words, the contents of that book are much more extensive that we should expect any teacher to require of an undergraduate class. This course was followed partly with the object of affording ample references, and partly to allow scope for individual selection by the teacher.

Coming to the subject of actions and uses, I find it far more difficult to determine on a course of action. It is quite clear that all poisonous drugs should be thoroughly studied as to mode and danger of occurrence of poisoning, medicinal and toxic dosage, conditions favoring a toxic effect, mode of action and the antidotal indications and treatment. The object of this thorough study of poisons is not only to qualify the pharmacist to administer emergency treatment, but to make him alertly intelligent in his estimates of danger in the prescriptions coming to him.

In regard to the ordinary medicinal action and uses of non-toxic drugs, the principle on which I act is that this is one of the subjects that the pharmacist should *know something about*, on general principles, but that he should not *know* these subjects as he does those with which he must have active professional dealings. My own practice has been, therefore, to go very thoroughly into the classification of medicines, based on their physiological action, and teach with the utmost possible clearness the general nature of both primary and secondary effects. Having thus referred the respective drugs to their therapeutical classes, the teacher is at liberty to go as far as he chooses in discussing the individual peculiarities of the several drugs.

In the matter of the biological serums, vaccines, antitoxins and similar products, where the pharmacist has nothing to do with preparation or compounding, there seems to be little absolute necessity for other information than that of storage, preservation and commercial handling, although the subject is one of great interest.

From what I have said on the subject of therapeutics, it will be inferred that the subject of experimental pharmaco-dynamics, or pharmacology as it is still called by many, is not, in my opinion, a subject for the pharmacy school.

TREND OF LEGISLATION AS INDICATED BY THE COURTS.*

BY ROBERT L. SWAIN.

While legislation is frequently the basis of decisions by the courts, it is also true that the decisions of the courts are frequently the basis of legislation. Many laws have been enacted to meet objections or to remedy conditions pointed out by the courts. Many have also been passed to set aside judicial opinion. Much of our law is Case law, so called because it to is be found in the adjudicated cases. So important is this branch or repository of the law that one of the great classifications of the law divides the subject into Statutory and Case Law. Case law is of the greatest significance to subsequent legislation. Knowing what the courts have said regarding the application of a principle to a factual situation, legislation may be more easily framed to meet the judicial view or to avoid the conditions which have not been approved. Case law is a very dependable source of statutory law.

* Section on Education and Legislation, A. PH. A., Baltimore meeting, 1930.

There is now a well-directed movement to render uniform the law of the several states regulating certain social and business relationships. This work is in the hands of eminent legal scholars, and is designed to simplify and restate the law. The uniform partnership act is a case in point. The opinions of the courts of the several states dealing with the relationship created by partnership were carefully compiled and legislation drawn to give effect in all of the states to what was established as the majority view. The law of partnerships has been passed in many states, thus making uniform this branch of legal procedure. This one illustration will serve to point out the importance of case law to statutory law.

This subject is of great importance to pharmacy. Pharmacy laws have been before the courts in most of the states. The courts have upheld all of a certain kind, many of another kind, and have expressed themselves very forcibly regarding certain defective provisions. It has been the evident desire of the courts to uphold these laws even in those cases where the language of the act made it impossible to do so. From the very outset the courts have recognized the public health value of pharmacy and have sought to make effective the protection which the pharmacy laws contemplate. So far as I have been able to learn the courts have, in every instance, upheld the provisions prescribing educational, professional and technical qualifications for pharmaceutical registration. Some of the most profound appreciations of the significance of pharmacy to the public welfare is to be found in the opinions of the courts. This same appreciation of the service which pharmacy renders persists in those decisions in which the court is compelled to invalidate the law. For instance, in the case of South Dakota *vs.* Wood, decided on October 11, 1927, which involved the legality of restricting the sale of patent and proprietary medicines to pharmacists, the court made the following statement: "A police regulation for the protection of the public health will be sustained, if by any fair construction it has a tendency to effect its object. We have, therefore, sought earnestly for a valid reason to sustain the law, and to that end have considered the reasons advanced in the briefs of the appellant, and have searched the statutes and the reported cases for a valid reason." There is a marked uniformity in the opinions of the courts regarding the fundamental aspects of pharmaceutical service. The different conclusions which have been reached in different jurisdictions are not so much different in the principles recognized as in the manner in which the principles have been applied.

In the early case of State *vs.* Donaldson, decided in Minnesota June 18, 1889, reported in 42 N. W. 781, the court said: "Undoubtedly the state has as much right to regulate the sale of patent medicines as any other; and, in the exercise of that power, may adopt any measures they see fit, provided only they adopt such as would have some tendency to accomplish the desired end, to wit, the protection of the lives and health of the public. This is the extent and limit of their power. But, because it was deemed either impracticable or unnecessary to regulate the sale of patent or proprietary medicines, of the acts of nearly thirty states or territories regulating the paactice of pharmacy (all so nearly alike as to suggest a common source) which we have examined, every one, unless ours be an exception, expressly excepts the sale of patent or proprietary medicines from its operation. Probably, the reason is that merely to limit their sale to pharmacists would furnish no protection to the public, without some further regulation as to inspection or analysis

that would tend to exclude from sale those that might be injurious to health, or something requiring pharmacists to exercise their skill and science in determining the quality and properties of such as they sold. If we turn to our statute we find an entire absence of any such provisions." Later the court added: "Had the act made pharmacists responsible for their quality, this might have had some tendency to protect the public." This case is a leading case, and may still be accepted as a sound statement of the law. The principle is well established that so long as the pharmacist does not analyze patent or proprietary medicines so as to satisfy himself of their value, so long as the sale does not require the exercise of skill or professional judgment, and so long as the sale is not otherwise regulated or controlled, there can be no restrictions legally imposed upon the sale of such commodities.

A different view has been expressed in several instances, especially in the sale of domestic remedies. In the well-known case of State Board *vs.* Mathews, decided January 25, 1910, in New York, the court said: "There are strong reasons relative to the public welfare which make it proper that regulations concerning the sale of drugs and medicines should not be confined to poisons, but may be extended so as to embrace what are known as harmless household remedies, *i. e.*, which may be harmless if properly prepared. The injury to the public health which might ensue if such medicines were carelessly or ignorantly compounded so as to contain deleterious ingredients, or deceptively, so as to be something different from what they purported to be, is manifest. The police power logically extends to such medicines no less than to poisons and other lethal medicinal agents."

The relationship of pharmacy to public health and the individual responsibility attaching to pharmaceutical practice is very clearly set out in the case of State *vs.* Zotalis, decided July 8, 1927, in Minnesota and reported in 214 N. W. 766. The statute before the court prohibited dealers located less than two miles from a pharmacy from selling certain drugs, including aspirin. The court upheld the law saying: "The statute should be sustained, if enacted, with reasonable reference to public health or welfare. If intended merely to give a monopoly to pharmacists or druggists by restricting sales to them, it is not sustainable. It is sustainable only as a police measure.

"The legislature thought that the dangers incident to its sale justified regulation and that a restriction of sales to pharmacists or to those under their supervision was effective. It is true that no technical skill is required in making a sale. This does not prove the statute invalid. As remarked by the trial court, the pharmacist knows where to procure a pure and genuine article and his prescribing physician will require him to furnish a pure drug."

Another question was presented by the facts before the California court, decided February 15, 1929, and reported as Ex-parte Gray, 274 P. 974. The law in question prohibited dealers less than a specified distance from a pharmacy from selling domestic remedies in the manufacturer's original package. In the opinion of the court there is a health question involved. The court said: "A police regulation for the protection of the public health will be sustained if, by any fair construction, it has a tendency to effect its object. All of the authorities recognize that the state has as much right to regulate the sale of domestic remedies in the original package of the manufacturer as it has to regulate the sale of any other kind of medicines and remedies. The mere fact that such medicines and remedies

are usually put in sealed packages or containers, with directions as to their use, should not alone be sufficient to remove them from the realm of regulation. A person purchasing such original package medicines might well rely, as it is intended that he should rely, upon such directions and administer the medicine accordingly, and, while the directions upon any particular original package medicine might be, and probably are, correct and safe, medicines of a dangerous character might be put up and sold in the same manner, with directions not safe, and not approved by a pharmacist, and thus the statutory province of the pharmacist be usurped to the detriment of the public."

In a very recent case, a Nebraska statute prohibiting any person other than a registered pharmacist from selling any item recognized in the United States Pharmacopœia or National Formulary was held invalid. This decision was in the case of State *vs.* Geest, decided June 4, 1929. This is one of the most important decisions in the field of pharmaceutical jurisprudence. It very closely points out that the law failed because of unreasonable and unjustifiable restrictions. It was in no case an abatement of the principle heretofore recognized. In fact, it may be that the decision states the principle even more forcibly than preceding cases. The following is from the opinion by the court: "The provision, conferring on licensed pharmacists, the exclusive right to sell any of the articles listed in the United States Pharmacopœia and National Formulary must stand or fall in its entirety.

"It will not do to say that because the legislature *intended* to promote the public health, safety, and welfare by the legislation in question and that the sale of poisonous, harmful, or deleterious drugs or medicines should be restricted to licensed pharmacists, we should, therefore, hold the act valid . . . . We think no one will contend that it would be within the scope of the police power if the act purported to restrict to licensed pharmacists the sale of sugar, coffee, tea, or dairy products. If the act were so framed that we could eliminate from its operation those articles that are useful and harmless, and leave it in force as to those articles when the public safety or health would be promoted, or calculated to be promoted, by restricting their sale to registered pharmacists, we would gladly do so. As the act is framed, however, we cannot differentiate and separate one class from another. That is a legislative and not a judicial function.

"We are constrained to hold that in so far as the act limits to licensed pharmacists the sale of all articles listed in the United States Pharmacopœia or National Formulary, it transcends the police power and is therefore invalid."

It will be noted that all of the cases predicate the validity of pharmacy laws upon the police power of the state. This police power has been defined by the Supreme Court of the United States as "one of the most essential of powers, at times the most insistent and always one of the least limitable of the powers of government." It is the authority for the laws, rules and regulations promoting public health, morals, safety, convenience and general welfare. Broad and extensive as the doctrine is, it is exercisable only within the constitutional limits. Thus while "the police power embraces the protecting of the lives, health and property of citizens, the maintenance of good order and the preservation of good morals" (Patterson *vs.* Kentucky 97 U. S. 501), the legislature cannot "under pretense of making police regulations . . .enact laws unnecessary to the preservation

of the health and safety of the community, or which prohibit that which is harmless in itself, or command that to be done which does not tend to promote the health, safety and welfare of society" (Toledo, W. & W. R. Co. *vs.* Jacksonville, 67 Ill. 37). "The legislature cannot, under the guise of police regulations, arbitrarily invade personal rights or private property" (Chicago, B. & O. Co. *vs.* State, 47 Neb. 549). "A statute which unjustly discriminates against one class of citizens in favor of another, or attempts to create a distinction as to their property or personal rights, not founded on sound reason, is invalid, unconstitutional and void" (State *vs.* Donaldson, 41 Minn. 74).

A study of these decisions and the points of law emphasized will be profitable. While these are but a few of the opinions available, they are the most recent and are valuable as reflecting current opinion. A summary of the law will embrace the following:

Pharmacy is a public health calling and is based on a valid conception of the police power; laws restricting household remedies to registered pharmacists will be upheld; laws prohibiting dealers other than registered pharmacists from selling certain types of medicines are valid and reasonable; laws imposing restrictions and regulations affecting the public health, or tending to affect the public health will be sustained; the necessity of carefully correlating restrictions with valid purposes must be observed.

As the educational, professional and technical requirements have been universally upheld, it would seem that the directions in which legislation is to proceed is fairly well indicated. The profession may feel secure in advancing the qualifications for registration to a satisfactory basis. It can still further control the sale and distribution of drugs and medicines if this is approached from the standpoint of public interest. It is only essential that the law shall be so worked out as to exercise a real public function. A wise policy on the part of the profession, based on an intelligent grasp of the facts and principles involved, would seem assured legislative and judicial approval.

The chief purposes of this paper are to emphasize the fundamental legal conceptions underlying pharmacy laws and to mention some of the salient points crystallized in the opinions of the courts interpreting them. No attempt has been made to cover the field other than to venture the opinion that the courts do have the disposition to interpret pharmacy in the terms of its public value. A further purpose was to suggest that the adjudicated cases should be made the basis for all subsequent pharmaceutical legislation. It is certainly obvious that the judicial view has become expressive of modern day demands. As the standing of pharmacy progresses it would seem reasonable to forecast that the courts would uphold statutory provisions which, under an older order, might not have been sustained. It is my view that as the professional status of pharmacy becomes more impressed upon the public mind, legislation more in keeping with this development will be enacted and will be sustained by the courts. This tendency is already apparent in the law as established by the adjudicated cases.

The 79th annual meeting of the AMERICAN PHARMACEUTICAL ASSOCIATION will be held in Miami, Fla., during the week of July 28th, 1931.