such traffic, or from prohibiting it altogether, if it think proper. The state may even declare that buildings where intoxicating liquors are distilled or sold shall be a nuisance and ordered destroyed. (Mugler vs.. Kansas, 123 U. S., 623.) The state may regulate its domestic commerce, contracts, the transmission of estates, real and personal, and act upon all internal matters which relate to its moral and political welfare. Over these subjects federal governments exercise no power. The acknowledged police power of the state extends even to the destruction of property. A nuisance may be abated. Everything prejudicial to the health or morals of a city may be removed. (License Cases, 5 How., 504; Beer Co. vs.. Mass., 97 U. S., 25, 33; Foster vs.. Kansas, 112 U. S., 201, 206; Case vs.. Board of Health, 24 Phil. Rep., 250; Mugler vs.. Kansas, 123 U. S., 623.)

The police power of the state extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within its borders. Under the general police power of the state, persons and property are subjected to all kinds of restrictions and burdens in order to secure the general health, comfort, and prosperity of all. This power, or the right to exercise it, as need may require, cannot be bargained away by the state. (Case vs.. Board of Health, *supra*.) Even liberty itself, the greatest of all rights, is not unrestricted license to

act according to one's own will. It is only freedom from restraint under conditions essential to the quiet enjoyment of the same right by others. (*Case vs.. Board of Health*, supra; *Holden vs.. Hardy*, 169 U. S., 366, 395.) It is as much for the interest of the state that public health should be preserved as that life should be made secure. With this end in view, quarantine laws have been enacted in most, if not all, civilized states. Insane asylums, public hospitals, institutions for the care and education of the blind have been established, and special measures taken for the exclusion of infected cattle, rags, and decayed fruit. States have enacted laws limiting the hours during which women and children shall be employed in factories. (*Case vs.. Board of Health*, supra.)

The present is not the first case which has" been presented to the courts relating to the right of the state to regulate the practice of medicine and surgery, and to define the conditions under which such practice may be continued and to revoke the license granted to exercise such professions. Legislation or statutory regulations, similar to the one which we are now discussing, have been adopted in practically every one of the States of the Union. The constitutionality of such legislation has been questioned in practically all of the States where such legislation exists. Such statutes have been uniformly sustained. (*State vs.. Webster*, 150 Ind., 607, 616; *Dent vs.. W. Virginia*, 25 W. Va., 1 (129 U. S., 114); *Ex parte Frazer*, 54 Cal., 94; *Harding vs.. People*, 10 Colo., 387; *People vs.. Blue Mountain Joe*, 129 111., 370; *State vs.. Mosher*, 78 Iowa, 321; *Iowa Eclectic Medical College vs.. Schrader*, 87 Iowa, 659 (20 L. R. A., 355) ; *Driscoll vs.. Commonwealth*, 93 Ky., 393; *Hewitt vs.. Charier*, 16 Pick. (Mass.), 353; *Reetz vs.. Michigan*, 188 U. S., 505; *People vs.. Phippin*, 70 Mich., 6; *State vs.. State Medical Examining Board*, 32 Minn., 324; *State vs.. Fleischer*, 41 Minn., 69; *State vs.. District Court*, 13 Mont., 370; *Gee Wo vs.. State*, 36 Neb., 241; *State vs.. Van Doran*, 109 N. C., 864; *State vs.. Randolph*, 23 Ore., 74.)

The constitutionality of similar legislation, regulating the practice of dentistry, has been presented in many of the States, and has been sustained. (*Wilkins vs.. State*, 113 Ind., 514; *Gosnel vs.. State*, 52 Ark., 228; *State vs.. Vandersluis*, 42 Minn., 129; *State vs.. Creditor*, 44 Kansas, 565.)

So also have similar statutory regulations been sustained affecting the practice of pharmacy. (*Hildreth vs.. Crawford*, 65 Iowa, 339; *People vs.. Moorman*, 86 Mich., 433; *State vs.. Forcier*, 65 N. H., 42.)

Various States have attempted to regulate by statute the trade of plumbing, of horseshoeing, as well as that of engineering. Even the trade of barbering is subject to statutory regulation in some States, because it has relation to the health of the people. (*Singer vs.. State*, 72 Md., 464; *People vs.. Warden*, 144 N. Y., 529; *Smith vs.. Alabama*, 124 U. S., 465.)

Legislation analogous to that under discussion has also been adopted in various States relating to the practice of the profession of law. The constitutionality of such legislation has been uniformly sustained. (*State vs.. Gazlay*, 5 Ohio, 14; *Goldthwaite vs.. City Council*, 50 Ala., 486; *Cohen vs.. Wright*, 22 Cal., 293; *Ex parte Yale*, 24 Cal., 241.)

In every case, where the constitutionality of similar statutes has been questioned, it has been held that it is within the power of the legislature to prescribe the qualifications for the practice of professions or trades which affect the public welfare, the public health, the public morals, and the public safety, and to regulate or control such professions or trades, even to the point of revoking such right altogether.

The trade of plumbing vitally affects the health of the people. The lives of thousands of people may depend upon the result of the work of an engineer. The property and life of citizens of the state may depend upon the advice of a lawyer, and no profession or trade is more directly connected with the health and comfort of the people than that of a physician and surgeon. The practice of medicine and surgery is a vocation which very nearly concerns the comfort, health, and life of every person in the land. Physicians and surgeons have committed to their care most important interests, and it is of almost imperious necessity that only persons possessing skill and knowledge shall

be permitted to practice medicine and surgery. For centuries the law has required physicians to possess and exercise skill and learning. Courts have not hesitated to punish those who have caused damages for lack of such skill and learning. The requirement of the Philippine Legislature that those who may engage in such professions shall be possessed of both knowledge and skill before entering the same is no new principle of law. It is an exercise of the right of the state, under its police power, which has been recognized for centuries. No one can doubt the great importance to the community that health, life, and limb should be protected and not be left in the hands of ignorant pretenders, and that the services of reputable, skilled, and learned men should be secured to them.

In the case of *Dent vs. W. Virginia* (129 U. S., 114), the late Mr. Justice Field, speaking for the court, said: "It is undoubtedly the right of every citizen [of the United States] to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and conditions. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to everyone on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the estate acquired in them—that is, the right to continue their prosecution—is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken. But there is no arbitrary deprivation of such right when its exercise is not permitted because of a failure to comply with conditions imposed by the state for the protection of society. The power (police power) of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure, or tend to secure, them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end, it has been the practice of different States, from time immemorial, to exact in many pursuits (professions or trades) a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. * * * Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and mineral substances, but of the human body in all its complicated parts and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the state to exclude from practice those who have not such a license, or who are found, upon examination, not to be fully qualified. The same reasons which control in imposing conditions, upon compliance with which the physician is allowed to practice in the first instance, may call for further conditions as new modes of treating disease are discovered, or a more thorough acquaintance is obtained of the remedial properties of vegetables and mineral substances, or a more accurate knowledge is acquired of the human system, and of the agencies by which it is affected. * * * We perceive nothing in the statute which indicates an intention of the legislature to deprive one of any of his rights. No one has a right to practice medicine without having the necessary qualifications of learning and skill; and the statute only requires that whoever assumes, by offering to the community his services as a physician, that he possesses such learning and skill, shall present evidence of it by a certificate or license from a body designated by the state as competent to judge of his qualifications."

The appellant contends, however, that the Legislature exceeded its authority in conferring upon the Board of

Medical Examiners the right to revoke his license. He contends that the right to revoke it rests in the judicial department of the Government; that the courts only are possessed of the right, if the right exists, to revoke his license and to deprive him of his right to practice his profession of medicine and surgery. It will be remembered that the law conferred upon the Board the right to grant the certificate, as well as the right to revoke it, subject to the right of appeal to the Director of Health. While, in some respects, the power exercised by the Board is quasi judicial, the action of the Board is not judicial, any more than the action of a board appointed to determine the qualifications of applicants for admission to the bar, nor that of a board appointed to pass upon the qualifications of applicants to be admitted to the profession of teaching. In many of the States of the Union, no one can engage in the trade of barbering, or horseshoeing, without passing an examination before a board specially appointed for that purpose. States have deemed it wiser to place such power and discretion in boards composed of men especially qualified, by reason of their learning and scientific knowledge, rather than in the courts.

It is contended that the law provides no appeal from the decision of the Board to the courts, and is, for that reason, null and void. A law is not necessarily invalid, if it provides a remedy for those affected thereby, simply because it does not provide for an appeal to the courts. Due process of law is not necessarily judicial process. (*Murray's Lessee vs.. Hoboken Land etc. Co.*, 18 How. (U. S.), 372; *Davidson vs.. New Orleans*, 96 U. S., 97; *Ex parte Wall*, 107 U. S., 265, 289; *Dreyer vs.. Illinois*, 187 U. S., < 71, 83; *Reetz vs.. Michigan*, 188 U. S., 505.) Indeed, it not infrequently happens that a full discharge of the duties conferred upon boards and commissions or officers of a purely ministerial character requires them to consider and to finally determine questions of a purely legal character. The legislature may confer upon persons, boards, officers, and commissions the right to finally decide many questions affecting various interests of the people of the state. If a remedy is granted, the law will be valid, even though no appeal to the courts is provided. The right of appeal is a purely statutory right; it is not an inherent right. The right to appeal was not at common law, and is not now, a necessary element of due process of law. (*McKane vs.. Durston*, 153 U. S., 684, 687; *Reetz vs.. Michigan*, 188 U. S., 505, 508.)

The objection that the statute confers judicial power upon the Board of Medical Examiners is not well founded. The law provides for an appeal to the Director of Health. Many executive officers, even those who are regarded as purely ministerial officers, act judicially in the determination of facts in the performance of their duties, and in so doing "they do not exercise judicial power," as that phrase is commonly used, and as it is used in the Organic Act in conferring judicial power upon specified courts. The powers conferred upon the Board of Medical Examiners are in no wise different in character, in this respect, from those exercised by those of examiners of candidates to teach in our public schools, or by tax assessors, or boards of equalization, in the determination for the purposes of taxation, the value of property. The ascertainment and determination of the qualifications to practice medicine, by a board appointed for that purpose, composed of experts, is not the exercise of a power which appropriately belongs to the judicial department of the Government. The same is true with reference to the power conferred upon such a board to revoke a license, for the reasons given in the law. (*People vs.. Hasbrouck*, 11 Utah, 291; *Reetz vs.. Michigan* 188 U. S., 505, 507.)

The appellant further argues and contends that the present law is repealed by section 88 of the Act of Congress of July 1, 1902. We think from the foregoing argument we have shown that there is nothing in said Act of Congress which is inconsistent with the provisions of Act No. 310, under consideration, and that it is not repealed.

What has been said, we think, also answers the argument of the appellant in support of his second, third, and fourth assignments of error. It may be well, however, to observe in relation to the third assignment that the appellant cannot object to the decision of the Board, when he himself, after his appeal, voluntarily withdrew it.

With reference to the fifth assignment of error, the record shows, beyond question, that the appellant had personally engaged in the practice of medicine and surgery, in clear contravention of the law, without being

authorized so to do. It is a matter of little importance whether the appellant practiced medicine and surgery as the "Hotel Quirurgico" or not. The record shows that he personally and illegally engaged in the practice of medicine. The poor sick patients who called him for medical assistance certainly did not believe or think that they were calling the "Hotel Quirurgico." They believed that they were being treated by the appellant. So ordered.

For all of the foregoing reasons the sentence of the lower court is hereby affirmed, with costs.

Arellano, C. J.. Torres, Carson. Trent, and Araullo, JJ., concur.

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