

L. K. Darbaker;¹ *Vice-President*, E. H. Wirth; *Secretary-Treasurer*, L. E. Harris. *Council Members*, F. J. Bacon; F. H. Eby.

After breakfast, Friday morning, the members broke camp and proceeded by auto caravan through the Ada Oil Fields. Stops were made at Sulphur and Turner Falls after which the party proceeded to Dallas.

Attending the 1936 Seminar were: F. J. Bacon, Cleveland, O.; R. D. Bienfang, Norman, Okla.; Miss Carolyn Binder, Oak Park, Ill.; P. D. Carpenter, Chicago, Ill.; Glenn Couch, Norman, Okla.; L. K. and Mrs. Darbaker, Pittsburgh, Pa.; M. S. and Mrs. Dunn, Philadelphia, Pa.; C. T. Eidsmoe, Brookings, S. Dak.; Mrs. Herman Elich, Chicago, Ill.; R. W. Elich, Chicago, Ill.; Wm. Felkner, Norman, Okla.; E. N. and Mrs. Gathercoal, Chicago, Ill.; F. J. Gibbs, Oklahoma City, Okla.; Dr. Katherine Graham, Chicago, Ill.; Miss Ina L. Griffith, Norman, Okla.; L. E. and Mrs. Harris, Norman, Okla.; Miss Lorene A. Harris, Norman, Okla.; L. D. and Mrs. Hiner, Brookings, S. Dak.; E. J. Ireland, Gainesville, Fla.; D. B. R. and Mrs. Johnson, Norman, Okla.; Ray Johnson, Norman, Okla.; L. F. and Mrs. Jones, Indianapolis, Ind.; A. W. Matthews, Edmonton, Alberta; J. E. and Mrs. Seybert, Indianapolis, Ind.; Elbert Voss, Pittsburgh, Pa.; Miss Marilyn Wirth, Oak Park, Ill.; and E. H. Wirth, Chicago, Ill.

See pages 364, 374, 375.

FAIR TRADE LEGISLATION.

PARTS OF AN ADDRESS BY R. L. SWAIN AT THE RECENT MEETING OF GEORGIA PHARMACEUTICAL ASSOCIATION.

First of all, what is the fair-trade movement? The fair-trade movement is an attempt to maintain free and open competition in retail trade by eliminating those business practices which tend to monopoly. It is aimed at loss-leader selling, predatory price cutting and the other nefarious business methods, which have crushed the small business men of this country into economic servitude. It is an attempt to restore some semblance of economic security to the independent, and to preserve for him a decent place in the scheme of distribution. Its greatest merit is that it is devoted to that traditional American notion that the doors of opportunity shall be kept open to one and all and on equal terms. It is forever opposed to economic discrimination and oppression. It is fair to big and small.

What is a fair-trade law? A fair-trade law is an act of a State legislature, aimed at the elimination of the evils of loss-leader selling. Generally speaking, these acts make lawful contracts between the manufacturer and his distributors, whereby minimum resale prices are set up for trade-marked, identified merchandise, which is in free and open competition with other merchandise of the same general class.

Are producers permitted to agree among themselves regarding resale prices? The fair-trade acts, without exception, prohibit all agreements between producers, between wholesalers or between retailers. They authorize vertical price agreements, but prohibit horizontal price agreements. In other words, competition between producers is in no sense lessened.

Are all commodities subject to fair-trade agreements? The fair-trade acts are limited to trade-marked commodities, which are in free and open competition with commodities of the same general class produced by others. Competition is the key-note of the agreement. If competition is not present, then no contract can be entered into.

Are fair-trade acts price-fixing acts? In an unanimous decision by the Supreme Court of the United States, in which the Illinois and California Fair Trade Acts were upheld, the fair-trade laws are declared not to constitute price fixing. The fair-trade laws are aimed at recognized evils in retail distribution, which are undermining free competition and tending to concentrate retail business in the hands of a relatively few large concerns. By eliminating loss-leader selling, the fair-trade acts seek to keep the doors of opportunity open for the small dealer. The minimum retail price in fair-trade contracts is incidental, the main purpose being to keep the channels of competition free and open, and to check those recognized unfair trade practices which tend to monopoly.

¹ Page 374.

Have the fair-trade laws been fair to the consumer? In so far as there is evidence available, the answer is yes. Impartial studies made of the situation in California, where the act has been in effect for several years, have shown that prices have not been to the detriment of the consuming public. Studies made under the NRA codes show that there was a leveling-out of retail prices, which resulted in benefits to the consumer.

This whole fair-trade program would be an overwhelming success if the public could be made to see just what predatory loss-leader selling means. The Supreme Court, in the Illinois Fair Trade Case, stated: "There is a great body of fact and opinion tending to show that price cutting by retail dealers is not only injurious to the good-will and business of the producer and distributor of identified goods, but injurious to the public as well."

The key-note of the fair-trade program was sounded back in 1912 by the eminent Louis D. Brandeis, before he became a member of the Supreme Court. In a classic discussion of the subject, Mr. Brandeis said: "When a trade-marked article is advertised to be sold at less than the standard price, it is generally done to attract persons to a particular store by the offer of an obviously extraordinary bargain. It is a bait, called by the dealers a "leader." But the cut price article would more appropriately be termed a "mis-leader;" because ordinarily the very purpose of the cut price is to create a false impression."

The late Justice Oliver Wendell Holmes had an uncanny sense in going to the heart of any controversy. In the celebrated Miles case, the learned jurist said: "I cannot believe that in the long run the public will profit by this Court permitting knaves to cut reasonable prices for some ulterior purpose of their own, and thus to impair, if not to destroy, the production and sale of articles which it is assumed to be desirable and that the public should be able to get."

The fair-trade movement is aimed at destroying the cant and hypocrisy of that group which has sandbagged the buying public into believing that a cut price is in the public interest. It is intended to give the public, the producer and the distributor a fair and decent break. It will bring peace and order into distribution, and provide a sounder and cleaner method of competition. It will make possible better hours and wages for employees, and bring about improved conditions of employment. It is a social and economic force, aimed at bettering the conditions under which people live and labor.

Because of these underlying principles, fair-trade acts have been enacted in thirty-nine states, representing well over 90,000,000 of the population of this country. The states, faced with drastic economic problems in the field of distribution, have seized upon the fair-trade acts as a means of solution. They have seen in the movement some hope that economic security can be found for the independent retailer, and at the same time a hope that the buyer can be freed from the deception and fraud of those who profit from the predatory route.

However, from the very start, it was apparent that the State acts could not effectuate their purposes without congressional action. There was the fear that in some respects contracts made under the fair-trade laws might infringe some of the provisions of the Sherman Act. It was to allay this fear, and at the same time remove all doubt on the subject, that the Tydings-Miller National Fair-Trade Enabling Act was introduced into Congress. Its sole purpose is to remove Federal obstacles to the operation of fair-trade contracts which the states themselves have declared lawful.

It is interesting, at this point, to note the economic and political philosophy of Senator Millard E. Tydings of Maryland and Congressman John E. Miller of Arkansas. These men gave their names and prestige to the National Fair Trade Enabling Act, and have thus allied themselves with the forces seeking to bring peace and decency into the field of distribution.

In his address before the National Association of Retail Druggists' convention in Pittsburgh last year, Senator Tydings said: "Is the country better off with a relatively large number of independent retailers, or shall we concentrate distribution in the hands of a few? The question as I see it admits of but one answer. I believe it to be the duty of the government to protect the weak against the strong, and to keep the channels of trade free and open to all. I subscribe without reservation or restraint that democracy in government is a mockery unless there is democracy in opportunity.

"Because of studies that I have made of the problems now raging in distribution, I am convinced that there is an urgent need for the National Fair Trade Enabling Act."

The note sounded by Congressman Miller is no less high. In a recent statement, he said:

"I have a great interest in the survival of the independent business man in the field of distribution in this country, believing that his survival is essential to the maintenance of our democratic institutions.

"I have given a great deal of study to the basic principles underlying the State Fair Trade Acts, and approve them fully as a rational method of outlawing certain predatory practices in commerce which have contributed in a large measure to the decimation of the ranks of independent business men in all parts of the country—namely, predatory price cutting and loss-leader selling.

"I believe that the principles of fair-trade legislation, as embodied in the acts now on the statute books of fifteen states, if brought to full effectiveness by the National Enabling Act, will result in benefit to independent business men and the general public."

First of all, the manufacturer's right to control his prices is not dependent upon the fair-trade acts. The cost of materials plus the costs of production plus the costs of distribution plus the forces of competition are what control the manufacturer in determining what his price shall be. Any sane man knows that prices are not arbitrarily fixed. Every sane man knows that no manufacturer would so unduly raise his prices as to incur the resentment of the public. Then, too, it must be borne in mind that no commodity can be made the subject of a fair-trade agreement unless it is a trade-marked commodity, and in free and open competition with commodities of the same general class produced by others. Imagine the absurdity of saying that a manufacturer of a tooth-paste would so unduly raise his prices as to incur the resentment of the public, when there are scores of tooth-paste manufacturers all keenly competing for the favor of the consumer. This is a principle so elementary that even the Federal Trade Commission should be aware of it.

The basic meaning of the fair-trade acts, in so far as their bearing upon competition is concerned, was admirably stated by the Honorable Robert H. Lehman, Governor of New York, when he signed the fair-trade act of that state: "The prices of commodities that are sold in fair and open competition with other commodities of the same general class will always be subject to control by the powerful forces of competition. If a manufacturer markets his products at a price which the consumer deems too high, the consumer will naturally purchase a commodity of the same type produced by another manufacturer who is willing and able to market at a lower price."

AN EGYPTIAN PHARMACOPEIA.

Liberty is taken in quoting the following from *The Pharmaceutical Journal*, April 17, 1937.

"A review of fourteen national pharmacopœias has been contributed to the *Journal of the Egyptian Medical Association* by Professor I. R. Fahmy, of the University of Cairo. Marked differences between substances bearing the same names are shown, and variations in national standards which also arise are pointed out. Where prescriptions contain a mixture of preparations from different pharmacopœias, the dispenser is often uncertain as to which pharmacopœia should guide him, a situation which apparently often arises in Egypt.

"Professor Fahmy suggests that the present chaos prevailing in Egypt can be stopped by

one of three possible methods: By accepting one of the commonly used pharmacopœias in the country as the official Pharmacopœia and compelling all medical practitioners in Egypt to use it. Against this proposal there is the difficulty of finding a pharmacopœia which would suit the needs of the country. By compelling medical practitioners to write the name of the pharmacopœia to be used by the pharmacist. 'This is impracticable,' states Professor Fahmy, 'owing to the difficulty of stocking all the preparations of the various pharmacopœias in one pharmacy.' His third suggestion—the production of a national pharmacopœia suitable for the needs of the country—is put forward as the only acceptable proposal; one which should be the main object of those interested in the progress and welfare of the sciences of medicine and pharmacy in Egypt."
