Section 7109, I conclude, was aimed at bargain counter reading glasses. The words "as merchandise", appearing in the section have special meaning. They were no doubt taken from that section of the Public Health Law of 1908 concerning those exempted from securing a certificate to practice optometry and were intended to distinguish between prescription glasses and glasses at hand. Thus, such new section is but another curtailment on the seller. Under said section a corporation is not only allowed to employ, but is required to use an optometrist. If such optometrist decides an examination is necessary, then it is his duty to make one (*Roschen* case, *supra*). This without question is the practice of optometry by an employee in behalf of the employer. It is something which was not previously required but is now specifically mandated by law.

Defendant's argument that section 7109 sanctions its employment of optometrists as an incident to the sale of prescription glasses would be tenable if the law was aimed at other than ready-made glasses generally on the counter or sold by peddlers from house to house. As stated before, its intent was to prevent the sale at retail of eyeglasses as but another piece of counter merchandise. Section 7109 of the Education Law, the court finds, does not sanction the defendant's employment of a licensed optometrist to the extent of permitting such optometrist to write prescriptions.

Such conclusion as to the restricted purpose and intent of section 7109 of the Education Law is not dispositive nevertheless of the basic issue presented. Although required to hire an optometrist in the sale of counter eyeglasses, may a corporation employ a licensed optometrist for the additional purpose of examining a customer and supplying a prescription, even though the Education Law prohibits a corporation from practicing optometry? Or, putting it another way, is such hiring an attempt to circumvent the law to enable the corporation to practice optometry indirectly which it cannot do directly? The issue is not the defendant's right to practice optometry as if it were a licensee or its right to sell the totality of an optometrist's services and functions. The question concerns the propriety of defendant's employment of optometrists for the limited purpose of examining the eyes of its customers in connection with the sale of eyeglasses at retail, and for this purpose to utilize their skill to determine the need for glasses and the prescription to meet any such need.

The question of whether defendant's limited activities constitute the practice of a profession restricted to natural persons has not been directly passed upon by our appellate courts. Foreign decisions, moreover, are in conflict. The right to engage in a lawful occupation is a fundamental, natural, essential, and inalienable right, one of the privileges of citizenship. Like other rights equally fundamental, however, the right to engage in any legitimate trade, occupation, business, or profession, is not absolute, but is subject to a reasonable and necessary exercise of the regulatory powers of government in the public interest or welfare. The inalienable right of every citizen to follow the common industrial occupations of life does not extend to the pursuit of those professions which are subjected to supervision in the interest of the public welfare. As to what is a profession, the term connotes something more than mere proficiency in the performance of a task; it implies intellectual skill as contrasted with that used in an occupation for the production or sale of commodities. Originally, and historically, the word "profession" was applied only to law, medicine, and theology or divinity. From early times, moreover, the "learned professions" were given "exclusive rights and subjected to peculiar responsibilities." The practice of law or of medicine was not a business open to all, but a privilege conferred upon the individual engaged therein. A corporation, it was held some 50 years ago, could not practice law or medicine, nor might it hire lawers or doctors to act for it (*Matter of Co-operative Law Co.*, 198 N. Y. 479, 484). As the applications of science and learning were extended to other fields, other vocations became known as "professions". The liberalization of the term, however, to embrace chemists, editors, electricians, landscape architects, teachers, and shorthand reporters, among others, did not give to such "professions" exclusive rights nor subject them to peculiar responsibilities. If wrongs were practiced by individuals engaged in these callings, a State might not seek to remedy such evils by imposing unreasonable and unnecessary restraints upon them. If it was felt that only natural persons should be authorized to carry on one of these vocations, such a statute would have to bear "a real and substantial relation to the public health, safety, morals, or some other phase of general welfare. * * * A state cannot, 'under the guise of protecting the public, arbitrarily interfere