

P.V. 422

No. 190.

2126

2126  
Washington, D.C.

## IN ASSEMBLY,

February 16, 1835.

## REPORTS

Of the majority and minority of the select committee on several petitions relative to the repeal of the law restraining Botanic Practice.

Mr. J. Haskell, from the minority of the select committee to whom was referred the petition of about 30,000 inhabitants of this State, praying for the repeal of the laws which proscribe botanic practice, beg leave to present the following

## REPORT:

The *number* of the petitioners, and the *nature* of the subject referred to your committee, combine to give it an importance which entitles the *former* to great respect, and the *latter* to the deliberate consideration of your committee; and under these impressions they have endeavored to discharge the duty imposed upon them. No *fact* is presented in the petitions, *sustained by satisfactory proof*, excepting the *single fact*, that "a law was passed, during the last session of the Legislature, imposing a fine of \$25, on any botanic practitioner of medicine, if he receive any compensation for services rendered in the capacity of a physician." Evidence of this fact is to be found in chapter 68 of the Session Laws of 1834, and the petitioners speak of *that* law in the language of complaint; alleging that "one of the dearest privileges of community is sacrificed, viz. a *free* and unmolested choice of their physician:" that "they believe said law is a direct infringement of their constitutional privileges," &c.: and they *close* with a respectful prayer to the Legislature, "that *all* law proscribing botanic

[Assem. No. 190.]

physicians from a just fee and reward for services rendered may be repealed; and that they be permitted to collect their dues, in the same manner as other free citizens:" and in *another* form of words, "that the law which was passed April 7th, 1830, and which amended the past winter, may be reinstated to its primitive purity, as when first enacted."

There is another fact *alleged*, however, which the petitioners only "beg leave to *represent*," but it is *supported* by no additional evidence whatever. They *represent* that, during the last session of the Legislature, "the medical society of this State, through *their influence*, CAUSED a law to be enacted, which prohibits the botanic practitioner from receiving compensation for services rendered, under penalty of \$25, for each offence." Although your committee have been referred, by some of the persons concerned in the success of this application, to the petitions presented to this House in the year 1834, for *proof*, that among 1,439 petitioners for the passage of the law now sought to be repealed, 383 of them were *Doctors*, your committee do not see in *that* fact, admitting its *truth*, sufficient evidence to justify the broad assertion, that "the medical society of the State, through *their influence* CAUSED the law to be enacted." And although for this reason, your committee have pronounced the allegation to be "supported by no additional evidence whatever," and, for the *same* reason, would have been justified in giving it no place in this report, yet there is a reflection in the *language* that gives it consequence, *permitting*, if not *calling* for, some freedom of animadversion. The allegation bears on its face an *inference* of too grave an import to be presented to this House on slight grounds, and be allowed *here* to pass off in silence.

This *Chamber*, dedicated to honorable and unbiassed deliberation, is represented as having been the arena for an extrinsic *influence*, incompatible with the purity of legislation. Your committee deem it due to the place we occupy, and no *less* to the integrity of the last Legislature, to pronounce an unqualified disapproval of an imputation so unjust. But in these remarks upon the *terms*, in which the exceptionable portion of the petition is couched, your committee would *exempt* from their *bearing*, a vast majority of the petitioners, and impute to *them*, no impropriety of *intention*. It is to a *different* class of the persons interested, perhaps *few* in number, they are intended to apply,—and to have *them* understand,

that imputations impugning the motives of the Legislature, *past* as well as *present*, should be withheld from *this* place, or followed up with evidence to support them.

In the allegation just now considered—in the general tenor of the petitions—and indeed, in all the past history of the botanic practitioner and licensed physician, as contained in petitions and remonstrances, the parties are found arrayed in belligerent attitude, and much pomp of military phrase has been heard in allusion to them. But a due regard to the appropriate duties assigned to your committee, excuses *them* from taking *any* part in the fight. To them, belong the exemptions and privileges of non-combatants. It is not for *them* to decide between the *virtues* of steam, and the *efficacy* of the lancet. They have no business in the *mineral* nor in the *vegetable* kingdom. Rush and Thompson are both alike to be excluded from their deliberations. Your committee cannot participate in this war of words, carried on as *it is*, with the missiles of opprobrium, and bandying from host to host the reproachful epithets of *quack* and *empirick*, on the one side, and repelled with *other* hard names, as *tyrant* and *aristocrat*, on the other. The index of duty *no where* points your committee to a solution of the questions, whether tyranny and aristocracy pertain *alone* to the sprig of the lancet, or *occasionally* may not be found in the prowler after roots and herbs—whether the dispenser of nostrums and specifics *exclusively* deserves the cognomen of *empirick*—nor whether the doctor of physic may not *sometimes* divide with *him* the honors of the quack. Nor does it pertain to your committee to decide upon the comparative *effect* produced by the fire of a battery, belching forth the bitterness of the Bolus; or *that* caused by the *humbler* works, which discharge only the seemingly *simple* sourness of Number Six. Your committee, therefore, proceed to the discharge of their *proper* duties, leaving the laurels to be won in *this* field of honor, to adorn *other* brows, and the *glory* to be reported in *another* bulletin.

In making their first *direct* approaches to the work *before* them, your committee comprise the matter of the petitions in two propositions: the *laws* complained of, and the relief *claimed*.

The existing laws on the subject under consideration, are to be found in the Revised Statutes, part 1st, chap. 15, title 7, section 22, page 455, of the first volume; Revised Statutes, vol. 3, page

104, of the Appendix, and Session Laws of 1834, page 72. It is alleged by the agents of the petitioners, that the law, even as it stood *previous* to the last session, was susceptible of a construction so uncertain, that the judgments pronounced under it by different justices of the peace, were opposite and conflicting, *some* allowing recoveries in *favor* of the botanic doctor, and *others denying* them. But it is the opinion of your committee, and they find it to be the admitted opinion of *some* in the legal profession, that the legislative *intendment* and the fair construction of the law, as it *then* stood, are favorable to such recoveries. But *since* the act of 1834, the botanic practitioner may *indeed practise and administer*, but he is interdicted all compensation for his services.

Your committee, being bound by the rule of the house which governs their proceedings, cannot but declare *their* opinion, that a law producing *these* results is an anomaly in legislation. If it lay within the range of legitimate investigation, for your committee to explore the history of the legislation on this subject, the remonstrances and reports on your files and documents, *against* botanic practice, would be found full of arguments to *prove* that it *exposed* the *patient* to the *hazard*, and frequently to the *loss* of life and limb; consequences dreadful and deleterious—lasting as life and incurable as death.

If, then, a due regard to the public health be the justifying inducement to legislative interposition on this subject, why not approach the evil with a *direct* and *positive* prohibition? and enact a penalty as *large*, as *sure* and as *enduring* as the mischief? Why give your legislation on this vexed and exciting question, so much likeness to that rigid and merciless policy of war, which encourages and approves the treason, while it despises and degrades the traitor? Why permit the botanic doctor to accomplish mischief to the full extent of his ability, and punish him *only* with the mere *denial* of compensation? Why legislate a state of things which allow him to inflict hopeless wretchedness upon his *patient*, and then escape with the simple *loss* of his services?

Your committee are of opinion, that the provisions of the law should be palpable and undisguised, and the *penalty*, *clear* and *distinct*. Where crime does *not exist*, there needs *no* law; but where it *does* exist, and is *definable*, your laws in the case should be direct and unequivocal.

Your committee are aware of the answers to these questions, and of a disposition to justify, with the *same* answers, a continuance of the laws now sought to be repealed. It is affirmed, that the present legal inability to collect *pay* for botanic services, is a sufficient safeguard to the community, against the evils and dangers to be apprehended from the root doctor, because he will *cease to practise* when his *pay* is withheld.

All the experience and information of your committee on this subject, are adverse to this proposition. Botanic physicians are men of like passions with other men. Like the *rest* of the species, they are humane, benevolent, sympathetic and strong in their attachments to their friends. And these passions and predilections are not incompatible with even *all* the ignorance *imputed* to them. And men are to be found in their ranks, who, for *purity* of morals, strength of *intellect*, clearness of *judgment* and perseverance of investigation, have raised themselves to at *least* a *medium* level with the mass of their fellow citizens; and *many* of them have a competency of learning, and a considerable knowledge of the human system, and of the medicinal qualities of the vegetable kingdom.

In their surrounding vicinities, these men have acquired a reputation for doing good in *their* way. They have inspired the people with an abiding confidence in their skill and usefulness. But whether this confidence reposes on the ground of *merit*, your committee do not stop to inquire. It is sufficient for the argument, that such is the *fact*, or at *least* that such is *believed* to be the fact. And this confidence reposed in them by a respectable portion of the people, entitles them to compete with legalized physicians for a proportionate share in the benefits of a doggrel truism down east—"where men *believe* in doctors, doctors *cure*."

Of the truth of these conclusions, your committee have before them nearly 30,000 witnesses; and they believe, that this House need not be told by *them*, that botanic skill, resting on a confidence like *this*, whether *well-placed* or *mis-placed*, would not be permitted, in times of common pestilence, to remain dormant, nor *uncalled* for, where single families or individuals were sick and suffering for its aid. The House need not be *informed* by its committee, that the *calls of confidence* and the *sufferings of friends*, would arouse the sympathies of the botanic doctor, and bring his

efforts into action, to a *general* or circumscribed extent, as the exigencies of individuals or the country should require. The people would *take no denial*, and the doctor would *give no refusal*, when an inmate of a family was struggling with disease or parleying with death; though pains and penalties and prisons should stare them *both* in the face, on every page of the statute book. It is known to your committee, that these things have transpired not unfrequently, even *since* the enactment of the law of thirty-four. And but recently, before he left the place of his residence, one of your committee witnessed the denunciation of *that law*, by citizens of substantial respectability, as infringing their right to choose their own physician, and followed by a threatened defiance of its provisions, should necessity require the employment of a botanic physician.

From these views of the subject, your committee are clearly of opinion, that the law should be *so* modified as to secure community *against* the evils to be apprehended from *all* botanic practice, or else allow the *fair* practitioner to recover pay for his services and medicines. There is such apparent incongruity on the face of the existing laws on this subject, that your committee cannot but view the *reserved* right of the botanic doctor to practise, but *without pay*, in the light of an apology for doubtful legislation; or as an excuse for *that* species of lawgiving, which resembles the magic performance of holding the *shadow* in a *stationary* position, after its witching dexterity has abstracted the substance.

But there is another ground on which the petitioners *insist* for the repeal of the obnoxious laws, *unconditionally and without alternative*.

This brings your committee to the consideration of the second branch of the subject—“*the relief claimed*.” This claim is based upon the broad ground of equal rights, in the enjoyment of “life, liberty, and the pursuit of happiness,” as secured to the petitioners in the Constitution of this State and the United States. Conscientious of its inability to enlighten the House on the momentous questions of constitutional law, your committee would not be justified in consuming its time and drawing upon its patience by an unprofitable attempt. But they allow themselves to say, that their closest examinations of those instruments, have not furnished them with a satisfactory answer to this claim of the petitioners. It is *true*, that *statutory* provisions, guarding the privileged rights of

the doctor *according to law*, are to be found *older* than the *Constitution*; but in the opinion of your committee, they are among the enactments abrogated by its adoption, because *inconsistent* with the spirit of its provisions and declarations.

The laws regulating the practice of physic are of *remote date*, and they seem to have been enacted with great carefulness in protecting the legalized doctor, from invasion of his privileges by the unlicensed practitioner. But *since* the adoption of the Constitution, there has been *one*, if not *more*, periods when the disfranchisement of the botanic physician was *suspended*, and he stood forth, like his fellow citizens, a *free man*. In other words, his knowledge and skill in the republic of roots and herbs, were put in requisition for the benefit of his fellow citizens in distress; and they both stood together under the *Ægis* of the law, equally protected in his rights, impleading each other in the contest of litigation, *for* and *against* a recovery for his services, "according to the very right of the case." But so far as the history of that period has come down to your committee, they are *not* informed of *any* consequences, resulting from the practice of the botanic doctor, to justify a forfeiture, by *legislative enactment*, of the immunities enjoyed in common with his fellow citizens. It is enacted in a code of laws, coming from a source whose wisdom excludes all *occasion for repeal or amendment*, that "the laborer is worthy of his hire," and the spirit of this enactment is infused into your Constitution with so much of its native sacredness as should stay every attempt of *human* legislation, to reduce it to the standard of a dead letter.

Standing upon their rights, reserved to them in the Constitution, and secured by laws, both human and divine, as they *affirm*, about 30,000 of their fellow citizens have arrayed themselves before your committee, demanding an answer to the simple question, "Why they are not permitted to enjoy the common rights of their fellow citizens, in choosing their own physician? Why they are not allowed to enjoy the benefits of *his skill*, in which they repose so *much* confidence? and the *satisfaction* of *paying* him an equivalent for his services, without resorting to the secrecy of stealth? Why *he*, is denied the use of his knowledge and inventions for *their good*, or has it only *granted* as a degrading *indulgence*, with the invidious condition imposed upon him, if he serve in his *natural* avocation, to *do* so under the restrictions of an *unnatural* law?"

To these interrogatories your committee are of opinion there is no answer that will justify *themselves* to this host of petitioners, or satisfy their reasonable and constitutional complaints. In their searches, and researches into the statutes, and constitutions, (and admit there have been necessarily but partial and superficial,) they find no answer to justify a continuance of the laws, "regulating the practice of physic," as they now exist.

Your committee cannot allow themselves, in drawing to a close, consistently with their sense of duty, to pass over one other prominent feature in the subject of reference; and *that* is, the excited state of the public mind. The *number* of the petitioners has already been stated; and they are scattered over many counties in the State, and the elements of society seem to be moving in commotion. All history shows that when the *people are stirred*, it is not *commonly* the result of *imaginary* causes. Something *substantially* wrong has usually been found among the exciting causes, when they manifest a general restlessness and concern. An instance of recent date in Western New-York confirms the truth and correctness of these positions, and demonstrates that the people in their strength, are not to be disregarded with impunity.— And if in the *present* instance, they *fail* of relief *here*, it requires no great struggle of apprehension to see, that the time is at hand, when they will appeal, as in *that* instance, to the ballot boxes. Already have some of your committee, witnessed decided indications of a disposition, to direct this excitement to a bearing on our elections. Experience has taught your committee, that consequences so hurtful, as are certain to follow *such* measures of redress, are greatly to be deprecated; and that proper steps should not be omitted to prevent their recurrence.

These considerations, your committee *admit*, have had their *merited* influence in bringing them to a conclusion favorable to the petitioners. It remains therefore for your committee to announce their opinion, that the prayer of the petitioners is just and reasonable, and *ought* to be granted.

And here the House may well expect the labors of your committee should terminate; having, though *imperfectly*, discharged the specific duty assigned them. But, by permission of the House, they are desirous before they conclude, to give a passing consideration to what they deem an important connexion of

the subject, though not directly embraced in the petitions, and consequently, not included in the appropriate range of the reference.

Your committee are aware that the numerous and prevalent objections to the botanic practice, are but *too well* grounded; that the evils complained of, have increased to an alarming amount, under the system, called by way of distinction, "*Thomsonian.*" And this startling state of things, has resulted, in the opinion of your committee, *more* from the facilities given to ignorant pretenders, by the indiscriminate sale of the Thomsonian patent, without *proper* regard to the qualifications and character of the purchaser, than from any *defect*, which your committee are competent to *allege*, in the system itself. An apparent mercenary disposition in the earliest venders of the patent, or a desire to disseminate a sudden and extensive use of the invention, appear to have sought gratification in hawking about these facilities, until a mushroom phalanx consisting of the *old* and the *young*, and of *both* sexes, till *then* only distinguished by their ignorance and obscurity, started into *notoriety*, claiming to be the guardians and safe depositories of the public health. And a credulity existing among a *portion* of the people, corresponding with *that* ignorance, gave ample scope to their marvellous pretensions, and in *too many instances*, fatal experiments.

Among the deleterious results of their empyrical exploits, instances of misapplied steam or other prescriptions have come to the painful knowledge of your committee, where loss of speech and of the use of limbs have followed among the disastrous consequences. And here your committee deem it but just to remark, in relation to the discreet and experienced botanic practitioner, that, in their opinion, *he* was among the severest sufferers from these destructive operations. For it brought him under the ban of a law, which was *especially designed* to arrest *their* career, and which, but *for them*, *most* probably would not have been enacted. Your committee would also exempt *him* from the severity and application of the remarks they have found it their duty to aim at the measures herein alluded to, so justly obnoxious to universal reprobation.

Your committee owe it to a right understanding of their views, to add, that the point and severity of the foregoing remarks are not in-

[Assem. No. 190.]                      2

tended to apply *exclusively* to that side of the controversy to which they have now more particularly been directed. Quackery is an *identity*, in all its forms and exhibitions, and it is never *more odious* than when it is under the protection of law and the sanction of a diploma. And to deny its *occasional* appearance under *these* advantages, would be to belie both experience and observation. *More* belongs to an *impartial* comparison between the two conflicting parties of the healing art, than *simply to affirm* its harmless *existence*, without looking to results and consequences, *sometimes* produced by the licensed practitioner. And, *therefore*, to guard against partial conclusions being drawn from the allusions your committee have deemed it their duty to make to quackery on the one side, they feel it just to declare, from knowledge and experience, that calamity and mishap, proportioned to the number of pretenders, have marked the footsteps of the other.

Your committee owe it to themselves, as well as to the two classes of their fellow citizens whose interests may be affected by this report, to add further in this place, in order to prevent all improper constructions being applied to it, that they entertain the best feelings towards, and the highest confidence in, the regular physicians as a profession, and as a body of men, who are largely contributing to individual happiness and national character; and whose knowledge and skill in the healing art, especially in diseases of an acute description, commands their *first* patronage, while they award due respect to the skill, understanding and qualifications of a considerable portion of the botanic practitioners for doing good in the more lingering and chronic classes of complaints. And *such* are entitled, in the judgment of your committee, to the testimony of their personal observation, where they have witnessed the patient abandoned by the former, brought up from the side of the grave and restored to comfort and usefulness by the persevering efforts and attention of the latter.

To proceed, your committee are *also* aware, that public policy, and a suitable regard to the public *health*, not only *justify*, but seem also to *require*, in the existing state of society, that the administration of medicinal remedies, in all the forms of both mineral and vegetable preparations, be made the subject of legislative regulation. This policy grows out of the same associations of community, on which nations, ancient and modern, have based their legislation in regard to quarantine, pauperism, education, &c. An-

cient nations have *claimed*, and certainly, a nation with institutions *free and enlarged* as ours, with *more propriety* have a *right* to claim, a common property in the individuals composing it. And in proportion as those nations have advanced from a state of barbarism, have these claims derived force and strength. And insomuch, as the freedom of our institutions, and the continuance of our liberties, depend upon an enlightened and cultivated public mind, is the community interested in providing the means for public improvement. And that they *do so* depend, *entirely and absolutely*, is a proposition universally admitted without controversy. Hence the fitness and propriety of all our laws for the establishment of colleges, academies and common schools. And hence it is a full answer, for any complaint arising from unavoidable inequalities in their operation, to say, "*the public good requires it.*" On like principles, the public have an interest, though of a *different* character, in raising up hale and robust soldiers for the public defence. Regarding the personal for your army, your marine and militia, the public have a deep stake in these important arms of its strength. And so far as the public right is concerned in the *health of the citizen*, the legislative department of *any* government, appears to your committee, should have the right to interpose for its guardianship and protection. Hence also arises the right on which are founded all laws regulating quarantine; and the *exercise* of that right would seem to become a *duty*, as *appertaining to that department*, and it would need no *excuse* for legislating to regulate the administration of *medicine*, much *less* for interdicting and punishing the dangerous experiments of ignorant pretenders; and having done *so much*, the *personal* rights of every citizen, should be left free, equal and unrestricted. But there is a collateral consideration, of *some* importance, to be noticed in connexion with this branch of the subject, as affecting the rights of the smaller local communities of which the State is composed, and as fortifying the positions herein taken.

Your committee refer to the operation of the poor-laws in the towns and counties. By the operation of these laws, the burden of pauperism is increased, by every victim of malpractice, *botanic or licensed*, who is thereby disqualified for his own support, and otherwise destitute of the necessary means. In *this* consideration, your committee believe, that the most zealous and fastidious advocate of unrestrained botanic practice, will see the rights of the public so *distinctly marked*, as to admit the *duty* of the Legislature,

to regulate that practice; at *least* so far as prevent the rash and ignorant practitioner from *fitting*, or increasing the number of candidates for the poor-house.

Your committee have entered upon this discussion with great diffidence, being sensible that these views are obnoxious to objections of considerable weight. Among these objections, they anticipate *one*, and perhaps the one most difficult to obviate, that even granting the *existence* of the public rights, they are so evanescent and intangible, and the line of separation between them and the unquestionable rights of individuals is so faintly described—and the former are so *undefined* and *undefinable*, compared with the prominent features of the latter, that *any* legislation affecting these, would be dangerous. Candor requires of your committee to admit the force of this objection, while they consent only in *part* to the *conclusion*; for most *surely*, so much legislation against illiterate mummery, and indiscriminate distributions of deleterious prescriptions, as would save the *life* or *limb* of *no more* than a *single individual*, or shield him from the entailment of perpetual wretchedness and misery, at the hands of *any* prescriber, would be, in the opinion of your committee, a justifiable and salutary enactment.

Finally, if the existing laws regulating the practice of physic are *necessary*, as regards the encouragement of medical science, and the protection of the faculty, your committee do not perceive any *good* reason why the fair botanic practitioner is not entitled to *equal* protection, nor why *his* branch of medical knowledge and improvement, may not receive the same encouragement at the hands of the Legislature. Nor do your committee see that a greater stretch of legislative wisdom is necessary, to give system and organization to the worthy and deserving class of botanic physicians, than has been exercised in according legal regulation to the *medical* faculty.

Your committee are sensible of the hazard to which they expose themselves in making this suggestion, not doubting but the first essays to impose *regulations* upon the botanic community, would be beset with many *serious*, if not insurmountable difficulties, and they may have erred *entirely* in their judgment. If, however, the project were *admitted* to be impracticable, and your committee were left to choose between the alternatives of *no law* to regulate the practice of physic, or the *present* laws on that subject, they would be constrained to elect the former as the lesser evil, and as

most consistent with the genius of our institutions. And your committee are sustained in this conclusion, by the history and example of our sister State of Pennsylvania, where medical science has reached an elevated standard, and where the faculty have never enjoyed the monopoly of a privileged order, protected by law. Ohio, too, as your committee understand, has left this profession to stand upon its own merits, without a legislative nurse, and without any legal restriction, implying either a right in the Legislature to confine the people to statutory restrictions, or a want of discrimination in *them* for self-government, in so delicate a matter as the choice of their physician. Your committee, therefore, are clear in their judgment that it would be more discreet, as well as more republican, to leave the *whole* matter to be regulated by public opinion, than undertake to *control* or repress the action of that opinion by legislative provision. Your committee would place both orders of the healing art upon the same footing, either *with* or *without* legal restraint or regulation. They would leave the field of benevolent competition open to both; and while they award due honor and respect to the son of science, who emaciates in the pale glimmer of the midnight lamp, for the good of his fellow, they would not withhold from the more hardy explorer of the forest, the meed *he* deserves for industry and perseverance in the pursuit of means for the mitigation of human misery.

In conclusion, your committee feel it to be due the courtesy of the House, to ask its indulgence for thus travelling out of the record; and *now*, confining themselves to the proper limits assigned them by the prayer of the petitioners and the scope of the reference, they proceed, in pursuance of the intimation contained in a former part of this report, that the prayer of the petitioners ought to be granted, to ask leave to introduce a bill.

JOB HASKELL, *Chairman*,  
G. PETTIT,  
GEORGE FISHER,  
SAMUEL RICHMOND,  
JOSEPH CLARK.



## REPORT OF THE MINORITY.

---

Mr. Livingston, in behalf of the minority of the select committee to which was referred the petition of sundry inhabitants of many of the counties of this State, praying for a repeal of the law passed at the last session of the Legislature, imposing a fine upon the botanic practice of medicine,

### REPORTED:

That the minority of said committee have given to the subject referred to them as full an examination as their time and attention to other duties would allow.

In discharging the duty assigned to the members of the committee, the undersigned have thought it proper to look into the history of the legislative enactments upon the subject matter referred to them. They do not desire to go back to the dark ages, (as has been asserted by the majority of the committee,) for examples to guide them, but they have endeavored to discover and state what opinions have been heretofore entertained upon this important subject by our predecessors, in legislating upon the subject committed, in part, to our charge.

The minority of your committee have also thought it proper, with a view of fully understanding the merits of the question referred to them, to state in their report the existing provisions of the law which it is proposed, by the petitioners, should be repealed, in order to present clearly to the House the true question and the precise character of the prayer of the petitioners.

Upon examination, the committee find that, as early as the year 1760, a law was enacted for the promotion of medical science, confined in its operation to the city and county of New-York. The reasons which gave rise to the passage of that law are clearly stated in the preamble to the act, which is in these words, viz: "Whereas, many ignorant and unskilful persons in physic and

surgery, in order to *gain a subsistence*, do take upon themselves to administer physic, and practise surgery, in the city of New-York, to the endangering the lives and limbs of their patients; and many poor and ignorant persons inhabiting the said city, who have been *persuaded* to become their patients, have been great sufferers thereby: for preventing such abuses in future, Be it enacted, &c."

This act provided for an examination of students, and the granting, to such as should be approved upon such examination, a certificate or license to practice, and also prescribed a certain term of tuition and study to be performed by every student of medicine before he could be permitted to present himself for an examination. It also provided that a penalty of five pounds might be recovered from any person who should practice without complying with the provisions of that act.

On the twenty-seventh day of March, 1792, there was an additional act passed upon this subject, which was also confined in its operation to the city and county of New-York. The reasons for the passage of this act, are also set forth in its preamble, which is in these words: "Whereas, many ignorant and unskilful persons presume to administer physic and practise surgery within the city and county of New-York, to the detriment and hazard of the lives and limbs of the citizens: therefore, for the prevention of such abuses in future: Be it enacted," &c. This act provides for the examination of every student by three practitioners of medicine, other than the one with whom the student shall have previously studied; and that such examination shall be had before the Governor and certain other public officers: and for the granting to such student, (if approved,) a certificate or license to practise physic and surgery. It also required the student to have studied under the tuition of a practising physician and surgeon the full term of two years, (if a graduate of some college,) or three years, if not such graduate, before he could be admitted to an examination.

In this act every person who shall thereafter practise physic and surgery, without having obtained a license according to the provisions of the act, is made liable to a forfeiture of the sum of *seven pounds*; and is, moreover, declared incapable of  *suing or maintaining a suit for any services rendered*.

The first general law upon this subject was enacted March 23d, 1797. By this act every student of medicine in this State, was required to produce satisfactory evidence before certain public officers, &c. of having faithfully studied physic and surgery, under the instruction of some physician or surgeon the full term of four years, (if not a graduate of some college,) and of three years, if such graduate.

In this act also it is declared that if any person shall practise physic and surgery without having first obtained such license, he shall forfeit and pay the sum of *twenty-five dollars*.

This, as was observed above, was the first general act passed upon this subject in this State, and this act has in it another provision, to which the minority of your committee desire particularly to call the attention of the House; it is in these words: "And whereas, upon sudden emergency it may be necessary to apply for aid from persons not qualified to practise physic or surgery, in conformity to this act: Therefore,

"Be it further enacted, that, in every such case, it shall and may be lawful for any person not authorized by this act to practise physic or surgery to administer medicine, and to perform surgical operations, but shall not ask, demand or recover any compensation therefor."

This act continued in force, and was not materially altered or amended until the 4th of April, 1806: when the first act incorporating a State medical society and county medical societies was enacted. The general provisions of this act were very similar to those of the act of March 23d, 1797, except that the term of study for every student was definitely fixed at three years, and his examination was to be had before certain officers called censors, to be chosen by each medical society that should be organized under said act. By this act it was also declared that no person should practise physic and surgery within any of the counties in this State, without having first obtained such diploma as is directed to be given by the terms of the act: "And if any person shall so practise without having obtained a diploma for that purpose, he shall forever thereafter be disqualified from collecting any debt or debts incurred by such practice, in any court in this State."

This act was not materially altered or amended, until the general revision of the laws in the year 1813.

The minority of the committee beg leave here to stop one moment, for the purpose of calling the particular attention of the House to the fact, that in all the laws thus far enacted to regulate the practice of this important and indispensable profession, first in the city and county of New-York, and subsequently in the whole State, special care is manifested, in order to protect the ignorant and unwary from becoming the dupes of unqualified, unskilful and incompetent persons; who, by artful contrivances and pretended specifics, were enabled to deceive the honest citizen; and, by operating upon his superstition and fears in some instances, and his prejudices in others, might not only endanger his health, but even his life. Hence were enacted, in all the laws above recapitulated, the provisions for a *penalty*; and in most of the acts, as striking more effectually at the *root* of the evil, it was provided that no person should maintain a suit for the recovery of remuneration for services rendered as a physician and surgeon who had not previously obtained a diploma according to the provisions of the acts referred to.

It is believed that every person who will examine the history of the times alluded to will find that then, as well as now, there might be found a very large number of *pretended doctors*, who practised medicine and surgery under the popular names of the times, such as "*herb doctors*," "*root doctors*," "*Indian doctors*," and a great variety of equally ridiculous and unmeaning names.

If it was then thought wise and judicious to pass legislative enactments for the protection of the unwary and honest citizen, it is apprehended that the same reason ought to apply at present, and in a degree greatly increased.

But to return to the progress of our legislation upon this subject. The minority of your committee find that the general provisions of the act of April 4th, 1806, were enacted in the revision of the laws in 1813, with the addition of this remarkable *proviso*:

"That nothing in this act contained, shall be construed to extend to debar any person from using or applying for the benefit of any sick person, any *roots, barks* or *herbs*, the growth and produce of the United States."

This was the first step in the history of the legislation of this State, in which the indirect and illegal practice of physic and surgery received any encouragement; for it will readily occur to every one upon a moment's reflection, that unqualified and unlicensed persons were admitted into full and complete competition with the regularly bred physician, by the practical operation of this *proviso*.

All that was required of the "*root doctor*," was to convince his patient that the medicine which he gave him, and recommended, was some "*root, bark or herb*," the growth and produce of the United States, and the whole object of the "*doctor*" was obtained, and the end which the Legislature had in view in the penal enactments against illegal practitioners, was entirely frustrated and defeated.

In order to demonstrate this result, the minority of the committee will state a case: A man is attacked by disease; he from some cause, (no matter what,) is induced to call upon a "*root doctor*," or "*Thompsonian doctor*." The *doctor* comes, whose first business is to assure his patient, that all the medicine which he proposes to administer, not only in this particular case, but in all other cases, is composed solely and wholly of *roots, barks and herbs*, the growth and produce of the United States; and that most certainly, *there is no mercury in it*. This done, and the doctor may and can, with impunity, give *any and all* the various articles and compounds to be found in the whole range of *materia medica*. It is easy to conceal chemical, mineral and foreign medicines from detection, by the eye even of a very competent judge; and it is not to be supposed that our citizens generally are able to contradict the "*doctor*" with regard to the character of the composition, or nature of the medicine which he may prescribe. Hence the operation of this *proviso*, opened the door for the practice of the unlicensed physician and surgeon, as effectually as if there had been no penalty embraced in the act.

While this door was thus, as the minority of your committee believe, unintentionally opened for the illegal practitioner, restrictions were continued upon the regular student and physician: and by an act passed April 20th, 1818, were greatly increased, especially by requiring every student to study with some practising physician or surgeon four years, (one of which might be spent in pursuing classical studies,) before he could become a candidate for examination before the medical censors.

The substantial parts of the Revised Laws of 1813, upon this subject, continued without alteration until the revision of the statutes in 1828, when this law was again remodelled, and some important alterations adopted; one of which was, the adoption of a section making it a misdemeanor, punishable by fine and imprisonment in the discretion of the court, to practise without a license, and to *receive compensation therefor*.

The consequence of the passage of that law was, that all those who were interested in the continuance of illegal practice, whether they were called "Thompsonian doctors," "steam doctors," "patent doctors," "Indian doctors," "root doctors," "herb doctors," "stick doctors," or "botanic physicians," made common cause in petitioning the Legislature for a repeal of that section in the Revised Statutes, inflicting the penalty above mentioned.

On the 7th of April, 1830, the Legislature passed an act repealing the clause above alluded to, and added a section re-enacting in substance the provisions of the Revised Laws of 1813, with its remarkable *proviso*, rendering substantially the penalty declared in the same section wholly inoperative.

During the last session of the Legislature, the proviso above mentioned was stricken out, and a section added, similar in its provisions to the one contained in the first general law upon this subject, passed March 23, 1797, excepting, however, from the penalty any person who should use domestic medicine for the benefit of any sick person without receiving any fee or *reward* therefor.

It is for a repeal of this law, that the petitioners ask. In the argument of the petitioners, (and their names most generally appear to be attached to the same common copy of a petition from every quarter of the State,) an appeal is made to the constitutional right of the citizen to employ such physician as he may deem most proper, and an inference is attempted to be drawn that the law which they pray to have repealed, is an infringement upon their natural rights.

The substantial provisions of the law, regulating the practice of physic and surgery, as it now stands, are as follows: Every student is required to study medicine with some practising physician or surgeon four years, one year of which may be deducted for pursuing any of the studies usually taught in any of the colleges in

this State, or for attending a full course of medical lectures, in one of the medical colleges of this State. The student may then be admitted to an examination, and if approved, is to receive a diploma. This constitutes him a regular physician and surgeon. If any person practices physic and surgery, without having first obtained such diploma, and shall take and receive any *compensation* for such practice, he shall forfeit for every such offence, a sum not exceeding twenty-five dollars, and shall be forever precluded from recovering by any suit (in this State,) for such services.

The minority of your committee are incapable of discovering any unconstitutional act in these provisions, or any infringement of the rights of any citizen; nor are they able to discover any *exclusive* privileges granted to one set of men, which are not freely offered to any and all persons.

It is merely a question of general policy, whether or not the law in question is wise and salutary. That it is so, the minority of your committee entertain the most confident belief; and in this opinion they are strengthened by the uniform and almost uninterrupted course of the Legislature of this State.

As early as 1760, the salutary provision which is now asked to be repealed, was enacted, so far as the city of New-York was concerned, and remained in force during an interesting portion of the civil and political history of the country.

It will strike the mind of every man, with great force, that during the long period, in which this subject (as has already been shown) has so often been before the Legislature, and which has undergone so many changes, that the idea of the unconstitutionality of the law, was never before seriously urged, but that it has remained for those interested in the illegal and unauthorized practice of this day under the insidious name of "botanic physicians," to make the assertion.

It appears to the minority of your committee, that from the necessity of the case, the power of the Legislature to provide by enactments for the preservation of the public health is most clearly invested in the Legislature; and further, that the legislation of every civilized community, testifies in behalf of the opinion they have offered. Look at our quarantine laws; at our law in relation to the prevalence of pestilential and infectious diseases; at

our law relative to boards of health. And let us look also to our laws which infringe upon the natural rights of individuals, by holding out inducements to persons to make themselves skilled in various professional and mechanical pursuits.

If the petitioners are right in their assertions, or in their argument, it must be unconstitutional to license either *attornies* or *car-men*. Can such an opinion as that of the petitioners, be for a moment tolerated? We think not. It would do away with the established doctrine, that in entering into the social compact, we necessarily cede for the benefit of the community, such individual rights, as may, and have generally been found to be necessary to be given up for the general good. It is upon this basis, that large sums of money have been expended by this State, in rearing up medical and other colleges. We cannot sanction the doctrine of the petitioners, as we believe the practical result of adopting it would be fatal to some of the best of our scientific institutions, which hitherto, it has been the pride and glory of our State to foster and cherish.

The minority of your committee do not consider this objection of sufficient force to detain the House with any further remarks, and more especially so, as the majority of the committee admit that the law which the petitioners ask to be repealed is constitutional.

They will, therefore, proceed to examine another *point*, particularly urged by the petitioners, to wit: the benefits to be derived from botanic practice. This term appears to be used by the petitioners, in contradistinction to the term of a physician regularly educated and licensed, and an impression is thereby sought to be made, that the regular physician is unacquainted with botany, and *rejects* all botanic substances from investigation and use, than which, a greater error cannot be entertained. Botany, strictly speaking, merely treats of the natural orders of plants, or of the artificial modes of classifying them, so that they can be distinguished from one another; but does not investigate their medicinal and economical use. The science of *materia medica* is the one which embraces the investigation of the botanical characters; the medical properties; the best mode of preparing the active parts of plants, and the diseases and particular circumstances of each disease in which they can, with advantage, be administered. Mate-

ria medica is not confined to articles belonging to the vegetable kingdom only, but embraces the range of vegetable, animal, and mineral kingdoms.

The regular practitioner is obliged to make himself acquainted with the various articles of the materia medica, before he is allowed to practise. Four-fifths of the articles used in medicine by physicians are derived from the vegetable kingdom, and the investigation of the properties and uses of these constitute one of the most important departments in every medical college; and occupies a principal share of the time of every student in a private office. Whilst regular practitioners are thus taught the properties and medicinal uses of a very extensive catalogue of vegetable articles, the self-styled "botanic physician" is in ninety-nine cases in a hundred, as ignorant of the science of botany as he is of Hebrew. His knowledge, such as it is, is confined to a few articles, which he exhibits on all occasions, without discrimination, whether the disease be small-pox, scarlet fever, measles, or dropsy. All diseases are one in his estimation. If the patient will take his medicine, he is willing to leave the effects to providence, be the result life or death. He is totally ignorant of the structure and functions of the human body, and equally so of the characteristic marks of the various diseases that flesh is heir to.

It is a vulgar error to believe that medicines derived from the vegetable kingdom are more innocent in their effects on the constitution than those derived from the mineral kingdom: some of the most deadly poisons are derived from the vegetable kingdom, and are the growth of the United States. Only a small number of the most valuable medicines derived from vegetables are the growth of the United States, whilst our extensive territory produces its full share of poisonous and deleterious articles, such as can not be used in rash and ignorant hands, with safety to the lives of the sick: consequently the proviso allowing the use of the roots, barks and herbs of the United States must have crept into the statute book through ignorance, and a belief that vegetable medicines were safer than mineral. It is also an error of general prevalence that steam is used as a remedial agent only by botanic or steam doctors: steam is in various ways extensively used by the regular profession, and has been for ages, in the form of simple watery vapour, or impregnated with different vegetable and mineral agents, according to the disease, and the object to be ac-

accomplished. Regularly educated practitioners avail themselves of the whole field of nature to furnish the means of alleviating human suffering, and have the experience of former ages to guide them, instead of the limited experience of one or two illiterate and ignorant individuals, whom chance or necessity have made acquainted with some of the properties of a few articles which they apply in all cases, without discrimination or judgment.

If an individual has studied the prescribed length of time, has made himself acquainted with the structure and functions of the human body, and with the virtues ascertained to belong to the many articles already used in medicine; if after acquiring all this preliminary information he finds that steam, or any particular articles the growth of the United States, are more efficacious in the removal of disease, he is at liberty to employ them, and to enlighten the world by publishing his experience; but until he shall have so studied, and have made such proficiency, the safety of the public demands that his random experiments upon the lives of citizens should, by law, be prohibited. It is the interest of the community that calls for protection, and not that of the medical profession; all the legislation on the subject has had in view the SAFETY OF THE PEOPLE, not the elevation or advantage of the medical practitioner.

Much is claimed by the "botanic doctors," on the strength of the large number of persons who have signed petitions in their favor. They claim that thirty thousand citizens are friendly to their cause. May not the minority of your committee triumphantly ask whether there are not in this State nearly three hundred thousand legal voters at our elections, who have not signed against the abandonment of an existing and proper legislative protection, in favor of science and skill in the healing art.

The experience of every member of this House will demonstrate to him how easily signatures to petitions can be obtained, no matter for what object or end. That many persons have signed the petitions referred to your committee through a common facility of disposition to oblige an applicant, by doing that which at first blush he may think can not affect his personal interests, they think will not be doubted by the House. That others may have signed the petitions under erroneous notions, which the botanic doctors have sedulously attempted to inculcate, is not improbable, as the

botanic doctors endeavor to create the belief that it is against the existing law to prescribe as drinks either mullen or catnip teas.

If a measure should be adopted for taking the sense of the people upon this subject, through the ballot boxes, the minority of your committee would cheerfully submit to the decision that should be made by that great and true *democratic* test of public opinion.

That the provision requiring every student to study a specified term under the direction of some practising physician and surgeon, and then to submit to an examination and be approved, before a competent board of officers, previous to his admission into society as a physician, is a wise and wholesome regulation, the minority of your committee feel confident that *none* will deny. If this conclusion be just, is it right to require the regularly educated physician to conform to these stipulations, and still allow others to come into practice upon equal terms with him, from whom no such requirements have been exacted? The minority of your committee can not for a moment consent to the justice of such a conclusion.

If true policy and sound reason require that *all* physicians and surgeons should have devoted time and exertion in the prosecution and acquisition of medical science, then even handed justice would dictate that they should be protected in the enjoyment of the fruits to be derived from their scientific attainments. If this be just, is it not also reasonable? Why should one set of men be required to perform a certain course of study, and to submit to a rigid and scrutinizing examination, in order to qualify themselves as physicians, and at the same time another set be allowed to come into practice without any previous preparation. That any person can, by nature or instinct, and without a long previous course of study and observation, become acquainted with the human system, with disease in all its numerous and diversified characters, and with the most judicious mode of treatment, is assuming too much for the intelligence of the age, and totally at variance with the observation of all.

There is another mode by which, (as the minority of your committee are informed,) the "botanic doctors" seek to recommend themselves to the credulous, and upon which they found pretensions even more remarkable than their claim to *instinctive* or *natural* capacity to practise medicine, to wit, through the medium of

a "patent," by the agency of which "botanic physicians," are manufactured with as great facility and ease as patent plough shares or "*hob nails*." What peculiar virtue a piece of parchment, under the great seal of the United States, may be supposed to impart, and how far it may advance, in this instance, its possessor, in medical science, the minority of your committee will not undertake to say; but they may be permitted, they trust, (without the imputation of prejudice,) to express their doubts in the infallibility of *such* an evidence of skill and science. What possible advantage such a patent may be to its possessor, or benefit to the community, it is impossible to conceive. Every person, upon a moment's reflection, will at once perceive that *it* can not impart to its recipient any knowledge of the construction or organization of the human frame, or give him any knowledge of the nature and character of disease; neither can it be supposed to convey any special information upon the subject of botany or of medicinal substances, or of NATIVE ROOTS, *barks* and *herbs*, or of chemical, mineral and foreign articles.

Therefore, the minority of your committee are convinced that the *great seal* and *patent* of the United States, will not be urged before this House as a sufficient qualification for a physician; as if *that* of itself was able at once to bestow upon its possessor all the requisite knowledge necessary for a safe, prudent and useful member of this important profession.

Finally, the minority of your committee believe that the present law is not only just of itself and reasonable in its character, but also of great practicable benefit to the public interest.

It is averred by the petitioners, that the State Medical Society improperly influenced the last Legislature to enact the statute of which they complain. This we view as an unjust imputation, both as regards the medical society and the members of the last Legislature. It amounts to saying, that the members of the last Legislature suffered themselves knowingly to be governed in their conduct by improper means.

It is asserted by the majority of the committee, that the present law is useless, and that it does not go far enough to remedy the evils which it was intended to prevent, and that therefore it ought to be repealed.

To this reasoning we dissent. The fact that the botanic doctors are crying out against the law passed last winter, affords strong

reason to believe that that law has already begun to produce its intended effect upon the illegal practice of medicine.

It ought to be borne in mind, that if the provisions of the law be repealed pursuant to the prayer of the petitioners, there will then be left no well grounded hope that any student of medicine will hereafter qualify himself by a sufficient term of study and submit to an examination before he commences the practice of physic and surgery. How can it be expected that any young man wishing to engage in this profession, will employ four years of the prime of his life, and expend from five hundred to one thousand dollars in money to fit and prepare himself for this profession, while he is left at perfect liberty to commence practice, under the assumed name of "botanic doctor," without any previous preparation.—Where is the man, young or old, who will submit to a long, tedious and laborious course of study, if proper and sufficient inducements are not held out to him as an eventual reward for such labor and study.

The minority of the committee believe, that if the act in question should be repealed, there would be reason to apprehend that a great portion of the medical science which has grown up under the fostering protection of our laws, and of which the State has just reason to be proud, will be in danger of being prostrated, and that the necessary consequence would be to fill the country with unlearned, ignorant and unskilful practitioners of physic and surgery—a consequence to be dreaded by *all*, and desired by no friend to the happiness, comfort or *liberty* of the people.

From the foregoing examination of the subject referred, and for the reasons above assigned, the minority of your committee have come to the conclusion, that to grant the remedy asked for by the petitioners, would be detrimental to the best interests of the community.

It is with great diffidence in their own judgments that the minority venture to recommend the denial of the prayer of so large a number of petitioners; and they aver, that a sense of what they deem due to the public welfare, has alone constrained them to recommend, (as they now do,) that the prayer of the petitioners be denied.

All which is respectfully submitted.

EDWARD LIVINGSTON,  
DUBOIS BURHANS,  
A. R. MOORE.