

15th July, 1985

Police -v- J K E Dwyer

DEPUTY BAILIFF: The appellant in this case is a herbalist; he is not registered under the provisions of the Medical Practitioners' Registration (Jersey) Law, 1960, and he was convicted by the learned Magistrate on the 8th February of having held himself out, whether directly or by implication, as being prepared to practise medicine and, therefore, was in breach of Article 2 of the law. The definition of what practising medicine is is found in that law in Article 1 sub-paragraph 2 and I read it:

"For the purposes of this law, the practice of medicine shall be deemed to include the performance of any such operation and the giving of any such treatment, advice or attendance as is usually performed or given by medical practitioners."

Mr Boxall for the appellant submitted that on a proper interpretation of that article, the Court should limit it as being an exhaustive definition; to do otherwise, he said, would (not before us, I think, but before the learned Magistrate, looking at the transcript) would be to extend what the practice of medicine was to the length of the Medical Officer of Health's foot or the Crown Officer's foot, I forget which, for the moment. And if that were the case that the article is exhaustive, then there was insufficient evidence to have enabled the Magistrate to find that local registered medical practitioners, in fact, usually perform what is claimed to be performed by the appellant.

However, Miss Nicolle for the Crown said that that wasn't important; it wasn't whether the learned Magistrate erred in finding that that article was not exhaustive or whether he was correct in his finding that it was not exhaustive or whether he was correct (sic) didn't matter because he formed the proper test which had to be applied in considering this case and which is set out on pages 4 and 5 of his judgment; this is to say, he applied his mind as to whether what the evidence showed the herbalists generally do were usually activities carried out by medical practitioners.

Now, although this ... although what I'm going to say is therefore obiter, I have come to the conclusion, as a matter of law, that the definition, as I see it, and from the authorities which have been cited to me by Mr Boxall, would be exhaustive but, of course, that could be open to further argument in a case which depends on a ruling as a substantive matter and not as an observation which I have just made.

So we are left, really, with the differences, if any, between what a general practitioner does and what somebody carrying on what has been called alternative medicine or herbalism does in seeing the persons who consult him. I think it's fair to call the persons who do so in each case, his patients.

Mr Boxall has rightly pointed out that it is not seeing people - there is nothing to prevent a person seeing somebody who is not a registered practitioner - nor, indeed, he says, receiving advice from that person, but it is different, he says, when the treatment which is then given by the herbalist differs considerably from the treatment given by a registered practitioner, between the herbalist and the registered practitioner. As regards the herbalist, he says that they - and the evidence is before the learned Magistrate - they do not prescribe a concentrated essence of drug from a plant, they prescribe the whole plant in order that ... not that the concentrated drug will attack a particular remedy but that the body will be able to use its natural resources to the fullest extent in conjunction with a natural product which they prescribe for the patient.

Clearly, there is a prescription and it is really a matter of a different form of prescription which is carried out; both a registered practitioner and a herbalist sees a patient; both diagnose what is wrong; the methods of diagnosis may be different; the length of time seeing the patient may be different and both, eventually, prescribe something for the purposes of helping the patient.

We have come to the conclusion that the difference in prescribing is not such that we can say that that kind of prescribing takes a herbalist's patient...or what a herbalist does to a patient ... out of Article ... of the definition in Article 1 of the law.

We cannot find that the Magistrate erred in that respect and that we agree with Miss Nicolle that if we take the view suggested by Mr Boxall as being the position, that would be an over-literal meaning of the law. The essence is what we have to look at and looking at the essence, we find that the Magistrate was correct in coming to the conclusion that what is done by herbalists is, in fact, the giving of treatment, advice or attendance as is usually performed or given by medical practitioners (omitting the word 'operation', of course, which is not relevant to the present hearing). Therefore, this being an appeal by way of case stated, we dismiss the appeal.

Is there anything else you want to say? Do you wish to make any applications? As this is a matter which, as far as I know, it is the first time it has come to Court, I don't think it is right to make an order for costs.