The Journal of the American Pharmaceutical Association

Volume II DECEMBER, 1913 No 12.

Office of Publication, 79-89 North Third St., Columbus, Ohio.

Subscription, $3.00 per annum, within the United States. To Canada, $3.35. To other foreign countries in Postal Union, $3.50 per annum. Single copies, twenty-five cents.

Entered at the Postoffice at Columbus, Ohio, as Second-Class matter.

Papers and communications for insertion in the JOURNAL should be sent to the Editor, James H. Beal, Scio, Ohio. Subscriptions should be sent to the Treasurer, H. M. Whelpley, 2342 Albion Place, St. Louis, Mo.

The Association does not accept the responsibility for the opinions of contributors. Offensive personalities must be avoided.

SOME OF THE OBJECTIONS TO THE HARRISON BILL.

AT the time this is written (November 15) word comes from Washington that the so-called Harrison Bill (H. R. 6282), which has so long slumbered peacefully in committee, is about to be dug up and placed on the Senate Calendar, though it does not seem possible that the measure can be finally disposed of during the present session of Congress.*

It is well understood that under our dual form of government each state has exclusive jurisdiction in police matters, or the power to regulate its own internal affairs without outside interference, so far as such regulation does not affect the rights of other states or the rights of the Federal Government.

This supremacy of the state in policing its own affairs is qualified, however, by the fact that Congress has power to levy taxes within the states, and to regulate interstate commerce, and in the exercise of these two powers may incidentally interfere to a material extent in strictly *intrastate* affairs.

In consequence of the constitutional limitations upon the powers of Congress it was necessary to construct the Harrison Bill so that it would constitute either a regulation of interstate commerce or a measure for the creation and collection of internal revenue.

For what seemed to be good and sufficient reasons it was decided to draught it as a revenue measure, and as such it must mainly be construed, although the

*An analysis of the bill was given in an editorial in our July issue, pages 818-821, to which the reader is referred for more detailed information concerning its various provisions.

validity of some of its minor provisions rests upon the power of Congress to regulate interstate commerce.

Considering the difficulties natural to the draughting of a bill dealing with such an important subject, and at the same time keeping within constitutional limitations, it is not remarkable that there should be some radical differences of opinion as to the efficiency or expediency of its several provisions. Consequently, while holding the views expressed below, the writer does not intend to reflect upon either the honesty of purpose or good judgment of any who may hold quite different opinions.

The idea kept in mind by the National Drug Trade Conference in draughting its modification of the original Harrison Bill was expressed in the resolution adopted at the second meeting of that Conference, April 9, when it was resolved:

"That it be the sense of this Committee that the bill is not intended, and ought not to be intended, to regulate sales to consumers, but only to trace habit-forming narcotic drugs to the hands of the last distributor, and that the regulation of the sale of such drugs to the consumer in intrastate commerce should be left entirely to state, territorial and other local laws."

This idea of non-interference with the police powers of the state was adhered to throughout, and is the idea which was also in mind when the resolution of the A. Ph. A., adopted at Nashville, was draughted, which says:

"That the American Pharmaceutical Association endorses and approves the Federal measure known as the Harrison Bill, H. R. 6282, * * * * * * * as a reasonable and effective measure to provide the means of tracing the principal habit-forming narcotic drugs from the time of their introduction into the United States until they reach the hands of the physician and the retail druggist."

With this thought before us let us consider how well or how illy the expressed purpose of the bill is carried out.

Section 1 provides that, "every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes or gives away opium or coca leaves, or any compound, manufacture, salt, derivative or preparation thereof shall register with the Collector of Internal Revenue of the District" as a "dealer" in the said drugs, and pay a special tax of *$1.00* per annum.

It will be observed that, by its terms, this section requires physicians to register if they dispense, sell or distribute any of the articles covered by the Act,* but that it does not require them to register if they merely prescribe them, since a prescription addressed to a druggist for the delivery of a drug could not be regarded as a dealing in the said drugs any more than the delivery of a check on a bank could be construed to be the conduct of a banking business.

To this extent, then, the bill tends to encourage physicians to prescribe rather than dispense, but since all physicians are compelled to dispense the named drugs on occasion, it is practically necessary that they be registered as dealers.

It will be observed also that there is nothing in this section to prevent any person from registering as a dealer, upon the payment of the one dollar tax, and thus be entitled to obtain the official order blanks provided for in the following

*i. e.—If they dispense them in larger proportions than the excepted quantities specified in Section 6.

section, and thereby be able to secure any quantity of the narcotic drugs, and either use them himself, or dispose of them to any other person who is also registered as a dealer.

This liberty of registration has caused some persons to hastily condemn the bill as worthless, losing sight of the fact that its expressed purpose is only to trace the drugs in commerce, and of the further fact that the Federal Government cannot accept the tax from some persons and refuse to accept it when tendered by others, and that it cannot control the *intrastate* sale of these drugs any further than such control is necessary for the collection of the prescribed tax. If the bill went beyond these limits and attempted to limit registration to certain classes of citizens, or to control the sale of the drugs to any greater extent than necessary to insure the collection of the tax, such provisions would not only be void in themselves but might have the effect of rendering the entire act unconstitutional and void.

While the theory of the bill is thus to trace and not to control sales, it will, if enacted, have a strongly deterrent effect through the requirement of registration, the use of the official order blank and the publicity and exposure which it provides. The physician or druggist who is willing to sell "dope" on the sly will hesitate when he knows that every fraction of an ounce which he buys can be traced to him, and that the state or other officer acting under local law may ask him for an accounting of the manner in which it has been distributed. Of course, if the state laws are inefficient, or if the local authorities are lax in their enforcement, the main object of the Federal enactment will be largely nullified, but the responsibility would not rest with the Federal Act. In other words, it will be "up to" the states to see that the good effects of the national law are realized.

Section 2 provides that, except as provided below, the sale, delivery, etc., of the named drugs can be made only on an order written on an official form obtainable from the Collector of Internal Revenue of the district, and consequently no one can purchase the drugs unless he has registered as a dealer and procured the necessary order blanks. The original order must be preserved by the person who supplies the drug, and a copy must be preserved by the person who gives the order for a period of two years, and both the order and copy must be open at all times to inspection by Federal officers and agents, and by officers charged with the enforcement of any state law or local ordinance regulating the sale of narcotic drugs.

Three classes of cases are provided where the use of the official order blank is *not* required:

(a) In the dispensing or distribution of the drugs by physicians, dentists or veterinarians, registered under the act, in the course of their professional practice only, and only when personally attending upon the patient to whom dispensed.

(b) In the sale, dispensing or distribution by a pharmacist in pursuance of a written, signed and dated prescription issued by a physician, dentist or veterinarian, registered under the act, the prescription to be preserved for two years, and open to inspection by the same officials as are entitled to inspect the preserved orders and copies provided for in the first part of the section.

(c) To the sale, exportation or delivery of the drugs to persons residing in

a foreign country, who for obvious reasons could not register as dealers in the United States.

Among the objections which have been offered to exceptions "a" and "b" are the following:

It is claimed that they discriminate unjustly between physician and pharmacist by permitting the latter to dispense only on an order written on the official form, or on a prescription, while the physician may dispense without either, the inference of this objection being, either that the pharmacist should be relieved from the official order blank and prescriptions requirements, or else that the same requirements should be imposed upon the physician, dentist and veterinarian. To this it may be answered:

First. That it certainly cannot be considered much of a hardship to require the pharmacist to preserve his prescriptions for narcotic drugs, since he would do that anyway as a detail of professional practice, and besides, the state law would make the requirement if the Federal law did not.

Second. It would be unjust to require the physician, dentist, or veterinarian to demand either a prescription or order blank from their patients. In most cases it would be impossible for such patients (always in the case of the veterinarian) to furnish these, and besides patients are not dealers but consumers, and the theory of the bill is to leave the distribution of the drugs to consumers to the regulation of state laws.

It is furthermore claimed that the discrepancy in the manner in which pharmacist and physician may sell constitutes a sufficient inequality in the operation of the law to make it unconstitutional. But this does not seem to necessarily follow. The bill does not prevent the pharmacist from selling to exactly the same persons that the physician may sell to, but only provides for a *different method of evidencing the sale.*

Until the Supreme Court shall have passed upon the matter, it would not be wise to assert unqualifiedly either that the law proposed by the bill would be unconstitutional, or that it would not. In nearly every case it decides the United States Supreme Court finds itself in opposition to the strongly asserted opinions of one-half of the lawyers engaged.

Without making any strong assertions either way, there are certain considerations that may help us to estimate the probable view of the courts:

First. The presumption is always in favor of the constitutional validity of an act, and courts will not declare a law invalid because of trivial or frivolous reasons, i. e., for reasons which do not work a positive hardship, or do not tend to establish a dangerous precedent, or do not plainly infringe some well defined principle of constitutional law.

Second. The tendency of courts is to give a liberal construction to the exercise of legislative powers for the protection of public health or public morals, and no one would be likely to deny that a restriction upon the privilege of the druggist to sell habit-forming drugs would be in the interest of both public health and morality.

Third. A court could hardly fail to recognize the fact that the druggist has no business to sell habit-forming narcotic drugs direct to the general public, and would be apt to tell him so, and moreover the druggist would have to admit that

to deprive him of the opportunity of selling such drugs except on prescription was, after all, a trivial matter, if his sales were for legitimate purposes. If his sales were not for legitimate purposes, he would have no right to appeal to the courts to protect him.

Fourth. A similar, or even greater, inequality exists in the liquor tax license law which passes unchallenged. For example, Druggist A., having paid a retail liquor dealer's tax, buys a barrel of alcholic liquor, and may sell it (so far as the Federal law is concerned) to any one, either mixed with other things or without admixture.

Druggist B., who does not pay the retail liquor dealer's tax, also buys a barrel of alcoholic liquor, and by medicating it, is able to sell it without the payment of any tax at all. The tax is levied upon the *business of selling alcoholic liquors*, and in the two cases cited the one dealer sells as much as the other, the only difference being in the *manner* of sale.

The alleged inequality would be even less under the Harrison Bill, because the latter requires the physician who administers the drug to pay the same tax as the druggist, it only excuses him from the absurdity of demanding that his patient register as a dealer in narcotics before he receives the needed dose of medicine. In administering that dose the physician is not performing a commercial function in the ordinary sense, even though he makes a charge for his services and includes in that charge the cost of the medicine, just as the druggist who does not pay the liquor dealer's tax includes the price of the alcohol in the mixture which he compounds.

Another objection that has been made to exception "a" is the claim that to permit physicians to dispense these drugs to their patients without as close supervision as is exercised over their sale by the druggist will result in transferring the illegitimate traffic in habit-forming drugs from the dope-selling druggist to the dope dispensing physician.

To this objection it may be answered:

First. The exception in favor of physicians, dentists, and veterinarians is so worded as to make it exceedingly dangerous for them to dispense the drugs in other than a perfectly legitimate manner. They may dispense in the course ot their professional practice only, and only when in actual personal attendance upon their patients.

Second. The last paragraph of Section 2 makes it unlawful for any person to make use of the order blank to obtain any of the named drugs "for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said articles, or in the legitimate practice of his profession." How long, under this provision, could the dope dispensing physician continue the business until his order blanks filed with the dealer would lead to his detection, and subject him to the $2000 fine prescribed by the act, and how many physicians would be willing to assume such a hazard?

Third. If it were true that exception "a" would result in transferring the illegitimate traffic in narcotic drugs from the drug store to the offic of the dispensing physician, it would furnish the strongest kind of reason why the drug trade should give the bill its hearty support and thus at once rid pharmacy of its most undesirable members, and make clear to the world the responsibility

of a certain class of doctors for the evils resulting from the improper use of narcotic drugs.

Fourth. There is nothing in this section, or in any other part of the bill, that would impose any impediment or restriction upon state legislation regulating or even prohibiting the sale within the state of habit-forming drugs. If the Federal law will provide the means of tracing these drugs in quantities to those who distribute them to consumers, the state law may safely be trusted to impose proper restrictions upon their distribution.

Still another objection which has been strenuously urged to exception "b" in Section 2, is that the druggist will have no means of learning what physicians, etc., are registered under the act, and may innocently make himself liable to the heavy penalties of the law by dispensing on the prescription of a physician who has not registered.

The phrase, "registered under this act" was first inserted in one of the earlier forms of the bill (the third prior to the present one) and was carried over into its two successors apparently for no other reason than that no one seems to have objected to it until after the pending measure had been started on its way through Congress.

In the writer's opinion, the phrase might be omitted without harm to the measure, though he does not share the alarm of those who see in it a great menace to the interests of the pharmacist.

In this connection the writer calls attention to the fact that Section 6 expressly exempts from all of the requirements of the act any and all preparations which do not contain more than two grains of opium, one-fourth grain of morphine, one-twelfth grain of heroin, or one grain of codeine, in one fluid or avoirdupois ounce, and consequently that a large majority of legitimate preparations and prescribed mixtures will not be covered by the act at all. The physician may dispense or prescribe, and the pharmacist may compound and sell such preparations without registering as dealers or without considering the act in any particular.

It is only when the amounts exceed the above stated maximum quantities that the act would apply.

If the measure should become a law, it certainly will not be long thereafter until lists of the physicians registered in any section will be available to the druggists of that locality, probably obtained and published by the drug journals or by local pharmaceutical associations, and until this has been done the druggist can always insure his own safety without any great loss of revenue by simply refusing to dispense upon the prescriptions of physicians not known to be on the register.

Whether the Harrison Bill shall become a law or not, it is fairly certain that the day is not far distant when it will nowhere be safe to dispense habit-forming drugs in such quantity or in such form that they might be used to satisfy a drug habit unless the pharmacist is well enough acquainted with the prescriber to feel assured that they are not intended to be so used.

In conclusion, the writer does not contend that the bill is perfect, or that it fully represents his own views of what such a bill ought to be, but he does regard it as a fair and reasonable compromise between the conflicting interests and

claims of those who will be affected by it, and he believes that if it becomes a law it will not only furnish the evidence necessary to enable the several states to more effectually enforce their own legislation upon the subject, but will also exercise a strongly deterrent influence upon those who are willing to take chances with the local laws, but will hesitate to try conclusions with the power of the United States Government.

J. H. BEAL.

STRIKING AN AVERAGE.

The hour of high-pitch enthusiasm is an exhilarating experience, but it is not a safe time for a man to take his own measure. Many a man, who, in a frenzy of patriotism, would bare his bosom to a hail of shot, or singe his hair at the mouth of the enemies' cannon, would not be worth three cents to the army. His feet would give out the first five miles of a forced march, and he would take his death of cold sleeping on the ground.

Many a man fails in business because he plunges in when red-hot with enthusiasm and then sizzles down until he is so cool he gives his customers a chill every time they come in. In entering any race, it is not safe for a man to figure himself in at top speed for the entire run. In estimating his assets on going into business, a man must not count himself in at what he feels he is worth at the high point of enthusiasm. He should be honest with himself, and, from what he has already done and failed to do in other things, strike an average. To be sure, he should raise that average if he can. But, if his normal ingenuity and push and efficiency are sixty, it is not safe to go into business or run for an office that will require a hundred.—*Popular Magazine.*