

Communications and Correspondence

All communications must be signed by their
Authors

LIMITATIONS ON POWER OF BOARD OF PHARMACY TO MAKE RULES AND REGULATIONS.

EDITOR A. PH. A. JOURNAL:

SIR—I am pleased to inform you that the case of Commonwealth of Pennsylvania vs. B. W. T. Tobin, which was practically vs. Sharp & Dohme, as Mr. Tobin was our Philadelphia Agent, and the Pennsylvania State Pharmaceutical Examining Board, could only proceed against a local person and not against a Maryland or other foreign corporation, has on May 1st been decided in favor of Sharp & Dohme and against the said Pharmaceutical Examining Board. The case has been pending since August, 1910, due mainly to delays of one kind or another on the part of the Board, as we were quite desirous of having the case tested and settled, since it involved the broad and important question of reading regulations, adopted by an executive board into a law passed by a legislative body.

The case was one involving a bottle of Essence of Pepsin 1:2000, manufactured by Sharp & Dohme, which Sharp & Dohme have been supplying for the medical profession to the drug trade since 1888, and always of the same consistence, formula and digestive power. According to the Federal Pure Food and Drugs Act and the Pennsylvania Pure Food and Drugs Act of 1909, this Essence of Pepsin was correctly labelled and could legally be sold in Pennsylvania or any other state, and for the following reasons, to wit:

1. It was an established product for which a fixed demand has existed for twenty-three years and it has always given satisfaction.

2. It was correctly labelled, inasmuch as although it was not of the National Formulary digestive strength of 1:3800, it had plainly stated upon its label its correct and claimed digestive power of 1:2000.

3. It was found by the chemists of the Pharmaceutical Examining Board to be above the digestive strength claimed upon

the label and was, hence, found to be a better product even than it was held out to be by Sharp & Dohme.

The Essence of Pepsin case was brought by the Pennsylvania Board to test said Board's right by law to make regulations arbitrarily established by itself part of the organic law of the state. Therefore this question is one of great importance to the drug trade all over the country, as there exists a growing tendency for Federal and State Boards, whose duty it is merely to execute laws passed by Congress or a State Legislature to formulate regulations and endeavor to enforce them as part of the organic law, respectively, of the country or state. The Sharp & Dohme Essence of Pepsin was made the test case, but it has been difficult to get the Pennsylvania Board to bring the case to trial as the Board evidently felt it had no strong case and that the case was going to be contested by able counsel and competent witnesses. As it involved a broad question of moment to the entire drug trade of the land, Sharp & Dohme had fully intended to take it up to the Court of Appeals, and if possible, to the U. S. Supreme Court, in the event that it had been shown that the case was one of interstate commerce instead of intrastate commerce.

The case came up for trial in the court of Oyer and Terminer before Judge Audenried in Philadelphia on Thursday, May 1, and was argued by Assistant State Attorney Maurer for the Commonwealth of Pennsylvania, representing the Pennsylvania State Pharmacy Examining Board, and by Messrs. Charles Biddle and Henry LaBarre Jayne of the firm of Biddle, Paul & Jayne of Philadelphia for Sharp & Dohme. The witnesses for the Board were Messrs. Rohrman of the Philadelphia Drug Exchange, Christopher Koch, Vice President of the Pennsylvania Examining Board, Professor C. H. LaWall of the Philadelphia College of Pharmacy, L. L. Walton, Secretary of the Board, and H. H. Blair of Philadelphia. The witnesses for Sharp & Dohme were Dr. A. R. L. Dohme, President of that corporation, and Dr. Herman Engelhardt, their chief chemist.

After the bottle of Essence of Pepsin had been brought into the case and Prof. LaWall had testified as to what was the U. S. P. and the N. F., and that he had found that the Essence of Pepsin had shown on digestion test by the U. S. P. method for testing

pepsin products, that it was not below its claimed and labelled strength of 1:2000, but considerably above it, and was, therefore, correctly labelled and not misbranded, the claim was made by the Assistant District Attorney that it was misbranded, because according to the regulations of the Board no Essence of Pepsin could be sold in Pennsylvania that was labelled Essence of Pepsin unless it was of the N. F. strength of 1:3800, i. e., one part would digest 3800 parts of coagulated egg albumen according to the U. S. P. test. Thereupon Mr. Biddle objected and gave as his reason for so doing that regulations were not laws and at once Judge Audenried interposed and said if your case rests upon the effectiveness of regulations drawn by your Board, then I wish to state most emphatically that the legislature of the Commonwealth of Pennsylvania never intended that such a body of men as constitute this Board or any Board, *should have the power to read regulations framed by them into the organic law of this state.* When Mr. Maurer admitted that that was the crux of the whole case, the judge ordered the jury to bring in a verdict of not guilty and dismissed the case.

This decision, hence, establishes for the drug trade the important fact that regulations drawn by executive boards appointed to execute Pure Food and Drug Laws have not the effect of law, and in so far as they affect or modify the law in any way are null and void. The Sharp & Dohme Essence of Pepsin case, hence, promises to be a crucial and important one for many existing conditions and cases pending based upon the regulations of executive boards held out to have the force of law. Very truly yours,

A. R. L. DOHME.

Sharp & Dohme Laboratories, Baltimore, Md.

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SUNDAY REST AND SHORTER HOURS.

EDITOR A. PH. A. JOURNAL:

SIR—To the real professional pharmacist the "wide-open" Sunday as exhibited by such a vast number of drug stores must ever be as a blot upon the good name of such an honorable calling. The writer is not familiar with the attitude of the A. Ph. A. in regard to the Sunday closing question, but he has become convinced, through long years of experience, that the drug store is kept wide open on Sunday for the single and sole pur-

pose of making money. Pharmacy will never come into its own, nor will she be able to draw into her ranks the most desirable of men and women as long as this condition exists. Genuinely Christian men, who desire to be consistent, cannot keep their stores open on Sunday.

The hours of employment would not be legally tolerated in any other line of work. Any candid man will acknowledge that they are excessive.

Legislative enactment should place a maximum limit to the working hours. It is as important to the state that the health and happiness of the drug clerks be conserved as it is of any other of her citizens.

Proprietors drive the good clerks into business for themselves. It is but natural. The human element enters in. It is an ill-spent life devoted entirely to the pursuit of wealth. A clerk, who is married and has a family, must not only sacrifice his earnings but his Sundays as well. Family and home life are but a vague dream to him. It is a social wrong. It is awful for the wife and children. For one, I register my protest against it and plead for the cooperation of the A. Ph. A. to cure this cancerous growth.

Respectfully,

ELLIOTT D. COOK,

Red Bank, N. J.

P. C. P., 1906.

Proceedings of the Local Branches

"All papers presented to the Association and its branches shall become the property of the Association, with the understanding that they are not to be published in any other publication than those of the Association, except by consent of the Committee on Publication."—By-Laws, Chapter X, Art. III.

Reports of the meetings of the Local Branches should be mailed to the editor on the day following the meeting, if possible. Minutes should be *plainly* written, or type-written, with wide spaces between the lines. Care should be taken to give proper names correctly, and manuscript should be signed by the reporter.

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NASHVILLE BRANCH.

One of the most enthusiastic and interesting meetings in the history of the Nashville Branch of the American Pharmaceutical Association was held at Furman hall, Van-