

charge where eyeglasses are sold, by an analogy of reasoning if the right to own eyeglasses as merchandise and to sell them at retail was curtailed by statute, there would be a denial of that which the Constitution guarantees. The New York Legislature has attempted no such curtailment but, as earlier indicated, has reaffirmed the constitutional right to sell eyeglasses at retail.

The Secretary of State cited *Matter of Co-operatives Law Co.* (198 N.Y. 479) to sustain his position. Some of the statements in that opinion, taken from their setting and background, might seem to sustain his claim. The question under consideration there was whether "a corporation could be lawfully organized to practice law" under the authority "found in that part of the Business Corporations Law which provides that 'three or more persons may become a stock corporation for any lawful business'" (p. 483). Then the opinion defines the meaning of the clause "lawful business" as follows: "This means a business lawful to all who wish to engage in it. The practice of law is not a business open to all." It was there decided that under the general authority of the Business Corporations Law a corporation might not be organized for the purpose of practicing law. Here we are dealing with a different question. The Legislature has granted the right to sell eyeglasses at retail if a physician or optometrist be present at the sale. The writer of the *Co-operative* opinion cited with approval the *Woodbury Dermatological Case* (*supra*), which decided that with statutory authority a corporation could lawfully be organized to practice medicine.

Disregarding the fact that there is a statute which permits a corporation to practice optometry and none which permits the practice of law, still the general distinction between the professions of optometry and law makes the *Co-operative* case inapplicable.

"Formerly, theology, law and medicine were specifically known as the professions; but as the applications of science and learning are extended to other departments of affairs, other vocations also receive the name. The word implies professed attainments in special knowledge as distinguished from mere skill." (*United States v. Laws*, 163 U.S. 258, 266.) An optometrist is defined in the Education Law (§ 1425) as a person "who by any means or methods, other than by the use of drugs, diagnoses any optical deficiency or deformity, visual or muscular anomaly of the human eye, or prescribes lenses, prisms or ocular exercises for the correction or relief of the same." The New Jersey Supreme Court has defined optometrist (*New Jersey State Board of Optometrists v. Kresge Co.*, 113 N.J. L. 287; 174 Atl. 353).

"Oculists * * * pursue a calling quite distinct from that of optometrists. The first has relation to the practice of medicine and surgery in the treatment of diseases of the eye, and the second to the measurement of the powers of vision, and the adaptation of lenses for the aid thereof. [*Saunders v. Swann*, 155 Tenn. 310; 292 S. W. 458; *Martin v. Badly*, 249 Penn. St. 253; 94 A. 1001; *McNaughton v. Johnson*, 242 U.S. 344; Herzog's Medical Jurisprudence, § 120.] It is the primary function of the optometrist to employ means to determine the need of lenses for the correction of defects of eyesight, and the increase of the power and range of vision. He forms a judgment as to the need, and then provides the corrective lens."

In the *Co-operative Case* (*supra*) some of the obligations, requirements and duties incidental to the practice of law are mentioned.

"The right to practice law is in the nature of a franchise from the State conferred only for merit. * * * It is attested by a certificate of the Supreme Court and is protected by registration. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. * * * The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. There would be neither contract nor privity between him and the client, and he would not owe even the duty of counsel to the actual litigant" (pp. 483, 484).

The relation between the vendor and vendee of eyeglasses differs so markedly from that between lawyer and client that even the language of the *Co-operative* case is without force in this matter.

The order should be affirmed, with fifty dollars costs.