

sions by means of which either of the cotenants in the partition suit may have all the liens chargeable upon the property ascertained, and may have such a disposition made of the proceeds of the sale as will protect him from loss."

The proceedings to confirm the sale, being based upon the erroneous and injurious interlocutory decree, must of necessity be affected by the same infirmities.

Accordingly, both orders appealed from are reversed, with directions to the court below to vacate the interlocutory decree in partition, and all subsequent proceedings, and to take the steps required by sections 761 and 762 of the Code of Civil Procedure with respect to lien claimants and to otherwise proceed with the cause in a manner consistent with the holding here made.

We concur: WASTE, C. J.; SHENK, J.; THOMPSON, J.; CURTIS, J.; LANGDON, J.; SEAWELL, J.



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EVANS v. McGRANAGHAN.
Civ. 9505.

District Court of Appeal, First District,
Division 2, California.
Jan. 28, 1935.

As Modified on Denial of Rehearing
Feb. 25, 1935.

1. Physicians and surgeons § 6(3)

Licensed chiropractor has authority to practice chiropractic as taught in chiropractic schools, regardless of whether such practice would prior to enactment of Chiropractic Act have been construed as practice of medicine, surgery, osteopathy, dentistry, or optometry (Chiropractic Act St. 1923, p. xxii, § 7).

2. Physicians and surgeons § 6(3)

Licensed chiropractor is authorized to practice chiropractic as taught in chiropractic schools, together with necessary mechanical, hygienic, and sanitary measures included in chiropractic or not included in practice of medicine, surgery, osteopathy, dentistry, or optometry (Chiropractic Act St. 1923, p. xxii, § 7).

3. Physicians and surgeons § 13

Evidence of scope of chiropractic as taught in chiropractic schools held admissible on question whether agreement of chiropractor to give treatments involving mechanical and hygienic and sanitary measures was authorized (Chiropractic Act St. 1923, p. xxii, § 7).

4. Physicians and surgeons § 13

Patient suing licensed chiropractor for declaration of his rights under contract for treatments involving mechanical, hygienic, and sanitary measures, was required to produce evidence of scope of chiropractic as taught in chiropractic schools, where defendant asserted that contract called for unauthorized practice (Chiropractic Act St. 1923, p. xxii, § 7).

5. Appeal and error § 891

District Court of Appeal will not take testimony on appeal for purpose of reversing a judgment.

Appeal from Superior Court, City and County of San Francisco; Michael J. Roche, Judge.

Action by Mons Evans against M. James McGranaghan. Judgment for defendant, and plaintiff appeals.

Affirmed.

Samuel J. Jones, of San Francisco, for appellant.

M. Jas. McGranaghan, of San Francisco, in pro. per.

U. S. Webb, Atty. Gen., Leon French, Deputy Atty. Gen., and Frank V. Kington, of San Francisco, amici curiae.

PER CURIAM.

The petition for rehearing is denied.

The opinion heretofore filed herein is modified to read as follows: Respondent is a licensed chiropractor under section 7 of the Chiropractic Act, Statutes of 1923, p. xxii. Respondent and appellant entered into a contract in writing whereby respondent agreed to treat appellant for a period of one year. The contract contained the following provision: "The said services shall include chiropractic adjustment, and all mechanical, hygienic and sanitary measures incident to the care of the body deemed necessary by the party of the second part (respondent), and such mechanical, hygienic and sanitary measures shall include diet, concussion, traction, enemas, diathermy, sinusoidal, galvanic, Sunlite, cold quartz, massage, baths, hot and cold

packs, manipulation, massage, X-ray, Laboratory tests, and such other like measures, provided that such measures or modes of treatment are within the scope of the practice under the provisions of the Chiropractic Act of California. * * *

Appellant filed a complaint alleging that respondent refused to give him any treatments under the contract except chiropractic adjustments, on the ground that the mechanical, hygienic, and sanitary measures enumerated in the contract were not within the legal scope of his license under the Chiropractic Act, and prayed for a declaration of his rights under the contract pursuant to Code of Civil Procedure, § 1060. Respondent, answering, admitted the contract and his refusal to perform beyond giving appellant chiropractic adjustments, and justified his refusal on the ground of a conflict as to the scope of his license and the danger of criminal prosecution and civil liability for negligence if he practiced any measure outside the scope of his license. The trial court gave judgment for defendant, from which this appeal is taken.

The decision of the court recites that the case was submitted to the court without evidence being introduced.

Section 7 of the Chiropractic Act authorizes the issuance of a license which "shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

[1, 2] As we construe section 7 of the Chiropractic Act, it authorizes the license holder to practice chiropractic as taught in chiropractic schools or colleges, regardless of whether such practice would have been construed as the practice of medicine, surgery, osteopathy, dentistry or optometry prior to the enactment of the Chiropractic Act. It contains no definition of "chiropractic * * * as taught in chiropractic schools or colleges," and hence, in the absence of evidence on that subject, it is impossible of precise construction. The act further in our

judgment authorizes the license holder to use all necessary mechanical and hygienic and sanitary measures incident to the care of the body which are included in chiropractic as taught in chiropractic schools or colleges, if any there be (a subject upon which, in the absence of evidence as to what is included in chiropractic as so taught, we cannot reach any conclusion), together with any other such necessary mechanical, hygienic, and sanitary measures, the use of which would not constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, nor involve the use of any drug or medicine now or hereafter included in materia medica.

[3, 4] While it is undoubtedly the rule "that there can be no intent in a statute not expressed in its words, and there can be no intent upon the part of the framers of such a statute which does not find expression in their words" (Ex parte Goodrich, 160 Cal. 410, 416, 417, 117 P. 451, 454, Ann. Cas. 1913A, 56), that rule is in no way violated by our holding in this case that in order to determine the scope of the words "chiropractic as taught in chiropractic schools or colleges" resort must be had to extrinsic evidence. The intent of the statute is clear upon its face: That the license shall authorize the holder to practice chiropractic as taught in chiropractic schools or colleges. (But the court has no way of determining the scope of chiropractic as taught in such schools and colleges in the absence of evidence on that subject, and hence a resort to such evidence would be proper. *People v. Borda*, 105 Cal. 636, 639, 640, 38 P. 1110; 50 C. J. p. 1037. This ruling comports with the holding of the appellate department of the superior court of Los Angeles county in *People v. Schuster*, 122 Cal. App. (Supp.) 790, 794, 795, 10 P.(2d) 204.

Plaintiff was seeking a construction of the contract which depended upon the determination of the scope of practice allowed to defendant under his license, and since the determination of such scope of practice depended upon evidence it was incumbent upon plaintiff to produce it.

[5] The petition to take testimony in this court is denied. We will not take testimony for the purpose of reversing a judgment. *Tupman v. Haberkern*, 208 Cal. 253, 280 P. 970.

The judgment is affirmed.