

Opinion No. 203

Optometry—Duplicating Ophthalmic Lenses—Certificate of Registration Required—Statutes—Construction—Subdivision 9, Section 3156, R. C. M., 1935, As Amended by Chapter 130, Laws of 1939.

HELD: A person who duplicates broken ophthalmic lenses without having a certificate of registration as an optometrist violates Subdivision 9, Section 3156, as amended.

The act of duplicating broken ophthalmic lenses is separate and apart from the mechanical work done upon lenses. The former is forbidden by statute while the latter comes within the exception; it is immaterial that such person, on his own initiative, employed another to duplicate the lenses for him.

February 20, 1940.

Dr. F. H. Keller
Secretary, Montana State Board of
Examiners of Optometry
Kalispell, Montana

Dear Dr. Keller:

You have submitted the following facts:

A, at the instance of X, who was informed that B Company was duplicating ophthalmic lenses, took a pair of broken lenses to B Company and asked the latter to duplicate them. B Company did no work, made no measurements or tests and gave no advice but sent the lenses to C, an optical supply house, for duplication. C made a duplicate pair and sent them to B Company, who delivered them to A., C. O. D., \$10.36.

On these facts you ask whether B Company has violated subdivision 9 of Section 3156, R. C. M., 1935, as amended by Chapter 130, Laws of 1939, which reads:

"It shall be unlawful for any person: * * *

"Subdivision 9. To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided, however, that the provisions hereof shall not be construed so as

to prevent an optical mechanic from doing the merely mechanical work upon such lenses."

We have no other facts. From the above statement, however, we assume that A asked B Company to duplicate the lenses; that B Company, for a certain consideration, accepted them for that purpose; that A did not ask B Company to send them to C, or any other person, for duplication, or instruct B Company in any manner; that he dealt solely with B Company, knowing nothing of any other party or B's methods of duplication and that as understood or agreed paid B Company the sum mentioned for his services in duplicating the lenses.

If these are the facts, it would seem that B Company, assuming the responsibility, undertook to duplicate the lenses and in its own way did so, for which it accepted pay and that it employed C on its own initiative instead of acting as the agent or servant for A, for the purpose of transmitting the lenses to C for duplication. If this is true, we think B Company violated the above quoted statute for the reason that it did duplicate the lenses without having a certificate of registration as an optometrist. This is the thing forbidden. The statute prohibits duplication. The language is broad enough to prevent anyone from making such duplication himself or causing duplication to be made, for, in either event, he makes the duplication. It certainly would be an anomaly if a person forbidden by law to duplicate lenses could hire someone else to do the forbidden thing for him and not be responsible therefor. The maxim, *qui facit per alium, facit per se* (meaning, he who acts through another, acts by himself) expresses a fundamental principle of the law.

The purpose of the statute was to protect the public from dealing with persons who are not qualified to make duplication of lenses or to state that a duplication has been made where they cause duplication to be made by someone else. The statute in question recognizes two separate acts in the process of duplicating lenses. The mechanical work upon the lenses, such as grinding the lenses, which comes within the proviso of the statute above quoted, and is not forbidden, and the separate act of duplicating lenses, which is for-

bidden. The latter appears to have been the act of B Company.

On the facts stated and assumed, if they can be established, we are of the opinion that B Company violated subdivision 9 of Section 3156, R. C. M., 1935, as amended.