4. Doses of 0.000067 cc. of the fluidextract made with 75% alcohol as the menstruum cause a rise in blood pressure of dogs when injected intravenously.

5. Doses of 0.000134 cc. of the fluidextract made with 25% alcohol as the menstruum cause a fall in the blood pressure of dogs when injected intravenously.

6. The possible presence of a principle or principles causing a rise in blood pressure is indicated in the fluidextract made with 75% alcohol as the menstruum.

7. The possible presence of a principle or principles causing a fall in blood pressure is indicated in the fluidextract made with 25% alcohol as the menstruum.

8. The possible presence of a principle or principles causing an increase in the rate of respiration and apparently cumulative in action is indicated in both fluidextracts.

The writer believes that these results justify a continuation of the research, and results will be reported from time to time in THIS JOURNAL. He also wishes to express his appreciation of the very able assistance and coöperation of his co-workers Messrs. Howard Dolyak, Milo Evosevic and John A. MacCartney.

COMMITTEE REPORTS

REPORT OF THE COMMITTEE ON PATENTS AND TRADEMARKS, 1930.

BY F. E. STEWART, *Chairman.*

The late Charles E. d'M. Sajous, M.D., of honored memory, in the introduction of his work on *The Internal Secretions and the Principles of Medicine,* called attention to a most important subject worthy of our thoughful consideration. He said:

> "At the dawn of the present century, one of our foremost clinicians, Llwellys Barker, of Johns Hopkins, wrote that therapeutics is moribund; eight years later, our foremost pharmacologist, Sollmann, wrote at present it cannot be classed as an art nor as a science; it can only be classed as a confusion. To-day therapeutics has been virtually eliminated from the curricula of our largest medical schools. What this means does not seem to have been apprehended by those upon whom rest the responsibility of deciding such questions. They overlook the fact that by allowing therapeutics to disappear from the list of subjects taught, *they are insuring the doom of medicine itself.* Indeed, even empirical therapeutics, that of the day, is at least based upon vast experience and observation, and affords material relief in suffering and often saves life. Virtually deprived of this knowledge by medical schools, graduates of the future will increasingly realize that their livelihood will no longer be earned honestly, unable as they will find themselves to meet the needs of those, granting them unmerited confidence, who will appeal to them for aid. Honorable men will increasingly abandon a carcer so little in keeping with their true aims, leaving the field open to the unscrupulous, the Christian Scientists and cults of all kinds. The phenominal development of such in recent years emphasizes already what the future has in store, if legitimate therapeutics is allowed to die."

Dr. Sajous spoke truly. The field of therapeutics, especially drug therapeutics, has been increasingly abandoned by the medical profession. Physicians have increasingly entered the field of non-drug specialties, leaving the field to be cultivated by the commercial drug business and the nostrum manufacturers. So diligently has the field been cultivated by the latter that the legitimate interests of the manufacturers engaged in the pharmacal and pharmaco-chemical industries, as well as the United States Pharmacopœia, the profession of pharmacy, and the schools and colleges of pharmacy, are threatened with extinction.

Referring to the nostrum business, Professor Charles H. LaWall, dean of the Philadelphia College of Pharmacy and Science, in his classic work, "Four Thousand Years of Pharmacy," says:

> "Secrecy, mystery and superstition have been the indispensable ingredients of many successful prescriptions and remedies from the time of the earliest Egyptians down to and including the present. The evolution of the nostrum, that

blot upon scientific medicine and pharmacy, for which professions are jointly responsible, is a separate story altogether. From these mysterious polypharmacal monstrosities, evolved by the physicians of the seventeenth and eighteenth centuries and used by them as secret remedies, has developed the modern nostrum traffic, a veritable Frankinstine taking toll in the United States alone of more than $200,000,000 annually, or enough to endow pharmaceutical and medical education and research for the permanent benefit of mankind."

The gradual abandonment of the therapeutic field by the medical profession threatens the future of the medical and pharmaceutical journals with loss of patronage, and the only way to save it seems to be in teaching physicians pharmaco-therapy in the reading pages of the medical journals. However, it stands to reason that the medical journals cannot afford to open their reading pages to teaching physicians how to employ the advertised materia medica as therapeutic agents. As stated by Prof. Wm. H. Thompson, M.D., L.L.D., who, in his day was an eminent leader of the medical profession, "The verdict about any alleged remedy must depend upon the findings of a jury whose members should not only be competent, but also so numerous and of such difference in locality and nationality that all personal or local influences can be safely left out of account."

It is evident that such an investigation of therapeutic agents commercially controlled and undergoing introduction to the profession in the advertising pages of the medical journals is impractical. Favorable reports would be appropriated by the commercial introducers for advertising purposes. The publication of unfavorable reports in medical journals would meet with reprisal including loss of advertising patronage, and, perhaps, lawsuits for damages.

ACTION OF THE AMERICAN THERAPEUTIC SOCIETY.

The American Therapeutic Society was organized in 1900, during the meeting of the National Pharmacopœial Convention at Washington, to promote progress in therapeutics and stem the tide of rapidly growing therapeutic nihilism in regard to drugs as therapeutic agents. Among the causes of this loss of faith in drugs were several of importance, including the growth of non-drug specialties, the "new remedy business" and the misleading advertising of the commercial introducers.

It was found that the misinterpretation and misapplication of the patent and trademark laws by the manufacturers of medicine and by the lower courts had also much to do with it. However, the decisions of the Supreme Court of the United States often over-ruled the decisions favorable to the nostrum trade except those dealing with product-patents.

PREAMBLE AND RESOLUTIONS ADOPTED BY THE AMERICAN THERAPEUTIC SOCIETY MAY 1, 1922.

"WHEREAS, the exact therapeutic value of new and even old drugs cannot be demonstrated owing to (1) the variety of names under which they are marketed; (2) the variation in their character, quality and strength due to different processes of manufacture; (3) the opprobrium of publishing in medical journals laudatory articles advertising commercially controlled drugs; (4) the fact that medical journals are unwilling to publish articles repudiating the therapeutic value of drugs, the advertisements of which are carried by them in their advertising columns.

"WHEREAS, the large majority of practitioners of medicine and surgery find it impossible to remember or to take time to write the long chemical names of drugs, which have short, easily remembered names claimed as trademarks by their manufacturers.

"WHEREAS, the constant use of a commercial name by physicians in prescribing and pharmacists in ordering supplies creates unfair monopolies in the sale of such drugs, to the discouragement of other manufacturers of the same products under their chemical names and hence by destroying competition, removes the incentive to excel in the production of preparations of superior quality, therefore, be it

"1. *Resolved*, that the American Therapeutic Society herewith records its complete disapproval of all methods now in vogue for obtaining monopolies of drugs, vaccines and serums by product-patents and the registration of so-called commercial names as trademarks, and be it

"2. *Resolved*, that the American Therapeutic Society herewith records its approval of, and will support, measures that aim toward the patenting of processes and apparatus for the

manufacture of medicinal drugs, chemicals and preparations of the same when such preparations are in fact new and useful inventions, provided that a complete description of their chemical composition, method of preparation and standardization and tests for purity are made known in the application for patent in such clear and concise language that any chemical or pharmaceutical firm may manufacture and market said drugs, and

"3. *Resolved*, that the American Therapeutic Society approves the patenting of new drugs under agreement whereby the educational, research and eleemosynary institutions are licensed by the patentees or their agents or assigns to produce such patented products without royalty, and be it

"4. *Resolved*, that the American Therapeutic Society also approves measures whereby the owners of such patents shall license the production of such patented products to completing manufacturers on a royalty basis, and

"5. *Resolved*, that the American Therapeutic Society urges the coöperation of the medical profession, pharmacists, pharmaceutical firms, manufacturers of drugs and editors of medical and pharmaceutical journals toward the end of appointing committees with power to promote such legislation as is needed to abolish the obnoxious and unscientific production, marketing, and use of drugs patented under the present laws, be it also

"6. *Resolved*, that a copy of these resolutions be sent to the secretary of each national medical and pharmaceutical association and to *The Journal of the American Medical Association*."

PRODUCTS-PATENTS *vs.* PROCESS-PATENTS.

J. W. England, well-known pharmacist, prominent member of the Pennsylvania Pharmaceutical Association and its ex-president and a leader of the AMERICAN PHARMACEUTICAL ASSOCIATION, with long experience as director of the chemical laboratory of a large manufacturing and wholesale drug house, therefore in position to speak with authority on the subject, is in agreement with the American Therapeutic Society on the subject of product-patents. He says in the JOURNAL of the AMERICAN PHARMACEUTICAL ASSOCIATION, Vol. 6, No. 2, under the head "The Product-Protection of Chemical Compounds:"

> "The crux of the situation in relation to the patent-protection of chemical compounds, more particular the synthetics, in this country, is to be found in the system of product-protection. We permit the first inventor to patent the product *as such* and thereby we stop all future inventors from marketing the same product no matter how made. It is hardly necessary to cite examples of the thousands of synthetic compounds made in Germany and process-patented and product-patented in this country, but for illustration, we shall call one of these 'X,' and it is a widely used compound. Prior to the European conflict 'X' sold in this country for about forty or fifty cents an ounce (wholesale) while the price in London was equivalent to about 8 to 10 cents an ounce * * * * 'X' cannot be marketed and sold in this country except by the owners of the patent, who have product-patented the compound, even if it be made by an entirely new and original process of manufacture. * * * And as these owners alone have the monopoly of sale they can fix the selling price. But in Germany product-patents are not allowed, and 'X' can be made by any other process than that used originally for making it, and can be marketed. * * * I blame the American public for not demanding a revision of the patent laws insofar, at least, as relates to the product-protection of chemical compounds, because the law prevents the growth and development of an American industry."

The German patent law excepts from patent protection: (1) inventions the application of which is contrary to the laws or public morals; (2) inventions relating to articles of food, whether for nourishment or enjoyment, and medicines, as also substances prepared by chemical processes insofar as the inventions do not relate to a definite process for the preparation thereof.

Patents are granted, however, for processes and apparatus for manufacture, and Section 35 provides a method for protection of inventors of processes for the production of new substances in the following manner: If the invention relates to the production of a new substance, all substances of like nature are considered as having been made by the patented process until proof to the contrary is given. (See Report of the Commission Appointed to Revise the Patent and Trademark Laws, etc., under Act of Congress Approved June 4, 1898. Senate Document No. 20.)

THE REGISTRATION OF COMMERCIAL NAMES IN THE PATENT OFFICE AT WASHINGTON AS TRADEMARKS.

The American Therapeutic Society records its complete disapproval of the registration of so-called commercial names as trademarks as a method of obtaining monopolies of drugs. Its reasons as cited in its Preamble and Resolutions are pertinent, but the subject has even more important bearings upon our subject than here given.

It has been several times pointed out in the reports of the committee on Patents and Trademarks of the AMERICAN PHARMACEUTICAL ASSOCIATION that copy rights and patent rights are creatures of statute and of grants and subject to the conditions incorporated in the statutes and in the grants, while, on the contrary, trademark rights are creatures of natural right and common law. This distinction between copy rights and patent rights on the one hand and trademark rights on the other is basic and very important to understand.

> "If to-day you should invent an art, a process, or a machine, you have no right at common law, nor any natural right, to hold that for seven, ten, fourteen, or any given number of years, against one who should invent it to-morrow, without any knowledge of your invention, and thus cut me and everybody else off from the right to do to-morrow what you have done to-day. There is no absolute or common law right, that I, being the origina land first inventor to-day, have to prevent you and everybody else from inventing and using to-morrow or next day the same thing. (A. M. H. & L. Mach. Co. *vs.* Am. Tool & Mach. Co. Fisher's Patent Cases, 294.)
>
> "The theory upon which the copyright and patent rest laws is that it is to the interest of the community that persons should be induced to devote their time, energies and resources to original investigation for the furtherance of science, the arts and manufactures. This was recognized from the earliest times which can pretend to be described as civilized. It is to the advantage of the whole community that authors and inventors should be rewarded, and no measure of reward can be conceived more just and equitable and bearing a closer relation to the benefit conferred by the particular individual than to grant him the sole right to his writing or discovery for a limited period of time." (Terril, in his treatise on Patent Law.)

Starting from the premise that authors and inventors do not possess a natural, or common law right to the exclusive use of their respective writings or discoveries—that civilization is dependent upon invention, discovery and imitation and duplication of inventions and discoveries and their improvement from age to age; also the recording of such, and the reduction of the knowledge thus evolved to law, and embodying it in system, and protecting this knowledge from pretense and error by fixed and changeless nomenclature, thus creating *science*, the framers of the Constitution of the United States incorporated a clause giving Congress the power. "To promote the progress of science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries. (See Clause 8, of Sec. VIII Article I.)

THE UNITED STATES COPY RIGHT PATENT, AND TRADEMARK LAWS AND THEIR INTERPRETATION AND APPLICATION BY THE COURTS.

As just stated, the copy right and patent laws rest upon Article I, Section VIII, Clause 8, of the Constitution of the United States. The Constitution does not specifically provide a clause upon which to rest the trademark laws. Section 8, Clause 3, however, gives Congress the power "To regulate commerce with foreign nations, and among the several States and with the Indian tribes." On this clause the trademark laws are pinned. It will be noted that Congress is not granted power to grant copy rights or patents on names, either in this or any other clause of the Constitution. As stated by ex-commissioner of patents, Newton, "the trademark law is not a law for *creating* trademarks; it is a law for *registering* trademarks."

Copyright and patent rights are granted to authors and inventors, respectively, as rewards for benefits conferred upon the public. They are granted for limited times only. When the grants expire authors and inventors no longer enjoy their protection. As we have already seen, the right to copy published writings and published inventions are public rights. The writer of a book, pamphlet and other writings, as long as the writer has them "under lock and key," "is protected by law from unauthorized publication by others. But common law, while thus

guarding from invasion on an author's well-defined property rights in the form or style of his composition, ceases to protect an author once his works are made public." (The New Universities Encyclopedia.) An inventor, as long as he keeps his invention hidden, has its manufacture and sale under control. But the common law does not protect him from invasion when he exposes his invention to the public eye. Any person has the right to copy it and offer copies for sale. Hence the necessity of copy right and patent laws for the protection of writers, publishers, inventors and manufacturers of inventions as articles of commerce.

Trademark rights are not grants. Manufacturers and merchants have a natural right to so label or mark their goods as to identify their *make* or *brand* of the same. This is a natural right just as much so as the right possessed by every person to sign his own name to a check, deed, contract or any other document requiring his signature. Moreover, this right does not expire. It is a perpetual right as long as the individual possessing it lives. In fact, a trademark is often referred to as a "commercial signature."

But the name of the goods cannot be a trademark on the goods to which the name is affixed. As stated by the learned judge in the case of Leclanche Battery Co. *vs.* Western Electric Co. (83 Fed. rep.) "When an article is made that was theretofore unknown, it must be christened with a name by which it may be known and dealt in, and the name thus given it becomes public property, and all who deal in the article have the right to designate it by the name by which alone it is recognisable."

Can a Name Become a Trademark? Yes. A name can become a trademark by use as a trademark; but it cannot become a trademark if used as the name of the goods or as a synonym thereof. To become a trademark the name must be used *fancifully*. For example, the name "Eagle" is used as a trademark on a brand of condensed milk. The name "Eagle" used alone, means eagle, it cannot possibly mean condensed milk. In other words, it cannot possibly describe the contents of the can of condensed milk as a synonym. It is used *fancifully*, not descriptively. Therefore, when a customer goes to his grocery store to purchase a can of condensed milk, and the grocer who carries several brands in stock, asks the customer what brand he wants, the word "Eagle" used by the producer enables the purchaser to reply, "I want the "Eagle brand."

"In short, a trademark denotes the *producer* and *not the thing produced.* ("The New Universities Encyclopedia.")

BASIC TRADEMARK DECISION BY THE SUPREME COURT OF THE UNITED STATES.

The first national trademark law was enacted by Congress in 1870. It was pronounced unconstitutional by the Supreme Court. The basic decision was that of Delaware and Hudson Canal Company *vs.* Clark. In referring to this decision the Official Gazette of the U. S. Patent Office (1872, page 28) said:

> "The Supreme Court of the United States in President, etc., of the Delaware and Hudson Canal Company *vs.* Clark, repeated a proposition that as a rule has been frequently enunciated and settled beyond question, *viz.:* The office of a trademark is to point out distinctively the origin or ownership of the article to which it is affixed or, in other words, to give notice who was the producer." The Court went on to say: "No one can claim protection for the exclusive use of a trademark or trade name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the public would be injured rather than protected, for competition would be destroyed. Nor can a generic name or a name merely descriptive of an article of trade, or of its qualities, ingredients, or characteristics, be employed as a trademark, and the exclusive use of it entitled to protection. (Canal Co. *vs.* Clark, 13 Wall, 323.)

WHY, IN THE LIGHT OF THIS DECISION, DOES THE UNITED STATES PATENT OFFICE PERMIT THE REGISTRATION OF THE NAMES OF ARTICLES OF TRADE AS TRADEMARKS?

The United States Patent Office *does not* permit the registering of articles of trade as trademarks. Indeed the trademark law specifically forbids it. The law states "That no mark which consists merely in the name of an individual, firm, corporation, or association not written, printed, impressed or woven in some particular or distinctive manner * * * or merely in words or devices

which are descriptive of the goods with which they are used, or of the character or quality of such goods * * * shall be registered under the terms of this Act." The name of a medicine, for example, when included in some "particular or distinctive manner" within a design or drawing of some kind, becomes part of a trademark. But the name, separated from the design, is not in itself a trademark; but is simply the name of the medicine which any person has the right to use as the name of the article which it describes.

OPINION OF THE HOUSE COMMITTEE ON PATENTS RELATIVE TO TRADEMARKS.

The following statement was made by the Hon. Benjamin Butterworth speaking as the Chairman of the House Committee on Patents of the U. S. Congress:

"While the House Committee on Patents is not an interpreter of law, that being the function of the Supreme Court of the United States, the Committee in its individual capacity is of the following opinion:

"1. The registration of a trademark does not make it valid. Registration is merely giving notice that the thing registered is claimed as a trademark. The validity of the claim can only be settled by the courts.

"2. The use of a trademark in no way restricts the free use of others of the articles of merchandise to which it is affixed. It confers on the user no privilege to the exclusive use of an invention of the kind conferred by the patent law. Otherwise we should have an anomoly of laws directly opposing one another. The patent law grants the inventor exclusive right to his invention for a limited time, and then only on the publication of full knowledge of the invention whereby the public may manufacture it when the patent expires. The use of a trademark, on the contrary, is unlimited in duration, and no publication is required when it is used on an invention.

"3. The public has a perfect right to manufacture and sell any article of commerce not patented, and do so under its proper or generic name, whether a trademark is used in connection with the article or not. For this reason the courts hold that names describing the articles cannot be used as trademarks on the articles they describe. Otherwise trademarks would be a hinderance to competition, while the proper use of a trade-mark promotes competition by distinguishing between one brand of an article and another brand of the same article, thus stimulating manufacturers to improvements in processes and methods of manufacture for the purpose of excelling each other in producing the same article of better quality or lower price."

THE STATUS OF SECRET PROPRIETARY MEDICINES.

The following is abstracted from the Law Encyclopedia, Vol. XXXVIII:

"The name of a secret or proprietary medicine is descriptive thereof, and hence not a valid trademark. Anyone who discovers the secret and makes the goods according to the formula may use the name to describe the goods. * * * Of course the name may not be used to pass off spurious concoctions as and for the genuine preparations (page 740). A subsequent user of the same must add some distinguishing statement showing the article is his own production of the article known by that name in addition to using the name and he must not imitate the dress or the make up of the goods, or do any affirmative act calculated to deceive the public and pass off the goods as and for the previously known goods (pages 38–385)."

SOME REQUIREMENTS OF THE UNITED STATES PATENT LAWS.

According to the United States Patent Law an invention to be patentable must conform to the following requirements: It must be—

1. New and useful.
2. Previously unknown or used by others in this country.
3. Must not have been patented or described in any printed publication in this or any foreign country before the inventor's application for patent in this country.
4. Must not have been in public use or on sale for more than two years prior to the application for patent; unless the same is proved to have been abandoned.
5. The application for patent must be in writing to the Commissioner of Patents.
6. Said application must contain a written description of the invention, and of the manner of making, constructing, compounding and using it, in such full, clear, concise and exact terms,

as to enable any person skilled in the art or science to which it appertains, or with which it is most closely connected, to make, construct and use the same.

7. In case of a machine, the inventor shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions.

8. The inventor of the machine shall particularly point out and distinctly claim the part, improvement or combination, which he claims as his invention or discovery.

9. The said specifications and claim shall be signed by the inventor and attested by two witnesses.

10. When the invention or discovery is of a composition of matter, the applicant, if required by the Commissioner, shall furnish specimens of the ingredients and of the composition, sufficient in quantity for the purpose of experiment.

11. *Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design.*

12. Every patent shall contain a grant to the patentee, his heirs or assigns, for the term of 17 years, of the exclusive right to make, use and vend the invention or discovery throughout the United States and Territories thereof, referring to the specification for the particulars thereof.

13. A copy of the specifications and drawings shall be annexed to the patent and be a part thereof.

THE STATUS OF PATENTED INVENTIONS WHEN PATENTS HAVE EXPIRED.

The following statement constitutes the decision of the Supreme Court of the United States in the Singer Sewing Machine Case in 1895:

> "The result, then, of the American, the English and the French doctrine universally upheld is this, that where during the life of a monopoly created by a patent a name, whether it be arbitrary or that of the inventor, has become, by his consent, either express or tacit, the identifying and generic name of the thing patented, this name passes to the public with the cessation of the monopoly which the patent created. Where another avails himself of this public dedication to make the machine and use the generic designation, he can do so in all forms, with the fullest liberty, by affixing such name to the machine, by referring to it in advertisements, and by other means, subject, however, to the condition that the name must be accompanied with such indications that the thing manufactured is the work of the one making it as will unmistakedly inform the public of the fact."

COMPLAINTS THAT THE PATENT OFFICE IS NOT PROPERLY PERFORMING ITS FUNCTIONS.

The chairman of your Committee has received several requests for the Committee to make known certain complaints in regard to the Patent Office not properly performing its functions, due, probably, to overwork.

The contention that the Patent Office has more to do than its facilities permit receives support from the address of the Hon. Charles Merrill Hought given at the dinner of the New York Patent Law Association, Feb. 10, 1927. He said: "According to an annual report now widely and proudly published there were 1,612,789 grants of monopoly since 1836, and of late over 45,000 in a single year. Allowing 300 working days to the year, 150 per day, and all depending upon one statute. Now, as the British cross-examiner says 'I put it up to you,' can anybody have any collective respect for 45,000 patents a year?"

Add to this enormous work that required to register thousands of so-called trademarks annually, and it is not surprising that the market is overloaded with nostrums, patented and unpatented, to the serious injury to the public health.

NATIONAL ASSOCIATION OF RETAIL DRUGGISTS TO MEET IN DETROIT.

The thirty-third annual convention of the National Association of Retail Druggists will be held in Detroit, September 28 to October 3, 1931—the Book-Cadillac has been selected as headquarters hotel.