amounts in the large intestine and are held responsible for the senile degeneration of man. In ordinary yoghurt there are three kinds of bacteria, namely, *Bacillus bulgaricus,* which is the most important, since it has the function of destroying the putrefaction bacteria existing in the intestines, replacing them and forming lactic acid, and two others, consisting of *B-diplo-coccus* and *B-strepto-coccus,* which exercise the subordinate function of decomposing the sugar in the intestines. These several bacteria exert a more intense activity if in the presence of an abundance of sugar, and it is therefore recommended (and the practice) to administer the yoghurt in connection with saccharine food, such as dates or bananas. The sugar so provided is, however, almost entirely consumed before it can pass from the small into the large intestine and there exerts its saccharifying action producing the sugar necessary for the *Bacillus bulgaricus* to exert its function to retard or prevent the formation of indol and scatol in it. Dr. Piorkowski's investigations demonstrate that this new "Microbion" consists of immobile, ovid, gram-negative bacilli, developing at as low a temperature as 22°-35° C. a rose-red to pale red metabolic product, which imparts a fine color to wafers, bread, rice, potatoes and flour, but is destroyed at higher temperatures. Milk is coagulated by it at 37° C., and at lower temperatures acquires a light rose-yellow color. The taste of the milk so produced is sweetish. In combination with yoghurt an agreeably-tasteing sour milk is produced which symbiotically combines the glycobacterium with the bacteria ordinarily present in the yoghurt.—Pharm. Ztg., LVII (1912), No. 87, 876.

The Pharmacist and the Law

ABSTRACT OF LEGAL DECISIONS.

MALT LIQUORS—SALES—STATE REGULATIONS.—Action was brought in the Mississippi State courts by a corporation engaged in the manufacture of a beverage called "Poinsetta" for a sum claimed under an agreement with the defendant for the purchase by him of the article on stated terms for five years for sale in exclusive territory in Mississippi. For this exclusive right he was to pay $500 within five days after making the contract, and it was to recover this sum that the action was brought, the defendant having repudiated the agreement at the outset, upon the ground that, on coming to Mississippi, he found it to be illegal to sell "Poinsetta" in that state. The trial court sustained the defense, and its judgment was affirmed by the Mississippi Supreme Court. The plaintiff took the case to the United States Supreme Court for review. The parties made an agreed statement of facts in which it was agreed that "Poinsetta" was not an intoxicant, and that "the United States government does not treat 'Poinsetta' as within the class of intoxicating liquors, and does not require anything to be done with reference to its sale." The state court construed the state statute as prohibiting the sale of all malt liquors, whether in fact intoxicating or not, and the United States Supreme Court held that this construction of the state statute was binding upon it. As the parties' contract contained no suggestion that the contemplated resales were to be made in the original imported packages, but was broad enough to include other sales, and hence encountered the local statute as applied to transactions outside the protection accorded by the Federal Constitution to interstate commerce, it was held that the state court's decision did not involve the denial of any right incident to interstate commerce.

By the terms of the contract the agreed prices were per cask containing 10 dozen bottles and per case containing 6 dozen bottles. It was held that each separate bottle shipped into the state under this contract could not be considered an original package, so as to save the local sales from the interdiction of the Mississippi statute prohibiting the sale of malt liquors.

Local sales of malt liquors, whether intoxicants or not, might, it was held, be forbidden by the state in the exercise of its police power, as is done by the Mississippi statute, without infringing the Federal Constitution, 14th Amendment, against taking liberty or property without due process of law.

Purity Extract & Tonic Co. v. Lynch, 33 *Sup. Ct. Rep.* 44.

DAMAGE TO FOUNTAIN IN TRANSIT.—Action was brought by the consignee of a soda fountain against the final carrier for damages

to a part of the fountain. The fountain was shipped in 15 or 16 separate boxes. When these were opened by the consignee the contents of one of them were discovered to be broken. There was no evidence introduced showing that the fountain was in good condition when delivered to the initial carrier. It was held that the plaintiff was not relieved from showing this by a provision in the bill of lading describing the property as being "in apparent good order, except as noted, (contents and condition of contents of package unknown)." This excluded any inference that the carrier admitted anything as to the condition of the contents of the boxes.

Alabama & V. R. Co. v. Cassell Drug Co., Mississippi Supreme Court, 59 *So.* 932.

DISTRIBUTING MEDICINE — REGULATION.—The Indiana statute (Burns' Ann. St. 1908, section 2446), prohibits the distribution from house to house of medicinal preparations, or the giving or causing to be given to any child under the age of 16 years any such sample of medicine. Section 2447 prohibits the distribution of "any deleterious substance." In proceedings under the statute it was held that it prohibits the distribution, from house to house, of samples of medicine, though the samples are handed to adults, even though by implication the distribution of samples to adults on the street is not forbidden, as the Legislature has a wide discretion in determining methods and expedients for the protection of the public health.

The statutes were held not to be in violation of the state constitutional provision prohibiting the granting of privileges and immunities which upon the same terms shall not equally belong to all citizens, as that section cannot be invoked as against the exercise of a purely police power, when it is applied alike to all who may be affected by its exercise.

Ayers v. State, Indiana Supreme Court, 99 *N. E.* 730.

RIGHT TO INTEREST.—In an action for claim and delivery of a soda fountain, to which the plaintiff claimed title by reason of the possession of notes reserving title to the seller, on which it was alleged there was a balance due of $871.50, with interest from April, 1909, the jury returned a verdict that the amount due on the notes was $840. It was held that this presumptively included interest, and the trial court could only render judgment bearing interest from its date.

American Soda Fountain Co. v. Shell, North Carolina Supreme Court, 76 *S. E.* 631.

TAXATION OF SODA FOUNTAINS.—A controversy without action was submitted to the supreme court of North Carolina to determine the legality of a license tax imposed by a municipal corporation upon soda fountains. The charter of the town provided that in addition to the powers therein specially enumerated, the town should have all the powers incident to corporations of like character under the general laws of the state. The state laws, Revisal 1906, section 2924, confers on cities and towns the power of annually levying a tax on all trades, professions and franchises carried on therein. It was held that the town was empowered to impose a license tax of $5 on every soda fountain maintained in the town; the business of keeping soda fountains being a "trade" within the meaning of revenue acts, in regard to which the word is defined as "any employment or business embarked in for gain or profit."

Lenoir Drug Co. v. Town of Lenoir, 76 *S. E.* 480.

NEGLIGENCE IN FILLING PRESCRIPTION.—Action was brought for alleged negligence in compounding a physician's prescription calling for five grains of phenacetin and five grains of sugar of milk, to be put up in five powders, containing one grain each of the phenacetin and sugar of milk. One of the powders, given to a child of four years old, made her ill. It was held that the analysis of one of the powders which was found to contain but six-tenths of a grain of phenacetin was against the supposition of due care, the inference being that the surplus had got into one or more of the other powders. The medicine called for by the prescription had been successfully administered to the child for a year, so that the mother was not chargeable with contributory negligence in administering the powder without first consulting a physician.

Coughlin v. Bradbury, Maine Supreme Court, 85 *Atl.* 294.

UNLAWFUL SELLING OF COCAINE—QUANTITY NOT A TEST.—In sustaining an indictment under the New York Penal Law, Section 1746, charging the defendant with selling an "unknown quantity" of cocaine at re-

tail, not on the prescription of a physician, the New York Court of General Sessions held that it was sufficiently alleged that the sale was not at wholesale, the quantity sold not being made, by the statute, a test of a sale at wholesale.

People v. Levy, 138 *N. Y. Supp.*, 163.

SEIZURES UNDER PURE FOOD ACT—REVIEW.—A decree of a Federal district court dismissed, after a trial without a jury, a libel having for its object the condemnation of food products seized upon land under the Pure Food Act of June 30, 1906. The United States Supreme Court holds that such a decree is reviewable in the circuit court of appeals by writ of error, and not by appeal, notwithstanding the provisions of section 10 of the act that the "proceedings of such libel cases shall conform as near as may be to the proceedings in admiralty, except that each party may demand trial by jury of any issue of fact joined." The reason is that such provision cannot be deemed to intend to liken such proceedings to those in admiralty beyond the seizure of the property by process *in rem*. After that the case assumes the character of an action at law with trial by jury if demanded, and with the review already obtaining in actions at law. The proper mode of reviewing being by writ of error, neither the action of the court nor the consent of the parties could confer jurisdiction of an appeal.

443 *Cans of Frozen Egg Produce v. United States*, 33 *Sup. Ct. Rep.*, 50.

DUTY TO INSPECT FOOD.—The New York district court, S. D., holds that a packer, billing and selling pork to a retailer for sale to a consumer, owes a direct duty to the consumer to inspect the pork, to ascertain whether it is infected with trichinæ, or is otherwise unfit for food, and he is liable to the consumer for injuries sustained by failure to perform this duty.

Ketterer v. Armour & Co., 200 *Fed.* 322.

FOOD SOLD ON DINING CARS—NON-LIABILITY FOR INJURIES FROM.—In an action by a passenger against a railroad company for damages for injury to the plaintiff's health alleged to be caused by eating poisonous canned asparagus served to her on one of the defendant's dining cars, it was held by the Maine Supreme Court that a carrier of passengers is not an insurer of the quality of canned goods furnished on its dining cars. Where it serves such goods of a high brand, sold by a reliable dealer, guaranteed under the Pure Food Law, and without defect discoverable to eye, smell or taste, it is not liable for injuries caused by eating poisonous goods. All the facts ascertainable regarding the goods were as apparent to the passengers as to the railroad company; and it was impossible for the latter to know anything more about the contents of the can than did the passenger.

Bigelow v. Maine Cent. R. Co., 85 *Atl.* 396.

VIOLATION OF PURE FOOD LAWS—INTENT—ANALYSIS.—The Supreme Court of Washington holds that the statute (Rem. & Bal. Code, section 2613), providing that any person selling, delivering, offering for sale, or having in his possession with intent to sell or deliver, any milk of a grade below the standard therein fixed, is guilty of a misdemeanor, imposes the penalty for a violation thereof without regard to wrongful intention. The managing agent having control of the business of a corporation having in its possession such milk with intent to sell and deliver is criminally liable.

Section 5478 requires the person collecting samples of milk for analysis to send the result thereof to the person from whom the sample was taken, or the person responsible for the condition of the milk, within 10 days after obtaining such result. It does not provide that this is a prerequisite to a conviction for having possession of milk of a grade below the statutory standard. Section 5468 provides that the party collecting samples shall upon request seal and deliver to the owner or person from whose possession the milk is taken a portion of such sample, and that no evidence of the result of the analysis of such sample shall be received, if the collector refuses or neglects to seal and deliver a portion of such sample. Section 5477 provides that a producer of milk shall not be liable to prosecution unless a sealed sample thereof be given to him.

The conviction in the case at bar was reversed and a new trial ordered for error in giving oral instructions in a criminal case over the accused's objection, Laws 1909 c. 86, providing that the court must reduce its charge to writing.

State v. Burnam, 128 *Pac.*, 218.

SALE OF MILK CONTAINING VISIBLE DIRT.—The Indiana Pure Food Law of 1907 was entitled "An act forbidding the manufacture, sale or offering for sale of any adulterated or misbranded foods or drugs, defining foods and drugs, stating wherein adulteration and misbranding of foods and drugs consist," etc. The Act of 1911 purported to amend section 3 of the prior act by adding as one of several things prohibited and made unlawful the sale of "milk which contains visible dirt." In proceedings for selling milk containing visible dirt the Indiana Supreme Court holds that the title shows that it embraces the general subject of the sale of food, and the object of securing to consumers pure and wholesome food. It is sufficiently broad to cover the prohibition of the sale of milk containing dirt; and the act is not in violation of the section of the Constitution providing that an act shall embrace but one subject and the matters properly connected therewith, which subject shall be expressed in the title.

The statute does not require that the keeping or selling shall be for food purposes. The affidavit seeking to charge the violation charged that the accused did "unlawfully sell" milk containing visible dirt. It was held that the use of the word "unlawfully" precluded all legal excuses for the offense, and even if the provision of the statute must be construed to prohibit only sales for food, the use of the word negatived a sale for any other purpose.

In any event such laws are police regulations for the food supply of the people, and the law-making power is vested with a broad discretion to determine what is necessary to secure to the consumers cleanliness, wholesomeness and purity in so important and easily adulterated or tainted a food as milk. The courts will sustain such regulations without any attempt to limit them by construction.

Moreover, as the sale of the milk under any other circumstances or for any other purpose, which might make the sale lawful, would be a matter of defense, which could be shown under a plea of not guilty, the affidavit was not insufficient for failing to anticipate and negative such a sale.

Although the act fixes no standard by which visible dirt can be determined, it is not thereby rendered indefinite and incapable of enforcement. The term "visible dirt" has a common and specific meaning. "Visible" means perceivable by the eye; capable of being seen. "Dirt" is defined as any foul or filthy substance; whatever, adhering to anything, renders it foul, unclean or offensive.

State v. Closser, 99 *N. E.*, 1057.

<>

ABSTRACT OF U. S. TREASURY DECISION.

(T. D. 1820.) ALCOHOLIC MEDICINAL PREPARATIONS.—The classification of "Glycerine Tonic," manufactured by G. E. Kimmerer, of Canajoharie, N. Y., has been reconsidered, and the compound has been classed as an alcoholic medicinal preparation for manufacture and sale solely in good faith for medicinal use only, and special tax is not required.

(T. D. 33025.) DRAWBACK ON LEONARDI'S BLOOD ELIXIR AND RENO'S NEW HEALTH.—Drawback on domestic tax-paid alcohol used by S. B. Leonardi in Reno's New Health and Leonardi's Blood Elixir amended. Allowance for the blood elixir not to exceed 19.5 percent of the exported quantity; and for Reno's New Health 18 percent thereof. Allowance for worthless waste not to exceed 25.50 percent of the alcoholic content of the blood elixir exported, and 28.50 percent in the case of the New Health, computations to be made on a basis of 188° proof alcohol.

(T. D. 33020.) WHITE SULPHUR MATCHES.—The furnishing of official certificates of inspection, or bonds, for the production thereof, will not be required under T. D. 32975 until April 1, 1913, in the case of matches manufactured in Sweden and Norway, the governments of these countries not having had sufficient opportunity to make arrangements for the issuance of certificates.