always encouraging and that stock vaccines as well as autogenous vaccines give variable results under different conditions. In answer to a question propounded by Dr. Apple as to the length of time required for the preparation of autogenous vaccine, Dr. Lyon pointed out that the average length of time would be about seventy-two hours. Dr. Lyon further stated that he believed the preparation of autogenous vaccines would be unprofitable for pharmacists.

The next meeting will be devoted to a consideration of legislative matters.

The executive committee has outlined the following subjects to be discussed during the meetings of the coming year:

"Newer Remedies." (Joint meeting with physicians.)

"Recent Advances in Chemistry."

"Changes in U. S. P. and N. F."

"Commercial Subjects."

"Where May We Expect Modern Pharmacy to Lead"?

"Regulation of Sale of Narcotics and Habit-Forming Drugs and of Poisons."

It is the intention of the committee to arrange with the different Colleges of Pharmacy for lectures on and demonstrations of the new methods and tests of the U. S. P. IX.

ROBERT P. FISCHELIS, Secretary.

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NEW ENGLAND BRANCH.

The annual meeting was held on Wednesday evening, April 22d, at the Hotel Plaza in Boston. After the dispatch of routine business, the following officers were elected for the ensuing year:

President—Fred A. Hubbard, Newton, Mass.

Vice President—F. W. Archer, Dorchester, Mass.

Secretary-Treasurer—R. Albro Newton, Southborough, Mass.

Chairman, Committee on Professional Relations—Frank F. Ernst, Jamaica Plain, Mass.

Chairman, Committee on Membership—William H. Glover, Lawrence, Mass.

The gathering was a joint meeting of the Branch and the Boston Association of Retail Druggists.

Dinner was served at 7 o'clock, after which the following speakers were heard: John R. Sawyer, William H. Glover, R. A. Newton, Frank F. Ernst, and Elie H. LaPierre on "Individual Propaganda," Fred W. Connolly on "Liquor in the Drug Store," and James F. Finneran on "The Attitude of the State Sealer on Apothecaries' Weights and Measures." This latter subject brought out so much discussion that it was nearly midnight when the meeting was adjourned.

R. ALBRO NEWTON, Secretary.

The Pharmacist and the Law

ABSTRACT OF JUDICIAL DECISIONS.

POISONOUS INGREDIENTS—"INJURIOUS TO HEALTH." The flour bleaching case has resulted in a construction by the United States Supreme Court of sub-division fifth or section 7 of the federal Food and Drugs Act, which reads as follows: "That for the purposes of this act an article shall be deemed to be adulterated * * * Fifth, If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health." Part of the charge of the federal District Court, excepted to by the milling company, read: "The fact that poisonous substances are to be found in the bodies of human beings, in the air, in potable water, and in articles of food, such as ham, bacon, fruits, certain vegetables, and other articles, does not justify the adding of the same or other poisonous substances to articles of food, such as flour, because the statute condemns the adding of poisonous substances. Therefore the court charges you that the government need not prove that this flour, or foodstuffs made by the use of it, would injure the health of any consumer. It is the character—not the quantity—of the added substance, if any, which is to determine this case." On the other hand, the defendant requested the court to charge the jury substantially that the burden was upon the prosecution to prove that by the treatment of the flour by the Alsop Process it had been caused to contain added poisonous or other added deleterious ingredients, to wit., nitrites or nitrite reacting material, which might render the flour injurious to health; and in that connection that the government must prove that any such added ingredients were of such a character and contained in the flour in such quantities, condi-

tions and amounts "as may render said flour injurious to health." This charge was refused by the District Court. The Circuit Court of Appeals reversed the judgment of the District Court for error in its charge and the Supreme Court has now sustained the decree of the Circuit Court of Appeals and remanded the case to the District Court for a new trial.

The Supreme Court said (Justice Day delivering the opinion), that if the testimony introduced on the part of the milling company was believed by the jury, they must necessarily have found that the added ingredient, nitrites of a poisonous character, did not have the effect of making the consumption of the flour by any possibility injurious to the health of the consumer. "The statute upon its face shows that the primary purpose of Congress was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated foods. The Legislature, as against misbranding, intended to make it possible that the consumer should know that an article purchased was what it purported to be; that it might be bought for what it really was, and not upon misrepresentation as to character and quality. As against adulteration, the statute was intended to protect the public health from possible injury by adding to articles of food-consumption, poisonous and deleterious substances which might render such articles injurious to the health of consumers. * * * The instruction of the trial court permitted the statute to be read without the final and qualifying words, concerning the effect of the article upon health [which may render such article injurious to health]. If Congress had so intended, the provision would have stopped with the condemnation of food which contained any added poisonous or other added deleterious ingredient. In other words, the first and familiar consideration is that, if Congress had intended to enact the statute in that form, it would have done so by choice of apt words to express that intent. It did not do so, but only condemned food containing an added poisonous or other added deleterious ingredient, when such addition might render the article of food injurious to the health. Congress has here, in this statute, with its penalties and forfeiture, definitely outlined its inhibition against a particular class of adulteration.

"It is not required that the article of food containing added poisonous or other added deleterious ingredients must affect the public health, and it is not incumbent upon the government in order to make out a case to establish that fact. The act has placed upon the government the burden of establishing, in order to secure a verdict of condemnation under this statute, that the added poisonous or deleterious substances must be such as may render such articles injurious to health. The word 'may' is here used in its ordinary and usual signification, there being nothing to show the intention of Congress to affix to it any other meaning. It is, says Webster, 'an auxiliary verb,' qualifying the meaning of another verb, by expressing ability, * * * contingency, or liability, or possibility or probability.' In thus describing the offense, Congress doubtless took into consideration that flour may be used in many ways in bread, cakes, gravy, broth, etc. It may be consumed, when prepared as a food, by the strong and the weak, the old and the young, the well and the sick; and it is intended that if any flour, because of any added poisonous or other deleterious ingredient, may possibly injure the health of any of these, it shall come within the ban of the statute. If it cannot by any possibility, when the facts are reasonably considered, injure the health of any consumer, such flour, though having a small addition of poisonous or deleterious ingredients, may not be condemned under the act."

The opinion refers to the view of the English courts construing a similar statute. The English statute provides (§3 of the sale of food and drugs act, 1875): "No person shall mix, color * * * or order or permit any other person to mix, color * * * any article of food with any ingredient or material so as to render the article injurious to health." That section was construed in Hull v. Horsnell, 68 J. P., 591, which involved preserved peas, the color of which had been retained by the addition of sulphate of copper, charged to be a poisonous substance injurious to health. There was a conviction in the lower court. Lord Alverstone, in reversing the case on appeal, held that if the conviction proceeded on the ground that the ingredient mixed with the article of food was injurious to health, and not on the ground that the peas, by reason of the addition of sulphate of copper, were rendered injurious to health, the conviction was clearly wrong. All the cir-

cumstances, he said, must be examined to see whether the article of food has been rendered injurious to health.—*United States v. Lexington Mill & Elevator Co.*, 34 *Sup. Ct. Rep.*, 337.

DIAMOND ANTISEPTIC TABLETS—EXCLUSIVE RIGHT TO NAME AND SHAPE OF. On the ninth of February last, Judge John D. McPherson rendered the following judgment:

"It is therefore adjudged, ordered and decreed that the complainant is entitled to the exclusive use of the name "Diamond" as a trade-mark for antiseptic tablets; and that complainant is entitled to the exclusive use of a diamond-shaped figure representation as a trade-mark for antiseptic tablets; and the complainant is entitled to the exclusive right to the conventional shape of a diamond as a shape for its antiseptic tablets. And it is further adjudged and decreed that the use by the defendants of the word "Diamond" or the representation of a diamond-shaped figure or symbol as in any manner indicating or designating antiseptic tablets, was and is a violation of complainant's rights, and, further, that the manufacture and sale of antiseptic tablets made in the conventional shape of a diamond is a violation of complainant's rights.

"And it is further adjudged and decreed that the defendants, their agents, clerks, workmen, servants and attorneys, perpetually refrain and are hereby perpetually enjoined and restrained, from using the name "Diamond" or the conventional figure of a diamond, to designate antiseptic tablets and, further, from manufacturing, selling or otherwise distributing antiseptic tablets made in violation of complainant's rights, diamond-shaped, or in the conventional form of a diamond.

"It is further adjudged and decreed that defendants surrender and deliver up to complainant, to be destroyed, all labels, signs, prints, bottles, packages, wrappers or receptacles in the possession of defendants bearing the said trade marks or either of them, or any colorable imitation thereof, and likewise all antiseptic tablets in their possession made in violation of complainant's rights, in the shape of a diamond."—*Eli Lilly Co. v. Diamond Pharmacal Co., United States Court for the Eastern Dist. of Pennsylvania.*

FOREIGN CORPORATIONS—"DOING BUSINESS"—FILING COPY OF CHARTER—INTERSTATE COMMERCE. A contract with a medical company, a Minnesota corporation, provided that N. was appointed by the company "as a traveling salesman for its products in the county of M., state of Tennessee," and that the company "agrees to take back all goods left in the possession of the traveling salesman at the time he quits work," and referred to "the expiration of the services of said traveling salesman," etc. A provision on the back of the contract provided that N. was to begin work "as soon as practicable after the goods are received and to work continuously at the agency." During the existence of the agency a note was given by several persons for the agent, to the medical company, for the uncollected price of goods shipped to the agent, namely, $668.01. One of the makers died and in an action for the settlement of his estate in the courts of the State of Kentucky, where the deceased owned real estate, the medical company made a claim for this sum, which was disallowed. Under the statutes of Tennessee every foreign corporation is required to file a copy of its charter with the Secretary of State, and it is unlawful for it to do or attempt to do any business in the state until it shall have complied with the statute. These statutes have been construed in a number of cases in the Tennessee courts, and it has been uniformly held that, where a corporation does business in that state without complying with the statute, all contracts growing out of such business are illegal and invalid. It was held, on appeal, that the medical company was doing business in Tennessee through its agent, N., who was not a mere purchaser of its products.

The medical company contended that its transactions with N. were interstate commerce, and that therefore the note was binding, although it had not complied with the laws of Tennessee. It was held that this defense was not available, under the facts. These products were not ordered by mail and shipped direct to the company's customers. As a matter of fact, they were shipped to Memphis, and from there distributed to its agent, N., and his brother said that he never ordered any goods except from Memphis. The company's witnesses said that the goods were billed to N. in Minnesota, and were merely sent to Memphis for distribution. Even if there were any doubt as to whether or not the interstate journey ended at Memphis, the interstate journey certainly ended

when the goods were delivered to N. Upon their delivery to him their interstate character ceased; and from that time on, N. as the company's agent, proceeded to sell and deliver the goods in Tennessee. The question of the validity of the note was governed by the law of the place where the transaction was had, as well as the place where it was executed, namely, Tennessee, and not by the law of the place of payment.—*Orr's Adm. v. Orr, Kentucky Court of Appeals,* 163 *S. W.,* 757.

SALE OF DRUGS BY ITINERANT VENDORS—PROHIBITION. The United States Supreme Court holds that a state has power, without violating the equal protection or due process of law clauses of the Fourteenth Amendment to the United States Constitution, to forbid the sale by itinerant vendors of "any drug, nostrum, ointment, or application of any kind, intended for the treatment of disease or injury," although allowing the sale of such articles to other persons. The power which the state government possessed to classify and regulate under consideration (Louisiana Laws, 1894, act No. 49, § 12), is held to be cumulatively sustained and made, if possible, more obviously lawful by the fact that the regulation in question deals with the selling by itinerant vendors or peddlers of drugs or medicinal compounds,—objects plainly within the power of government to regulate.—*Baccus v. Louisiana,* 34 *Sup. Ct.,* 439.

SALE OF INTOXICATING LIQUORS—ATTESTATION OF PERMITS. A druggist, carrying on business in a town in Iowa, in making sales of liquors under permits, omitted to attest two of them, as required by Iowa Code, § 2394. In proceedings for violation of the statute it was held that, although there was no bad faith in the omission, the statute had been violated. An active duty is required of the permit holder in each case, and it must be performed in fact, before he can lawfully make the sale.—*McAllister v. Campbell, Iowa Supreme Court,* 145 *N. W.,* 867.

ACTION FOR PRICE—MISBRANDED DRUGS—AGREEMENT TO ADVERTISE. Action was brought for the purchase price of a quantity of patent medicine called "Nott's Melon Seed Kidney Cure." The defenses were that the plaintiff had broken its contract in regard to advertising agreed therein to be done, and also that the goods were misbranded. The trial court instructed the jury that the only question which they could consider was whether the drugs in question were misbranded. It was held, on appeal, that this was error, because it appeared that the plaintiff was not able to carry out the advertising part of the contract as it had agreed, and this evidence should have been submitted to the jury. In regard to the alleged misbranding, it appeared that the defendant was prosecuted by the state for having this misbranded article in its store, and that it was fined $10, and required to pay the costs of the prosecution. It was therefore held that the plaintiff should be required to take back the goods and credit the defendant with the price thereof, in accordance with the terms of the contract of sale.—*Hessig-Ellis Drug Co. v. Harley Drug Co., Nebraska Supreme Court,* 145 *S. W.,* 716.

GASOLINE EXPLOSION—PROXIMATE CAUSE.—An action was brought against the owner of a drug store for injuries to the plaintiff's automobile, caused in the following manner: The plaintiff's son drove the automobile to the defendant's drug store to have it filled with gasoline. After stopping the machine in front of the store and ordering the gasoline, he turned down the light of a lamp, attached to the rear of the automobile about twenty inches under the cap of the tank into which the gasoline was poured, and walked away to talk to some boys. The side of the lamp next to the defendant's store was of metal, so that the light did not show in that direction. The defendant's clerk brought out a five-gallon gasoline can, and, without noticing that the light was burning, placed a funnel in the mouth of the tank, and lifted the can to pour in gasoline, when some of the gasoline ran down, causing an explosion. There was no proof whether the cap on the tank was originally removed by the plaintiff's son or by the defendant's clerk. It was held that the plaintiff's son was negligent in merely lowering the light and removing the tank cap and walking away without explaining to the defendant's clerk that the tank was not ready to be filled. This negligence was a proximate cause of the explosion. Even if the defendant's clerk had been negligent, the plaintiff could not recover, under the rule that where the plaintiff and the defendant are guilty of acts of negligence which together constitute the proximate cause of the injury, then the negligence of the plaintiff, however, slight, bars a recovery.—*Grigsby & Co. v. Bratton, Tennessee Supreme Court,* 163 *S. W.,* 804.