WILLIAM MACDOUGALL.....APPELLANT;

AND

THE LAW SOCIETY OF UPPER CANADA ..... } RESPONDENT.

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*June 2.

*Nov. 10.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Solicitor practising without certificate—Allowing name to appear as a member of firm—Estoppel.

M., a solicitor who had not taken out the certificate entitling him to practice in the Ontario courts, allowed his name to appear in newspaper advertisements and on professional cards and letter heads as a member of a firm in active practice; he was not, in fact, a member of the firm, receiving none of its profits and paying none of its expenses, and the firm did not appear as solicitors of record in any of the proceedings in their professional business. The Law Society took proceedings against M. to recover the penalties imposed on solicitors practising without certificate, in which it was shown that the name of the firm was indorsed on certain papers filed of record in suits carried on by the firm.

Held, reversing the judgment of the court below, that M. did not "practise as a solicitor" within the meaning of the act imposing the penalties (R. S. O. (1877) c. 140) and that he was not estopped, by permitting his name to appear as a member of a firm of practising solicitors, from showing that he was not such a member in fact.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment of the Divisional Court (2) which suspended the appellant from practice as a solicitor and imposed a penalty of $40 for practising without a certificate.

The solicitor of the Law Society moved the Queen's Bench Division of the Divisional Court for an order

*PRESENT.—Sir W. J. Ritchie C. J. and Strong, Fournier and Gwynne JJ.

(1) 15 Ont. App. R 150. (2) 13 O. R. 204.

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suspending the appellant from practice as a solicitor until he paid the fees due to the society and a penalty of $40. The affidavit read in support of the motion stated that appellant practised during the year 1885 as senior member of the firm of Macdougall, Macdougall & Belcourt, and returns were produced from officers of the court in Ottawa and L'Orignal showing the appellant's name among the solicitors practising in those courts for the said year.

The affidavit of the appellant in opposing the motion, and the evidence of J. M. Macdougall, were to the effect that while appellant's name appeared on the professional card of the firm, on the office sign, and in the advertisements, appellant had nothing to do with the firm business, received no share of its profits, and that his name was not used in any process issued or proceedings in suits carried on by the firm, all of which was done in the name of N. A. Belcourt; that the appellant had his own business as consulting barrister with which the firm had nothing to do; and that any solicitor's business offered to appellant was handed over to the other parties, who took all the profits resulting therefrom.

The professional card of Macdougall, Macdougall & Belcourt was put in evidence and was as follows:—

"Macdougall, Macdougall & Belcourt, Avocats, Procureurs, &c., Scottish Ontario Chambers, Ottawa, Ontario.

HON. WM. MACDOUGALL, C. R.,
FRANK M. MACDOUGALL,
N. A. BELCOURT, L. L. M.,
Notaries Public.

Agents pour les affaires de la Cour Suprême, du Parlement et des Départements du Canada, &c.

Les affaires de la Province de Québec recevront l'attention personnelle de Mr. Belcourt, membre du

Barreau d'Ontario et de celui de Québec, et Commissaire pour cette dernière Province."

The Queen's Bench Division held, and its decision was affirmed by the Court of Appeal, that the appellant was practising as a solicitor within the meaning of section 21 of "The Act respecting Solicitors," R. S. O. (1877) ch. 140, which section is as follows :—

Sec. 21 : "If any attorney or solicitor practises in any of the said courts, or in the county courts, without such certificate in each and any year of his practice, he shall be liable to be suspended from practice for any such offence in all of such courts for a period of not less than three nor more than six months, and to continue so suspended until his fee upon the certificate for the year in which he so practised without certificate is, together with the penalty of $40, paid to the treasurer of the Law Society, and the proceedings for such suspension may be taken in any of the said Superior Courts."

Belcourt for the appellant. The statute is not violated by an uncertificated person advertising himself as a solicitor ; he must practise as a solicitor in the High Court or in a County Court.

Practising as a solicitor in this section means doing some act, as issuing a writ, entering an appearance or doing some other act in one's own name usually performed by a solicitor. See *Law Society* v. *Waterloo* (1) ; *Barnard* v. *Gostling* (2) ; *Davis* v. *Edmonson* (3).

One act of practice would not be sufficient. *Re Horton* (4).

On the construction of the statute, the fees being for revenue purposes only it should be stringently construed. *Graff* v. *Evans* (5), *Ex parte Swift* (6),

(1) 8 App. Cas. 407.
(2) 1 B. & P. (N. R.) 245.
(3) 3 B. & P. 382.
(4) 8 Q. B. D. 434.
(5) 8 Q. B. D. 377.
(6) 3 Dowl. 636.

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Gordon v. *Dalzell* (1), *Ford* v. *Webb* (2), *Stephenson* v. *Higginson* (3).

Marsh Q. C. for the respondents. If the partnership had been a true one the appellant would, clearly, have come within the terms of sec. 20 of the act. But the fact that there was no real partnership is immaterial. Our statute prohibits practising by uncertificated persons without the qualification in the English Act by the words "for fee or reward."

The statute is disciplinary as well as for purposes of revenue, and looks to the protection of the public.

Edmonson v. *Davis* (4), and *Dockings* v. *Vickery* (5), were cited.

SIR W. J. RITCHIE C.J.—Mr. Macdougall swears that:

In or about the month of November, A.D. 1884, my son, F. M. Macdougall, a barrister and solicitor in the Province of Ontario, entered into partnership with N. A. Belcourt, a barrister and solicitor in the said Province, and the said partnership or firm have since practised and are now practising as barristers and solicitors in the city of Ottawa.

That I have never read, or been made aware of the particular terms or stipulations of the said partnership agreement and have not now, and never had any pecuniary or other interest in the same.

I have not for many years past practised as an attorney or solicitor in the courts of Ontario and have no desire or intention to do so.

Mr. Frank Macdougall is the only witness called on behalf of the Law Society. He positively swears that the firm of Macdougall, Macdougall & Belcourt consisted of Frank Macdougall & Napoleon Belcourt; that the Hon. William MacDougall had nothing whatever to do with the firm; that he had nothing to to with the firm's business at all; that the profits of the business are shared between Mr. Belcourt and himself; that William Macdougall's name appeared on the business card of

(1) 15 Beav. 351.
(2) 7 Moore 54.
(3) 3 H. L. Cas. 638.
(4) 4 Esp. 14.
(5) 46 L.T.N.S. 139.

the firm and on the letter headings, but he did not practice at all; that when they required counsel they give him a preference. And he also testifies as follows:

Q.—Does it (appellant's name) appear in any advertisement? A.—Yes, I think so.

Q.—And on some papers filed in the courts? A.—I think not. I am prepared to say that no writ has ever been issued by the firm of Macdougall, Macdougall & Belcourt. The writs are issued, and have always been issued in the name of Belcourt, so far as it is possible for me to say. That is the usual course of procedure.

Q.—I suppose the papers are endorsed in the firm's name? A.—Yes, on the outside of the papers the firm style is used in endorsation.

Q.—And that is the way in which the business is carried on? A.—Yes.

Q.—Have you William Macdougall's permission to use it in this way? A.—In this instance, no.

Q.—It was ratified by him? A.—Acquiesced by him.

Q.—He has always been aware of it? A.—Undoubtedly; it is painted on the windows.

Q.—Stuck on the sign? A.—His name personally doesn't appear; but the style of the firm does; there is a sign at the front of the office with the firm name, and Mr. Macdougall's own name appears in that with that of myself and Belcourt.

Mr. Frank Macdougall made the following statement.

At the time of the partnership there was no intention that he should have any interest or any connection good, bad or indifferent with the firm; Mr. Macdougall has never done any business for the firm except as counsel, and has nothing whatever to do with the ordinary work of the office even when present; he has a business of his own in which the firm has no interest or connection whatever.

BY MR. READ:—

Q.—What is that business of his own? A.—Advisory counsel for the Northwest Telegraph Company, counsel business exclusively; he has a separate business as advising counsel, and otherwise with which we have no connection; and furthermore we have received from him business to be done by our firm which he, as a barrister, could not do—acting as a solicitor.

Q.—How much business? A.—In two years past three or four cases.

Q.—And did you give him any share in the profits of that business? A.—No.

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The writs having been issued in the name of Belcourt the subsequent proceedings would necessarily be carried on in his name. I think the mere endorsement of the name of the firm on the back of papers is no part of the proceedings in a cause, and consequently such an endorsement cannot be considered a practising in the courts. The appellant's name was not used in issuing the writs, and except this endorsement I cannot discover that his name was used in any proceedings in any court. So far as there is any evidence all the proceedings in the courts were in the name of Mr. Belcourt, a duly qualified solicitor; therefore, I think that the evidence that the appellant practised entirely fails.

This being clearly a penal enactment no penalty should be inflicted under it unless the case is clearly within the spirit and letter of the statute imposing the penalty. I think the penal clauses of the act, R.S.O., (1877) ch. 140, do not apply to the appellant; that he is brought neither within the letter nor the spirit of the act and, therefore, no penalty has been incurred.

I entirely agree with Chief Justice Armour and Mr. Justice Burton in the views they have taken of this case, and do not think it necessary to add any thing to what they have so clearly expressed.

I think this appeal should be allowed with costs in this court and in the courts below.

STRONG J.—This was originally an application to the Queen's Bench Division on behalf of the Law Society for an order that the present appellant, the Hon. William Macdougall, a solicitor of the Supreme Court of Ontario, should be suspended from practice for a period of three months and continue suspended until the fees due by him to the Law Society and a penalty of $40 should be paid.

In support of the motion an affidavit of Mr. Walter Read, the solicitor of the Law Society, was filed as well as the deposition of Mr. Frank Macdougall, taken before an examiner, and in answer to the motion the appellant's own affidavit was read. The undisputed facts appearing from this evidence are as follows:

In or about the month of November, 1884, the appellant's son, Mr. Frank Macdougall, a barrister and solicitor, duly called to the bar and admitted to practise in the Province of Ontario, entered into partnership with Mr. N. A. Belcourt, also a barrister and solicitor for the same province.

There were no written articles of partnership but, as Mr. Frank Macdougall states in his deposition, there was a distinct verbal agreement of which an unsigned written memorandum was made. By the terms of this agreement the partnership business was to be carried on by, and the profits divided exclusively between, Mr. Frank Macdougall and Mr. Belcourt.

The name and style adopted by this firm was "Macdougall, Macdougall & Belcourt," and it is admitted that by the first name of Macdougall the present appellant was meant to be indicated. A printed business card in the French language used by the firm was produced, and upon it the following names appear, viz.: Hon. Wm. Macdougall, C. R., Frank M. Macdougall and N. A. Belcourt, L. L. M. The before-mentioned style of the firm was also painted upon the office window and on a sign affixed in front of the office, and appeared in newspaper advertisements. It is sworn that the appellant never interfered in or took any part in the business of the firm, and never derived any benefit from it, and it is not pretended that he in any way contributed to its expenses and disbursements. The appellant used for his own private business affairs a room in the offices of the firm, which

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was assigned to him by the partners in consideration of certain telephone accommodation which he enjoyed as counsel for a telegraph company, and which he permitted the firm to use for their own convenience. Mr. Frank Macdougall says he had no express consent or permission from his father to use his name in the style of the firm, but he says the appellant knew it was used in the way mentioned and acquiesced in it.

It is distinctly stated by Mr. Frank Macdougall in his deposition that the appellant's name in no way appeared in any of the legal proceedings carried on by the firm, save in so far as that "on the outside of the papers the firm's style was used in endorsation." Further, Mr. F. Macdougall says he thinks the firm's name was not used in papers filed in the courts, and he adds :

I am prepared to say that no writ has ever been issued by the firm of Macdougall, Macdougall & Belcourt. The writs are issued and have always been issued in the name of Belcourt so far as it is possible for me to say. That is the usual course of procedure.

Mr. Frank Macdougall also in the course of his examination made the following voluntary statement :

At the close of the partnership there was no intention that he (the appellant) should have any interest or any connection, good, bad or indifferent, with the firm. Mr. Macdougall has never done any business for the firm except as counsel, and has nothing whatever to do with the ordinary work of the office even when present ; he has a business of his own in which the firm has no interest or connection whatever.

It is admitted that the appellant did not take out any certificate as a solicitor and attorney for the year 1885.

The statutory provisions applicable are contained in the Revised Statutes of Ontario, (1877,) cap. 140, and are as follows :

Section 16, sub-section 1. Each practising attorney and solicitor shall obtain from the Secretary of the Law Society annually, before the

last day of Michaelmas Term, a certificate under the seal of said Society, stating the Superior Courts in which he is practising attorney or solicitor.

Sub-section 4. The Law Society shall determine what fees shall be payable for such certificates.

Section 20. If any attorney or solicitor, or any member of any firm of attorneys or solicitors, either in his own name or in the name of any member of his firm, practises in any courts of Queen's Bench, Chancery, or Common Pleas, without such certificate being taken out by such attorney or solicitor, and by each member of his firm, he shall forfeit the sum of $40, which forfeiture shall be paid to the Treasurer of the Law Society for the uses thereof, and may be recovered in any of the said courts.

Sec. 21. If any attorney or solicitor practises in any of the said courts, or in the county courts, without such certificate in each year of his practice he shall be liable to be suspended from practice for any such offence in all of such courts for a period of not less than three nor more than six months, and to continue so suspended until his fee upon the certificate for the year in which he so practised without certificate is, together with the penalty of $40, paid to the treasurer of the Law Society, and the proceedings for such suspension may be taken in any of the said Superior Courts.

The certificate required by the 16th section is clearly for revenue purposes ; in other words, it is a tax imposed upon solicitors who practise in the courts for the benefit of the Law Society by which the funds so raised are to be devoted to purposes which are no doubt highly beneficial to the profession of the law, and in which the public also are indirectly interested. These clauses are, therefore, to be construed strictly for the double reason that they are enactments for fiscal purposes, and also because they impose penalties and forfeitures.

The inquiry upon which the decision of this appeal must depend is, therefore, whether the evidence establishes that the Honorable William Macdougall practised in any of the courts without having taken out a certificate.

What the effect of an uncertificated solicitor sharing profits with one duly qualified might be, under this

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statute, is a case we are not called upon to consider, inasmuch as it is distinctly proved and not disputed that the appellant received no part of the profits or emoluments of the firm or pecuniary advantage of any kind from its practice. It would, however, be impossible to hold such an arrangement by itself to be illegal practising by the unqualified person in the face of decisions by which it has been held perfectly legal to agree that a share of profits shall be paid to the widow of a deceased partner, or even to an unqualified solicitor, provided such person does not participate in the profits in consideration of his acting or taking proceedings as a solicitor. *Scott* v. *Miller* (1); *Candler* v. *Candler* (2); *Sterry* v. *Clifton* (3); Lindley on Partnership.

The only way in which I can conceive a solicitor can be said to practise as such in the courts is by exercising the functions of a solicitor, by taking on behalf of a client some of the regular steps of procedure in an action or some other judicial proceeding.

Can it then be said that Mr. Macdougall, by permitting his name to be used in the manner disclosed by the evidence, practised in either of the courts (or divisions) of Queen's Bench, Common Pleas or Chancery?

I am of opinion that allowing his name to be used in the business card, in newspaper advertisements and on the office signs did not, upon any reasonable principle of construction which can be applied to the statute, constitute a practising. As I have before said the English cases show that sharing the profits of a solicitor's business with a disqualified person is not illegal when that person does not so share the profits in consideration of his acting as a solicitor. Then the use of the

(1) Johns. 220.
(2) Jac. 225.
(3) 9 C. B. 110.
(4) 5th Ed. p. 100.

name of a disqualified person in the style of the firm, as in the case of a former partner who has retired from the practice of the profession, cannot possibly be considered by itself as a practising as a solicitor; that practice is common in England, and prevails not merely in the case of a retired partner but in the case of deceased partners as well. The new business is carried on in the name of the old firm for the sake of the good-will associated with it. In short the name of the firm is nothing; the real question is: Did the disqualified person perform functions which the law says he shall not perform without having taken out a certificate? In the case reported in 4 Esp. relied on in both the Queen's Bench Division and the Court of Appeal, it is not for a moment pretended that the use of the name of the defendant in the style of the firm, nor the holding himself out generally as a practitioner by announcing himself as a partner, amounted to practising, but what was held to constitute the illegal act was that he had held himself out to the world as the attorney in a particular cause. In the present case the firm might never for the whole year which would have been covered by the certificate, the want of which is complained of, though carrying on a large business in other respects, have been once called upon to act as solicitors in any of the courts; how, in that case, would it have been possible to say they practised in the courts within the meaning of the 20th section of this act?

That there is nothing wrong in itself in qualified solicitors adopting as the name of their firms a style not exclusively composed of the proper names of actual acting partners is so apparent from the common practice which prevails as to it that no one would think of impugning the practice. An instance of it referred to in the judgment of Mr. Justice Burton is

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familiar to all of us who come from the Ontario Bar. The late Hon. Robert Baldwin, a distinguished attorney general of that province who also for a long time filled the office of treasurer of the Law Society, and who was a scrupulous observer of professional propriety, for years carried on practice under the name of Baldwin & Son, long after the death of his father Dr. Baldwin who was indicated by the first name in the style of the firm; and if I do not mistake, the late learned Chief Justice of the Queen's Bench Division, Sir Adam Wilson, together with his partners, also for some years practised under the same name and style of Baldwin & Son.

These instances do not of course amount to anything like authority, but they do show very strongly what the opinion of men of high honor and eminent members of the profession as to the proper construction of the statute has been. I can see nothing, therefore, in the advertising and public announcement of the firm's name which amounts to practising within the meaning of the statute.

It remains to consider whether the endorsement of the partnership name on papers in actions actually instituted, and in other proceedings taken in the courts, is to be deemed a practising by the appellant. Assuming for the moment that this is the case I should, if we were driven to decide the point, feel bound to hold that the evidence before us was insufficient to warrant an order for suspension or a conviction for the penalty. We have no proof of any actual instance in which papers were so endorsed, but we have only the general statement of Mr. Frank Macdougall which ought not, I think, to be considered sufficient in a penal proceeding like the present; however, as it appears that the case can be disposed of on a broader ground, one which will afford a more

complete vindication of the appellant, it is fairer to him not to rest the judgment on this point.

Had it appeared that the actual proceedings in the courts had been taken in the name of the firm I should have had grave doubts if this would not have brought the appellant within the statute, though even in that case much might, I think, have been said, which we need not now discuss, in his favor. It is, however, stated by Mr. Frank Macdougall that in the formal proceedings in the courts Mr. Belcourt's name has always been used as the attorney of record, and not that of the firm. It is true that he only speaks of cases in which the firm have acted for plaintiffs and does not, in terms, allude to cases in which they have appeared as attorneys for the defence, but I understand him to speak generally, and at all events no instance was adduced by the respondents in which the firm appeared or took any proceedings as attorney of record for defendants.

This being so, are we to consider the mere endorsement of the writ with the style of the firm to amount to a practising as a solicitor by the appellant ? I can see in such an endorsement nothing more than an announcement that a firm, carrying on its business with this name, were acting for the party on whose papers the announcement appeared, and nothing implying that every person whose name appeared in the style of the firm was personally engaged in conducting the proceedings. If the firm's name had been used in the formal proceedings, as for instance, if the præcipe for a writ had been signed, or an appearance entered, in the name of the firm that might possibly have been regarded as an actual exercise of professional functions by every one of the members whose names thus appeared on the files of the court.

As regards authority I entirely agree with Chief

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Justice Armour and Mr. Justice Burton that *Edmunson* v. *Davis* (1) is distinguishable. There the language of the statute was different and, as far as we can gather from the somewhat vague report, the defendant in that case, the unqualified attorney, actually appeared as one of the attorneys of record in the action in which it was alleged he had acted as an attorney. But even if the language of the statute applicable in that case had been identical with that of the 20th and 21st sections of the present statute, and even though the acts relied on as being in breach of the statute had been precisely similar to those here, I should, considering that the decision was a mere *nisi prius* ruling, reported in a book of so little authority as Espinasse, (2) have declined to follow that case, and I should have persisted in what I have already declared to be my own opinion of the proper construction and application of this statute.

For the foregoing reasons, which are the same as those stated in the judgments of Mr. Justice Burton and Chief Justice Armour, I am of opinion that this appeal should be allowed and that an order refusing the motion should be substituted for that made by the Queen's Bench Division, with costs to the appellant in all the courts.

GWYNNE J.—The question raised by this appeal is whether the appellant is or is not, under the circumstances of the case, a person who is subjected to the penalties of ch. 140 of the Revised Statutes of Ontario, 1877, intituled "An Act respecting Attorneys at Law." By the 1st section of the act it is enacted that—

Unless admitted, and enrolled, and duly qualified to act as an

(1) 4 Esp. 14.

(2) See as to this Lord Denman in *Small* v. *Nairne*, 13 Q. B. 844, and *Lady Wenman* v. *Mackenzie*, 5 E. and B. 453 per Coleridge J. approving what Lord Denman had said.

attorney or solicitor, no person shall act as attorney or solicitor in any superior or inferior court of civil or criminal jurisdiction in law or equity, or before any justice of the peace, or as such sue out any writ or process, or commence, carry on, solicit or defend, any action, suit or proceedings, in the name of any other person, or in his own name.

By the 16th section—

Each *practising* attorney and solicitor shall obtain from the Secretary of the Law Society annually before the last day of Michaelmas Term, a certificate under the seal of the said Society, stating the Superior Courts in which he is a *practising* attorney or solicitor.

By the 20th section—

If any attorney or solicitor, or any member of any firm of attorneys or solicitors, either in his own name, or in the name of any member of his firm, practises in any of the courts of the Queen's Bench, Chancery, or Common Pleas, without such certificate being taken out by such attorney or solicitor, and by each member of his firm, he shall forfeit the sum of forty dollars, which forfeiture shall be paid to the Treasurer of the Law Society, and may be recovered in any of the said courts.

By the 21st section—

If any attorney or solicitor *practises* in *any* of the *said courts*, of Queen's Bench, Chancery, or Common Pleas, or in the County Courts, respectively, without such certificate, in each or any year of his practice, he shall be liable to be suspended from practice for any such offence in all of such courts for a period of not less than three nor more than six months, and to continue so suspended until the fee upon his certificate for the year in which he so practised without certificate is together with a penalty of forty dollars paid to the Treasurer of the Law Society, and the proceedings for such suspension may be taken in any of the said Superior Courts, and upon the vote being made absolute for such suspension in any of the said Superior Courts, such attorney or solicitor shall be suspended from practice in the other courts in the same manner and for the same period as if the rule had been made absolute also in each of the said courts.

The question before us arises under this 21st section of the act. Upon a motion by the respondents to the Divisional Court of Queen's Bench for Ontario that the appellant should be suspended from practice for a period of three months and continue suspended until

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certain fees claimed by the society to be due by the appellant to them and a penalty of forty dollars should be paid, that court, Mr. Justice Armour dissenting, made an order whereby it was ordered that the said appellant be suspended from practice for a period of three months, and continue so suspended until the fees due by him to the Law Society, together with a fine of forty dollars, be paid, and that the appellant should also pay the costs of the said application to be taxed.

Upon appeal from this order by the appellant his appeal was dismissed and the order affirmed by the Court of Appeal for Ontario, Mr. Justice Burton dissenting.

There is no dispute as to the facts of the case which briefly are as follows: The appellant had been a duly qualified attorney and solicitor and barrister, practising in the Ontario courts, but prior to the year 1885 he wholly ceased practising as an attorney and solicitor, and confined his practice to the profession of barrister and counsel only, and for this reason he did not take out any certificate as a practising attorney and solicitor for the year 1885, and it is for his not having taken out a certificate in that year that the order under consideration was made. In that year a son of the appellant, being a duly qualified attorney and solicitor, and who had duly taken out his certificate as such for the year 1885, entered into partnership with a Mr. Belcourt, also a duly qualified and certificated attorney and solicitor, practising in the same courts of Ontario. The appellant's son and Mr. Belcourt having thus formed a partnership between themselves in the business of attorneys and solicitors, without any prior application to the appellant for his leave and without his authority, styled the name of their firm—" Macdougall

Macdougall & Belcourt," and published cards stating the firm to consist of the appellant, his said son and Mr. Belcourt. The appellant became aware of this having been done and did not make any objection to his son and Mr. Belcourt so using his name, but in point of fact he was not, nor was it ever intended that he should be, a member of the firm, nor had he, nor was it ever intended that he should have, any interest therein or in the profits thereof. All the business of every description carried on in the courts was conducted personally by, and in the name of, Mr. Belcourt. The appellant never in any way took any part in any business conducted by the firm or personally interfered in any such business. His name simply appeared in connection with the advertisements published by his son and Mr. Belcourt of the style of the firm in the names of Macdougall, Macdougall & Belcourt. The learned counsel for the respondents in his argument before us admitted that the appellant had not *practised* as an attorney or solicitor in the year 1885, in the *popular* sense of the word, but he nevertheless contended that he had within the meaning of the act; but there is nothing whatever in the act which indicates that the word *practises* as used therein is used in any other sense than the ordinary or popular sense of the word. It is the popular sense which is to attributed to all words in an act of Parliament, unless the contrary plainly appears upon the face of the act.

He contended that the appellant having permitted without complaint his name to be published as a member of the firm he would be liable to a client of the firm, who should have a good cause of action against the firm, and that in like manner and for the like reason he would be liable to the penalties by the act attached to his not taking out a certificate; but the liability to a person who, having employed the firm

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upon the faith of the appellant being a member of it as he was published to be, was damnified by any act or default of the firm, would arise by reason of the estoppel which under the circumstances the law would impose upon him preventing him from setting up the truth that in point of fact he was not a member of the firm. No case has been cited, and if one had been found no doubt the learned counsel for the respondents would have cited it, wherein it has been held that the doctrine of estoppel applies to prevent a person, against whom proceedings are taken under a penal statute to recover or inflict penalties, from shewing the truth, namely, that in point of fact and truth the thing had never been done to the doing of which the penalties sought to be recovered or inflicted were attached.

It was admitted that, in point of fact, all the acts of *practising*, with the doing of which the appellant is sought to be connected, were personally and directly done by Mr. Belcourt who was duly licensed to practice, but it was contended that Mr. Belcourt's acts were the acts of the appellant because of the latter having suffered his name to be used as it was. This is but another mode of insisting that having suffered his name to be so used he is, even in penal proceedings, estopped from shewing the truth. It was also argued that although Mr. Belcourt was the person who himself personally did each and every one of the acts relied upon as the acts of a practising attorney or solicitor yet that he, and every member of his firm how many soever they should be, are severally liable to the penalty imposed by the 20th section, and from that premise it was contended that he was liable under the 21st section. Whether Mr. Belcourt himself would be liable under the 20th section may possibly depend upon the true determination of the question whether or not *he* would be estopped

from showing what is now admitted to be the truth, namely, that in point of fact the appellant was not nor was ever intended to be a member of the firm, but we are not dealing with the 20th section nor does it throw any light upon the true construction of the 21st that does not appear in the 21st itself, the language of which is, in my opinion, sufficiently clear, and deals with persons who, in the ordinary and popular sense of the word, do *actually practise* as attorneys or solicitors either alone or in partnership with others. All that the facts, in my judgment, warrant us in concluding that the appellant did was, not that he practised at all as an attorney or solicitor in the year 1885, but that he suffered his son and Mr. Belcourt, who did practice in partnership together as attorneys and solicitors, to publish his name as if he was a member of their firm, although in point of fact he was not nor was ever intended to be; that was not, in my opinion, an act to which the statute has annexed any penalty. The appeal must, therefore, be allowed with costs and the order of the Divisional Court of Queen's Bench discharged and in lieu thereof an order be ordered to be issued from the said court dismissing the application made to it with costs.

Appeal allowed with costs.

Solicitor for appellants: *N. A. Belcourt.*

Solicitor for respondent: *Walter Read.*