Reports

REPORT OF THE COMMITTEE ON PATENTS AND TRADEMARKS.

To the Officers and Members of the American Pharmaceutical Association your committee respectfully present the following report:—

Degradation of the Materia Medica:—The skeptical attitude assumed by leading physicians and teachers of medicine, during the past quarter of a century, is responsible in great measure for the neglect of materia medica by the medical colleges and inadequate knowledge of drugs as remedial agents on the part of the medical profession. To such extent had this therapeutic nihilism reached, that it was said of the medical societies, "If any daring member has introduced a subject bearing on medical treatment, it has been with an apologetic air and humble mien, well knowing that if his remarks had any reference to the utility of drugs in the treatment of disease they would be subjected to good-humored banter, and received by those sitting in the seat of the scornful with amused incredulity."

Rehabilitation of the Materia Medica:—We are informed by Prof. W. A. Puckner, Secretary of the Council on Pharmacy and Chemistry of the American Medical Association, that the report of the Board of Trustees made to the House of Delegates at the last annual meeting, (held in Atlantic City) does not bear out the statement that drug nihilism is rampant in the medical profession at the present time.

This change in the attitude of the medical profession, is very gratifying to those of us who are lovers of the pharmaceutic art, and we hope to see pharmacy elevated to its proper position as a branch of medical practice as the final result. Pharmacy, or the art of selecting, preparing, preserving, compounding and dispensing medicine, to meet the requirements of a rational drug therapy, is dependent upon the medical profession and a fountain can rise no higher than its source.

This change in attitude, is doubtless, largely due to the constructive work of the Council on Pharmacy and Chemistry of the American Medical Association. The Committee on Therapeutic Research and the Committee on Useful Drugs, are making progress in a way that holds out hope for the pharmacy of the future. But to secure the full benefits of this work, pharmacists and manufacturers must coöperate with the Council in its efforts to rehabilitate a rational materia medica.

The rehabilitation of the materia medica, is inhibited by our irrational patent and trade-mark laws, which permit the inventor of a new chemical substance, medicine, or food product, to patent the product, patent the process, and register as a trade-mark the name by which it is to become afterward known and dealt in. By this plan it is hoped, by the "proprietary" medicine manufacturers, to establish a system of perpetual monopoly in place of the seventeen-year monopoly permitted under the patent law.

In marked contrast to this system is that adopted by Germany and most foreign countries, where no product-patents are allowed, only process-patents, and where no trade-mark law stands in the way of competition between the manufacturers of the same products, who are free to deal in them under their currently-used names, when they succeed in discovering improved processes for preparing them.

Suggested Points of Patent Law Revision:—Our patent laws need revising in at least three important particulars. First,—the law should except from patent-protection, chemical substances, medicines and foods, the same as is done in Germany and most foreign countries. Processes only should be patented, leaving the products open to competition under their currently-used names. However, if

the patented process relates to a new product hitherto never produced, all substances of like nature should be considered as having been made by the patented process until proof to the contrary is given. This is the provision adopted by the German patent law.

It has been stated that such a law would be unconstitutional in this country, because the burden of proof in case of infringement rests upon the complainant, it being assumed that the defendant is innocent until he is proved guilty. This objection is evidently groundless, as President Taft, known to be a competent constitutional lawyer, in one of his last presidential messages, requested Congress to so amend the patent laws as to throw the burden of proof upon the would-be infringer.

Second:—The patent law should provide that the inventor of a process for the production of a new product, shall provide the new substance with a name which shall appear as the principal title in the application for patent, and shall also be used as a principal title on all labels, in all advertisements and in all literature published by the owner of the patent, his heirs and assigns.

Third:—The patent laws should be so amended as to except the patenting of aggregations or mixtures of drugs, or, in other words, ready-made prescriptions. In Caffall M. S., Vol. 16, p. 22, we learn that the Board of Examiners in Chief of the U. S. Patent Office, finally decided in relation to such mixtures, that "it was never intended that any composition of matter or mixture of simples should be the subject of monopoly. If Rhubarb and Senna, or Calomel and Jalap, were for the first time put together, he who should do it, whether regular practitioner or quack, would not be an inventor or discoverer under the law. If done by a physician, it would be only the exercise of ordinary professional skill; if by another, it would be but an ignorant jumble of things, having supposed virtues and benefits to be obtained by the union of known drugs."

Yet, in spite of this decision, which seems to have been salutary for a time, the patent office has returned to the practice of granting patents for ready-made prescriptions, as will be noted by referring to United States Patents Nos. 1,081,069, 1,086,193 and 1,086,900, which are essentially for simple mixtures of substances to which the Council on Pharmacy and Chemistry has objected, and so far objected rather effectively, because at least several applications for patents along similar lines have been since refused.

It is evident, therefore, that the patent laws should be so amended, as to prevent further transgressions of the principle underlying the law, which requires that inventions to be patentable shall be inventions in fact, and not mixtures of old and well-known drugs claiming special new therapeutic virtues not in fact possessed.

Physicians' "Proprietaries":—The manufacturers of this class of products have possibly done more to divert the practice of pharmacy and the prescription business away from the retail druggist, and centralize both in the great manufacturing houses, than have the manufacturers of synthetic chemicals. They have been aided in this by the general practitioners of medicine throughout the country, who, on account of their ignorance of prescription writing, have relied upon the skill of the manufacturer to produce elegant pharmaceutical mixtures, rather than upon their own ability to write prescriptions. Many of these ready-made compounds are just as worthy a place in the U. S. P. or N. F., as the compound pharmaceuticals now contained therein. But none of them should be subject to patent protection, unless displaying in their make-up greater skill than naturally is to be expected from skilled pharmacists, chemists and physicians, in the ordinary practice of their respective vocations.

As just stated, for a time the Patent Office refused to grant patents for ready-made prescriptions, on the ground that no greater invention is shown by their inception than should naturally be expected from skilled practitioners.

Objectionable Proprietary System:—A new method of protection was there-

fore evolved, known as the "proprietary system." It consists of coining a name for a medicine and registering it as a trade-mark. The name is not used as a trade-mark, however, that is, as a mark to distinguish an article from another *brand* of the same article, but is employed as a name to distinguish one article from another. This is not in keeping with the intent of the trade-mark law, but competitors let it go at that, for law-suits cost money; and, besides, manufacturers and retailers of medicines generally are doing the same thing.

The trade-mark law should be so amended, as to prevent the registration of names of medicines as trade-marks. Long ago, Commissioner of Patents Seymour told your Chairman that he believed the time would come when the Government would refuse to register words as trade-marks, because of their misuse afterward. Mr. George H. Lothrop, of Detroit, who in his day was one of the leading patent and trade-mark lawyers in the United States, in a letter addressed to your Chairman, dated October 5, 1894, says: "It has always seemed to me that the great evil of the proprietary system, lies in the ability of ingenious and wealthy advertisers, to delude a large portion of the public into buying their wares at exorbitant prices. In several cases I have forced a disclosure of the cost of these proprietary medicines, and have generally found that the largest manufacturing cost was the bottle and the label, and yet, by expensive and persistent advertising, the stuff is sold at retail for from 75 cents to $1.00 a bottle.

"The objectionable features of selling an article like this under a trade name, will probably in time be corrected by the courts, for I believe that they will eventually hold that where a man makes a new article which has no proper name, or a common appellative, and gives it a name by which it alone is known, he cannot hold an exclusive right to that name, under the law of trade-marks. If I am right in this position, then anybody will have the right to sell a proprietary medicine under its one name, and trade-mark rights will be restricted to names which either contain the name of the manufacturer or consist of some fanciful title which leaves the common appellative open to the public."

A Remedy for the Misuse of the Trade-Mark Law:—There is a remedy for the misuse of the trade-mark law as applied to patented materia medica products worthy of consideration in this connection. Take, for example, saccharin as listed by the house of Merck & Co., in Merck's Index. The patent for Benzoyl-sulphonic Imide, having expired, the name "saccharin," although claimed as a trade-mark, had by the decision of the Supreme Court of the United States in the Singer Sewing Machine case (1895), become common property. Merck & Co., recognizing this fact, listed the product in the *Index* under the name *Saccharin* and then added, as synonyms, the other chemical names, and all the so-called trade names under which saccharin is known, as follows:

> "Saccharin Merck-Refined; Benzoylsulphonic Imide; Garantose; Glusidum; Gluside; Glycophenol; Glycosine; Saccharol; Saccharinol; Saxin; Sykose; Zuckerin; Glusimide; Agucarina; Toluolsüss; Anhydroorthosulphaminebenzoic Acid; Benzosulphinide (U. S. P.); Neo-saccharin; Saccharinose.

It is evident that when saccharin is prescribed under any of the trade names Merck & Co. consider it perfectly legitimate for the pharmacist to dispense "Saccharin, Merck-Refined."

What should prevent the application of the same rule to unpatented materia medica mixtures? Why should not each manufacturer and retailer have his own brand of the same thing, and use the names of all competing brands on his label as synonyms?—that is, of course, if the secret of the composition of the article has been divulged. In that case each manufacturer might use his own name, firm name, or initials, for pointing out his brand, as "Saccharin-Merck," or Fluid-extract of Cascara Sagrada, P. D. & Co., or Diphtheria Antitoxin, Mulford.

Secret Nostrums:—There is still another class of so-called proprietary medi-

cines concerning which there is much to be said in objection, and that is the secret nostrums falsely advertised to the general public as specific or cures.

If the public is to be its own doctor, people should at least know what they are buying as medicine, and should be protected from paying more for medicines than they are worth. What would happen if a law were passed forcing the manufacturers to disclose the formulas of their widely advertised products and confine their statements in advertising to the truth? It would put an end to the sale of some of the "proprietaries," but those worthy of survival would live and thrive. Probably the demand for the worthy would increase because of less competition and because confidence in their virtues would be gained by knowledge of their composition.

Your committee can readily imagine the shock that will be produced on the minds of the "proprietors" on reading such a suggestion. In their opinion such legislation is confiscatory. "Every little druggist will make an imitation of our medicines and substitution will ruin our business," is the reason given for opposing such legislation.

Let us stop a moment and consider this question of confiscation. Where did the manufacturers of these "Proprietaries," get their formulas? They have already answered that question in part. You will find this partial answer in the "Petition of the Proprietors of and Dealers in Proprietary Medicines," addressed to the United States Congress and read at the annual meeting of the "Proprietary Association of America," St. Louis, Oct. 17-20, 1898.

"Petition of the Proprietors of and Dealers in Proprietary Medicines, including the Wholesale and Retail Dealers in Drugs, of the United States."

> "The undersigned, representing the industries mentioned, hereby earnestly petition your Honorable House of Representatives and Senate of the United States, that the War Tax upon Proprietary Medicines may be promptly or speedily revoked, for the following potent and valid reasons:—
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> "1. Because it is founded upon entirely erroneous ideas as to the origin and value of these medicines, the general or prevalent idea being that these medicines are mere nostrums, the outcome of ignorance and greed, for gain; and that they are of no value as curatives for disease and are deserving of no legal recognition.
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> "WHEREAS, The real fact is that they, to a very large and universal extent, are the best and most successful prescriptions of our most advanced and successful physicians. The story is simple. The physician, and the more eminent he may be the more likely this result is to happen, sends his prescription to his druggist, who carefully prepares and sends it to the patient: this is followed by others and others, all made of the same ingredients and the same proportions and they are largely or even eminently successful. The druggist is alive to this—he knows from his own observation that he has in hand a cure for a certain definite form of disease, and gives it a name and launches it upon the public as a remedy for a certain form of disease."

Price Protection for Secret Nostrums:—We are now confronted by an anomaly. After doing all in their power to supplant the pharmaceutical profession with the medical profession and the public, the "proprietary" medicine trade is appealing to pharmacists to support them in securing legislation for the protection of the manufacturers against "fraudulent substitution," and the pharmacists are asking for price-standardization laws for the protection of prices of commercially-controlled and nationally-advertised products. Both of these objects are certainly in a sense desirable under existing conditions, but both should be carefully considered before the American Pharmaceutical Association commits itself to any action concerning either.

It should be remembered that the exclusive license granted to pharmacists, is largely dependent upon benefits conferred by the pharmaceutical profession upon the public. These benefits consist of, (1) the supplying of the public with medicines properly prepared from drugs selected by persons skilled in pharmacognosy, standardized to conform to the requirements of the U. S. P. and N. F., and compounded and dispensed by skilled pharmacists. Do the secret nostrums on the market conform to these professional and scientific requirements? (2) The protection of the public, from the results of ignorance and greed on the part of those who desire to exploit the sick for financial gain. Are pharmacists doing their duty to the public in this respect, when they deal in secret nostrums?

The manufacture and sale of secret nostrums, is certainly not legitimate pharmaceutical practice. Secrecy and monopoly are opposed to the principle of fraternalism and coöperation, which is claimed to be the foundation stone of professionalism in medicine and pharmacy. And yet both professions are violating this principle every day; the medical profession by prescribing secret and monopolized medicines, and the pharmaceutical profession in making and selling them.

When the above facts are taken into consideration, it is evident that neither profession has a right to demand exclusive right to practice its respective professions unless it is willing to fulfill its professional obligations to the public.

The question then is, how far can the pharmaceutical profession sanction a plan in which the secret nostrum manufacturers profit at the expense of the public? It is claimed that price-protection legislation will prove of great benefit to the manufacturers of nationally-advertised goods. Care should be taken by the pharmaceutical profession in dealing with this subject, and in aiding in securing such legislation to see that nothing is done to further degrade pharmacy.

The "proprietary" medicine trade have built up an enormous commercial business in drugs, representing millions of dollars of capital, which business has supplanted the pharmaceutical profession, and largely taken the place of the doctor in treating the sick. As for pharmacy and medical laws, which, theoretically, limit the practice of medicine and pharmacy to licensed practitioners, they do not apply to either vocation when conducted at wholesale.

The "proprietary" trade is already strong enough to defy the medical and pharmacal license laws. Surely nothing should be done to increase the grip of the nostrum trade on the public, and to decrease the influence and the business of medical and pharmacal practitioners. A law permitting the alleged proprietors of secret nostrums to fix the price of prescriptions confessedly stolen from the medical and pharmaceutical profession, and falsely advertised, as specifics or cures, has no defense. However, the false system of advertising adopted by these manufacturers, may be finally checked by the enforcement of the Shirley amendment to the national pure food and drug law and thus curb the secret nostrum business.

In regard to price protection, as you of course know, several bills are now before Congress having as their object the protection of prices for nationally advertised goods. President Wilson, in referring to such legislation expresses the opinion that "underselling to injure competition or create a monopoly is wrongful and should be punished; that low selling, when not for these reasons, should be permitted, otherwise little merchants would suffer and aim of legislation to curb trusts, defeated." If legislation were first secured forcing the medicine manufacturers to place their business on a legitimate basis in relation to the public, price protection laws as thus explained by President Wilson seem to present many advantages. Until the "proprietary" medicine business is purged from fraud and unfair competition with the medical and pharmaceutical professions, it should be exempted from protective laws of any kind whatever.

A Law to Prevent "Fraudulent Substitution":—While this discussion regarding price-protection of "proprietaries," has been going on, the "proprietors" have

been busy in securing legislation to prevent fraudulent substitution, by passing a law in New York State more clearly defining what is meant by that term. As there is a vast deal of difference between fraudulent substitution and legitimate competition, illustrated by the act of the pharmacist who recommends a pharmacopœial or National Formulary preparation in place of a secret nostrum, this law may aid in making that difference more apparent. We refer to the "Act to amend the New York Penal Law in Relation to Trade-Marks" approved by Governor Glynn on April 14, 1914, which will take effect September 1, 1914. Clause 8 reads as follows:—

> "Section 2354. Offenses against trade-marks. A person who shall knowingly sell, offer or expose for sale any article of merchandise, and shall orally or by representation, name or mark written or printed thereon or attached thereto or used in connection therewith, or by advertisement, or otherwise, in any manner whatsoever, make any false representation as to the person by whom such article of merchandise or the material thereof was made, or was in whole or in part produced, manufactured, finished, processed, treated, marketed, packed, bottled, or boxed, or falsely represent that such article of merchandise or the material or any part thereof has, or may properly have, any trade-mark attached to it or used in connection with it, or is, or may properly be, indicated or identified by any trade-mark, is guilty of a misdemeanor and punishable for the first offense by a fine not less than fifty dollars nor more than five hundred dollars, or imprisonment for not more than one year, or both such fine and imprisonment, and for each subsequent offense by imprisonment for not less than thirty days or more than one year, or by both such imprisonment and a fine of not less than five hundred dollars or more than one thousand dollars.

The fixing of prices of medicine by unlicensed practitioners for licensed practitioners to follow under penalty of the law; and the establishment of a law which appears to be so ambiguously expressed as to admit of being contorted, to punish pharmacists for offering to sell similar preparations of their own manufacture, are alike objectionable.

Your committee has the privilege of calling your attention to legislation recently enacted in the Philippine Islands which may well be adopted by the entire United States. This legislation, which went into effect July 1, 1914, requires the publication of quantitative and qualitative formulas on all labels of medicinal products; and that the advertisements of all such products shall be truthful and be accompanied with such formulas wherever they shall appear. No medical or pharmaceutical journal or daily paper containing an advertisement of a medicine will be permitted to circulate in the Philippine Islands unless the publisher complies with the law. Price protection under the protection of such a law would be largely free from the objections which now apply to patented and secret medicines sold at fanciful prices and advertised in a misleading manner to create a fictitious demand.

Redemption of Pharmacy from Unlicensed Practitioners:—Your committee also takes pleasure in reporting further progress in relation to the propaganda going on in various parts of the world, for the redemption of pharmacy from unlicensed practitioners and its restoration to a professional vocation.

At the Saratoga convention of the New York State Pharmaceutical Association held June 23rd to 25th, 1914, attention was called in the report of the Committee on New Remedies, to the fact that the "tar-barrel" has not yielded as many remedies as in former years. Nevertheless, the manufacturers of chemical and synthetical products are very active and are introducing products that will replace those on which the patent is about to expire. This can be observed in the case of aspirin or acetylsalicylic acid, the manufacturers of which are now introducing novaspirin, which is methylene-citryl-salicylic acid. The same holds true of atophan-2-phenyl-quinoline-4-carboxylic acid—which is being replaced

by novatophan, the ethyl ester of paratophan-6-methyl-2-phenyl-quinolin-4-carboxylic acid.

The Committee also calls attention to the good work that has been done in the United States as well as in foreign countries, in analyzing so-called "proprietary" medicines. Credit is given to the Chemical Laboratory of the American Medical Association and to the Ohio and also to the North Dakota Dairy and Food Commissioners, who have greatly helped in the exposure of some of the worthless nostrums. Excellent work in this connection has also been done in this country, by Prof. L. E. Sayre of the Kansas State University, and Dr. S. J. Crumbine, Secretary of the Kansas State Board of Health, and by Prof. D. H. Thoms, director of the Pharmaceutical Institute of the University of Berlin, and Dr. C. Mannich, of the Laboratory of the University of Goettingen. By the publication of the analyses of these remedies, the physician and pharmacist are being informed of their identity, thus permitting their investigation by these professions.

Turning to the Proceedings of the American Medical Association we note the Chairman's address read before the Section on Pharmacology and Therapeutics, at the Sixty-fifth Annual Session, held at Atlantic City, June 22nd-26th. The Chairman, Dr. John F. Anderson, Director of the Hygienic Laboratory, U. S. Public Health Service, Washington, D. C., called attention to "Some Unhealthy Tendencies in Therapeutics." This subject is well worthy of consideration by the American Pharmaceutical Association. Dr. Anderson says, "A large number of new materia medica products have been introduced within the last decade, for which claims have been made so extravagant as to warrant classing some of them as 'fake' remedies. The exaggerations displayed in advertising many other products which in themselves are of marked therapeutic value, has a tendency to throw disrepute upon them also." The tendency to prostitute pharmacy and therapeutics for dishonest commercial exploitation, is certainly a very unhealthy tendency and is throwing the entire drug business into disrepute. The monopoly established over some of these preparations by the great commercial houses engaged in the materia medica-supply business, by patents and by the control of their generic names and by secret formulas, and the large capital used in their commercial exploitation by misleading advertisements is tending to divert the preparation of medicines away from the pharmaceutical profession and the practice of medicine away from the physician, and into the hands of unlicensed practitioners, ignorant alike of disease and its proper treatment.

Is it Ethical for a Physician to Patent Surgical Instruments or Profit by Their Sale? If Not, Why is it Right for the Pharmacist to Do So?—We also note with interest that the A. M. A. is facing a similar problem concerning the assignment of patents to the Association, that the A. Ph. A. has under consideration. The patentee of a new surgical instrument presented his patent to the A. M. A., offering to donate his invention to the public under the protection of the Association. The offer is still under consideration.

However, there is one feature of this offer differing from those made to the A. Ph. A. The inventor promises not to engage in the making of money out of his invention. In the debate resulting from this offer, certain points regarding medical ethics, which have a strong bearing upon the recognition of pharmacy as a profession by the medical profession, were brought out, vital to the interests of pharmacists.

According to medical ethics it is unprofessional to patent surgical instruments or medicines or engage in the business of making them for sale, on the ground that a physician cannot occupy a *judicial* position toward the things he advocates as therapeutic agents or prescribes for the treatment of the sick.

Under such ruling, pharmacy can never be recognized as a profession because the pharmacist has things to sell. But how about the physician who sells his advice? How about the physician who dispenses his own medicine? How

about the medical journals that accept the advertisements of medicines? especially those commercially controlled by patents and trade-marks? Are they in a *judicial* position? How about Ehrlich and his patented and "trade-marked" Salvarsan, and the royalty he receives from the manufacturing chemical house engaged in marketing it? How about the Journal of the American Medical Association and its Council on Pharmacy and Chemistry? Does not the Journal accept advertisements of commercially-controlled products and do not the editors and members of Council—at least some of them—get pay for services rendered? Are they in a judicial position? Evidently they are not if accepting money for work done, necessarily places them on the side of advocates rather than judges, even though they obtain their pay indirectly from the advertisers.

It is true that we are all honestly biased by the things we believe in. But it is not true that no man can be *honest* who receives pay for his services. This fact is recognized in scientific circles, and medical and pharmaceutical societies and press exist for the very purpose of correcting the bias of selfish interests by free and open discussion. What is needed is impartial discussion of every advertised materia medica product by the professional societies and press, not only by physicians but also by those engaged in their manufacture. Open the door to the manufacturers of these products and let us hear what they have to say about them.

But that does not mean open the door to firms or corporations to discuss materia medica products in the professional societies or press. *Science requires individual responsibility.* Let the *individuals* having the personal charge of the manufacturing of the medicines used by the medical profession, tell us how they are made and what they are made of. If they are not sufficiently educated as scientific men to do that, they are not fit to have charge of such important work and we want to know about it.

Neither does it mean that we should open the professional societies and press to commercial exploitation by the manufacturing houses. The educational channels must be kept free from pretense and error and not converted into an advertising bureau. The press and societies can control the situation, either by refusing to accept information in their advertising columns or reading columns, concerning commercially controlled products except to condemn them; or by establishing a board of control, admitting to fellowship manufacturing houses willing to donate their product patents to the public and permit them to be honestly discussed. If there is no way to establish a scientific literature concerning advertised materia medica products, because they are being advertised, it is time to make the advertising of medicine a penal offense.

Under a revised system of patents free from the objectionable monopolistic features of our present patent-system, and under conditions that may readily be brought about by reforming the trade-mark system, there appears to be no greater objection to physicians availing themselves of patent-protection than pertains to their protecting their literary productions by copyright. Under present conditions the patent-system and the trade-mark system are conducted in direct opposition to the ethical principles underlying the proper practice of either medicine or pharmacy.

As for the patent and trade-mark laws, are we not forgetting their true object? The Constitution of the United States upon which these laws are founded, if they are constitutional, informs us in relation to the patent law, that, "to promote progress in science and useful arts," Congress shall have the power to grant authors and inventors for limited times the exclusive use of their respective writings and discoveries. If the patent law can be so applied to medicine as to promote progress in medical science, promote knowledge of the medical arts, and promote the commercial interests of physicians, pharmacists, botanists, bacteriologists and others engaged in the practice of the arts of preparing medicines and applying them to the relief of suffering and the curing of the sick, then let us as professional men coöperate in securing its application in such manner as to attain these objects. It is to the advantage of all concerned that inventors shall be encouraged

to invent and publish their inventions for the benefit of science, and the arts, and commerce. Let us not refuse them the financial rewards and scientific credit which is their due. *But we must know who they are and hold them personally responsible before we can assure ourselves that the rewards and credits go to whom they belong.*

Finally, let us not forget that such rewards and credits, according to the patent law, only belong to those who have in fact invented something *new and useful,* and do not belong to those who have invented nothing but names and are building up monopolies in the sale of medicines which do not belong to them. The patent law properly applied to medicine is compatible with professionalism and scientific progress; but the so-called "proprietary" system, with its secrecy, abuse of the patent and trade-mark laws, "hog-latin" nomenclature, misleading advertisements, and pretense to invention and discovery, is a hydra-headed monstrosity unfit to survive in this day of the square deal. The trade-mark law was never intended to protect capital invested in a business which is so apparently contrary to public welfare.

When it is considered that during the past thirty years, tens of thousands of alleged "new remedies" have been commercially introduced by advertising and recommended as superior to materia medica products already in use, and not one tenth of one per cent of them have proved of sufficient therapeutic value to justify their introduction, also that physicians have been largely deluded by misleading advertising to prescribe them, also that pharmacists have been forced to sell them; and the interests of the sick have been correspondingly injured; it is evident that all concerned should coöperate in correcting this abuse. Therefore your Committee suggests as an initial move the plan described in the following

PREAMBLES AND RESOLUTIONS IN REGARD TO NATIONALLY ADVERTISED DRUGS AND MEDICINES.

WHEREAS, The Supreme Court of the United States in the Singer Sewing Machine case (1895) decided that: "The result, then, of the American, the English, and the French doctrine universally upheld is this, that where, during the life of a monopoly created by a patent, a name, whether it be arbitrary or be that of the inventor, has become, by his consent, either express or tacit, the identifying and generic name of the thing patented, this name passes to the public with the cessation of the monopoly which the patent created," and

WHEREAS, In the same decision the Supreme Court states: "Where another avails himself of this public dedication, to make the machine and use, the generic designation, he can do so in all forms, with the fullest liberty, by affixing such name to the machines, by referring to it in advertisments and by other means, subject, however, to the condition that the name must be so used as not to deprive others of their rights or to deceive the public, and therefore that the name must be accompanied with such indications that the thing manufactured is the work of the one making it, as will unmistakably inform the public of the fact," and

WHEREAS, It has been decided by the courts and it is a recognized principle of law, that "When an article is made that was theretofore unknown, it must be christened with a name by which it can be recognized and dealt in, and the name thus given it becomes public property, and all who deal in the article have a right to designate it by the name by which it is alone recognizable,"[1] and

WHEREAS, There can be no such thing as an exclusive right to any particular line of industry,[2] unless that industry is controlled by a patent, so that any person who knows how to make the same thing, and has obtained his knowledge in a legitimate manner, has a right to do so, and to offer the same for sale under its identifying name, i e., the name used by the purchaser in buying the article, and

[1] Leclance Battery Co. vs. Western Electric Co., 23 Fed. Rep., 227.

[2] See "Report of the Commissioners Appointed to Revise the Statutes Relating to Patents, Trade and Other Marks, etc." under Act of Congress, approved June 4, 1898.

WHEREAS, Medical and pharmaceutical science, and the requirements of pharmacopœial standardization and scientific literature demand the adoption of a fixed and changeless nomenclature, the publication of accurate knowledge of each materia medica product, as to its identity, physical, chemical and therapeutic properties, methods of preparation, compounding and dispensing, and the verification of claims to therapeutic efficacy by clinical tests by competent observers, and

WHEREAS, Public welfare demands that each brand of every product shall be branded with the name of the producer or his identifying mark or trade-mark, that his identity may be known and his responsibility fixed, thus permitting physicians, pharmacists and the public, to specify and receive the brand they may prefer, therefore, be it

Resolved, That WE, THE AMERICAN PHARMACEUTICAL ASSOCIATION, invite the manufacturers of nationally advertised materia medica products to send to the Secretary of the Association a list of their advertised products, the same to include generic names or titles or trade-marks to be used for specifying brands, whereby the Association representing the Pharmaceutical Profession may be aided in providing the materia medica products on the market with proper nomenclature, and be it

Resolved, That we hereby give notice to manufacturers who neglect to respond to this invitation, that by so doing they tacitly consent to the use of the names of their products as common property, by any and all persons who may know how to make the same articles and have obtained their knowledge in a legitimate manner, and be it

Resolved, That we supply the medical and pharmaceutical journals with copies of these Preambles and Resolutions requesting editors to publish them and call especial attention to their provisions; and, after the lapse of 90 days, that the Secretary of the Association mail a copy to each manufacturer advertising in the medical and pharmaceutical journals, and the principal manufacturers advertising in the newspapers, inviting them to coöperate with the Association in fixing the nomenclature of the nationally advertised materia medica.

PROFESSOR PUCKNER'S REMEDY FOR THE TRADE-MARK ABUSE.

A copy of the above report, including the Preambles and Resolutions, was sent to Prof. W. S. Puckner, Secretary of the Council on Pharmacy and Chemistry of the American Medical Association for criticism and comment. Unfortunately his reply did not reach your committee in time to avail ourselves of all of his valuable suggestions. However, the following are so important that we have herewith added them to the report. Prof. Puckner says:

"There is no doubt that the proprietary system is an unqualified abuse, but the correction of this abuse is largely dependent on aggressive action by pharmacists and has little or no interest for medical men, despite the fact that they have from time to time registered their objections.

"The resolutions offered in connection with the report are rather vague, and if adopted will, in my estimation, lead to nothing except possibly to create further confusion. To my mind resolutions something like the following would be much more to the point:

WHEREAS, The objects and uses of a trade-mark are at the present time not thoroughly understood, and

WHEREAS, A number of the words registered in the United States Patent Office are in reality words descriptive of the goods on which they are used and can in no way be construed as marks to distinguish the origin or manufacture of the goods from other goods of the same class, now, therefore, be it

Resolved, That the American Pharmaceutical Association request the Commissioner of Patents to discontinue the registration of words and phrases contrary to the spirit and letter of the existing law; and be it further

Resolved, That the American Pharmaceutical Association instruct its General Secretary to apply for the cancellation of trade-mark registration in accordance with the provision made in the rules of the Patent Office relating to registration and annulment of trade-mark.

After reaching Detroit so much interest was manifested in the subject of patents on medicinal chemicals on account of restricted supplies from war conditions existing in Europe that the following resolution was added to our report at the request of many prominent representatives of pharmaceutical and drug interests present at the meeting:

RESOLUTION REGARDING PATENT LAW AMENDMENT.

WHEREAS, The difficulty experienced in this country of obtaining supplies of materia medica products patented by the United States and manufactured abroad, and the consequent increase of prices, owing to existing war conditions, emphasizes the necessity of providing ways and means for producing these products in the United States, therefore, be it

Resolved, That we, the American Pharmaceutical Association, hereby memorialize the Congress of the United States, appealing for an amendment of the United States Patent Law which shall make it obligatory on the part of manufacturers of such products to manufacture them in this country within a specified time dating from the issue of patents, under the penalty of revocation of patent privileges.

Respectfully submitted,

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For the Committee.

HARRY V. ARNY, PH. G., PH. D.,
Editor Druggists' Circular.

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