

Contributed and Selected

FURTHER FACTS ABOUT DRUG IMPORTATIONS.

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Under the heading of "Some Facts Concerning Drug Importations," by Dr. H. H. Rusby, of New York, in the "Journal of the American Pharmaceutical Association," of February, 1915, Dr. Rusby criticises the article contributed by Mr. J. W. England, on "Drug Importations," in the January issue of the Journal.

Dr. Rusby states that he agrees with Mr. England's general conclusions and claims as there outlined. He adds,—“On the other hand, there are statements in Mr. England's article that have no basis whatever in fact, and there are others which can be justly weighed only in the light of existing conditions to which he makes no reference.” Dr. Rusby picks out this statement made by Mr. England,—“It is manifest that such a system gives a large scope for the use of personal influence and offers the possibility of gratifying private grudges. It is not asserted or intimated that any of the officials of the ports of this country are guilty of such nefarious practice, but it is certain that the system encourages such practice.” Dr. Rusby answers by saying—“It is very likely that at some ports where little business is done, and where very few persons are employed, such knowledge incidentally reaches the analyst, but this is not a design in the establishment of the methods.”

Any one who is acquainted with the importations at different ports knows that this is no answer at all. It is true that, in the Port of New York, where the bulk of importations is made, the system may be so enforced that Dr. Rusby is not acquainted with the ownership of the goods, the samples of which he is examining, and in fact we know that this is the case, as Dr. Rusby has made a statement to that effect, and he has the confidence of every man, but this condition does not and cannot prevail at other ports, where the importations are exceedingly small as compared with the importations at the Port of New York. If the office of Dr. Rusby was filled by a dishonest official, there is no doubt that he could obtain any information that he might wish to obtain as to what lots were represented by the samples submitted to him for examination. The statement of Mr. England remains with undiminished force. Mr. England did not directly or indirectly state or infer that any of the present officials were dishonest. He stated, and this statement is based on facts and on experience, that the tendency of the system was to debauch public officials. We may add here that this is the tendency of all bureaucratic administrations, when such officials set themselves above the law and outside of the law, and claim that they are justified in taking extra legal or illegal action, if in their opinion such action is for the benefit of the public. This course has been repeatedly followed, and for the reason stated, by

officials of the United States Government in their actions taken under the Federal Food and Drugs Act.

Dr. Rusby criticises, also, Mr. England's statement that Government officials higher up are apt to support the findings of their subordinates. This statement on the part of Mr. England can be established by facts. It can be shown that importations were rejected by officials of the United States Government for reasons that were extra-legal or illegal, and that their action was supported on appeal to the authorities at Washington, although it was known at Washington that the grounds on which the lower officials refused admission were illegal. Dr. Rusby explains Mr. England's position by a remark that is not worthy of that high repute in which he is held by the community. We hold that the following remark is not an argument and is an unjustifiable attack upon those who are trying to remedy a defect in the law and a great wrong, that is now inflicted upon the American people.

Dr. Rusby states, that in his opinion, the reason for Mr. England's impressions is that, "An importer who has always insisted upon his approval of the objects and purposes of the drug law, and who has given it his continued support, suddenly finds himself saddled with a shipment of the unfitnes of which neither he nor any one else has any doubt." This expression of Dr. Rusby needs only to be stated to receive the condemnation that it deserves. He possibly may have the writer in mind, when he has made this statement. It is hardly necessary for the writer to define his position or the position of the house of which he is President, but he can call upon the Department itself to prove that he has gone so far as to re-export goods that have been released by the Department, which he was told were released through a mistake.

Dr. Rusby adds,—“The rarest thing in all my experience, although I have known it to occur, is for an importer to exhibit a willingness to have the law justly enforced when this would result in a loss to him.” It is unfortunate that Dr. Rusby's opinion of business integrity is so exceedingly low, but from our personal experience, we can give him certain facts that show a willingness on the part of importers to take a loss rather than to accept the delivery of goods that are of inferior quality.

Quoting further from Dr. Rusby, he states,—“A far more serious question than any of the above is that of providing for judicial review of the findings of experts, which Mr. England strongly approves, and in which approval he is supported by many of the ablest lawyers, judges and legislators in the country. On general principles, it would seem clear that the importer should have this right and it is only the result of experience that can lead one to take the opposite view.”

It is worth while to quote Dr. Rusby at some length on this argument as the appeal to Congress to revise the law and give importers the right to appeal to the courts, is the chief argument of the agitation that is now spreading throughout the country. We would ask your attentive consideration to the argument presented by Dr. Rusby against granting such a right to importers, and in considering his argument it must be borne in mind, that this is a right already conceded to all importers of merchandise into the United States excepting only importers under the Federal Food and Drugs Act. Importers under the Federal Food and Drugs Act only claim the same right of appeal to the court of appraisers and to

the United States Court of Appeals, that is now granted to other importers, and now for Dr. Rusby—

“All seizures of interstate shipments are subject to court review and many hundreds of such cases have been brought since the Federal Food and Drugs Act went into operation. At many of these trials, I have been a listener and I can recall scarcely any into which gross perjury did not enter. Were one to judge only by his observations of such a case, he would be likely to conclude that there is no other class of persons so dishonest as these expert witnesses. Leaving out of consideration all cases in which there is a fair ground of error and all differences of opinion, I do not hesitate to assert that in nearly all important cases one or more witnesses testify to what they know or fully believe at the time to be untrue. Our unfavorable opinion of these results must be qualified by the reflection that in most such cases, some experts have been asked to testify who have refused to do so, on conscientious grounds. Nevertheless, it is never difficult for an attorney to find one or more who are willing to thus degrade the profession. I have seen a chemist deny the pinkish-color which promptly appeared in the test performed in the court room while he was looking on. I have known a witness, after having sworn to an entirely different result from that which he had previously obtained, to retire under instructions of his attorney, so that he would not see the result of the same test applied in the presence of a jury and in this way would escape being compelled to state the truth concerning it. I have heard a witness testify that all volatile oils contain alcohol in varying amounts, oil of peppermint about 90%. In this case, because that witness occupied the chair of *Materia Medica* in a medical college, while the one opposed to him was in a college of pharmacy, it was only with great difficulty that the jury could be convinced that his testimony was incorrect. It is this ignorance of the jurors, their complete dependence upon the statements submitted, and their unfitness for grasping and interpreting technical facts, in which the danger of this method of deciding such questions principally resides. As to the tendency of the witness to speak correctly, we must consider whether government witnesses, with no other influencing motive than that of justly and impartially upholding the law, are more or less likely to testify truthfully than are men who have been offered a rich fee, often a temptingly large one, to say that for the saying of which they are to be paid.”

You will note from a careful perusal of this argument that Dr. Rusby does not advance any argument whatever against the justification of this request on the part of importers, and indeed, he goes so far as to say that this appeal is supported by many of the ablest lawyers, judges and legislators in the country, excepting that his personal experience is that experts as a class are thoroughly dishonest and that being so, it would be wrong to give the right of appeal to American citizens, and that it is very much better to leave these questions to be settled as they now are; that is, in the hands of public officials who have autocratic power, who customarily act beyond the law and contrary to the law, because of their interests in the welfare of the people, and who are presumably honest and incorruptible.

It should not require more than a statement of this argument to show that Dr. Rusby has placed himself out of court and that his arguments are not worthy of serious men who still have some faith in humanity and believe that, on the whole, men are honest. It is unfortunate that in Dr. Rusby's argument he has failed to appreciate the basic principle that underlies the demand for the right of an appeal to the courts. If the right was granted, such appeals would not be made on a question of quality, excepting the importer had a sure case, for the reason that no merchant is going to expose himself to the public as an importer of inferior goods. The appeal will be made only when necessary to protect the importer against the extra-legal and illegal acts so constantly perpetrated at the present time by officials of the Government of the United States and for the purpose of correcting inequalities of administration at the different ports.

In the Declaration of Independence is stated that it is the right of every man to pursue “life, liberty and happiness.” This statement is no longer true as ap-

plied to a very large section of the American people. It is within the power today of a combination of officials of the Government of the United States to drive a man out of business and so make it impossible to enjoy that right which our Declaration of Independence declares to be inalienable. It is probable that the law is unconstitutional, because it deprives the American citizen of this birthright, but this cannot be known until a case is carried to the Supreme Court. Congress has always been looked upon as the bulwark of the personal freedom of American citizens. In passing the Federal Food and Drugs Act without the right of judicial appeal, Congress, probably unintentionally, betrayed the most important interests of the people.

Bureaucratic government is the government of despotism. It is practiced to its fullest extent in Russia and there has a political as well as a civil application. There is no difference in the Federal Food and Drugs Act as now enforced in this country and the bureaucratic government of Russia, under which a citizen can be seized in the dead of night and disappear forever, excepting that this particular law applies only to civil matters. If, however, the American people tamely permit bureaucratic government such as this in a civil matter, the time will come when it will be extended to political matters. The power of a large section of the American people for the "Pursuit of Life, Liberty and Happiness" has been placed in the hands of the United States Government officials, more or less honest, and more or less able. There should be no hesitation in redressing this wrong. Those of your readers whose ancestors helped to make this country what it is, know well that it was their intention to build up a free government under the law. It was because of bureaucratic government that this country severed its relations with Great Britain. While the abuses now existing in the administration of the law justify this amendment, this argument is of secondary importance, and the basis on which those numerous organizations that have taken up this matter with so much interest make their demand, is government of the people under the law.

To the Editor:—

I thank you for permitting me to see proof of Mr. French's reply to my last article in the Journal. My views were correctly stated in that article, and they were based upon knowledge rather than opinion.

I will thank you to say that I disclaim the intent to refer to any particular house or houses, which would be an abuse of my position. My language, as quoted by Mr. French, "It is the rarest thing in my experience," etc., makes my statement quite general. I think the most difficult feature in the administration of the law, as to both foods and drugs, has been this very common endeavor to secure the admission of shipments, after their unfit character has been demonstrated. Indeed, this by no means tells the whole story. The possibility of succeeding in such attempts, under the peculiar provisions of the law, has largely frustrated its beneficent purposes, and it will eventually become necessary to devise some new legislation to prevent this procedure.

I would like to add that what Mr. French says about the general tendency of bureaucratic administration is fully justified. It is hardly too much to say that

this growing tendency is alarming. We differ as to its bearing on the administration of the Food and Drugs Act. I am quite as sure that an ordinary jury is not the proper body to decide such technical questions as the identity, purity and quality of drugs, as Mr. French is to the contrary. Decision by a properly qualified body is no more bureaucratic than by an unqualified one, as the common jury certainly is.

Very truly yours,

H. H. RUSBY.

THE PRICE OF SUCCESS.*

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Every desirable achievement has its price. Every step forward costs effort. The chap who said, "There is no excellence without great labor," was not an amateur in the game of life. The man who said, "Eternal vigilance is the price of success," had cut the cards in the great game until he knew whereof he spoke, for verily no man was ever born with this much wisdom. Such philosophy comes only from those who have had the tutorship of necessity, that grim teacher who is dean of the school of experience in which not only fools but even the wise must learn the hard lessons of life. In fact, we are mostly fools until we go through the hardships that are thickly strewn along the road to success. Success is not a stationary attainment; it is forever moving away from its pursuers, and its luring call of work, work, work, comes with every waking moment and in dreams. The amassing of a million dollars may not mean success. The million that means success is the earned million that came little at a time through unceasing vigilance and hard work, and not the million that came accidentally when fate was loafing on the job. Eternal vigilance and hard work will put the poorest business on this continent into pay dirt as a profit-maker. Eternal vigilance is head work. There are many better pitching arms in the big leagues than the twirling wing of Christy Mathewson, but greater heads there are none. Success in business is a big game that works head and hands to full capacity. Hands cannot win without head work. Head will never score working alone. Brilliant ideas are born only to die in an unsystematized business that needs arranging from the curb to the alley. The store that looks like first money in a clean-up contest will never get anywhere if the want book and the advertising are overlooked. Every business that is approaching success must have at least one man whose judgment is supreme. He is a kind of a court of last resort. He has observed, worked and toiled. No detail has escaped his eagle eye or his lightning powers of discernment. He has seen things happen and things that have happened once do not have to happen again to remind him of the effect that comes from a certain cause. Once in a great factory on whose pay roll were thousands of men, with many experts and each supposed to possess all the information that went with his job and to be able to cope with any situation that might arise, it happened that the belt on a big machine was slipping and the operator of the machine did everything he knew to do, to no avail. The master mechanic of the plant was called and exhausted his collection of tricks

* The Practical Druggist, March, 1915.