The Pharmacist and the Law

ABSTRACTS OF LEGAL DECISIONS.

TAXING SMOKING OPIUM.—The United States Supreme Court holds that the reconversion of the residuum of opium remaining after smoking into a form fit for resmoking is not a manufacture of opium for smoking purposes within the meaning of section 36 of the McKinley tariff act, levying an internal revenue tax of $10 per pound upon all opium manufactured in the United States for smoking purposes, and prohibiting any person from engaging in such manufacture who is not a citizen of the United States, and who has not given the bond required by the Commissioner of Internal Revenue. The processes of reclamation of the opium charged are two, one by dissolving it in water, straining and purifying the solution so as to remove foreign matter, and then heating and cooking the refined solution, and thereby producing an inferior grade of smoking opium; in the other an admixture of smoking opium of a high grade is employed together with the residuum or yon shee. The court said that if Congress were undertaking to stamp out the practice of opium smoking, it might prohibit such processes of reclaiming, but in prescribing a revenue tax upon the manufacture of opium for smoking purposes it was not intended to subject the same substance more than once to the tax, or to require surveillance over opium smoking resorts,—in which, it would seem, such treatment of the residuum might most readily be conducted,—the same as over a factory or other establishment where the primary conversion of crude opium into smoking opium is conducted. *U. S. v. Shelley,* 33 *Supreme Court,* 635.

SALE OF BUSINESS—AGREEMENT NOT TO ENGAGE IN BUSINESS—AGREEMENT ASSIGNABLE.—A bill was filed in equity by W. L. Jones and J. L. Johnson against H. A. Knowles and the Crystal Pharmacy Company, a corporation, to keep the defendants from engaging in the drug business in the town of Samson, Alabama, for the reason that the complainants had purchased the good will of Knowles, who had contracted with them not to engage in the drug business in that town for three years. The bill alleged that Jones and Johnson were succeeded by a corporation in which they were the sole stockholders. It was held that the good will passed to this corporation, and it alone could sue to restrain Knowles from re-entering the drug business in violation of his agreement. The seller of the good will of an established business may enter into such an agreement, and as long as the purchaser continues in the business, and the stipulation remains in force, the seller cannot lawfully enter into competition with him either on his own account or as the agent and business manager of another. Nor can he take stock in and help to arrange or manage a corporation formed to compete with the purchaser. Such an agreement is not personal, unless specially made so, but inures to the benefit of one to whom it is assigned with the business. The fact that Knowles, the original seller, owned for a time some stock in the Jones and Johnson corporation, which he subsequently sold, did not release him from his agreement. The corporation alone being entitled to sue the injunction granted to Jones and Johnson individually was dissolved. *Knowles v. Jones, Alabama Supreme Court,* 62 *So.,* 514.

CONDITIONAL SALE OF CARBONATOR.—A contract was made for the conditional sale of a soda fountain carbonator at the price of $130, to be paid $10 on deposit, $20 on tender of goods or bill of lading, and the balance of $100 in ten monthly notes. The contract contained an option under which the buyer might purchase outright for cash. Upon shipping the carbonator, the vendor sent a bill of lading to a local bank, with a letter of instructions, informing the bank of this option, and authorizing the bank to accept a cash payment of $100, and deliver the bill of lading to the buyer. A similar letter was written to the buyer, who thereupon went to the bank, paid the $100, received the bill of lading, and installed the carbonator in his drug store. Later the seller, claiming that it had made a mistake of $10 in its instructions to its agent, brought an action against the buyer in the nature of a replevin to recover the possession of the carbonator. The answer of the defendant was that the bank as the duly authorized agent of the plaintiff, and acting within the scope of its authority, and by the direction of the plaintiff, had made a supplemental agreement with the defendant

by which the title to the carbonator should pass to him upon the payment of $110 in cash, which agreement was fully executed and passed the title to the defendant. Upon motion, the trial court struck out this answer as sham and frivolous, and judgment was entered for the plaintiff as in default of an answer. On appeal this was held to be error, and the judgment reversed, on the ground that the defense, instead of being frivolous, was the legal resultant of the admitted facts of the case. *A. H. & F. H. Lippincott v. Schneider, New Jersey Court of Errors and Appeals,* 87 *Atl.,* 437.

CONDITIONAL SALE OF SODA FOUNTAIN.—The trustee in bankruptcy of the purchaser of a soda fountain on a contract of conditional sale brought an action against the seller to recover the installments paid by the bankrupt on account of the seller's violation of the New York Conditional Sales Law. That law, Section 65 of the Personal Property Law, provides that, where property is retaken by the seller under a contract of conditional sale, it shall be retained for 30 days, during which it may be redeemed, and after that period may be sold at public auction. Unless so sold the buyer, or his successor, may recover the amount paid under the contract. After the bankruptcy of the buyer, the seller retook possession of the fountain and rented it to the bankrupt's successor from month to month from February to June, when the fountain was sold at auction. It was held that such lease constituted a retaking by the seller not in compliance with the statute, and entitled the bankrupt's trustee to recover the installments paid. The contract contained a provision that, on the buyer's failure to make payments as provided, all money paid under the contract should be retained by the seller, and that it should not be necessary for it to retain the property for thirty days after retaking or to sell the same for its benefit, but on such retaking the buyer's right to comply with the terms of the contract and receive the property was expressly waived. It was held that this provision, being contrary to the express provisions of the statute, was against public policy and void. *Crowe v. Liquid Carbonic Co., New York Court of Appeals,* 102 *N. E.,* 573.

CONDITIONAL SALE OF SODA FOUNTAIN—ELECTION OF REMEDIES.—A soda fountain was sold upon a conditional sale contract for $250 upon which $200 remained unpaid. The purchaser, Ross, also purchased from the seller supplies for the fountain of the value of $28.50, which sum also remained unpaid. He subsequently sold his business, exclusive of the fountain, to another, without complying with the Washington sales in bulk law (Rem. and Bal. Code, Secs. 5296-5300). The seller of the fountain, in reply to the purchaser of the drug business, stated that the fountain would have to be paid for by Ross, if he was good for it, but that the seller's agent would call on the purchaser of the business shortly and go into the matter. The agent called and attempted to sell the fountain to the purchaser of the business before his payment of the last installment of the price to Ross, and while he could have protected himself; but, not being able to sell the fountain to him, the seller retook possesion and instituted suit against Ross and the purchaser of the business for the balance due on the contract, claiming that the latter was liable because of the violation of the sales in bulk law. It was held that the seller of the fountain having retaken it and elected such remedy with notice to the purchaser of the business that it claimed the right to recover the price at a time when such purchaser could have protected itself, was estopped thereafter to claim the right to proceed on the contract. But the fact that the seller elected to retake the fountain did not satisfy the debt for the supplies, for which it was entitled to recover against the purchaser of the business. *Stewart & Holmes Drug Co., v. Ross, Washington Supreme Court* 133 *Pac.,* 577.

CHAMPAGNE—MISBRANDING—IMITATION. —A wholesale liquor dealer in New York ordered five cases of champagne from a firm in Peoria, Illinois. The order was filled with cases, the outside of which were marked with designs to represent cases of champagne and contained bottles of the same shape and made to imitate an ordinary champagne bottle. The bottles were corked and dressed about the neck the same and in very close imitation of ordinary champagne bottles, having the same style of label and seal, both attached in the same manner, and on the label was the name "Special Gold Cabinet, Superior Quality," with a coat of arms on one side and the initials "H. H. S. & Co." and

on the other certain figures, but without the word "champagne." The contents of the bottles was a very cheap, ordinary, low grade of carbonated white wine. The bottles were also marked with the words "Extra Dry," when in fact the contents were not "extra dry." In a suit for condemnation of the cases it was held that this constituted misrepresentation by misbranding intended to deceive and defraud purchasers, within Section 8 of the federal Food and Drugs Law of 1906, and that the champagne was subject to forfeiture.—*United States v. Five Cases of Champagne,* 205 *Fed.,* 817.

CONSTITUTIONALITY OF MILK ORDINANCE.—Suit was brought to restrain the enforcement of an ordinance of the city of Milwaukee providing that no milk drawn from cows outside of the city shall be brought into the city, contained in cans, bottles, or packages, unless they be marked with a legible stamp, tag, or impression bearing the name and address of the owner of the cows, and unless such owner shall, within one year from the passage of the ordinance, file in the office of the commissioner of health a certificate of a duly licensed veterinary surgeon or other person given authority by the State Live Stock Sanitary Board to make tuberculin tests, stating that such cows have been found free from tuberculosis or other contagious diseases. The certificate is required to give a number which has been permanently attached to each cow and a description sufficient for identification. The certificate must be renewed annually, and must show that the cows are free from tuberculosis or other contagious diseases.

The complaint was dismissed in the state court, and, after the judgment had been affirmed by the supreme court of the state, the case was carried to the United States Supreme Court. There it was contended that milk drawn from cows outside the city was unconstitutionally discriminated against. This contention was not sustained, as regulations relative to cows within the city forbid the sale of milk from sick or diseased cows, and contemplate inspection by the health officer, and the application by him of any known test to determine whether the animal inspected is afflicted with tuberculosis, and the removal by him of any diseased animal to a place where it will not spread infection.

It was also held that the confiscation, forfeiture and immediate destruction contemplated by the ordinance where milk does not conform to its requirements do not take property without due process of law, contrary to the fourteenth Amendment to the United States Constitution, even though the necessity of the tests be not demonstrated, and the beliefs which induced them may be disputed. The ordinance was declared to be a valid exercise of the police power of the state. The city was not required to let the milk pass into consumption and spread its possible contagion. Criminal pains and penalties would not prevent it from going into consumption. To stop it at the boundaries of the city would be its practical destruction. To hold it there to await judicial proceedings against it would be as the state supreme court said, to leave it at the depots, "reeking and rotting, a breeding place for pathogenic bacteria and insects during the period necessary for notice to the owner and resort to judicial proceedings." The judgment was affirmed.—*Adams v. Milwaukee,* 33 *Supreme Court* 610.

CLERKS AND TRADE JOURNALS.

Many employers not only are willing that their employes should read the trade journals, but are fully alive to the fact, that, usually, it is the employe who takes sufficient interest in his business to devote his own time to studying it, that is the employe best worth while. In other stores, however, although the trade journals come in month by month, no particular encouragement is given the employes to make use of them, and no effort is made in other ways to instruct them, to increase their interest in what they have to do, or to stimulate them to greater and more profitable effort.

The kind of clerk—the kind of salesman—who knows his business thoroughly and is not merely an order taker, is a valuable asset in your business. Such clerks are worth cultivating; and the qualities that go to make the efficient clerk are capable, in great measure, of cultivation. Set yourself, then, to help your clerks. Make it your business to see that they have a good trade journal—and use it.—*Western Druggist.*