CONCLUSIONS.

Now to summarize: We could start to do the following things:

Encourage the coöperation and team work of the associations, colleges and boards;

Study thoroughly the Charters' Study of Pharmacy from the functional standpoint and create therefrom a program for the rapid rehabilitation of professional pharmacy;

Select more carefully those who are to be admitted to pharmacy;

Create sections in associations to organize and accomplish more effective work within the associations;

Pay more attention to the classification and recording of pharmaceutical history;

Give hospital pharmacists their merited recognition, standardize their ranks and admit them to the councils of pharmacy;

Build up pharmaceutical business on scientific lines where competition will find it difficult to follow;

Enlist the interest of physicians in the new revision of the Pharmacopœia;

Promote the establishment of a greater number of fellowships and scholarships;

Try out the district meeting idea;

Try out the regional meeting plan;

Display the Northwestern Pharmaceutical Bureau Publicity Bulletins;

Study the Drug-store Experience requirement in the light of the present day;

Encourage higher training in pharmacy;

Do more research;

Increase the college prerequisite to three years;

Establish effective standing committees on professional standards;

Encourage business training for the druggists who devote themselves primarily to trade;

Take greater part in public health activities.

COMMITTEE REPORTS

REPORT OF THE COMMITTEE ON PATENTS AND TRADEMARKS.*

BY F. E. STEWART, CHAIRMAN.

Your committee, in previous reports, has presented the following incontrovertible facts—incontrovertible because supported by the Constitution of the United States; also by the copyright and patent laws founded thereon; also by the decisions of the Supreme Court:

"Any article of manufacture, unless it be protected by a patent, may be made and sold by any person. (Report of Commission appointed under Act of Congress approved June 4, 1898, to Revise the statutes of the U. S. relating to patents and trademarks, trade names, etc., Senate Document No. 20.)"

"An inventor has no right to his invention at common law. He has no right of property in it originally. The right which he derives by patent is a creature of the statute and of grant, and is subject to certain conditions incorporated in the statutes and in the grants. (A. M. H. & L. S. & D. Mach. Co. *vs.* Am. Tool & Mach. Co., 4 Fisher's Pat. Cases, 294)."

The patent law requires that "the invention shall be *new* and *useful;* that the device, manufacturing formula, method or design for which he seeks protection is not known or used by persons other than the inventor; has not been patented in any country before, and is not in public use or on sale or has not been two years prior to the application for patent."

The statute enacts, that, "Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner, and shall file in the Patent Office a written description of the same, and of the manner of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms, as to enable any person skilled in the art or science to which it appertains, or with which it is most closely connected, to make, construct, compound, and use the same; and in case of a machine he shall explain the principle thereof, and the best mode in which he has contemplated applying that

* Des Moines meeting, 1925.

principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim the part, improvement, or combination, which he claims as his invention or discovery; and said specification and claim shall be signed by the inventor and attested by two witnessess."

"Upon conforming to established procedure and paying the required fees, an inventor in the United States is granted the exclusive right to make, use, and sell his invention or discovery throughout American territory for 17 years. In the case of a design the period of protection may be $3^1/_2$ years, 7 or 14 years, as the dealer may elect."

Names of articles of commerce can neither be copyrighted, patented, nor trademarked. No right of ownership in a name is granted by registering it as a trademark. The trademark law is not a law for *creating* trademarks. It is a law for *registering* trademarks. "When an article is made that was theretofore unknown, it must be christened by a name by which it may be recognized and dealt in, and the name thus given it becomes public property, and all who deal in the article have the right to designate it by the name by which alone it is recognizable. (Leclanche Battery Co. *vs.* Western Electric Co., 83 Fed. Rep.)"

"The name of a secret preparation may be used by anyone for goods actually prepared by the recipe, for they are the goods indicated by the name, whether prepared by the original inventor of the recipe, or his successor in business, or not. (Seigert *vs.* Findlater, 7 C. D., p. 813.)"

"The user of the name must add some distinguishing statement showing that the article is his own production of the article known by that name and he must not imitate the dress or make up of the goods in addition to using the name, or do any affirmatory act calculated to deceive the public and pass off the goods as and for the previously known goods. (Cyc. 38-85.)"

As stated by the Official Gazette of the United States Patent Office, 1872, p. 28: "The Supreme Court of the United States, in President, etc., of the Hudson Canal Co. *vs.* Clark, repeated a proposition that as a rule has been frequently enunciated and settled beyond question, *viz.:* The office of a trademark is to point out distinctively the origin or ownership of the article to which it is affixed, or, in other words, to give notice who was the producer." "No one can claim protection for the exclusive use of a trademark or trade name which would practically give him monopoly in the sale of any goods other than those produced or made by himself, if he could, the public would be injured rather than protected, for competition would be destroyed. Nor can a generic name or a name merely descriptive of an article of trade, or of its qualities, ingredients, or characteristics, be employed as a trademark, and the exclusive use of it be entitled to protection. (Canal Co. *vs.* Clark, 13 Wall, 323.)"

"More recently this decision of the Supreme Court has been again reaffirmed in the Coco-Quinine case. The Supreme Court said: 'The use of a similar name by another to truthfully describe his own product does not constitute a legal or moral wrong, even if the effect be to cause the public to mistake the origin or ownership of the product.' In support of this statement the Court cited the following cases: Canal Co. *vs.* Clark, 13 Wall, 311, 325, 327; Standard Paint Co. *vs.* Trinidad Asphalt Co., 220 U. S., 446, 453; Howe Scale Co. *vs.* Wykoff, Semens and Benedict, 196 U. S., 118, 140.

THE PATENT LAW CREATES AND PROTECTS INDUSTRIAL PROPERTY.

Industrial property, *i. e.*, property acquired by industry, is of two kinds, namely, intellectual and material. The patent law, if properly interpreted and applied by the Patent Office and the Courts, protects both kinds. The knowledge accumulated by the practitioners of the medical arts of pharmacy and pharmaco-therapy are just as much industrial property as the material inventions and discoveries for which patents are granted.

Theoretically the intellectual property acquired by the practitioners of the medical arts are protected by the medical and pharmacal license laws. Practically, the door to practice is wide open to any person no matter how ignorant or venal. All he has to do is set up as a medicine manufacturer and practice both arts at wholesale without a license. To the extent that this illegitimate practice exists the medicine business is a menace to public health.

There has been a great increase of this illegitimate practice during late years as statistics show. One of the chemical journals is authority for the statement that within the past thirty years the number of so-called proprietary articles on the market has increased from 37 hundred to over 45 thousand.

The majority of these articles are ready-made prescriptions showing in their inception no greater skill than naturally to be expected from skilled licensed practitioners in the routine conduct of their vocation.

They are not patentable inventions in the meaning of the Patent Law, yet many of them have been patented. This, of course, is an abuse of the patent law for which the Patent Office is responsible.

Almost. if not without exception, the names of these so-called proprietary articles have been claimed as trademarks or trade names by their producers, and most of them have been registered as such in the Patent Office. This is an abuse of the trademark law for which the Patent Office is also responsible.

In some instances lawsuits have occurred where similar names have been used by competitors for similar preparations. Sometimes the original commercial introducers have won out because of imitation of labels and packages and consequent deception of the public.

But it does not follow that imitation is piracy. On the contrary, imitation is the foundation upon which civilization itself is built. Without imitation there could be no civilization.

This being the case the Fathers of the American Republic and its wonderful Constitution provided for patent and copyright laws. The theory upon which these laws rest is that "it is to the interest of the community that persons should be induced to devote their time, energies and resources to original investigation for the furtherance of science, the arts, and manufactures. This was recognized from the earliest periods which can pretend to be described as civilized. It is to the advantage of the whole community that authors should be rewarded, and no measure of reward can be conceived more just and equitable and bearing a closer relation to the benefit conferred by the particular individual than to grant him the sole right to his writing or discovery for a limited period of time."

It will be noted that the application for patent if properly drawn up is practically a scientific monograph describing the invention and the manner of making and using it. As stated in Article I, Sec. 8, Clause 8, of the United States Constitution, the object of the patent and copyright laws is to promote progress in science and the useful arts. Pharmacy and pharmacotherapy are useful arts. It is hoped by your committee that the AMERICAN PHARMACEUTICAL ASSOCIATION will, sooner or later, establish a *Council of Pharmacy and Chemistry* to work in cooperation with the Council on Pharmacy and Chemistry of the American Medical Association, and that one of the things that will be accomplished by such coöperation will be the adoption of some plan whereby the division of the United States Patent Office having charge of the granting of materia medica patents will be placed in the hands of examiners competent and willing to conduct the granting of such patents strictly in compliance with the patent law and its beneficent objects.

PHARMACY EXHIBIT AT THE SESQUI-CENTENNIAL.

The American Pharmacy Exhibit at the Sesqui-Centennial International Exposition occupies 600 square feet in the Medical Science Section in the Palace of Education and Social Economy. The exhibit is almost completed and is attracting enormous attention. Pictures have been taken of it by the Exposition official photographers at the request of the Publicity Department of the Exposition, who had a special feature story writer prepare a story about it to be released to 17,000 newspapers throughout the United States. The following features make the exhibit very interesting.

Booth No. 1. Ancient Pharmacy: Pharmacy of the Colonial Period—Antiques, etc., completely equipped apothecary shop with fixtures and equipment of 114 years old.

Booth No. 2. Modern Prescription Pharmacy and Dispensing, showing a complete modern Prescription Department, equipped for drug examination, biological standardization, clinical testing, chemical testing and manufacturing pharmacy.

Booth No. 3. Pharmaceutical Education and Literature, showing the evolution of pharmaceutical education, the American Association of Colleges of Pharmacy, etc., also the evolution of the U. S. Pharmacopœia, showing copies of all editions from the first in 1820 to the one which has just become official, same with the "National Formulary" and the "U. S. Dispensatory," representative group of textbooks used in Colleges of Pharmacy, showing several different books on each subject. Also showing the JOURNAL OF THE A. PH. A. and the *American Journal of Pharmacy.*