

Ninth. The dope dispensing doctor might "claim" that he dispensed the drugs in the conduct of a lawful business and in the course of the legitimate practice of medicine, but when confronted by a Federal court and jury he would discover that there is a vast difference between "claiming" and proving.

Tenth. There was no error in stating that the phrase "registered under this act" was introduced into one of the earlier forms of the bill. The Bill known as H. R. 28277, introduced January 20, 1913, after the first Drug Trade Conference, contains on page 9 the following: "That nothing contained in this section shall apply to the delivery of prescriptions of physicians, dentists and veterinarians duly registered under this act, compounded by a person duly registered under this act."

It is beside the point to say that it was not "used in the same connection as in the present bill." The first bill was a regulation of interstate commerce; the present one is a tax measure, and consequently the connection could not be the same. The intent of the phrase in both bills, however, was the same, namely, to give to drugs when dispensed on physician's prescriptions a different status under the law than when dispensed without a prescription.

As stated in the editorial, the writer considers the danger of harm to the druggist from filling the prescriptions of unregistered physicians as rather remote. As the bill will compel every physician to register as a dealer, even if he dispenses only on emergency, as all must do sometimes, there is not one in a thousand who will risk the penalties of the law by not doing so. If objection had been made to the phrase before the National Drug Trade Conference adjourned it is likely that it would have been eliminated, not because of any particular danger due to its presence, but from a desire to make the bill as satisfactory to as many persons as possible.

That Congress will not pass the bill in exactly its present form is quite probable. It would be equally safe to prophesy that Congress will never pass any other bill of equal length and importance without making changes in its phraseology as introduced.

J. H. BEAL.

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BRIGHTER PROSPECTS FOR PRICE PROTECTION.

WHEN the retail druggist stood alone, as until recently he did, in asking for the maintenance of the advertised retail prices on proprietary articles the rate of progress toward the legal and public recognition of his claim was slow, and at times the movement has even seemed to be in the reverse direction.

This ill success has been due to the world-wide and almost world-old popular belief, or more properly superstition, that there is an enormous profit in the sale of drugs, and the contest between the aggressive cutter and his fellows has generally been regarded as a dispute between robbers over their ill gotten gains, or if any sympathy was aroused it was betowed upon the cutter, who was looked upon as being, partially at least, in favor of giving the public a square deal.

When the druggist attempted to tell his customers that his average net profits were even less than those of some other retailers, he was met with polite incredul-

ity or flat unbelief. Nor has this prejudice been confined alone to those whose opportunities for impartial observation might be presumed to be limited, but it was extended to those who might be presumed to know better. On several occasions when the writer has called the attention of his friends in the newspaper fraternity to the well considered and carefully prepared articles by Mr. Harry B. Mason on drug store profits, while he was listened to politely enough it was easy to see that his hearers were inclined to believe that Mr. Mason had somehow juggled the figures so as to make out a better case for the druggist than the facts warranted. If the newspaper man condescended to argue the case it was usually to point to the success of those who extensively advertised themselves as cutters, and yet were able to conduct several flourishing stores, and by their scale of living exhibit all of the external evidences of financial prosperity.

If it was objected that these notorious cutters cut the prices of advertised proprietaries merely to create a reputation for cheapness, and relied for their profits upon the sale of their own make of substitutes for the advertised goods and by boosting the margins on goods the prices of which were not advertised, it was thought sufficient to reply that the average retailer ought to adopt the same policy and thus reap some of the prosperity that goes to the aggressive cutter.

In other words, the druggist's reputation as a taker of exorbitant profits is too deeply ingrained in the mind of the average man to be overcome either by evidence or argument to the contrary.

When, however, patented razors and cameras, copyrighted books, package groceries, and dozens of other articles widely advertised to sell at specified prices were seized upon by department stores and others to use in the same way they had used proprietary medicines—by advertising them at cut prices to draw people into their stores, and recoup themselves by the sale of more profitable articles,—then the regular dealers in these goods began to understand that the cause of the retail druggist was, after all, the cause of the square deal and fair play. The great difficulty has been, and still is, to reach and convince the purchasing public which, having only partial knowledge, has been persuaded that it has been profited by the price cutters.

Until one or two years ago, the task of reaching and instructing public sentiment seemed almost hopeless, but within that period there has appeared evidence, the volume of which is daily increasing, to show that the public conscience is at last beginning to be aroused to the economic and moral evils of price cutting upon fixed price goods, and is beginning to seriously consider legislation designed to prevent so-called competition from being used as an instrument for the destruction of real competition which always results when the independent small dealers are driven from the field.

The drug trade can now congratulate itself that its own members have done not a little to inaugurate the reform, and have secured through judicial decisions, not only a clear definition of the questions at issue, but also some clean-cut arguments in support of the principle of price maintenance, as in the case of the Miles Medical Co. vs. Park and Sons, in which Justice Holmes, in his dissenting opinion says:

"I cannot believe that in the long run the public will profit by this course. permitting knaves to cut reasonable prices for mere ulterior purposes of their own,

and thus to impair, if not destroy, the production and the sale of articles which it is assumed to be desirable the people should be able to get."

Since then the movement for adequate and proper price maintenance has received an important impetus by the organization and activities of the American Fair Trade League, which has enlisted the interests and co-operation of prominent publicists in their propaganda. One of the most notable of the recent utterances upon the subject is found in an article on "Cutthroat Prices," by Louis D. Brandeis, in a recent number of *Harper's Weekly*. In drawing a distinction between price maintenance and price fixing Mr. Brandeis uses the following argument:

"The independent producer of an article which bears his name or trade-mark—be he manufacturer or grower—seeks no special privilege when he makes contracts to prevent retailers from cutting his established price. The producer says in effect: 'That which I create, in which I embody my experience, to which I give my reputation, is my property. By my own effort I have created a product valuable not only to myself, but to the consumer; for I have endowed this specific article with qualities which the consumer desires, and which the consumer should be able to rely confidently upon receiving when he purchases my article in the original package. To be able to buy my article with the assurance that it possesses the desired qualities, is quite as much of value to the consumer who purchases it, as it is of value to the maker who is seeking to find customers for it. It is essential that the consumer should have confidence not only in the quality of my product, but in the fairness of the price he pays. And to accomplish a proper and adequate distribution of product guaranteed both as to quality and price, I must provide by contract against the retail price being cut.'

"The position of the independent producer who establishes the price at which his own trade-marked article shall be sold to the consumer must not be confused with that of a combination or trust which, controlling the market, fixes the price of a staple article. The independent producer is engaged in a business open to competition. He establishes his price at his peril—the peril that if he sets it too high, either the consumer will not buy or, if the article is, nevertheless, popular, the high profits will invite even more competition. The consumer who pays the price established by an independent producer in a competitive line of business does so voluntarily; he pays the price asked, because he deems the article worth that price as compared with the cost of other competing articles. But when a trust fixes, through its monopoly power, the price of a staple article in common use, the consumer does not pay the price voluntarily. He pays under compulsion. There being no competitor he must pay the price fixed by the trust or be deprived of the use of the article."

In pointing out how, under the disguise of open competition, price cutting may become the most effective instrument in the creation and maintenance of monopoly, Mr. Brandeis presents the following cogent thoughts:

"The competition attained by prohibiting the producer of a trade-marked article from maintaining his established price offers nothing substantial. Such competition is superficial merely. It is sporadic, temporary, delusive. It fails to protect the public where protection is needed. It is powerless to prevent the trust from fixing extortionate prices for its product. The great corporation with ample capital, a perfected organization and a large volume of business, can establish its own agencies or sell direct to the consumer, and is in no danger of having its business destroyed by price-cutting among retailers. But the prohibition of price-maintenance imposes upon the small and independent producers a serious handi-

cap. Some avenue of escape must be sought by them; and it may be found in combination. Independent manufacturers without the capital or the volume of business requisite for engaging alone in the retail trade, will be apt to combine with existing chains of stores, or to join with other manufacturers similarly situated in establishing new chains of retail stores through which to market their products direct to the consumer. The process of exterminating the small independent retailer already hard pressed by capitalistic combinations—the mail-order houses, existing chains of stores, and the large department stores—would be greatly accelerated by such a movement. Already the displacement of the small independent business man by the huge corporation with its myriad of employees, its absentee ownership, and its financier control, presents a grave danger to our democracy. The social loss is great; and there is no economic gain. But the process of capitalizing free Americans is not an inevitable one. It is not even in accord with the natural law of business. It is largely the result of unwise, man-made, privilege-creating law, which has stimulated existing tendencies to inequality instead of discouraging them. Shall we, under the guise of protecting competition, further foster monopoly by creating immunity for the price-cutters?"

And, finally, this very remarkable paper is closed with the following stirring appeal to the common sense and spirit of fair play of the American people:

"Americans should be under no illusions as to the value or effect of price-cutting. It has been the most potent weapon of monopoly—a means of killing the small rival to which the great trusts have resorted most frequently. It is so simple, so effective. Far-seeing organized capital secures by this means the cooperation of the short-sighted unorganized consumer to his own undoing. Thoughtless or weak, he yields to the temptation of trifling immediate gain; and selling his birthright for a mess of pottage, becomes himself an instrument of monopoly."

That the leaven is spreading is also apparent from the fact that many other independent and non-partisan journals of national circulation are beginning to quote with approval the arguments of the price protection advocates, as for example, the following which is quoted from the editorial columns of the *Saturday Evening Post*:

"Thoroughgoing followers of Adam Smith held that competition would cure everything. Give competition free sway and goods would be sold at the lowest possible price because manufacturers would bid against one another for customers; wages would be as high as possible because manufacturers would bid against one another for labor; goods would be of the best quality because such goods would attract the most buyers.

"Nobody, we suppose, believes that now. Experience contradicts it on every hand. Everyone who reads the newspapers sees that competition, instead of curing all evils, creates many. The Standard Oil Company was a perfect fruit of unlimited competition—being simply the competitor that survived and beat all others in a completely untrammelled field.

"Banks, railroads, insurance companies, meat packers, food manufacturers, and others, are restrained by law from competing in certain ways. It is said now that we want fair competition—which always means limited and restrained competition.

"The big thing before the forthcoming session of Congress will be the Administration's trust policy; and the big question concerning that policy is as to how much it will insist merely on competition.

"President Wilson has already signed a bill containing an exemption which im-

plies that monopolistic co-operation may be very beneficial for labor and for agricultural products, even with no supervision on behalf of the public. That is a pretty plain acknowledgment that competition is no cure-all."

Additional encouragement is found in the fact that politicians in search of popular issues are also beginning to see the light, as is witnessed by the recent report of a newspaper interview with Secretary McAdoo, who as a member of the President's official family may be expected to be in accord with the policy of the present administration:

"How would you regulate monopoly?" I inquired.

"I do not believe you can successfully regulate monopoly by permitting it to exist and by then passing laws to control it. Some men advocate this, prominently among whom is Mr. George W. Perkins. There are others equally as conspicuous. The only way to regulate monopoly successfully is to prevent it. I believe in prevention. What we ought to do is to regulate competition. By that I mean that we should pass such legislation as will preserve the virtues of competition and destroy its brutalities."

"Brutalities?" I interrupted.

"Yes, brutalities. Competition is full of them, but they are not half so great an evil as the brutalities of monopoly. Let me give you an instance of what I mean by the brutalities of competition. Suppose you own an oil refinery in Indiana and are doing a sound and profitable business in your own zone, which let us say, extends within radius of 200 miles from your establishment.

"Now, suppose that the Standard Oil Company, which has business throughout the United States, invades your territory and finds that you are in its way. It cuts the price of oil below the cost of production and drives you out of business. That is what I call one of the brutalities of competition.

"The Standard Oil Company would lose money in your territory while the fight was going on, but it could increase its price in other parts of the country, where it had a monopoly, and reimburse itself for these losses it was meeting in your territory. After it had driven you out of business it could put up the price in your territory and recoup again what it spent in disposing of you as a competitor.

"It should be made unlawful for a corporation to engage in this kind of practice. It is harmful in every respect, injurious to the public interest, and destructive to proper business standards and ethics. To my mind it is one of the most interesting economic problems of the day, and I have no doubt that it will receive attention by Congress when the whole question of trusts and monopolies is again considered."

In this connection also the writer takes the liberty of quoting from an article by J. Leyden White in a late issue of the *N. A. R. D. Journal*, in which it is shown in a convincing way that the battle for fair prices is not a struggle for special privileges to the retailer, but only an attempt to secure for him equality of commercial opportunity under the law, so that what are now special privileges enjoyed by the few may be converted into general privileges open to all alike. Mr. White says:

"The farmers who originate it, the producers, the growers, demand that they shall have a right to combine for selling purposes, for the price-fixing of corn, simply to protect themselves from their cut-rate competitors, the brokers. In this demand they are solidly backed by all union labor, by all country dwellers who have to do with them, even by country druggists. So powerful is this demand of the right to combine to preserve the farmer's profits on corn (and other products) that the General Deficiency Bill that recently became a law, in so far as that bill could, exempted farmers from the operation of the Sherman anti-trust law.

"The railroad men who take the corn from the farmers are unionized. So are the steamboat men, the longshoremen, freight handlers of all classes, the elevator men, the teamsters and all other labor concerned with its transportation. To defend itself against the cutters that menace it, every element of this labor demands the right to fix its own profits, its wages. This right to defend itself against the cutters whom it call 'scabs' is now generally acknowledged. As the corn goes into a manufactured article, let us say corn flakes, every element of labor, including even the printers of its advertising matter, has the power to combine, and does combine to fix, and does fix its own profit on the corn, by fixing its own wage.

"And did you ever hear of any association of jobbers or manufacturers being afraid to meet organized labor to fix prices, profits, wages, on anything with which labor is concerned? Ever hear them use the Sherman law spook on wage earners as they do on retailers?

"In the various sales of the corn, from the farm to the consumer, every price, every profit is fixed by combination. Brokers, elevator men, commission men, millers, bakers, manufacturers, all fix their profits on corn in their exchanges, boards, of trade, milling associations, and so forth. True, some of them are called 'trusts,' some are said to violate that Sherman spook, but as far as actual stoppage of any of their price-fixing is concerned—it's a joke.

"I said that every price, every wage, every profit is fixed. As a matter of fact, within or without the law, and with the favor of the actual majority of American citizens, every profit coming from the corn, from planter to eater, is practically, although not entirely satisfactorily fixed by the people making the profit, *except in one case.*

"The retail grocers who sell the canned corn or the corn flakes are not allowed to fix their wages, their profits. There the chain breaks, there is the missing link!

"The labor union of girls who fill the boxes with corn flakes can meet their employers, demand a meeting and fix their profit, their wage, and neither public sentiment nor law says nay. But let the same manufacturer dare to meet with retail grocers to fix their profits, their wages, and lo, and behold, the majesty of the law, the power of Government steps in—and keeps the chain from being consistently linked up."

The question is no longer one for academic discussion by trade associations, but has become one of practical politics, and the contest for fair and honest competition has been transferred from the courts to the floors of the state and national legislative bodies.

The cause of the retailer is so just and reasonable that it needs only to be presented clearly and forcibly in order to win legislative approval. It is now up to the retailers of every class to see to it that those who make the laws are fully informed on the subject, and duly impressed with the earnestness and political force of those who make the law makers.

J. H. BEAL.



THE PRESENT STATUS OF THE HUGHES-BACON BILL.

THE annual report of the Surgeon General to the Secretary of War makes a strong plea for the increase and improvement of the status of the Army Hospital Corps. This report has just been published. We quote from it the following:

"I can not in transmitting this, my last, annual report fail to call your attention to one particular in which the Medical Department is unprepared to fulfill its responsibilities to the Army and the Nation. It is one which has been the sub-