AMENDMENTS TO THE FEDERAL FOOD AND DRUGS ACT PROPOSED BY DRS. WILEY AND KEBLER NEARLY A GENERATION AGO.*

BY LYMAN F. KEBLER.[1]

The present agitation for amending or repealing the Food and Drugs Act of 1906 brings to mind many past activities and accomplishments. One frequently hears it said that cosmetics were not of sufficient importance, or prominence, previous to or at the time this law was enacted, to include them in the legislation. In this connection it may be interesting to note that cosmetics, for ages, played a prominent part in the make-up of the fairer sex, to enhance their attractiveness and to please mankind. Like all good things, their use has increased with prosperity, the fashions and demands of the time.

Cosmetics were used in such abundance, even in the sixties, that they were included[2] among the products for raising revenue, to pay the indebtedness caused by the rebellion in our country. Congressman Marriott Brosius included cosmetics in his first food and drug bill (*H. R. 5441*), introduced December 18, 1897. He included them in several subsequent bills but they were omitted from his last two bills. Cosmetics were made a part of the District of Columbia Food and Drug Law, approved February 17, 1898. On March 4, 1898 the National Pure Food and Drug Congress, comprising over 250 delegates, amended and adopted the then pending Brosius bill, which amended bill included cosmetics. Companion bills in the Senate at the time, also covered cosmetics. Due to the opposition that developed to the inclusion of drugs generally, in a law to be administered by the Department of Agriculture certain bills covered foods and pharmacopœial drugs only. Cosmetics went out of the picture for many years but were again brought forward in time.

In view of the fact that there have been such determined efforts made to supplant the present Food and Drugs Act in some quarters, rather than to amend it, let us see what Dr. Wiley and others thought about amending it in 1911 and 1912. The purpose of the amendments was to heal the breach caused by the United States Supreme Court decision in a case involving an alleged cancer cure, to cover cosmetics and therapeutic devices, to reach false and misleading advertising separate and apart from the package, to increase the number of drugs to be declared on the label, to control unscrupulous parties sending medicines directly to the consumer and to reach other features. These amendments cover the essential features of the bills introduced in Congress in 1933 and 1934, excepting food standards.

The request for making food standards was embodied in a goodly number of the early bills and always met defeat. Dr. Wiley was reluctant to take up this feature in the proposed legislation. Food standards was one of Dr. Wiley's hobbies but he knew from experience the temper and power of the interests involved. I think all will agree that with his vast experience in food and drug legislation, Dr. Wiley was eminently qualified to propose and prepare effective amendments

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* Section on Education and Legislation, A. PH. A., Washington meeting, 1934.

[1] Former Chief of Drug Division, Bureau of Chemistry, United States Department of Agriculture.

[2] U. S. Stat. at L. 12, 484 (1862).

to the Federal Pure Food law. It is likewise evident that with the multiplicity of Federal, State and Municipal legislation, affecting foods, drugs and public health, that the various enforcing officers, chemists, druggists, physicians, attorneys, consumers, advertising agencies, the business interests involved and others, were keenly alive and sensed the justice or otherwise, of amendments that may be proposed to existing laws or the enactment of new laws on these subjects.

A FEW SALIENT FEATURES IN FOOD AND DRUG LEGISLATION.

In order that our memories may be refreshed, permit me to briefly call attention to a few of the salient mile-posts on the way to the enactment of the Pure Food Law. The quality of the medicines and chemicals imported into the United States during the first half century of her existence were exceedingly poor in character. Apothecaries, physicians and chemists became greatly aroused. As a result of the agitation that developed a law was passed in 1848,[1] prohibiting the importation of spurious and adulterated drugs and medicine. The standards recognized were "the United States, Edinburgh, London, French and German pharmacopœias and dispensatories." This safeguarded the sick so far as imports were concerned, but nothing was done to control the purity of domestic medicines for many years thereafter. Strange as it may seem, a fairly efficient food and drug law was passed in the state of California in 1872.[2] The United States Congress in 1878[3] enacted a law for the District of Columbia, penalizing pharmacists who adulterated their drugs, chemicals and medicines.

Congressman H. B. Wright of Pennsylvania introduced the first Federal Food Bill in the United States Congress, January 20, 1879. It covered foods only and was a good bill for a beginning, but died in Congress. The same bill was reintroduced in the next Congress by Representative R. L. T. Beale of Virginia, May 23, 1879, and made some progress, but also came to naught. The subject, however, created a great stir at the time, particularly by George T. Angell, a prominent, wealthy and experienced Boston attorney, who had the health and welfare of humanity at heart. This publicity resulted in the National Board of Trade, at its annual meeting in December 1879, offering $1000.00 in prizes for a draft of a "Food Adulteration Act." The same year Congress authorized the formation of a "National Board of Health." In 1880 the report on the above prizes appeared[4] together with a draft of a proposed Food and Drug Law, by the National Board of Health, based on the first prize essay, by Dr. G. W. Wigner of England, where a similar law had been in operation for a number of years. It may be of interest to note that Dr. Wigner's prize essay contains the essentials and is the basis of most of the general food and drug laws enacted in the United States, so far as adulteration is concerned.

In 1881 one food and drug bill was introduced in the Senate and three in the House. All were based on the Wigner prize essay. Over one hundred food and drug bills were introduced in the United States Congress from 1879 to 1906, inclusive.

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[1] U. S. Stat. at L. 9, 237.

[2] Penal Code, page 93.

[3] U. S. Stat. at L. 20, 137.

[4] *Proc. Nat. Bd. Trade*, 11, 75.

UNITED STATES SUPREME COURT DECISION MAKES BREACH ON LAW.

Dr. H. W. Wiley was appointed Chief of the Bureau of Chemistry, United States Department of Agriculture in 1883 and soon thereafter began to take part in the proposed food and drug legislation. There was probably no one better qualified than Dr. Wiley to see through some of the mechanitions resorted to, to frustrate the passage of such a law or make it innocuous after its enactment. He recommended and made numerous suggestions and amendments to the various bills that were proposed over a period of nearly a quarter of a century. His interests were primarily centered in foods. Drugs were largely incidental. He relied generally on the advice of others in case of medicines.

I became identified with the work as Chief of the Drug Laboratory in 1903. Dr. Wiley delegated the drug work to me, including the legislative activities. I was to keep him advised. There was, as stated above, a vast amount of opposition in some drug quarters to a national law controlling the quality of drugs, but after the law was passed in 1906, the drug trade generally supported it. We were making good progress with its enforcement, when like a thunderbolt came a Federal Circuit Court decision holding that the Act did not cover therapeutic claims. The case was appealed to the United States Supreme Court. This Court sustained the lower court, one reason being that it was enforced in the Bureau of Chemistry. The language generally believed controlling, in the case of drugs, Section 8, reads, "That the term 'misbranded' as used herein shall apply to all drugs.....the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular....." The Supreme Court, in a divided opinion, 6 to 3, held that this language covered adulteration but did not reach curative claims. The fact that nine of the most eminent jurists disagreed on the meaning of this section of the law, shows that it was not clear and definite in spite of its constructive criticisms by many attorneys of the land.

Amendments to this law were proposed before it actually went into effect. About a dozen bills to amend the Act had been introduced in Congress up to the time the United States Supreme Court handed down its decision in the Johnson cancer cure case, May 29, 1911. This decision necessitated the abatement of a large number of cases under consideration, some of which were in court. Alleged cancer cures were considered among the most flagrant violations under the law. We felt rather jubilant that the defendant was courageous enough to contest the case in court. There was little doubt in our minds as to the final outcome, but we were greatly disappointed. The flood-gates of former days of flamboyant curative claims were thrown wide open. There was rejoicing in some camps and certainly depression among those enforcing the food laws.

PRESIDENT TAFT'S SPECIAL MESSAGE TO CONGRESS.

President William H. Taft fully appreciated the seriousness of the situation, as is tersely shown by the following, now historic, special message he sent to Congress:

PURE FOOD AND DRUGS ACT.

The Vice-President laid before the Senate the following message from the President of the United States (House Doc. No. 75), which was read:

To the Senate and House of Representatives:

Your attention is respectfully called to the necessity of passing at this session an amendment to the food and drugs act of June 30, 1906 (*34 Stat., 768*) which will supplement existing law and prevent the shipment in interstate and foreign commerce and the manufacture and sale within the Territories and the District of Columbia of worthless nostrums labeled with misstatements of fact as to their physiological action—misstatements false and misleading even in the knowledge of those who make them.

On June 30, 1906, after an agitation of 20 years, the food and drugs act, passed by the Fifty-ninth Congress, received the approval of the President and became law. The purpose of the measure was twofold—*first*, to prevent the adulteration of foods and drugs within the jurisdiction of the Federal Government; and, *second*, to prevent any false labeling of foods and drugs that will deceive the people into the belief that they are securing other than that for which they ask and which they have the right to get. The law was received with general satisfaction and has been vigorously enforced. More than 2000 cases have been prepared for criminal prosecution against the shippers of adulterated or misbranded foods and drugs, and seizures have been made of more than 700 shipments of such articles. More than two-thirds of these cases have been begun since March 4, 1909. Of the criminal cases more than 800 have terminated favorably to the Government, and of the shipments seized more than 450 have been condemned and either relabeled or destroyed. In every case in which the food seized was deleterious to health it was destroyed. A large number of cases are now pending.

The Supreme Court has held in a recent decision (*United States vs. O. A. Johnson, opinion May 29, 1911*) that the food and drugs act does not cover the knowingly false labeling of nostrums as to curative effect or physiological action, and that inquiry under this salutary statute does not by its terms extend in any case to the inefficacy of medicines to work the cures claimed for them on the labels. It follows that, without fear of punishment under the law, unscrupulous persons, knowing the medicines to have no curative or remedial value for the diseases for which they indicate them, may ship in interstate commerce medicines composed of substances possessing any slight physiological action and labeled as cures for diseases which, in the present state of science, are recognized as incurable.

An evil which menaces the general health of the people strikes at the life of the Nation. In my opinion, the sale of dangerously adulterated drugs, or the sale of drugs under knowingly false claims as to their effect in disease, constitutes such an evil and warrants me in calling the matter to the attention of the Congress.

Fraudulent misrepresentations of the curative value of nostrums not only operate to defraud purchasers, but are a distinct menace to the public health. There are none so credulous as sufferers from disease. The need is urgent for legislation which will prevent the raising of false hopes of speedy cures of serious ailments by misstatements of fact as to worthless mixtures on which the sick will rely while their diseases progress unchecked.

At the time the food and drugs act was passed there were current in commerce literally thousands of dangerous frauds labeled as cures for every case of epilepsy, sure cures for consumption and all lung diseases, cures for all kidney, liver and malarial troubles, cures for diabetes, cures for tumor and cancer, cures for all forms of heart disease; in fact, cures for all the ills known at the present day. The labels of many of these so-called cures indicated their use for diseases of children. They were not only utterly useless in the treatment of the disease, but in many cases positively injurious. If a tithe of these statements had been true, no one with access to the remedies which bore them need have died from any cause other than accident or old age. Unfortunately, the statements were not true. The shameful fact is that those who deal in such preparations know they are deceiving credulous and ignorant unfortunates who suffer from some of the gravest ills to which the flesh of this day is subject. No physician of standing in his profession, no matter to what school of medicine he may belong, entertains the slightest idea that any of these preparations will work the wonders promised on the labels.

Prior to the recent decision of the Supreme Court the officers charged with the enforcement of the law regarded false and misleading statements concerning the curative value of nostrums as misbranding, and there was a general acquiescence in this view by the proprietors of the nostrums. Many pretended cures, in consequence, were withdrawn from the market, and the proprietors of many other alleged cures eliminated false and extravagant claims from their labels.

either voluntarily or under the compulsion of criminal prosecution. Nearly 100 criminal prosecutions on this charge were concluded in the Federal courts by pleas of guilty and the imposition of fines. More than 150 cases of the same nature, involving some of the rankest frauds by which the American people were ever deceived, are pending now, and must be dismissed.

I fear, if no remedial legislation be granted at this session, that the good which has already been accomplished in regard to these nostrums will be undone, and the people of the country will be deprived of a powerful safeguard against dangerous fraud. Of course, as pointed out by the Supreme Court, any attempt to legislate against mere expressions of opinion would be abortive; nevertheless, if knowingly false misstatements of fact as to the effect of the preparations be provided against, the greater part of the evil will be subject to control.

The statute can be easily amended to include the evil I have described. I recommend that this be done at once as a matter of emergency.

The White House, June 20, 1911. Wm. H. TAFT.

President Taft stressed the necessity of controlling "knowingly false misstatements of fact" but cautioned against legislation covering "mere expressions of opinion."

BILLS INTRODUCED TO REMEDY THE BREACH.

On the same day that the President sent his message to Congress, Representative Swager Sherley introduced a bill to amend Section Eight, dealing with misbranding, to remedy the breach caused by the United States Supreme Court decisions. Senator McCumber introduced a companion bill (*S. 2849*) in the Senate, June 22, 1911. Hon. William Richardson introduced several bills for the same purpose, one June 24th, another July 5th and a third December 4th, all during 1911. Dr. Wiley and I were called on to draft suggestions regarding certain amendments proposed in the Richardson bill. Hearings were had on the December 4th bill, H. R. 14060, which embodied all of the amendments in the Richardson bills. Other proposed amendments then pending also came up for consideration, particularly the Sherley bill, H. R. No. 11877. The hearings were held before the Committee on Interstate and Foreign Commerce, House of Representatives, 62nd Congress, 2nd Session, April 23rd to 29th, inclusive.

Mention should be made that Dr. Wiley retired to private life, April 1, 1912, and I was directed by Secretary Wilson to give the Committee every possible assistance. This all followed shortly on the heels of the unfortunate attacks made on us in the Department. Even though we were exonerated I was not feeling at my best to handle the various problems raised. I called on my former Chief for advice and assistance.

AMENDMENTS PROPOSED FOR SECTION SIX.

The following amendments were embodied in Section Six of this bill:

"Or device;" "also soda and potash lye; also cosmetics; hair preparations and dyes and toilet preparations; also tobacco, snuffs, tobacco substitutes and all tobacco products."

Based on my experience and knowledge I suggested the inclusion of devices and cosmetics. The lye and tobacco features were included by request, as will be noted later. During the hearings, about a dozen of assorted devices or therapeutic devices, as we called them later, were shown, a partial list of which will be found on page 45 of the hearings, 1912.

Therapeutic devices were never to my knowledge included in this type of legislation before.

The question was raised as to the propriety of including devices under the heading of drugs, as is shown by the following.

Mr. Esch. Doctor, do you see any inconsistency in declaring by statute that these mechanical devices are drugs? That is what that section does.

Dr. Kebler. Congress can declare anything a drug, if it wants to.

Mr. Esch. If that meaning is not in the dictionary, could we give any interpretation we see fit as to words?

Dr. Kebler. Oh, yes, there is no question about that.

Mr. Stevens. But we can't declare that to be a fact which is not a fact?

Dr. Kebler. These commodities are used for the treatment of diseases.

Mr. Esch. One of the amendments is that the term "drug" shall include "device;" and your interpretation of "device" is made clear by these mechanical devices.

Dr. Kebler. Yes; and also they carry with them an element of medication, as a rule.

Mr. Esch. That might be so of that.

Dr. Kebler. Here is one (indicating) which you will find contains a little battery inclosed in it somewhere, or it is to be attached to a battery, for the purpose of conducting electricity.

Mr. Esch. I know that would not be a drug.

Dr. Kebler. Electro-therapeutics is considered under that line.

Mr. Esch. It is used as a medication, not as a drug.

Dr. Kebler. It is a therapeutic agent; we have it as a part of the medical course in every up-to-date medical school.

Mr. Esch. The point I am trying to get at is whether we ought to make such a declaration in this section or to provide a separate section covering devices.

Dr. Kebler. Well, of course, that is for Congress, or this committee, to determine; not for me. But I think it could easily be covered there, because they are so analogous to the ordinary agents that are used for the treatment of diseases, and are supposed to have the same effect.

After this questioning by Congressman Esch, and questions raised by others, Dr. Wiley and I felt that it would be unwise to push the matter. We were not interested in distorting the dictionary meaning of terms used in the law, because we had to resort to dictionaries in our work and believed it injudicious to set an example that might cause embarrassment later, but we were not prepared to amend the law by proposing a new section covering therapeutic devices at the time. I was rather surprised that no one raised a question about stretching the term "drug" during the two hearings of Senator Copeland's bills, S. 1944 and S. 2800, in 1933 and 1934, respectively. And these bills covered every sort of device, even those that might aid in the function of man or other animals. The question of distorting the dictionary meaning of terms seemed to be lost sight of by all parties concerned. They were to be called drugs as a matter of course.

In the enforcement of the law we came across a goodly number of cosmetics which we believed should be controlled in the same manner as foods and drugs were controlled. Attention was called by name to an assortment of these products on the market at the time, containing deleterious agents, among which may be named corrosive sublimate, white precipitate, silver nitrate, soluble lead salts and paraphenylendiamin, an aniline derivative. Some of these cosmetics were reported at times to produce harmful results to the user. In most cases there probably was a supersensitiveness or idiosyncrasy on the part of the user, or the product may not have been applied according to directions.

No objections were made at the time of the 1912 hearings to the inclusion of cosmetics under the definition of drugs, in the law. A partial list will be found on pages 42 and 91 of the hearings.

Soda and potash lye were introduced at the request of the manufacturing industry. The substitution of soda lye, the cheaper product, for potash lye, was a common practice. In many instances soda lye is as useful as potash lye, but for some purposes it is entirely unsuited and may result in damage.

Tobacco and tobacco products were included at the request of Senator Taylor of Tennessee. He called attention to serious cases of adulteration and misbranding. Among the harmful adulterants reported may be mentioned arsenic and lead. The arsenic came from the sprays used to control the ravages of insect pests. Lead in former days came largely from the lead foil in which the tobacco was commonly wrapped. Some may also have come from the lead arsenic spray used.

As a matter of fact attention was called to the eminent danger to health because of the promiscuous and indiscriminate use of arsenic and lead sprays on our foods, in checking the depredation of insect pests. Reference was made to the fact that the British Government put a tolerance of 1.4 parts in beverages and about 20 parts of lead per million on foods. We felt that the 1906 pure food law covered the addition of these poisons to our foods and should be vigorously enforced. At the hearings the old-time question as to the recognition of the Homeopathic Pharmacopœia was raised. In fact Senator Gallinger introduced a bill (S. 4856) January 29, 1912, providing for the recognition of the Homeopathic Pharmacopœia by the food law. After some discussion Dr. Kebler said, "I see no objection whatever to introducing into this law a homeopathic pharmacopœia, providing the homeopathic profession gets together and decides on the pharmacopœia, and provided further that the standards now in the law are not interfered with." Others expressed similar views. It should be said that it was asserted over and over again that the inclusion of the pharmacopœia was delegating power and therefore illegal. The U. S. Pharmacopœia and even the pharmacopœias of certain foreign countries were recognized as standards in the 1848 drug import law and no one had upset that law, after sixty-four years of enforcement, because of this alleged delegation of power.

CHANGES SUGGESTED FOR SECTION SEVEN.

Section Seven was amended to include the changes embodied in Section Six of the bill and to cover methyl alcohol, which was considered an undesirable constituent of medicines.

At the importunities of physicians and the retail drug trade, it was suggested at the hearings that the proviso commonly referred to as the variation clause, be deleted. The issue was raised by Chairman Richardson. This precipitated an acrimonious discussion on the part of some interests. Dr. Kebler said, "I did not intend to say anthing on that matter—"* * * * *. But after the question was raised he reviewed conditions rather extensively and recommended its elimination. It was vehemently contended that its elimination would make the law unconstitutional.

AMENDMENTS TO SECTION EIGHT DISCUSSED.

Section Eight dealing with misbranding was amended to reach all forms of false or misleading advertising, wherever and in whatever manner used; to control, by means of licensing, irresponsible persons sending medicines directly to the consumer, and to increase the number of drugs to be declared on the label.

The part dealing with false or misleading advertising of foods or drugs reads: "or if the label or labels or any advertisement, poster, circular, or otherwise, contain any false or misleading claims or representations relative to disease or symptoms of disease, to be read or intended to be read by the laity, which are intended or calculated to produce in the minds of persons reading them or to whom the same may be read, a false impression of the existence of disease in their own bodies, or if any statement or expression of opinion concerning its physiological, therapeutic, nutritive or remedial property be made or promulgated in any manner so as to deceive or mislead, or which shall deceive or tend to deceive the purchaser."

Dr. Wiley and I were surprised that no material objections were made to this proposed, rather inclusive as we thought, amendment, an amendment that covers advertising in all forms, including curative claims for drugs and nutritional representations for foods.

The bill also contained the following additional clause in the matter of publicity; "or when represented to the public in any way as having any remedial property"..... We suggested that this clause be expunged, believing that the above proposed amendment was all sufficient.

HABIT-FORMING AND DELETERIOUS DRUGS TO BE DECLARED IN LABEL.

Another misbranding amendment reads:

"Or if it be a drug offered for sale to the laity, directly or indirectly, which contains any habit-forming or deleterious ingredients, to wit, acetanilid, antipyrin, acetphenetidin, anesthesin, alcohol, aspirin, alpha and beta eucain, arsenic, barium salts, carbolic acid, caustic hydroxids, chloroform, chloral, cocaine, creosote, cantharides, croton oil, caffein, cannabis, heroin, holocain, hydrocyanic acid, lead salts, morphin, methyl alcohol, mercury salts, novocain, nux vomica, orthoform, phenacetin, the phosphides, theobromin, theophyllin, trional, stovain, strychnine, vernol, yellow phosphorus, cotton root, ergot, pennyroyal, rue, savin, tansy, the poisonous alkaloids, all heart depressants or excitants, or any compound or preparation or derivative of any of the foregoing, and to any food or drug product which is falsely branded as to the State, Territory or country in which it is manufactured or produced. All these articles or preparations or derivatives shall bear a label containing not only the name by which they are known, but also the names of the parent substances from which they are derived."

No specific opposition to this amplified amendment developed. Congressman Covington maintained that the best way to solve this problem would be to require the entire formula on the label. Dr. Kebler felt that might accomplish a great deal, but that a goodly number of persons would not know what they were taking or what the effects would be. The Congressman believed that this course would drive frauds off the market and that legitimate proprietary medicines would find a better market.

CONTROLLING IRRESPONSIBLE PARTIES BY A LICENSING SYSTEM.

The proposed amendment in the bill to bring this about reads:

"or if the compounder, manufacturer or vendor thereof is not authorized both under the law of the State or community where the article is produced, manufactured or offered for sale, directly to the consumer, to practice medicine or pharmacy, or both, as the case may be; .."

This amendment reaches out into a new field. There is, however, something analagous to it in the virus, serum, toxin and antitoxin law.[1] We believed it best to pattern after the precedent set in this law and recommended the following:

"Unless such drug is marked to show that it has been manufactured or compounded by a legally registered or qualified practitioner of medicine or pharmacy who holds an unsuspended or unrevoked license issued by the Secretary of Agriculture, providing the Secretary of Agriculture shall not issue any license to any manufacturer or compounder of any preparation containing any of the substances named above, concerning which any false or misleading claims or representations relative to disease or symptoms of disease or statement or fact concerning its remedial or curative property be made or promulgated in any manner."

We knew that this language was defective but hoped that the legal minds at the hearings would whip it into proper form. Our experience had been that wholly ignorant, unscrupulous, naive rascals, concoct or had concocted drug mixtures and sent the medicines so concocted to unsophisticated persons in all parts of our fair land. The object of this amendment was to put an end to this pernicious business. The committee considered the aims of the amendment most worthy and took kindly to it, but some attorneys attacked it fiercely, yet one of them submitted a draft of a bill embodying this feature to be enforced by the Commissioner of Internal Revenue. The bill covers certain named habit-forming drugs, provides for a specific tax and requires all dealers handling same to take out a license.

At the request of the committee a new bill was drawn up embodying all of the suggested changes. Such a bill was prepared by us and printed for the use of the committee. But after careful search I was unable to locate a copy. In reference to the amended bill and Dr. Wiley's views of it, let me quote from the hearing, page 230.

Congressman Sabath. Would you permit me to ask Dr. Wiley a question?

Mr. Richardson. Certainly.

Mr. Sabath. Have you, or did some one submit to you, this amended bill of Mr. Richardson's, as it is now amended by Dr. Kebler?

Dr. Wiley. I wanted to say that I was with Dr. Kebler when these amendments were suggested, and I am quite familiar with them, and saw the bill when it came up.

Mr. Sabath. What is your opinion, now, upon the bill as amended? Do you think it is a bill which should be recommended and passed?

Dr. Wiley. I do.

Mr. Sabath. Do you think it will cure a great many defects in the present law?

Dr. Wiley. It will cure a great many defects in the present law; it will strengthen the bill and will protect the public and will be beneficial all along the line, and yet it is far from being what I consider a perfect bill. I do not think anybody can draw that bill, except in the light of experience; but in the light of six years' experience in the enforcement of the drug act, I would say that would give immense strength to the law.

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[1] U. S. Stat. at L. 32, pt. 1, 728 (1902).

THE FALSE AND FRAUDULENT ENIGMA.

One of the alleged weaknesses in the present law is the phrase, "false and fraudulent." This phrase constituted a part of the amendment enacted to cure the defect pointed out by the U. S. Supreme Court decision. Neither Dr. Wiley nor I looked with favor on this amendment, we questioned its enforceableness, but the committee in its report H. R. 1138, 62nd Congress, 2nd Session, 1912, held that the phrase has a well-defined meaning in criminal law, that fraudulent means a deliberately planned purpose and intent to deceive and that it is easily susceptible of proof, which proof the Government is required to establish, by the facts and circumstances in each case. It was stressed at the hearings that intent must be proved, that the phrase "false and fraudulent" was essential to meet the decision of the Supreme Court and to make this part of the law constitutional. Even though specific proof of intent is not always easy, the committee felt that the Shirley amendment best met the Supreme Court decision, and the views expressed by President Taft in his special message to Congress and recommended its enactment. Senator McCumber used the phrase "false or fraudulent." Apparently lawyers differ. The Shirley amendment was made part of the law.[1] It must be said that this amendment served a useful purpose in curbing many unworthy curative claims and representations. Some culprit may escape punishment under this amendment by technicalities, but we must have an abiding faith in the old-time principle that "a person is presumed to be innocent until he is proved guilty."

There seems to be an idea abroad that the present advertising is the worst ever. This is erroneous. The enforcement of the food and drug law, the postal law and the Federal Trade Commission act have made wonderful changes. If anyone doubts it let him go back thirty years and satisfy himself or just read the flamboyant advertisements included in the Richardson Hearings.

May I further call attention to the fact that the pharmaceutical profession has for many generations contested adulteration and untruthful advertising.

THE STABLER-LEADBEATER APOTHECARY SHOP, ALEXANDRIA, VA., 1792–1933.*

BY ELEANOR LEADBEATER.

(IN COLLABORATION WITH THE LATE EDWARD STABLER LEADBEATER.)

When, in 1792, young Edward Stabler borrowed from an uncle a hundred pounds in order to buy stock for the apothecary shop he planned to operate, he did not realize he was establishing a business in which his descendants would continue for the next one hundred forty-one years. Records do not tell us what feelings of uncertainty he may have harbored in relation to his venture, but they do show that his business prospered to such an extent that he was able to return the loan and double his stock of goods during the first year.

The original bill, dated June 1792, came from Townsend Speakman of Philadelphia and contained about one hundred fifty items, amounting to 120 pounds,

[1] U. S. Stat. at L. 37, 416 (1912).

* Owned by the AMERICAN PHARMACEUTICAL ASSOCIATION.