

the spinal column may be weakened, and whenever possible the posterior elements should be preserved. Whatever the approach, the aim of treatment is to replace the diseased tissues with sound, healthy bone.

Restraint of Professional Activities

It is an old principle of law that contracts in restraint of trade are unenforceable unless they are deemed to be reasonable in the public interest and in the interest of the parties. For this reason restrictive covenants incorporated into the sale of a business or a professional practice have to be drawn with care. For centuries the courts have decided that, subject to certain exceptions, it is wrong that a man should be deprived of the opportunity of earning a living in the manner of his choosing. But until a recent case this principle had not been applied to the rules of professional bodies regulating the conduct of members, though every professional body imposes restraints on the money-making activities of its members.

The House of Lords has now confirmed the decisions of Mr. Justice Pennycuik¹ and the Court of Appeal² declaring it to be outside the powers of the Pharmaceutical Society of Great Britain to enforce a motion of the Society designed to place restrictions on the siting and trading activities of new pharmacies and extensions of existing pharmacies. The restrictions on sales were intended to cover goods other than the traditional toiletries and photographic equipment. It is worth noting that none of the judges involved in this case accepted the submission made on behalf of the Pharmaceutical Society that the doctrine of "restraint of trade" did not arise.

The litigation was begun at the suit of Mr. R. C. Miller Dickson, a member of the Pharmaceutical Society and a retail director of Boots Pure Drug Co. Ltd. He wanted to resist the promotion of the Pharmaceutical Society's policy aimed at imposing new restrictions on the trading activities of pharmacists. The policy was formulated in a motion passed at a special general meeting of the Society at the Albert Hall on 25 July 1965.

In giving his judgement Lord Upjohn³ suggested that the reason why the doctrine of "restraint of trade" had not been previously applied to the rules of professional bodies was that a profession called on its members to serve the public by offering them highly technical and always confidential services which required a different standard of conduct from that of the tradesman. Therefore the public's reliance on professional men is such that a different and more restrictive code is acceptable. The professional man must submit to some restraints of trade such as prohibitions against advertising and undercutting charges. In other words, though the law on restraint of trade applies to professional rules of conduct, the courts will be more ready to accept such restraints as being reasonable than they would if the restraints were on trading contracts and contracts of service.

In the present case the Pharmaceutical Society had declined to be drawn into a detailed examination of whether or not the restrictions imposed by the motion of 25 July 1965 were reasonable. It may be that if the Society had chosen to

fight the case in another way it might have shown that they were. But what is reasonable or unreasonable restraint? It appears that the House of Lords did not decide where the onus of proof of this question lies. The normal rule is that the person wanting to enforce a restraint of trade has the burden of justifying it and showing it to be reasonable as between the parties concerned. Without actually rejecting a submission that the same rule should apply to this case, Lord Reid expressed doubts whether the rule did apply when restraints existed as part of a code of professional conduct. As he pointed out, if the ordinary rule were to apply, any member of a profession who wanted to make more money by disregarding some long-standing rule of professional conduct could require the restraint to be justified without himself having to prove that the rule was unreasonable. Clearly this question of the onus of proof will be of great practical importance to the professions.

Doctors in the Armed Forces

In the early 1960s, after the end of National Service, recruitment of doctors into the armed Forces was very poor. In 1962 the Government and the B.M.A. together worked out a "new deal" for Service doctors, and cadetships were introduced for medical students. The Government had accepted that "to attract newly qualified young doctors in adequate numbers and of good quality they must be offered a substantial lead over the remuneration which they could expect in civilian life."¹ General duties medical officers aged 26 or more were offered salaries some 16% higher than the average earnings of an N.H.S. general practitioner. As a result there was a dramatic improvement² in the recruitment of doctors, many of whom signed on for periods of up to 16 years.

The pay of Service personnel is reviewed every two years, but after 1962 successive reviews made it clear that the pay of Service doctors was linked to that of N.H.S. general practitioners. All went smoothly until the biennial review of April 1966, which awarded increases of pay of about 18% to non-medical officers. The Review Body, in its Seventh Report published in May 1966, gave general practitioners a rise of about 30% in pricing the new contract (in addition to an interim rise of 9% given in 1965). If the differential established in 1962 was to be maintained a comparable rise should have been given to Service doctors, but in the atmosphere of the wages standstill they were given 10% only.

This cynical breach of faith caused widespread resentment among Service doctors, and the B.M.A. Council decided³ that the Association could no longer recommend the Services as a satisfactory career for doctors and refused to accept advertising for the armed Forces in the *B.M.J.* Recruitment fell off, serving medical officers who could do so retired prematurely, and by September 1967 there was an overall deficiency⁴ of 266 Service doctors (14.2%).

In November 1967 the National Board for Prices and Incomes was asked to keep the pay of Service personnel under continuous review, and its first report⁴ on Service pay

¹ *Brit. med. J.*, 1962, 1, 1191.

² *Brit. med. J. Suppl.*, 1963, 1, 247.

³ *Brit. med. J. Suppl.*, 1967, 2, 5.

⁴ *National Board for Prices and Incomes: First Report on Standing Reference on the Pay of the Armed Forces*, 1968. H.M.S.O., London.

¹ *Brit. med. J.*, 1966, 2, 181.

² *Brit. med. J.*, 1967, 1, 641.

³ *The Times*, 30 May 1968.