them money. A general discussion of provisions of the new state anti-narcotic law followed, in which the plan of the Narcotic Commission to allow habitues to obtain narcotics on a permanent prescription, to be issued by their physician and endorsed by the Commission, was considered from many points of view. All favored the idea of restricting the sale of narcotics.

After receiving an application for membership, the Branch adjourned.

W. R. WHITE, Sec'y.

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## PITTSBURGH BRANCH.

(January Meeting.)

The meeting of the Pittsburgh Branch of the A. Ph. A. for the current month was delayed for one week owing to the absence from the city of the secretary. It was held Friday evening, January 16, and in point of attendance was most successful. The number of students present was gratifying, as was also the presence of many ladies.

The only business taken up was the election of officers. The personnel of the nominees was given in the last issue of this JOURNAL, and as there were no new nominees submitted, the ticket recommended by the Committee on Nominations was unanimously elected.

The feature of the evening, the promise of which it was that brought out the unusually large audience, was the presentation by the aid of hand-colored lantern slide pictures, and descriptive lecture, by George B. Parker, Esq., of the wild flowers of nearby counties, and no one present was in the least disappointed in their most sanguine expectations of a rare treat. The delicate coloring in natural shades of the various flowers proved a continual source of wonder and appreciation, and it was clearly evident that in the production of them Mr. Parker must have had a severe strain on his patience, who explained that it was only possible by the use of the microscope while it was under way. Every plant and flower thrown upon the screen had been photographed by Mr. Parker during numerous rambles over the surrounding territory contiguous to Pittsburgh. His collection is extremely rich in number as well as in detail. Mr. Parker claims that he is not a botanist, but merely a lover of the plants and flowers as they grow in their natural environments; he submitted no illustrations of cultivated specimens. It is Mr. Parker's intention to present his valuable and interesting collection to the Pittsburgh Camera Club, a body of amateur photographers, and each member with a hobby. This disposition of the collection will place it where it can be secured for use in interesting the pupils of the schools of the city in the study of flowers and plants. The gentleman was the recipient of a very enthusiastic vote of appreciation of the instruction and entertainment he had so kindly given.

Dr. Louis Saalbach was on the program for a report on the proposed changes in the United States Pharmacopoeia, but owing to the serious illness of his mother, whose life is despaired of, he was not able to be present, nor in a mental condition to prepare the paper on the assigned topic.

B. E. PRITCHARD, Secretary.

## The Pharmacist and the Law

### ABSTRACT OF LEGAL DECISIONS.

VOID ORDINANCE LICENSING SELLERS OF SOFT DRINKS—RECOVERY OF LICENSE FEES PAID. A firm of druggists in a city of the fourth class in Kentucky were engaged in selling soft drinks as a part of their business. In April, 1910, at the solicitation of a number of persons who were engaged in that business, or that desired to engage in it, in the city, the board of councilmen adopted an ordinance providing for licensing the sale of soft drinks in the city, fixing the license fee at $200 per annum, payable quarterly. The firm in question obtained the required license, and continued to do business thereunder for 18 months, during which period they paid license fees aggregating $300. In September, 1912, the firm brought action against the city to recover that sum, upon the ground that it had been paid through mistake, and collected without authority of law. The want of authority upon the part of the city to collect the license fee appeared, for the first time, shortly before the action was brought, when the firm discovered that the ordinance of April, 1910, was void, because the yeas and nays of the vote upon its adoption had not

been recorded in the journal of the proceedings of the board of council.

The rule in most jurisdictions is that money paid under a mistake of fact can be recovered, but money paid under a mistake of law cannot be recovered. But it has long been settled in the Kentucky courts that in that state money paid under a mistake of law may be recovered. The court of appeals of the state upholds the wisdom of the Kentucky rule on the ground that one is much more inclined to make a mistake of law than a mistake of fact. One of the modifications of the Kentucky rule, however, is that illegal taxes paid voluntarily may not be recovered; but, if they are paid under compulsion, which exists whenever they are collectible by summary process of fine and imprisonment, they come within the general rule and may be recovered. When taxes can be collected by suit only, and are voluntarily paid, an action to recover them cannot be brought. All the requisites of a compulsory payment appearing in this case, judgment for the defendants was reversed and the cause remanded for further proceedings consistent with the opinion of the appellate court.—*Spalding v. City of Lebanon, Kentucky Court of Appeals,* 160 *S. W.,* 751.

SALE OF UNDIVIDED INTEREST IN STOCK—BULK SALES LAW. The sale of a half interest in a stock of goods by a merchant for the purpose of taking the vendee into partnership is held to be within the purpose and reason of the Tennessee Bulk Sales Law (Acts 1901, c. 133), requiring that notice shall be given to creditors, etc., since it very materially changes the relation of the vendor's creditors to the stock, if such sale is valid. Before the sale a creditor could levy upon the whole stock. After the sale, if valid, the creditor could not levy upon any of the stock, but only upon the vendor's interest in the whole, and in order to obtain this he would have to file a bill in equity and have an accounting with the new partner. So the former owner of the stock might admit three new persons into the business, and so reduce his own holding to a one-fourth interest, and so on as to small fractions—at the same time putting the proceeds into his own pocket and holding them beyond the reach of his creditors.—*Daly v. Sumpter Drug Co., Tennessee Supreme Court,* 155 *S. W.,* 167.

AGENCY CONTRACT OR ABSOLUTE SALE. Action was brought for goods sold and delivered, to recover for certain proprietary medicines alleged to have been sold by a proprietary medicine company to the defendant Bates. The defendant Eastgate guaranteed the contract. The plaintiff was the owner by purchase from the receiver of the medicine company. The vital question in the case was whether the contract, which was in writing and complete in itself, was a contract of absolute sale, making Bates liable, upon its termination, for the stipulated price of the goods which he ordered.

The contract recited a desire on the part of Bates to purchase of the medicine company, on credit and at wholesale prices, for the purpose of selling again to consumers, certain medicines and other goods manufactured or distributed by the medicine company, paying his account in installments as provided in the contract. Bates was to sell no other goods than those sold by the company, was to sell at retail prices fixed by the company, and was to pay on the basis of the wholesale prices fixed by the company. He was to remit to the company in cash each week an amount equal to one-half of the receipts of his business, of which he was to submit weekly reports. Upon the termination of the contract he was to settle in cash within a reasonable time the balance due the company on account. The company agreed to fill and deliver his reasonable orders, provided his account was in a satisfactory condition, and to charge current wholesale prices and to notify him promptly of any change in wholesale or retail prices. It agreed to pay any license fee required by the state or county. It agreed to furnish advertising matter, reports and other blanks. It agreed to give, free of charge, instructions and advice by letter, bulletins, and otherwise, as to the best method of selling products to consumers. Bates and his guarantor were to be released from the contract at any time by paying in cash the balance due the company on account. The contract was to continue so long only as his account and amount of purchases were satisfactory to the company. Concurrently with this contract it was agreed, by another contract in writing, that so long as Bates worked continuously selling the company's medicines it would not sell to anyone else to peddle in Cottonwood county, Minn., but if the contract was terminated the company might sell as if the agreement had not been made. The

so-called guaranty was a guaranty of "the honest and faithful performance of the said contract."

The court construed the contract not to be an absolute sale contract, making Bates liable for the wholesale price of merchandise unsold when the company terminated the contract, but to be in the nature of agency contract, notwithstanding that it did not expressly provide for a return of the merchandise unsold. Judgment for the defendants was therefore affirmed. The court stated that it had found no case construing a contract precisely like this one.—*Barkerville v. Bates, Minnesota Supreme Court,* 143 *N. W.,* 909.

FOOD ORDINANCE—VALIDITY. A conviction was had under an ordinance providing that no unwholesome meat "shall be brought into this city or offered for sale." The statute under which the ordinance was passed (Board of Health, 2 Comp. St., 1910, p. 2063, 12), gives to local boards of health power to pass ordinances "to prevent the sale or exposure for sale" of meat unfit for food. The ordinance was therefore held, on appeal, not to be within the power conferred upon local boards of health excepting in so far as it prohibited the "offering for sale" of unsound food. The defendant was not charged or convicted of offering the meat for sale, but only for bringing it into the city, a prohibition that was held to be beyond the power conferred by the Legislature.

Whether an ordinance would be valid that prohibited the bringing into the city of unsound meat for the purpose of offering it for sale for human food was not considered by the court, as neither the ordinance nor the complaint under which the defendant was convicted made any such qualification. The conviction was set aside.—*Silverman v. Board of Health of City of Bridgeton, New Jersey Supreme Court,* 88 *Atl.,* 622.

OVERREADING CREAM TEST—INTENT. An information charged the defendant with wilfully and unlawfully violating the Nebraska pure food law by overreading a test of cream purchased by him for commercial purposes. The statute (Comp. St., 1911, c. 33, 20), makes it unlawful for any person to "overread or underread, or in any other manner make, announce or record any false or untrue test of either butter or cream." It was contended by the defendant that the information was defective in failing to charge that the act was committed with the intent to defraud, that the result of overreading the test was to pay too much for the cream, and that the defendant did not cheat or intend to defraud anyone. It was held that the information was sufficient, intent not having been made by statute an element of the offense.—*State v. Thorp, Nebraska Supreme Court,* 143 *N. W.,* 202.

REIMPORTATION OF REJECTED TEA. In a libel for the forfeiture of certain chests of tea rejected by the customs examiner and released and exported under the provisions of Act March 2, 1897, c. 358, 9, 29 Stat., 606 (U. S. Comp. st., 1901, p. 3197), being "an act to prevent the importation of impure and unwholesome tea," it appeared that the tea had, after rejection, been shipped to Canada and sold there and afterwards reimported into the United States. Section 9 of the statute provides that "no imported teas which have been rejected and exported under the provisions of this act shall be reimported into the United States under the penalty of forfeiture for a violation of this prohibition." It was held that any person offering tea for import is bound to know whether or not it has previously been offered and rejected, and if it has he cannot be relieved from the penalty of forfeiture because he did not in fact know but offered it in good faith.—*U. S. v. Twenty Chests of Tea,* 298 *Fed.,* 89.

CLEANSING MILK BOTTLES. The New York Court of Appeals has affirmed the decision of the Appellate division in People v. Frudenberg, 155 App. Div., 199, 140 N. Y. Supp. 17, sustaining a conviction of having received milk bottles which had not been washed after holding milk. The proceedings were brought under New York City Sanitary Code, section 183, the last clause of which declares that no person shall receive or have in his possession any receptacle for the transportation of milk or cream which has not been washed after holding milk or cream. The ordinance was challenged by the defendant as being in violation of the Constitution, for the reason that that clause prevents the owner of a receptacle which has contained milk from reclaiming his property if the receptacle is unclean. It was held that the clause did not have this result, the word "or" being here equivalent to "and," but it cast upon the dealer retaking uncleaned milk bottles the burden of immedi-

ately cleansing the receptacle. The statute being designed to protect the public health, it was held that it should receive at the hands of the court a liberal interpretation. The expression "immediately" in the clause requiring bottles to be cleansed "immediately upon emptying" was construed to mean "forthwith," and as implying prompt and vigorous action and the statute was held to be a valid police regulation.—*People v. Frudenberg,* 103 *N. W.,* 166.

FOOD — "ADULTERATED" OYSTERS — KNOWLEDGE AND INTENT. In a prosecution for violation of the federal food and drugs act by shipping from the state of New York to Pennsylvania 10 barrels of oysters, it was charged that the oysters were "adulterated" in that they "consisted in part of filthy, decomposed and putrid animal and vegetable substance." It was held that oysters, although shipped unopened as taken from the water, may come within the prohibition of the statute where by reason of the condition of the waters in which they are grown they contain harmful bacteria, which renders them "filthy, decomposed, or putrid," and therefore adulterated within section 7, subd. 6, of the act.

Section 2 of the act provides that the shipment or delivery for shipment in interstate commerce of any article of food or drugs which is adulterated or misbranded shall constitute a misdemeanor. It was held that it is no defense to claim that the person causing the violation neither knew at the time that the goods were offensive, nor intended to violate the law. Hence an allegation that the defendants knew that the article was adulterated, at the time that they intentionally and wilfully shipped it or caused it to be shipped, would apply only to cases where the adulteration had been placed in the goods by or with the knowledge of the shipper, or where an examination of the article had disclosed its presence. But Congress has gone much further, and in the exercise of its police power has imposed a penalty upon the sending of the deleterious or harmful substance, where the shipper is responsible for the act of sending, even though he may have nothing to do with the condition of the article sent, except as possession or ownership makes him responsible.

The ordinary use of the word "adulteration" implies an actual addition to the original substance, through human agency; but as used in the food and drugs act, section 7, subd. 6, the meaning is not so restricted. If the adulteration of filthy, decomposed, or putrid substance has been added by nature, and is contained in the article to be shipped, it is adulterated in the eyes of the law.—*U. S. v. Sprague,* 208 *Fed.,* 419.

MISBRANDING—"WINE." In proceedings for misbranding wine in violation of the federal pure food and drugs act, the defendant's shipments purported to be Rhine wines of the character known as Hockheimer and Diedesheimer, whereas the article in each instance was an Ohio manufactured product, and a mixture of wine and a fermented solution of commercial dextrose, or starch sugar. It was held that section 6 of the act, defining the term "food" to include all articles used for food, drink, confectionery, or condiment, by man or other animal, whether simple, mixed, or compound, applies to and includes wine. It was contended that section 8 of the act relating to misbranding is void for not establishing a standard for the various wines enumerated in the indictment. It was held that this contention would make it practically impossible for Congress to pass an act to correct the evils at which the statute is aimed, for the reason that it would be necessary, not only to amplify the act with very particular and minute definitions of standards, but to be constantly amending it and supplementing it as new devices and compounds were placed upon the market. The name "wine" is usually understood to mean the fermented juice of the undried grape. All that Congress can do is to pass a statute in general terms, using words of ordinary acceptance.—*U. S. v. Sweet Valley Wine Co.,* 208 *Fed.,* 85.

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## ABSTRACT OF TREASURY DECISIONS.

DRAWBACKS ON MEDICINAL PREPARATIONS, ETC. The following drawbacks on medicinal preparations, etc., have been allowed by the Treasury Department:

Prepared talcum powder designated as "Eutaska," manufactured by the Andrew Jergens Co. of Cincinnati, Ohio, with the use of imported talcum powder in conjunction with domestic ingredients. (T. D. 33582.)

Medicinal and toilet preparations and perfumes manufactured by the J. K. Watkins

Medical Co., of Winona, Minn., with the use of domestic tax-paid alcohol. (T. D. 33626.)

Alvatunder, manufactured by the Hisey Manufacturing Co., of St. Louis, Mo., with the use of imported cocaine. (T. D. 33629.)

Dr. S. P. Townsend's sarsaparilla, manufactured by the Nostrand Trading Co., of Brooklyn, N. Y., either with the use of imported alcohol or with the use of domestic tax-paid alcohol. (T. D. 33648.)

Atwood's Bitters, manufactured by O. H. Jadwin & Sons (Inc.), of New York, N. Y., either with the use of domestic tax-paid alcohol or imported alcohol. (T. D. 33672.)

Medicinal preparations, manufactured by Parke, Davis & Co., of Detroit, Mich., with the use of imported morphine, or its derivatives, codeine or cocaine, or the salts of the same. T. D. 33675.)

Various perfumes, manufactured by Richard Hudnut, of New York, N. Y., with the use of domestic tax-paid alcohol. (T. D. 33676.)

Medicinal preparations, manufactured by C. S. Littell & Co., of New York, N. Y., with the use of domestic tax-paid alcohol. (T. D. 33685.)

Medicinal preparations, manufactured by B. S. McKean, of New York, N. Y., with the use of domestic tax-paid alcohol. (T. D. 33713.)

Medicinal preparations, manufactured by McKesson & Robbins, of New York, N. Y., with the use of domestic tax-paid alcohol. T. D. 33820.)

Prepared talcum powder, manufactured with the use of imported talc and toilet preparations manufactured with the use of domestic tax-paid alcohol by C. H. Selick, of New York, N. Y. (T. D. 33942.)

Medicinal preparations designated as Kickapoo Sagwa and Kickapoo Oil, manufactured by William R. Warner & Co., of Philadelphia, Pa., with the use of domestic tax-paid alcohol. (T. D. 33974.)

Medicinal preparations, manufactured by Peek & Velsor, of New York, N. Y., with the use of domestic tax-paid alcohol. (T. D. 33993.)

KAM WO TEA. Collectors are instructed that Kam Wo Cha, or Kam Wo Tea, is classed by the Secretary of Agriculture as a drug under the food and drugs act, and should be assessed with duty and should not be examined under the tea act of March 2, 1897. (T. D. 33910.)

MALT EXTRACT IN DRUMS. Paragraph 309, tariff act of 1909, imposes a duty of 45 per cent. ad valorem on malt extract when solid or condensed without regard to coverings and in whatever form it may be packed for shipment. (T. D. 33920.)

CRUDE OPIUM—DRIED OPIUM. Opium obtained by collecting in containers the sap of the poppy-seed pod and allowing it to stand until a percentage of the water in it evaporates, after which it is spread upon boards, exposed to the heat of the sun, and while being dried is manipulated and later cut into the form of cakes, is not "crude" opium, but is "opium, dried, * * * or otherwise advanced beyond the condition of crude," as provided for in paragraph 41, tariff act of 1909. G. A. 7001 (T. D. 30487, and U. S. v. Dauker (2 Ct. Cust. Appls. 522; T. D. 32251 distinguished (T. D. 33788—G. A. 7501).

CODEIN. Codein pays a duty as an alkaloid of opium under the language of paragraph 43, act of 1897, and paragraph 41, tariff act of 1909, whether manufactured from opium or synthetically from morphia. Abstract 5493 (T. D. 26218) followed, and the doctrine of that case extended to include codein synthetically prepared from morphia. (T. D. 3398—G. A. 7517.)

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## NOTICES OF JUDGMENT.

ADULTERATION AND MISBRANDING OF VANILLA EXTRACT BY SUBSTITUTING IMITATION. No. 2494. Herman Fuchs, New York, N. Y. Plea of guilty. Sentence suspended. New York. S.

No. 2592. Greenwich Supply Co., N. Y., N. Y. Condemnation by default. N. J.

No. 2617. Dr. Lowenthall, New Rochelle, N. Y. Condemnation by default. N. J.

No. 2625. Same. Same. N. J.

ADULTERATION AND MISBRANDING OF STRAWBERRY FLAVOR. No. 2495. Substitution of water, alcohol, sugar and artificial esters. Herman Fuchs, New York, Plea of guilty. Sentence suspended.

MISBRANDING OF HEADACHE TABLETS. No. 2578. Quantity of acentanilid overstated. Allaire, Woodward & Co., Peoria, Ill. Plea of guilty. Fine, $10 and costs. Ill. S.

MISBRANDING OF LITHIA WATER. No. 2585. Artificially prepared. Berry Spring Lithia Water Co., Providence, R. I. Nolo contendere. Fine, $20 and costs. R. I.

MISBRANDING OF CANDY. No. 2591. Syra-

Lukum, purported to be a foreign product. A. C. Castriotis and S. Vocos. Plea of guilty. Sentence suspended. New York. S.

ADULTERATION AND MISBRANDING OF VANILLA AND LEMON FLAVOR. No. 2609. Dilution. Dr. J. B. Lynas & Son, Logansport, Ind. Plea of guilty. Fine, $200 and costs. Indiana.

ADULTERATION AND MISBRANDING OF EXTRACT OF FRUITED LEMON. No. 2618. Diluted with solution of lemon extract. Royal Mfg. Co., Kansas City, Mo. Plea of guilty. Fine, $25 and costs. Missouri. W.

ADULTERATION AND MISBRANDING OF ORANGE EXTRACT. No. 2619. Diluted with terpeneless solution of orange extract. Royal Mfg. Co., Kansas City, Mo.,Plea of guilty. Fine, $50 and costs. Missouri. W.

## Council Business

### COUNCIL LETTER No. 8.

PHILADELPHIA, PA., Dec. 26, 1913.

To the Members of the Council:

Local Secretary Leonard A. Seltzer submits, on behalf of the Local Commitee, the following tentative program for the Sixty-second Annual Meeting (August 24 to 29, 1914, inclusive):

Monday—
9.00 A. M. Meeting of the Council.
3.00 P. M. House of Delegates.
7.30 P. M. First General Session.
9.30 P. M. Joint Reception of the Presidents of the A. Ph. A. and M. S. P. A.

Tuesday—
9.30 A. M. Second General Session.
9.30 A. M. First General Session, M. S. P. A.
10.00 A. M. Ladies Shopping and Visiting, etc.
2.30 P. M. Women's Section.
Scientific Section.
Joint Sessions of Commercial Section and M. S. P. A.
7.30 P. M. House of Delegates.
7.30 P. M. Meeting of the Council.

Wednesday—
9.30 A. M. Section Education and Legislation.
9.30 A. M. Pharmacopœias and Formularies.
12.30 P. M. Luncheon College Alumni.
2.30 P. M. Section Practical Pharmacy and Dispensing.
2.30 P. M. Scientific Section.
4.00 to 6.00 P. M. Ladies' Reception.
7.30 P. M. Meeting of the Council.

Thursday—
9.30 A. M. Section Education and Legislation.
Joint Session Practical Pharmacy and M. S. P. A.
1.30 P. M. Excursion.

Friday—
9.30 A. M. Historical Pharmacy.
Pharmacopœias and Formularies.
Women's Section.
Commercial Section.
2.30 P. M. Auto Ride.
8.00 P. M. Meeting of the Council.

Saturday:
9.30 A. M. Meeting of the Council.
10.30 A. M. General Session.

Do you approve of tentative program above submitted? This will be regarded as Motion No. 18. (*Approval of Tentative Program for 62d Annual Meeting.*)

In support of the program, as above outlined, Local Secretary Leonard A. Seltzer submits the following remarks:

"Enclosed herewith you will find tentative program which the local committee desires to submit to the Council for its approval. Later on we expect to make a few minor additions, such as entertainment for ladies, etc., but this will have no bearing on the program as presented.

The Michigan State Association has decided to hold its meeting in Detroit at the same time the meeting of the A. Ph. A. takes place. The local committee has encouraged this idea, believing that it will bring many men from the state to attend the meeting, who will thus become acquainted with our organization and its work, and we hope join with us. To help in accomplishing this purpose, the committee has therefore provided for two joint sessions with the Sections of our Association, and also a joint reception of the presidents of the two organizations. We sincerely hope that we have not taken unwarranted liberty in