

1914. He became a member of the American Pharmaceutical Association in 1907.

Gustavus Alexander Knabe, in Montgomery, Ala., on October 5, 1914. He was a life member of the American Pharmaceutical Association, joining in 1876. J. W. E.



Letters to the Editor

Mason G. Beebe, the Secretary of the Board of Pharmacy of Vermont, states that Dr. D. A. Bisbee, who sold the Wood Alcohol from the use of which, as a beverage, thirteen deaths have resulted, is not a registered pharmacist of that state and that he was not conducting a drug-store recognized as such, by the State of Vermont at the time of the sale of the poisonous liquor. Bisbee is a graduate of a medical college, but his license as a pharmacist, which he secured by registration when the Pharmacy Law was passed, had been previously revoked by the Board of Pharmacy, and at the time of the sale he was conducting a store for the sale of general merchandise, among which were a few patent medicines.



Little Rock, Ark., Nov. 24, 1914.

Editor Journal A. Ph. A., Columbus, Ohio.

I wish to congratulate you on the superb November issue of the Journal.

Every paper you admitted to the pages is a gem! I think I can see dear old chum Hynson when he read his "All Fool's Day, etc." How scientifically he punctures the conceit of some "d-d Doctors," as he meanders along! Big-hearted old fellow "his bark is worse than his bite."

But must I acknowledge it? The pictures first of all, claimed my loving attention. Just look at Remington in the front! Well is he placed. Next to his cordial smile and hand-grasp, which I had to miss at Detroit, comes the delight of looking at his masterful but still modest countenance.

Am I wrong in detecting some little "falling away" of his once luxuriant locks? It seems to me he is following the fashion set by Whelpley, my enemy in 1861-5, but friend ever since! If he was not in the Union army *bodily* he was in *Spirit*.

Then look at Army and Wulling! They both want to talk. West reminds me of Boston where I was treated so royally that I thought I was a sure enough Yankee!

I am so glad you found space for those lovely faces of some grand women! I sometimes imagine that Mrs. Godding showed me particular attention at the Boston meeting, but in my cooler moments I recall that she

showered smiles and kind words to every stranger she met. She was a help-mate to John G. Godding in every sense of the word. Mrs. Culley's face proves that there are good-looking women out in Salt Lake! "Howdy, Mrs. Whelpley," may you live forever.

Were I to mention the names of my dearly beloved personal friends, printed in your Journal, you would surely bar out this effusion. If you print it, however, allow me to recognize Mayo, Mason, England, Beringer, Payne, Anderson, Day, Apple, Rudiman, Wilbert, R. H. Walker, the rough diamond of Texas, Lemberger, Eberle, Diehl, Wallace of Pennsylvania, the state from which I "escaped" in 1840 when at the early age of four years!! However, I must close these reminiscences because your space is rather valuable.

John B. Bond, Sr.



FORNEY, TEXAS, Nov, 20th, 1914.

The Editor, Journal of the American Ph. Assn., Columbus, Ohio.

My Dear Sir:—On the first page of the Journal of the November issue in a biographical sketch of Prof. Joseph P. Remington, in recounting the different societies and associations of which he is an honorary member, I regret to have to be compelled to call your attention to the fact that you omitted his being an honorary life member of the Texas Pharmaceutical Association. On page 127, Proceedings of 1910, you will find "Upon motion of Secy. Eberle, Prof. Remington was unanimously elected an honorary life member of the Texas Pharmaceutical Association."

I realize that the honor Texas would do to Dr. Remington, is really an honor to Texas, rather than to the doctor. We are proud to have great men as members of our association, but when a man is both great and good we are particularly interested in his being counted as one of our number—and Dr. Remington is both great and good.

With best wishes I am,

Walter D. Adams,
President.



The Pharmacist and the Law

LICENSES—RECIPROCAL REGISTRATION—REGULATION BY BOARD OF PHARMACY.

Under Kentucky Acts 1910, c. 113, the State Board of Pharmacy is authorized to exchange certificates of registration with other states, under such rules as the board shall determine. The board adopted a rule that

applicants must have been registered in the state from which they apply at least one year before reciprocal registration is granted. In *mandamus* against the board to compel them to grant the petitioner a pharmacist's certificate, it appeared that his application had been denied, because he had not been registered in Georgia, the state from which he applied, for one year. He subsequently, on the elapse of the required year, made another application. Meanwhile the board had passed an additional rule, requiring that the applicant should have, for one year prior to examination, been a bona fide resident of, and been engaged in the drug business in the foreign state. As the petitioner had not been an actual resident of Georgia for one year prior to his registration in that state, his application was again denied. He claimed that the board's rules destroyed the right of reciprocal registration. The court did not concur in this. It said that, apparently, persons living in Kentucky, who were unwilling to stand the Kentucky examination, went to other states where they did not reside to get certificates, and then presented these certificates for reciprocal registration to avoid standing the Kentucky examination. But for the rule of the board, a person who had failed in the Kentucky examination might immediately go to another state, obtain a certificate, and return to Kentucky, and as a matter of right, have a certificate issued to him by the Kentucky board. The rule was held to be not arbitrary, but reasonable. The petitioner's constitutional rights had not been violated. The rule did not discriminate against the citizens of another state. It was neither harsh nor unwarranted. The petitioner was a citizen of Kentucky. The purpose of the rule was to prevent citizens of Kentucky from evading the statute of that state requiring them to pass an examination, in order to obtain a certificate as a pharmacist. *Mandamus* was refused.

King v. Kentucky Board of Pharmacy, Kentucky Court of Appeals, 169 S. W., 600, decided October 6, 1914.



INTOXICATING LIQUORS—SEARCHES AND SEIZURES.

In an action of *trover* against a sheriff and his deputies, it appeared that the plaintiff was a registered druggist and pharmacist in a village in Michigan. He had given no bond for the sale of liquor as a druggist on May

1, 1911, and did not give such bond until July of that year. On May 19, 1911, at an early hour in the morning, the defendants, holding a search and seizure warrant, made a search of the plaintiff's premises, and seized and took away liquors of the claimed value of \$284.

Michigan Pub. Acts, 1909, No. 107, Section 27, provides that if any person makes a sworn complaint or affidavit before a magistrate, that he has cause to believe, and does believe, that liquors are being manufactured, sold, furnished, or given away as a beverage, or kept for the purpose of being sold, etc., the magistrate shall issue his warrant to an officer, commanding him to search the premises designated, and, if such liquors are found, to seize them. Section 29 provides that no warrant shall be issued, until there has been filed an affidavit describing the house or place to be searched, the things to be searched for, and alleging substantially the offense in relation thereto, and that the affiant believes, and has good cause to believe, that such liquor is there concealed. In the present case, the affidavit merely alleged that the affiant believed that liquor was being sold, furnished and given away and kept for that purpose in the plaintiff's drug store, but did not allege that he believed and had good cause to believe that such liquor was there concealed. It was held that the affidavit was fatally defective, and did not give the magistrate jurisdiction to issue a warrant, and that the warrant issued was no justification to the officer for the seizure of liquor found on the plaintiff's premises.

Bullock v. Ward, Michigan Supreme Court, 148 N. W., 651, decided October 2, 1914.



UNFAIR COMPETITION—"SECONDARY TRADE NAMES."

Suit in equity was brought in the Oklahoma Federal district court, to enjoin the defendants from an infringement of the plaintiff's trade name, and to prevent unfair competition. It was held that there was no evidence tending to show that the defendants had been guilty of the use of the plaintiff's trade name. The facts with regard to the allegation of unfair competition, as stated by the court, are as follows: The trade name of the plaintiff's product is "Coca-Cola." The defendants prepared and sold a beverage which is called "Koke." Both beverages are made from syrups mixed with carbonated

water. Both are put up in bottles, and are served by the glass at cold drink stands. The bottles containing "Koke" are a little taller than those containing "Coca-Cola." The bottles containing each beverage have a tin cap over the stopper. The words "Coca-Cola" and "Koke" appear in script on these tin caps. "Coca-Cola" and "Koke" are similar in color. The defendants sold to dealers exclusively. It appeared, in testimony, that, in some instances, persons who wanted Coca-Cola would say, "Give me a dope," or "Give me a Koke." There was also proof to the effect that two or three dealers in Tulsa, Okla., gave "Koke" to their customers when they had called for "Coca-Cola." There was no proof that the defendants sold "Koke" for "Coca-Cola," or advised their customers to do so. In that respect this case differs from the case of *Coca-Cola Co. v. Gay-Ola Co.*, 200 Fed., 720. In that case, the defendant claimed to have discovered the complainant's formula, and to be in fact making the same thing. There the Court of Appeals for the Sixth Circuit held that a case of unfair competition had been made out, in that the defendant sold its product "as and for Coca-Cola." Nothing appeared in the testimony, in the present case, connecting the defendants with any effort to sell their product for Coca-Cola. There was nothing to show that they had such intention. In the case of *Coats v. Merrick Thread Co.*, 149 U. S., 562, where unfair competition in the manufacture and sale of thread was charged, the court said: "We think the defendants have clearly disproved any intention on their part to mislead the dealers who purchase of them. Indeed, such dealers could not possibly fail to know what they were buying, and the fraud, if any, was practiced on the buyer of a single or a small number of spools, who might be induced to purchase the thread of the defendants for that of the plaintiffs. If the purchaser of such thread desires a particular make, he should either call for such, in which case the dealer, if he puts off on him a different make, would be guilty of fraud, for which the defendants would not be responsible, or should examine himself the lettering upon the spools." Although it appeared in testimony, that it was the custom of dealers, in serving the two beverages, to remove the tin caps from the bottles, so that the purchaser did not see the name thereon, that would be true as to any beverage of like or similar color to Coca-

Cola. According to the testimony of the plaintiff's agent, there are 181 beverages having practically the same color as Coca-Cola. The defendants, it was held, could not be held responsible for what their customers did without aid, suggestion, or inducement from them.

The plaintiff also argued that "Koke" had become the "secondary name" of its product, because it appeared from the proof that some persons desiring that product say to the dealer, "Give me a Koke." A trade-name may be acquired by adoption or use. But the plaintiff had never used the word "Koke" in connection with its product. It has taken and used the name of "Coca-Cola." The use of the word "Koke," as applied to the product of the plaintiff, had been, so far as the testimony showed, by persons upon their own volition without being moved thereto by the defendants. If the use of the name had been observed by the defendants, and it was afterwards adopted by them with the purpose and intention of taking advantage of that fact and to engage in the manufacture and sale of a beverage and call it "Koke," and sell it "as and for Coca-Cola," then a case of unfair competition would undoubtedly be made out.

Assuming that there is such a thing as a secondary trade-name, the right to its exclusive use must depend upon adoption and use, just as in the case of a primary name. There is such a thing as a name having acquired a secondary meaning. But it was held that the facts in this case did not call for an application of that rule. The relief sought here, was the prohibition of the use of a name that the defendants had neither adopted nor used. There was nothing to show that the defendants were using the name for the purpose of selling the beverage manufactured by them for Coca-Cola. The plaintiff's bill was therefore dismissed.

Coca-Cola Co. v. Branham, 216 Fed., 264, decided July 15, 1914.

Council Business

COUNCIL LETTER No. 6.

Philadelphia, Pa., November 12, 1914.

To the Members of the Council:--

Motion No. 10 (Election of Members; Applications Nos. 31 to 36, inclusive) has received a majority of affirmative votes.