not suitable and gives fallacious results. The authors recommend Koevenagel's reagent of Cobalt-sodium-hexanitrite, which produces a yellow precipitate in potassium solutions even as dilute as 1:2000. If 1 percent KCl is permissible in the official NaCl, then no precipitate will be produced in a 5 percent solution of sodium chloride.

Tincturae. The percentage of dry residue serves as the valuation of a great many tinctures, but is expressed as *"for the menstruum"* and *not* as in the *finished tincture.* That, therefore, the figures are too high can be seen in Tincture Benzoes, which should contain 18 percent of dry residue. Benzoin should contain 90 percent of alcohol soluble resin. The tincture is prepared by macerating 20 parts=18 parts soluble resin, with 100 parts of alcohol. As 118 parts of the finished tincture contain 18 parts of dry residue, therefore the percentage is only 15.25 and not 18.

Tinctura Strophanti. The seventh edition ordered the seed to be deoleated with ether, which, on account of also dissolving some strophantin, was changed to petroleum ether. The tincture was prepared with 90 percent alcohol. The eighth edition orders the bruised seed to be percolated with diluted (68%) alcohol into a 10 percent tincture. This preparation is unsatisfactory, as oil drops separate, gets turbid in cold weather and does not mix clear with water. The authors recommend that the drug should be standardized and that the tincture should be prepared from deoleated seed. (Such a tincture is also better tolerated by a weak stomach, not causing nausea.—O. R.)—Ph. Post, 1912, No. 4, 37-41. O. R.

Sal Karolinum Factitium: Legality of Name.—The City of Carlsbad petitioned that this name be deleted from the Hungarian Pharmacopoeia, on account of being a trademark infringement. It was further suggested to change the title to Sal factitium typi salis Karolini. The Hungarian health board, however, decided that the present title shall be retained, as it is well known to physicians and the public, and that the designation "artificial" cannot cause any misrepresentation or confusion, and is therefore no infringement on the rights of the city of Carlsbad and its "natural" salt.—Ph. Post, 1912, No. 5, 55. O. R.

The Pharmacist and the Law

ABSTRACT OF LEGAL DECISIONS.

REGISTERED PHARMACISTS—HYDROGEN PEROXIDE NOT A MEDICINE.—The conviction of the manager of a 5 and 10 cent store on a charge of dispensing and compounding medicines or poisons, namely, western peroxide or hydrogen peroxide, not being a registered pharmacist, brought up the question whether hydrogen peroxide is a medicine. It was held that technically it was a medicine, like many other articles found in grocery stores and paint shops and in the same way as alcoholic preparations for external use, water, zinc, tar, turpentine, copper, olive oil, lemon essence, resin, tooth washes, soda, some soaps, or bay rum and glycerin for the hands. Hydrogen peroxide was not claimed to be a poison, and was shown to have no medical effect when taken into the stomach, but is simply a detergent, a cleanser, and as a medical agent it was shown to be used only to cleanse and soothe the skin, to dissolve and remove impurities from wounds and ulcers, or from the mouth, teeth and ears. It is not generally or popularly known as a medicine, and therefore the sale of it was held not to be regulated by the statute under which the conviction was obtained. A dissenting opinion was to the effect that it had been shown that it is more than a preventative or detergent, as it is frequently prescribed and used as a curative agency, and that its primary and principal use is medicinal; and that it is so regarded by the state board of pharmacy.

It was also held that the word "store" as used in the first sentence of the statute means a store of the same kind or class as a pharmacy, and does not apply to a 5 and 10 cent store.

State v. Hanchette, Kansas Supreme Court, 129 *Pac.* 1184.

UNFAIR COMPETITION—IMITATION IN PACKAGES AND COLOR OF PRODUCT.—The Coca-Cola Company, in a suit in equity, sought protection against what it claimed to be unfair competition on the part of the

Gay-Ola Company. It exhibited various letters and circulars of the defendant, and the Tennessee Circuit Court, Western District, dismissed the bill. This was reversed on appeal to the Circuit Court of Appeals. It appeared that "Coca-Cola" is sold by the complainant in barrels or kegs, painted with a particular shade of red, and marked with the complainant's labels. Purchasers from the complainant are of two classes: First, soda fountain proprietors, who mix the essence with carbonated water and sell directly to the consumer; and, second, bottling companies, who add the necessary carbonated water, and put the product up in sealed bottles, and then sell this article to retail dealers. The defendant claimed to have discovered the complainant's formula, and to be in fact making the same thing. It wrote a series of letters to bottling companies which were engaged in bottling Coca-Cola to the effect that it would supply Gay-Ola for a less price than they were paying for Coca-Cola and that no one could tell the difference; that a substitution could be made and that Gay-Ola would, if desired, be shipped in plain, unmarked packages. The defendant also sent circular letters to soda fountain proprietors, setting out the cheap price and the merits of Gay-Ola and its identity with Coca-Cola, and quoting from a testimonial of a soda fountain proprietor that he sold it for Coca-Cola.

The appeal court considered the substantial question to be whether the complainant had a remedy against the defendant, or whether the remedy was confined to proceedings against that retail trade which was the immediate agent in deceiving the ultimate purchaser. That the defendant had planned and expected a benefit by the fraud to be practiced, and that it had deliberately furnished to the dealers the material for practicing the fraud, was hardly denied. The court held that the ultimate wrong contemplated was clearly to be classed as unfair competition, and the complainant was entitled to such relief as a court of equity could give, unless merit was found in the defense that the Gay-Ola Company had the right to make and sell the article which it did sell, and that it was not responsible for the fraud of its vendees. It was held that, the defendant being an accomplice, if not the principal, in the trick, injunction must go against it. That injunction should forbid all attempts directly or indirectly to encourage or induce the dealer to make the fraudulent substitution.

But the complainant also asked that the injunction extend to the use of barrels or kegs painted of the same color as the complainant's, and to coloring the product itself with the same color, and to using any packages not plainly marked Gay-Ola. On this point the court said that the name adopted by the defendant did not negative an intention to confuse. The product was identical, both in appearance and taste; and the form of script used in printing the "trade-mark" names was the same. Even if the use of each of these items of similarity was lawful, when accompanied by good faith and no intent to deceive, they put the product near that dividing line where good or bad faith is the criterion, and their presence puts upon the user a burden of care to see that deception does not naturally result. The coloring matter used by the defendant was non-functional, being added to the compound solely for coloring purposes, and in the quantity necessary to give it the color of the complainant's. It was held that the article was so likely to deceive as to its origin that it should be tagged in such a way that the tag would reach the notice of the final purchaser. As to the bottling part of the output, the defendant could apparently provide reasonably efficient means of notice, and so probably prevent deception by seeing that all the bottles were stamped and labeled prominently with the name of its product. As to the soda fountain part, the court did not see how deception could be sufficiently prevented, save by giving the product a non-deceptive color, although some other satisfactory means might be brought to the attention of the court below.

The fact that the complainant supplied a part of its product to consumers in the territory where the defendant did business, only through a second company, which bought and resold it, and which was also injured by the defendant's acts, did not make the second company a necessary part to the suit. And the fact that the complainant sold its product through a system of contracts tending to maintain monopoly in a trade-marked article, did not preclude it from maintaining its suit to enjoin the unfair competition.

Coca-Cola Co. v. Gay-Ola Co., 200 *Fed.* 720.

CONSPIRACY IN RESTRAINT OF TRADE.—A Texas corporation owned a secret formula for compounding a syrup used to make a drink called "Jersey-Creme." It entered into a contract with a bottling co-partnership, to which it agreed to give the exclusive bottling privileges in a certain territory. The bottlers agreed to buy from the corporation not less than a certain quantity of the syrup during a period of five years, and to use the corporation's copyrighted labels and bottles. The corporation became dissatisfied with the way in which the bottlers were performing their undertaking under the contract and declared it canceled. In an action by the bottlers for damages, it was held that the contract was a "conspiracy in restraint of trade" within the meaning of Section 3 of the Texas anti-trust statute of 1903. Such a conspiracy is defined by that section as follows: "Where any two or more persons, firms, corporations, or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity." "Jersey-Creme" was a "commodity" or "article of merchandise." The bottles and labels were only incidentals to the contract, which indirectly conferred upon the bottlers the exclusive right to purchase and resell the syrup.

Jersey-Creme Co. v. M. Daniel Bros. Bottling Co., Texas Civil Appeals, 152 *S. W.* 1187.

PERFORMANCE OF CONDITIONS.—The manufacturer of a drink contracted to assign territory to another party for the purpose of bottling the manufacturer's special drink according to his formula. The manufacturer agreed to advance the necessary advertisements to get the best results. In pursuance of this agreement he caused advertisements to be inserted in newspapers in the territory and furnished posters which were posted in the territory. There was nothing in the evidence to show that this method of advertising was not calculated to bring the business into public notice, and the other party never requested other or additional advertisements. It was held that the manufacturer had sufficiently complied with his agreement as to advertising.

The manufacturer also agreed to indorse paper to a specified amount, to be secured by the other party's bottling works, which must be in good running order and worth a specified sum. It was held that the second party could not properly call for any indorsement without first showing that he possessed a plant worth the specified sum and which was in good running order.

Walling v. Wainscott, Kentucky Court of Appeals, 153 *S. W.* 452.

CONDITIONAL SALES—RETAKING AND SALE —SELLER'S LIABILITY.—A firm purchased a soda fountain and apparatus under a contract of conditional sale, giving the seller 36 promissory notes, payable at intervals of a month each, for the balance of the price. The firm subsequently became bankrupt, and a trustee was appointed. The notes due previous to the bankruptcy had been paid. Those maturing afterwards were not paid. The seller of the fountain leased it to a third person, who carried on the business in the bankrupt's store, on monthly leases. The rental was duly paid, but was not indorsed by the seller upon the contract of sale. Four months after, the seller removed the fountain and apparatus from the store, and claimed to have retaken it then, and after 30 days caused notice of sale to be given, and the fountain was subsequently sold, apparently according to the provision of the New York law relating to conditional sales. That statute, Section 65, provides that where property is retaken by the seller under a contract of conditional sale, and is not sold by him at public auction within 30 days after the 30 days during which he is required to retain possession, he is liable for the return of payments made by the buyer. In an action by the bankrupt's trustee against the seller of the fountain it was held that the latter, having appropriated the rent of the fountain without crediting it on the contract, became liable to repay the installments paid by the buyer, though the contract purported to waive the statutory provision· an executory contract waiving such statutory provision being contrary to public policy. Two judges dissented.

Crowe v. Liquid Carbonic Co., New York Appellate Division, 139 *N. Y. Supp.* 587.

WRAPPING BREAD LOAVES IN PAPER.—A conviction was obtained under a charge of violating Chapter 15, New Hampshire laws of 1911, in not complying with a rule of the state board of health requiring loaves of bread exposed for sale to be wrapped in paper. Section 1 of the statute forbids the existence or maintenance of unclean, unhealthful, or insanitary conditions in any place where food is produced, stored or sold. Section 2 provides that "unclean, unhealthful or insanitary conditions or practices shall be deemed to exist * * * if food in the process of manufacture, storage, sale or distribution is unnecessarily exposed to flies, dust or dirt, or to the products of decomposition or fermentation incident to such production, storage, sale, or distribution." Section 3 authorizes the state board of health to enter and inspect any place used for the production, storage, or sale of food, and on violation found to issue an order for the abatement of the condition. Section 4 empowers the state board of health to make all necessary rules and regulations for the enforcement of the act. Section 5 imposes a penalty for failure to comply with its orders. The regulation of the state board of health ordered that all bread loaves, before removed from the baking room, should be wrapped in clean, unused paper, unprinted or printed on one side only.

It was held that the mere fact that the wrapping of loaves of bread in paper before they are offered for sale is attended with some expense did not prove that the requirement was unreasonable. It was not apparent how the object could be attained at less expense. It was claimed for the defendants that the regulation was an attempt to delegate legislative power. It was held that the legislature, in the exercise of the police power, may regulate, restrain, and prohibit whatever is injurious to the public health and morals, and, if upon a reasonable construction of the act there appears to be some substantial reason why such regulations will promote the public health, they will be sustained as a valid exercise of the police power. The act in question was within the police power of the legislature so far as its purpose to secure greater cleanliness in food is concerned. The act is complete in itself, therefore the order of the board of health was not invalid as an exercise of delegated legislative power. The board in making the order was not legislating, but was merely exercising a power conferred upon it as an administrative board.

The court added: "If the defendants had prevented the nuisance by adopting some other precaution than that of wrapping their bread in paper, it may be that they would not have been subject to prosecution for not complying with the rule; but they did not attempt to abate the nuisance in any effective way, but persisted in maintaining a condition of things about their shops and carts which the legislature had prohibited."

State v. Normand, New Hampshire Supreme Court, 85 *Atl.* 899.

REVIEW—SEIZURE UNDER PURE FOOD AND DRUGS ACT.—A proceeding under Section 10 of the Food and Drugs Act of June 30, 1906, praying for the seizure and condemnation of three barrels of vanilla, tonka and compound alleged to have been shipped from Chicago to San Antonio, Tex., where they were offered for sale, and that the contents were adulterated and misbranded, was dismissed by the district court for the Western District of Texas on the ground that the evidence showed that the goods seized were not transported or shipped for sale, but were shipped for the purpose of being used in the manufacture of ice cream, and therefore not liable to seizure under said Section 10, and on the further ground that the evidence failed to show that a preliminary hearing was afforded to the party from whom the sample was obtained and an opportunity given him to be heard, as provided for in Section 4 of said act. The Circuit Court of Appeals holds that the dismissal is not reviewable in that court on appeal, the proceeding in the district court being one at law and only reviewable by writ of error.

United States v. Hudson Mfg. Co., 200 *Fed.* 956.

SALE OF ADULTERATED VINEGAR—DEFECTIVE INFORMATION.—The Missouri Rev. St. 1909, Section 4841, makes a person guilty of a misdemeanor who "manufactures for sale or offers or exposes for sale as cider vinegar, any vinegar not the legitimate product of pure juice known as apple cider, or vinegar not made exclusively of said apple cider, or vinegar into which foreign substances, drugs or acids have been introduced." An information under the statute charged that the accused offered for sale "one barrel of vinegar

labeled and branded as cider vinegar, which was not the legitimate product of pure apple juice and was not made exclusively from apple cider." The St. Louis Court of Appeals, Missouri, holds that the information did not charge an offense under the statute, since it did not allege that the vinegar offered for sale was offered "as cider vinegar," which is the gist of the offense, under this statute. An indictment charging a statutory offense unknown to the common law must allege every fact essential to bring the accused within the statutory provision.

State v. Markus, 153 *S. W.* 488.

SILICA COMPOUND.—Volcanic earth dried and ground in a mill and used for external application to the human body is not a medicinal preparation for the use of the apothecary or physician as a remedy for disease. (U. S. v. Roessler & Hasslacher Chemical Co., 79 Fed. 313.) The dry pulverized earth here is used as a mud bath and cannot be deemed a plaster, healing or curative. It is dutiable according to the protest as an earth, wrought or manufactured under paragraph 90, tariff act of 1909.

United States v. Von Oefele, U. S. Court of Custom Appeals.

ASK THE DOCTORS.

It is quite the fashion for the druggists to complain that the doctors buy too much of their medicines from the physicians' supply houses. Many times these supply houses sell their goods for prices as high as those asked of the doctors by the drug store. Price does not explain all the business that goes to the supply houses. Many times, too many times, the supply house furnishes a very inferior grade of goods so that quality does not explain why they get the business. The simple reason why the doctor buys so often as he does from these houses is that they keep asking him to buy from them. They ask him by carefully written circular letters and by expert traveling salesman. If the druggist will ask the doctor to buy from him as often as he is asked by the supply houses, the druggist will get his trade unless he is far above the competing quotations, quality for quality. Get physicians' samples from your pharmaceutical manufacturer, put them in the physician's hands personally with an explanation of the use and price of the goods. Send personal letters to every doctor in town once a week. If the number is small, they can be written on the typewriter. If the number is large, reproduce them on a mimeograph or some such machine. You ought to have one anyway. Ask the doctor to buy from you and ask him just as often as you can. You will get results as sure as you do so.—*The Spatula.*

HOW TO INCREASE YOUR SALARY.

To sell a customer a toothbrush, for example, does not require a crafty and elaborate approach, such as none but a veritable Mephistopheles could attain, nor is it necessary that the clerk be a mind reader in order to seize the exact "psychological moment" to close the sale. What that moment is, his own common sense, good judgment or intuition, whatever you please to call it, will tell him. He does not need a handbook on psychology to tell him just when that crucial moment arrives.

In nine cases out of ten when you have shown the customer the superiority of the 25 cent brush he will choose it in preference to the 10 cent or 15 cent brush. Thus you will protect your employer's profit, and in all probability, the customer being pleased with the better service the brush gives him, will come back for another when he needs it.

Remember, that it is the customer both you and your employer are working for. It is the customer who pays the wages of you both. If it were not for the customer you and your employer would be looking for other jobs. So go just as quickly to serve him as you would for your employer, as the customer is the employer of you both, and therefore, he is the man to be pleased if the store is to make money. If the customers are not pleased the store will not prosper, and your chances of getting better wages go a glimmering.—*Voice of the Retail Druggist.*