members of the faculties of the Colleges of Medicine and Dentistry.

Dr. F. M. Barta, '06, has been elected President of the Cedar Rapids Branch of the Bohemian National Alliance of America. Dr. Barta is also a graduate of the College of Medicine and is at present located at Cedar Rapids, Iowa.

A very comprehensive paper on the subject "Vanilla," by Prof. R. A. Kuever, appears in the February issue of the Ice Cream Trade Journal. It is a detailed account of the nature and source, origin, habitat and distribution of vanilla beans; commercial varieties, and methods of preparing—artificial or synthetic vanillin, Vanillism; Adulteration—imitations and artificial extracts; Definition—legal investigations; standards of analysis.

This paper was given as a lecture before the annual convention of the Association of Ice Cream Manufacturers of Iowa, and also before the annual Convention of the Nebraska Association ot Ice Cream Manufacturers. The former convention was held in Des Moines and the latter in Omaha.

Dean Teeters was called to Omaha a short time ago to act as a member of a visitation committee for the American Conference of Pharmaceutical Faculties at Creighton College of Pharmacy. Other members of the committee were Prof. Caspari of the St. Louis College of Pharmacy and Dean Koch of the Pittsburgh College of Pharmacy, Chairman of the Executive Board of the Conference. Prof. Koch was a guest for a day at the home of Dean Teeters before returning to Pittsburgh.

The Pharmacist and the Law

SALE OR PRESCRIBING OF POISONS. MORPHINE—"LEGITIMATE USE."

Kentucky Acts, 1912, c. 86, makes it an offense for any registered pharmacist or licensed physician to prescribe for, procure for, or sell or dispense to any person opium or its alkaloidal salts or their derivatives or any admixture containing opium or its alkaloid salts or their derivatives, or otherwise deal in the same for any purpose other than for "legitimate use," under a penalty of a fine of not less than $20 nor more than $100. An indictment was returned under the statute against a regularly licensed and practicing physician, for prescribing morphine for a purpose other than for a legitimate use. The circuit court sustained a demurrer to the indictment, on the ground that it failed to charge that the morphine prescribed for and sold to the purchaser by the defendant, was an alkaloid or derivative of opium or an admixture containing opium, and the court could not judicially know or say that such was its character. On appeal, the appellate court said that, while morphine was not named in the statute, as an alkaloid, derivative or admixture of opium, it did not suppose there was a person, of ordinary intelligence or common understanding, residing in the state, but has familiar knowledge of its power as a narcotic, its deadly effect as a poison, and that it is an alkaloid or derivative of opium. The word "morphine" has as well-defined a meaning as the word "whisky" and its qualities and effects, are as well known to the generality of the people of the state, as are those of the intoxicant called "whisky"; and manifestly it would be a work of supererogation to allege in an indictment charging one with the unlawful sale of whisky, that it is a spirituous liquor or intoxicant. It was therefore held that the validity of the indictment was not effected by its failure to state that the morphine sold was an alkaloid or derivative of opium.

The defendant also insisted that the failure of the statute to define the words "legitimate use" rendered it void for uncertainty. In other words, it was argued that the statute fixed no standard, by which the physician in selling or dispensing opium, its alkaloidal salts or derivatives, is enabled to know what use of it by the purchaser would or would not be legitimate. The court, however, followed Katzman v. Commonwealth, 140 Ky., 124, 130 S. W., 990, where it had under consideration the validity of Section 2630, Kentucky Statutes, which regulates the sale of certain poisons by retail, and declares, in substance, that a sale or delivery of such poison shall not be made by any person, without satisfying himself that the poison is to be used for legitimate purposes, without defining the words "retail" and "legitimate purposes." A prosecution, instituted by warrant, against Katzman for violating this statute, resulted in his conviction, and he sought a

reversal of the judgment on the ground that the statute was void for uncertainty, because it failed to define the words quoted. The court held, however, that the statute was not void on this ground. It said, "It may be admitted that, although the meaning of the words 'retail' and 'legitimate purposes,' as used in the statute, are reasonably well-understood, it is nevertheless possible that there might be difference of opinion as to whether, in a given state of case, the sale of a drug was by retail or for a legitimate purpose, and it is possible that in administering this statute, it may occasionally happen that a druggist will be accused, who claims not to know what constitutes a sale by retail, or what a legitimate use of opium; and it is also possible that different trial courts and juries may not always be harmonious in the conclusions reached upon this point. But the fact that there may be occasional doubt or want of agreement on this question cannot be allowed to invalidate the statute."

The opinion then proceeded to state that a person who has intelligence enough to conduct a drug store, could not fail to know what would constitute the selling of a drug by retail or to understand the meaning of the words "legitimate purposes" as used in the statute; that the druggist must, as declared by the statute, first satisfy himself that the sale of the drug or poison, is for a legitimate purpose; and that, if he, in fact, does not know the purpose for which the poison is to be used, or has any doubt about it, then he must, in good faith, exercise reasonable care to find out the purpose for which it is bought. "The statute," it was said, "was intended to regulate sales by druggists, and when it is sought to apply the words 'legitimate purposes' to a sale of drugs or poisons by druggists, they have a technical meaning that may not be clearly known or understood by courts or jurors, and so it is permissible to allow experts to give evidence as to what is regarded by qualified druggists and physicians as legitimate purposes for which sales may be made, so that the trial court and jury may be informed as to what is recognized as a legitimate purpose, for which these drugs may be sold by those intrusted with their sale, and to whom, in a measure, is confined the knowledge as to what constitutes a sale for legitimate purposes."

The court held that this reasoning must control in the construction to be given the words "legitimate use." The word "legitimate," in the statute, was not used in its original sense of *lawful,* but in its secondary sense of *proper* or *warranted,* as when we speak of a "legitimate conclusion," or a "legitimate argument." Morphine is sold for legitimate purposes, under the statute, when, under the facts, a druggist or doctor, acting according to the ordinary usage of the profession, and exercising ordinary care, would have made the sale. This, it was held, was a question for the jury. The judgment was therefore reversed, and the cause remanded for further proceedings.

Commonwealth v. Garhart, Kentucky Court of Appeals, 169 S. W., 514.

ADULTERATION—ICE CREAM DEFICIENT IN BUTTER-FAT.

In proceedings for selling ice cream deficient in butter fat in violation of the Pennsylvania Ice Cream Act March 24, 1909, it is held that the title of the act, reading, "An act for the protection of the public health and to prevent fraud in the sale of adulterated or deficient ice cream, fixing a standard of butter-fat for ice cream," gives sufficient notice of the contents of Section 4, which provides that "no ice cream shall be sold within the state containing less than seven *per centum* of butter-fat, except where fruits or nuts are used for the purpose of flavoring, when it shall not contain less than six *per centum* of butter-fat." The act was held to be within the police power of the state, though ice cream below the standard set, is not injurious to health. Ice cream, it was said, enters so largely into the food supply of the public, as to have become a proper subject of legislation, especially in view of the opportunities which its manufacture affords to practice imposition. In the popular understanding, it is largely composed of milk of which butter-fat is an important constituent. If by the exercise of ingenuity, and by the practice of unwarranted thrift, a product can be put upon the market having the name and appearance of ice cream, but lacking the chief element which gives it value as an article of food, a large opportunity would be afforded to dealers in that article to profit by deception, and it is the opportunity for such deceit of which the police power takes notice and seeks to take away. "It has been the policy of this state," said the court, "to legislate on the sub-

ject of milk and milk products, and statutes have been enacted which made it unlawful for any person to sell milk which contained less than a fixed percentage of butter-fat and less than a fixed percentage of mixed solids, making it unlawful to sell cream which contained less than a fixed percentage of butter-fat which classified cheese and fixed the percentage of butter-fat which the various classes of cheese should contain; and similar legislation has been enacted in other states. Legislation of a like character is found in the act of May 21, 1901 (P. L. 275), forbidding the sale of vinegar which contains less than four *per cent.* of absolute acetic acid. If the sale of pure milk containing less than three and one-fourth *per cent.* of butter-fat may be prohibited, it is not apparent why the same principle does not apply to ice cream. Milk is a natural product—wholesome and useful for food. The milk of many cows contains less than three and one-fourth *per cent.* of butter-fat. The owners of such cattle have a constitutional right to sell the product of their dairies; but this right has been held to be subordinate to the public welfare, and this welfare demands that a fixed minimum standard of butter-fat shall exist in the whole milk sold in this commonwealth. The known disposition of some dealers to cheat, and the opportunity afforded them by the absence of some regulation of the business, is the justification of such legislation under the police power." Although the dairy and food commissioner was specially charged with the enforcement of the provisions of the act, it was held that a prosecution thereunder need not be commenced by him, but may be brought by any citizen.

It was shown by the evidence that a pint of ice cream for the sale of which the defendant was prosecuted had been analyzed and found deficient in butter-fat. It was held not error to exclude the evidence of experts to show that samples taken from other parts of the same can might show different percentages of butter-fat.

Commonwealth v. Crowl, Pennsylvania Supreme Court, 91 Atl. 922.

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FOOD AND DRUGS ACT—"ADDED" DEFINED—MISBRANDING.

In a proceeding to condemn a quantity of a syrup called Coca Cola on the ground that it was adulterated and misbranded, the Circuit Court of Appeals made the following rulings. Forfeiture was claimed under the Federal Food and Drugs Act. It was held that the word "added" in section 7 of that act, declaring that an article shall be deemed to be adulterated if it contain any added poisonous or other added deleterious ingredient which may render the article injurious to health, implies the existence of a standard, and an element necessarily used to create a standard is not added. If caffeine was the addition to Coca Cola, as the complainant claimed, what was the base? For 15 years before the passage of the act, Coca Cola had been an existing article of food. It was a compound; it had no distinctive base (unless water, by reason of its larger proportion); it was made up of water, sugar, caffeine, phosphoric acid, glycerine, lime juice, coloring matter, flavoring matter and "merchandise No. 5." The test that whether the deleterious ingredient is "added" is whether this ingredient is in its natural or in an artificial form may often be a useful aid in applying and interpreting the statute, but it cannot be applied where artificially compounded foods are under consideration. In construing clause 5 of section 7, it is necessary to consider section 8 of the act, providing that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded, in specified cases, and when so construed, the act requires a standard before there can be any added ingredient or adulteration.

The act, it is held, makes no distinction between compounds known at its date and those thereafter devised, but it does not absolutely forbid the use in any compound of any element that a jury may call deleterious. Congress, having selected and regulated the use of those things known to be particularly dangerous, has not wholly forbidden other things from which no serious danger need be anticipated. The word "added" may be construed as being used with reference to a possibly deleterious food ingredient beyond the quantity in which the ingredient is normally found in usual or customary articles of food, and no such ingredient should be considered as added, provided it is present only in the quantity in which it existed in common articles of foods generally known. So construed, caffeine is not an added deleterious ingredient of Coca Cola.

The compound known as Coca Cola was held not to be misbranded, the name being a