Section on Education and Legislation

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THE LETTER OF THE LAW.

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"There are nine and sixty ways of constructing tribal lays,
And every single one of them is right."

To one who has had practical experience in legal cases and has observed criminal court procedure from the standpoint of an impartial witness, the most noteworthy feature is the unvarying adherence to forms and customs which magnify the letter of the law, frequently to such an extent that the spirit of the law is either entirely lost to view or is so obscured by the mass of technicalities as to be practically unrecognizable as a factor in arriving at a verdict.

When an experienced criminal lawyer and brilliant district attorney are on opposite sides in a case presided over by an able judge, a feeling of bewilderment is experienced by the spectator who sees the real issue disappearing in the mists of legal controversy which arise over points non-essential to that real issue.

It is like some gigantic game which must be played strictly according to the rules and in which the stake is often human liberty or even life, where the jury and many of the participants and spectators, having very little knowledge of the "rules of the game," sit through the trial with but slight appreciation of the finer points that are argued and decided in the preliminary skirmishing which always characterizes a hard fought case. To the credit of our jury system be it said that, if the case actually reaches the jury for decision and no binding instructions have been given them by the judge who presides in the case, the jury is usually able to separate the wheat from the chaff and to decide the case strictly upon its merits.

The prosecution of food and drug adulteration cases is usually along simple, well defined lines, technical, literal or trivial though they may be. The defense, however, is hampered by no restrictions as to consistency and cases are sometimes tried in which the defense reminds one of the story, hypothetical, of course, of the man who was arrested for breaking a neighbor's axe which he had borrowed. His defense was along three lines: First, that the axe was sound when he returned it; second, that the axe was broken when he borrowed it; and third, that he had never borrowed the axe.

What must be the feelings of a layman in examples like one recently offered in an Eastern city, where a municipal ordinance was being enforced in prohibiting food adulteration, when a judge of one of the courts acted as attorney for the defense and attacked and overthrew the ordinance upon the purely technical

grounds that it had not been read and published the number of times required by law and that some of its penalties differed slightly from those prescribed by another municipal ordinance which had not been repealed and which, on account of its priority, took precedence over the later one in some particulars. No question as to the guilt or innocence of his clients was involved in this defense, that being made as an entirely separate and distinct effort, with the final outcome that his clients were found guilty but that the ordinance had been illegally passed and was therefore non-effective.

The prosecution of cases for technical breaches of laws where the spirit of the law has not been violated, have been frequently reported in pharmaceutical news columns. Take for example the celebrated tincture of nux vomica case in New Jersey many years ago, where adherence to the requirement then official in the U. S. Pharmacopœia, of a certain amount of extractive matter in the finished prepartion resulted in the penalizing of a pharmacist whose preparation differed in this non-essential particular, although it was clearly proved that the alkaloidal strength (which is now the standard) was fully up to the requirements for a full strength preparation.

Another instance is found in the prosecutions brought for violation of the requirements in distilled water which was supposed, under the U. S. P. 1890 to leave no residue upon evaporation. It has since been proved that distilled water takes up small amounts of soluble matter from the glass containers in which it is kept, and this point is now covered by a more liberal provision of the standards in the matter of the residue, while retaining tests sufficiently rigid to exclude the use of raw water as a substitute, thus preserving the spirit of the requirements.

Few laws are fool proof in the hands of a commissioner or other official who wishes to multiply cases regardless of their actual merits. No pharmacist, however conscientious and careful he may be, is safe unless he has a knowledge of laws and requirements impossible to expect in one who has so many other and more important matters affecting the public health to occupy his attention. How many pharmacists know that only the "unpeeled" calamus is recognized in the Pharmacopœia or would hesitate to sell to the casual purchaser, who said that he wanted some calamus to make his own "bitters," the peeled rhizome usually found in the stores; and yet such a seller would be guilty of a technical violation of the law and could be legally prosecuted under any of the state food and drug acts which are in conformity with the national law. This may be dangerous information to place in the hands of some officials charged with the enforcement of these acts, but it illustrates the manner in which the letter of the law may be enforced irrespective of its spirit.

One instance which has occurred within the writer's experience, illustrating a ridiculously literal interpretation of the law, with just about as much justice in it as there would be in a calamus case, was of a drug commissioner who prosecuted a firm of wholesale druggists because their tincture of opium showed but 46 percent of alcohol, a difference of only several percent from the amount found in a tincture made by the official process under the most favorable conditions, and which might easily be accounted for by variation in the extractive matter present in the opium or slight loss during the final filtration. The alcoholic strength is made no part of the requirements of the tincture and is only inferential. It was

shown by the defendants and admitted by the Commissioner that the morphine strength of the laudanum was fully up to the standard, but much time, trouble and money was expended in defending a case which had absolutely no merit whatever from the standpoint of justice or of protection to the public.

The same kind of blind, unreasoning interpretation of laws and rulings was recently indulged in by an official in the Bureau of Animal Industry, who, in his over zealous efforts to enforce the new rulings regarding the declaration of cereal starches in sausage, discovered that coriander as commercially found upon the market, contained a few vetch seeds which were necessarily ground with the coriander and, notwithstanding the efforts of a dealer in spices to clean the seeds as far as was possible by mechanical means, ruled that "if the coriander seed contained only one vetch seed in a million it would necessitate the labeling of sausage in which a fraction of a percent of such coriander were used as seasoning, as containing leguminous starch." This may sound ridiculous, but it is a fact, and the spice dealer was forced to appeal to the Secretary of Agriculture to bring about a common sense interpretation of the ruling in question.

A case is also upon record where one of the Government departments turned down a sample of cresol (which is well known to be a varying mixture of three isomeric compounds) because it differed a decimal figure in the third or fourth place in its specific gravity from the official pharmacopœial requirements, although it was shown that the antiseptic and germicidal value was as high or even slightly higher than the average of samples conforming absolutely to the specific gravity of the Pharmacopœia.

It required a legal interpretation of the Federal Food and Drugs Act by the courts to decide that the silver coating on dragees or cachous is not a violation of that section of the Act which prohibits the use of mineral substances in confectionery and there is yet opportunity on the part of fanatic officials to prosecute candy manufacturers for the use of salt or cream of tartar, both of which are undoubtedly mineral substances within the literal meaning of the Act and both of which have a legitimate use in making certain kinds of candies. There is really no limit to the possibilities which may yet confront us in the matter of freak rulings and ridiculously technical prosecutions.

The injustice is not always on the part of the officials, however. Many manufacturers juggle words and phrases on their labels in a manner which reminds one of the episode in "Alice in Wonderland," where Alice and the Red Queen are conversing and the Red Queen offers Alice a position in which one of the inducements in the matter of wages is "jam every other day." Alice declines the offer saying that she does not care for any jam, whereupon the Red Queen's answers to the effect that it is just as well for "jam every other day means jam yesterday or jam tomorrow but never jam today."

The recently published cases of alleged adulteration of broken senna and of ground colocynth are examples of the lengths to which dealers will go in attempting to win a technical victory irrespective of the spirit of the law. The use of synonyms, such as "bitter apple" for colocynth, which constituted the defense in the case referred to, always leads, if not to ambiguity, at least to a basis for argument.

Synonyms are frequently used with about as much consideration and fore-

thought and with as much definiteness as in the following case which happened a number of years ago in my presence, and which is a fine example of their unreliability.

A party of men on a vacation trip in Pike County, Pa., where there are many French settlers, were sitting on the porch of the inn where they were stopping, when one of the typical French farmers came up the road carrying a large size vegetable which belonged unmistakably to the Cucurbitaceæ or gourd family. An argument immediately arose as to whether the specimen was a squash or a pumpkin and without any idea as to the ability of the peasant to decide such a momentous (?) question, a small bet was made by two members of the party and it was decided to leave it to the Frenchman. "What is the name of that vegetable?" asked the interlocutor, an unbiased member of the party. "It is ze squash," replied the peasant. Quick as a flash the man who had the losing side of the bet asked, "What is it used for?" Equally prompt was the reply on the part of the peasant, "To make ze punkin pie." Tableau! All bets declared off.

There is no doubt whatever that now, since the grosser forms of adulteration have been largely eliminated by the combined effect of a rigorous enforcement of the laws and the awakened consciences of the majority of manufacturers, the pendulum will swing even further than it yet has in the direction of basing prosecutions upon non-essential technical points, before we return to safe and sane conditions.

What we need to bring about a healthy condition in food and drug legislation is not large numbers of prosecutions based upon trivial or non-essential points, in which nominal fines (that act in no way as a deterrent) are imposed, but fewer and more wisely selected cases which involve basic principles where a penalty is imposed that really makes the defendant feel the weight of the punishment, and then to follow up these prosecutions by a continued enforcement of the law in similar cases until such violation is entirely stamped out. Concentration of effort, wisely directed, was never more needed than at present in matters pertaining to food and drug adulteration, for a continuation of some of the abuses of the past will bring about a chaotic condition in which the old laws will be discredited and no new legislation can be enacted.

Every honest manufacturer, and the large majority of them are honest, will welcome and uphold the enforcement of laws according to their spirit, but much of the opposition to food and drug legislation of any kind has been stimulated by the injustice which has often been done by the magnification of harmless technicalities into crimes of the first or second magnitude.

This change in the methods of conducting prosecutions must be accompanied by an equally sincere change on the part of some manufacturers who exert their efforts, not in seeing how good a product can be turned out, but how close they can come to violating the law without actually rendering themselves liable. When these two classes of reform have been brought about and when the letter of the law has ceased to be magnified out of all proportion to the spirit of the law, then and not until then, will we be considered as having really progressed.