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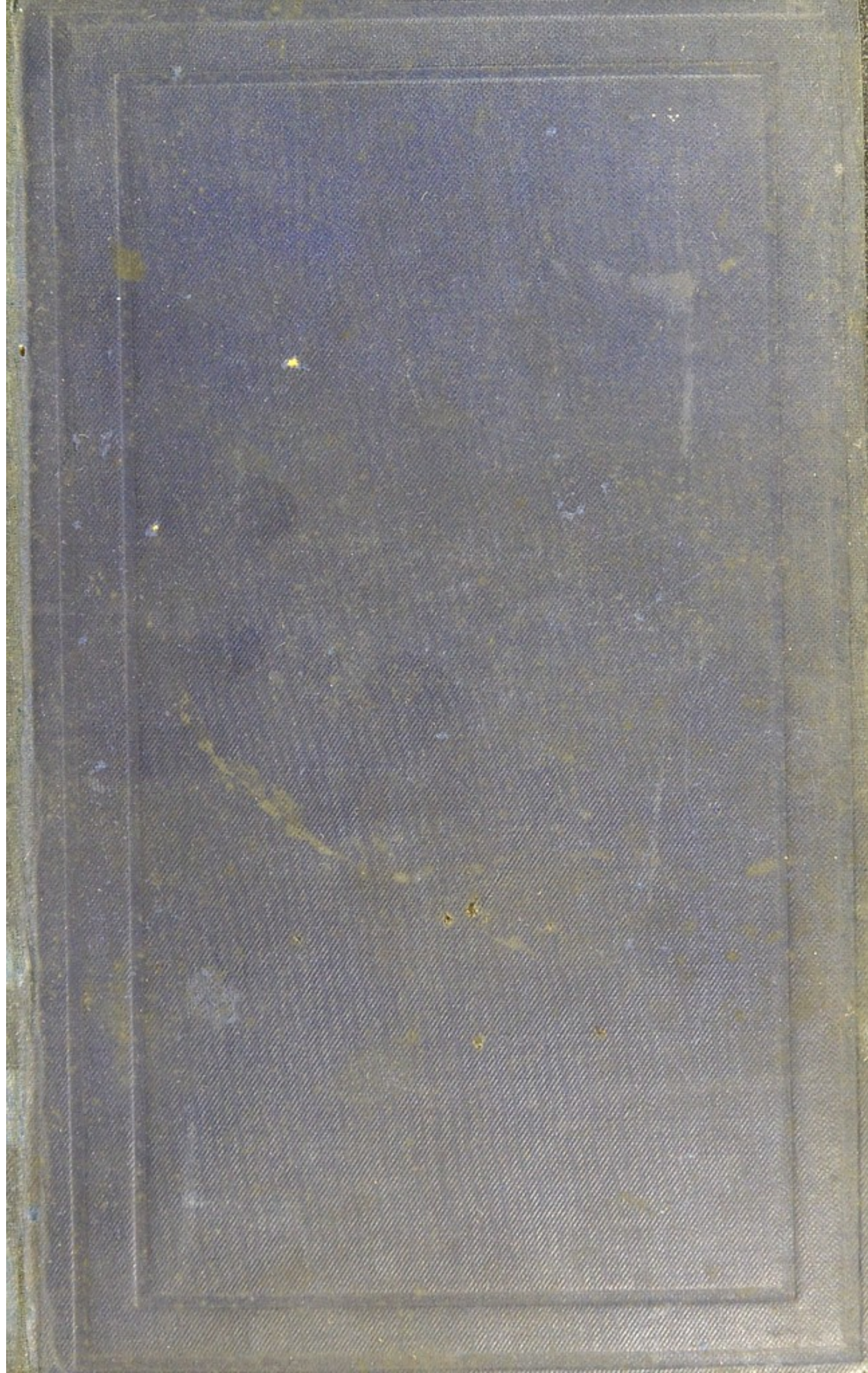
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THE LAW RELATING TO
POISONS AND PHARMACY
WITH NOTES AND CASES

TOGETHER WITH APPENDICES CONTAINING THE STATUTES
RELATING TO THE SALE OF POISONS AND THE PRACTICE
OF PHARMACY, AND REGULATIONS AND BYE-LAWS
MADE THEREUNDER; AND LEADING CASES
UNDER THE PHARMACY ACTS
1852 TO 1908

BY

W. S. GLYN-JONES

OF THE MIDDLE TEMPLE AND SOUTH-EASTERN CIRCUIT
BARRISTER-AT-LAW

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PREFACE.

IN this book an endeavour has been made to give a full and orderly statement of the laws which regulate the sale of Poisons and the practice of Pharmacy in Great Britain. The aim has been to present the subject so that the work may be, on the one hand, a complete guide to the lawyer who may be called upon to deal with any branch of Pharmacy law, and that it may, on the other hand, furnish for pharmacists an intelligible exposition of the regulations and restrictions which they are required to observe. It is hoped also that the book may be of service to coroners, medical practitioners, and others. The chapter on Agricultural and Horticultural Poisons embodies material of importance to a large class of traders other than chemists and druggists, and should be helpful to officials of the local authorities empowered by the Poisons and Pharmacy Act, 1908, to grant licences for the sale of sheep-dips, weed-killers, and insecticides.

The problems arising from successive instalments of legislation by reference, and from a series of
G.P. b

lengthy judicial interpretations, involving at times chemical and medical, as well as legal technicalities, are such as to surround the whole subject with exceptional difficulty, and to demonstrate a distinct need for a systematic collection, examination, and consideration of material details such as is to be found herein. It is believed that this treatise fulfils these conditions in a more comprehensive manner than has hitherto been attempted.

A glance at the Table of Contents will give a sufficient general idea of the arrangement. Special attention may be directed to the references to reports in trade journals of leading cases. In these journals such cases are often reported in greater detail than in the officially recognised reports. The Statutes, Orders in Council, and Statutory Regulations have been inserted as Appendices with the object of increasing the usefulness of the volume. A full explanation is given of the constitution of the Pharmaceutical Society of Great Britain. This has seemed desirable, in view of the important duties with respect to registration and administration, which have been entrusted to that Society by the Legislature.

Appendix D contains one or other of the recognised reports of every case in the High Court under the Pharmacy Acts which has been so reported, the source of the report being indicated in each case.

The Author desires to thank "The Incorporated Council of Law Reporting for England and Wales," the proprietors of the "Justices of the Peace," of the "Times Law Reports," and of the "Pharmaceutical Journal," for permission to reprint the reports of cases as indicated in that Appendix.

W. S. GLYN-JONES.

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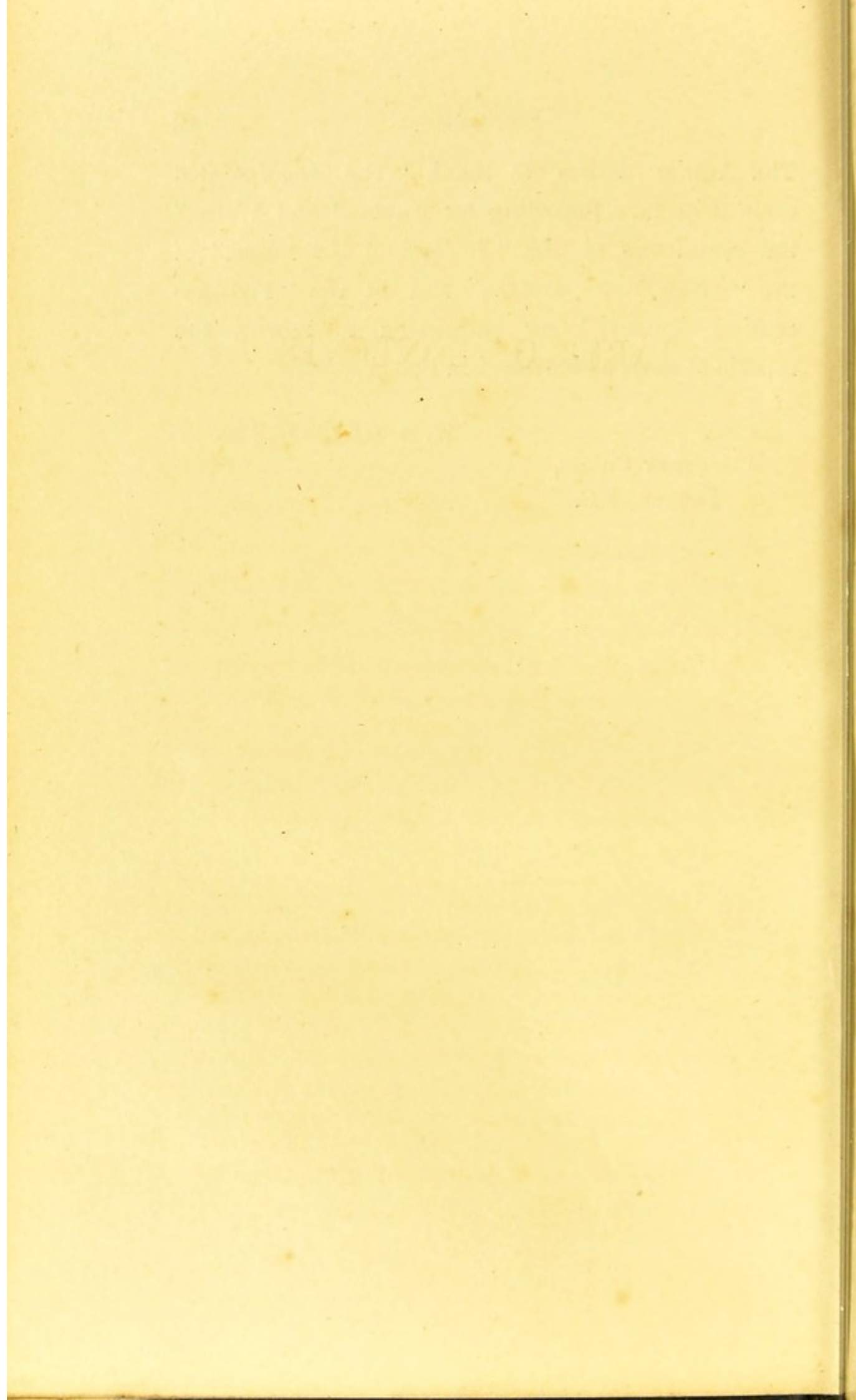


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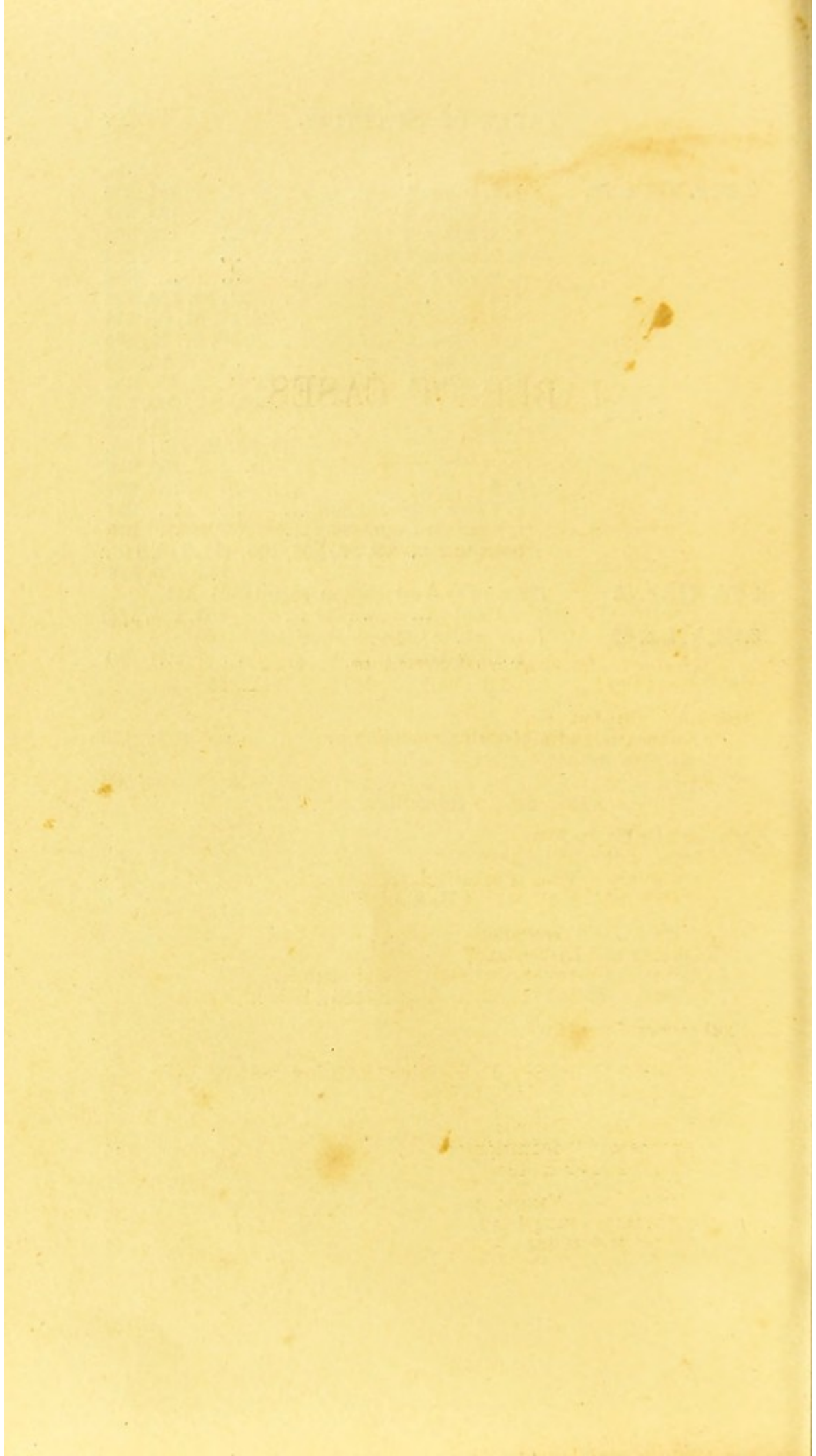


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INTRODUCTION.

THE principal statutes which affect the sale of poisons and the practice of Pharmacy are:—

The Arsenic Act, 1851, 14 Vict. c. 13.

The Pharmacy Act, 1852, 15 & 16 Vict. c. 56.

The Pharmacy Act, 1868, 31 & 32 Vict. c. 121.

The Pharmacy Act, 1869, 32 & 33 Vict. c. 117.

The Pharmacy Acts Amendment Act, 1898, 61 & 62 Vict. c. 25.

The Poisons and Pharmacy Act, 1908, 8 Edw. VII. c. 55.

Their subject matter may be classified into (*a*) the restrictions upon the sales of poisons and the practice of pharmacy, and (*b*) the constitution and functions of the Pharmaceutical Society of Great Britain and of its examiners and executive officers, and the status of its members and associates.

The operation of these statutes with the exception of the first and last is confined to Great Britain. Ireland has its separate poison and pharmacy laws following in the main the lines of the English statutes, but sufficiently differing therefrom to make it inconvenient to deal with them in this work without adding largely to its size and further complicating the many

questions involved. The Isle of Man and the Channel Islands have also their separate enactments. The Arsenic Act, which applies to the whole of the United Kingdom, was the first of the statutes to regulate the sale of poisons, and its provisions are confined to arsenic and arsenical preparations coming within the meaning of the term given in that Act. It required no qualification on the part of the seller.

The Pharmaceutical Society, which here and throughout the work, unless the contrary is indicated, means the Pharmaceutical Society of Great Britain, was established in 1841, and was granted a Royal Charter of Incorporation in 1843. At that time the right to use the titles Pharmaceutical Chemist and Chemist and Druggist, and to sell and dispense poisons, was open to any one subject to the qualifications required by the Apothecaries Act, 1815, on the part of any person acting as an "Assistant to any Apothecary, in compounding or dispensing Medicines."

The Pharmacy Act, 1852, recited the formation of the Pharmaceutical Society and the grant to it of its charter, and states that "it is expedient for the safety of the public that persons exercising the business or calling of pharmaceutical chemists in Great Britain should possess a competent practical knowledge of pharmaceutical and general chemistry and other branches of useful knowledge . . . and to prevent ignorant and incompetent persons from assuming the title of or pretending to be pharmaceutical chemists or pharmaceutists in Great Britain or members of the said Pharmaceutical Society, and to that end it is desirable that all persons before assuming such title

should be duly examined as to their skill and knowledge by competent persons, and that a register should be kept by some legally authorised officer of all such persons." The main provision of the Act is that which prevents the use of the titles Pharmaceutical Chemist, Pharmaceutist, and titles implying registration as such, or membership of the Society, but it in no way restricted the practice of pharmacy or the sales of poisons. It confirmed with modifications the charter of the Society, and set up the Society as the examining and administering body under the Act.

The Pharmacy Act, 1868, in its preamble recites that "it is expedient for the safety of the public that persons keeping open shop for the retailing dispensing or compounding of poisons should be required to be examined as to their practical knowledge of their business." With this object it amended the Act of 1852. It required and empowered the Pharmaceutical Society to institute a "register of chemists and druggists." Except those in business as pharmaceutical chemists or chemists and druggists at the time of the passing of the Act, no person could be so registered who had not passed the qualifying examination for that purpose, which examination the Society were required to conduct. The Act made it an offence for any person not registered as a pharmaceutical chemist or chemist and druggist—

(a) To sell or keep open shop for the retailing dispensing or compounding of certain substances scheduled by the Act as "Poisons."

(b) To take the titles chemist and druggist or chemist or druggist or dispensing chemist. (The

provisions relating to the titles pharmaceutical chemist and pharmacist were re-enacted.)

It made it illegal for any person to compound inaccurately any medicine of the British Pharmacopœia, or to fail to comply with regulations made under the provisions of the Act for the "keeping, dispensing, and selling of poison." It also contained provisions as to the labelling of poisons and the recording of the sales of such substances as were named or described in Part I. of the Schedule of Poisons. The Pharmaceutical Society was constituted by the Act the sole examining and registering authority, with the exclusive right to proceed for penalties for breaches of sections 1 and 15 of that statute.

The Pharmacy Act, 1869, was an amending statute explaining and amplifying certain exemptions in the 1868 Act.

The Pharmacy Acts Amendment Act, 1898, effected a simplification of the constitution of the Pharmaceutical Society.

In 1901 the Lord President of Council appointed a Departmental Committee to consider the Schedule of Poisons annexed to the Pharmacy Act, 1868, and to report the alterations therein which they deemed expedient, and further to consider whether a third sub-division might not be added to the schedule containing substances which, whether sold by registered chemists or not, should be labelled or otherwise distinguished, and if so to enumerate the substances which in their opinion should be so treated.

The Committee reported in November, 1902. Paragraph 10 of the report is as follows :—

"Inconvenience has been experienced by farmers and gardeners owing to the restriction of the sale of poisonous material to registered chemists and druggists in such districts where there is no such qualified tradesman within easy reach. Your Committee are convinced that the inconvenience would have amounted to a very serious interference with legitimate industry had the provisions of the 15th section been universally put in effect. For example, in the highlands and islands of Scotland, where sheep-farming is the principal business of agriculture, farmers are sometimes upwards of fifty miles distant from the nearest registered chemist and druggist, and the sale of sheep-dips is regularly carried on by ironmongers and other traders in contravention of the statute."

The paragraphs of the report which contain the Committee's recommendations are as follows:—

13. Your Committee consider that it would be going beyond their reference to suggest changes in the administration of the 15th section of the Pharmacy Act. They are of opinion, however, that preparations for use in connection with agriculture, horticulture, or sanitation might be placed in a third part of the Schedule, to be sold only by licensed persons and subject to regulations to be made by the Privy Council.

Your Committee further recommend that the traffic in arsenic should be regulated either by an amendment of the Arsenic Act, 1851, or by more stringent enforcement of the provisions of the 17th section of the Pharmacy Act, 1868.

14. Your Committee beg to submit the following suggested alterations in Schedule A:—

PART I.

Arsenic and its preparations, except any preparation prepared exclusively for use in connection with agriculture or horticulture,

and contained in a closed vessel or receptacle, distinctly labelled with the word "Poison," the name and address of the seller, and a notice of the agricultural or horticultural purpose for which the preparation has been made.

Alkaloids.—All poisonous vegetable alkaloids and their salts, and all poisonous derivatives of vegetable alkaloids, except preparations of tobacco, or the alkaloids of tobacco, prepared exclusively for use in connection with agriculture or horticulture, and contained in a closed vessel or receptacle distinctly labelled with the word "Poison," the name and address of the seller, and a notice of the agricultural or horticultural purpose for which the preparation has been made.

Aconite and its preparations. *Atropine* and its preparations.

Cantharides. *Cocaine* and its salts. *Corrosive sublimate*. *Cyanide of potassium* and all metallic cyanides and their preparations.

Emetic tartar. *Ergot of rye* and its preparations.

Morphine and its salts and preparations containing one or more per cent. of morphine.

Picrotoxin. *Prussic acid* and its preparations.

Savin and its oil. *Strychnine* and its preparations.

Vermin killers, containing poisons included in Part I.

PART II.

Acetanilide (Antifebrin) and its preparations.

Almonds, essential oil of (unless deprived of prussic acid).

Belladonna and its preparations.

Cantharides, tincture and all vesicating liquid preparations of.

Carbolic acid and liquid preparations of carbolic acid and its homologues containing more than three per cent. of those substances, except any preparation prepared for use as sheepwash, or for any other purpose in connection with agriculture, horticulture, or sanitation, and contained in a closed vessel, distinctly labelled with the word "Poison," the name and address of the seller, and a notice of the special purposes for which the preparations are intended.

Chloral hydrate and its preparations. *Chloroform*. *Cocaine*, preparations of, *Corrosive sublimate*, preparations of.

Digitalis and its preparations.

Mercuric iodide. *Mercuric sulphocyanide*.

Morphine, preparations of, containing less than one per cent.

Nux vomica and its preparations.

Opium and all preparations and of opium poppies.

Oxalic acid and its soluble salts.

Precipitate, red. *Precipitate, white*.

Strophanthus and its preparations. *Sulphonal*.

PART III.

Preparations containing arsenic exclusively for use in connection with agriculture or horticulture, and contained in a closed vessel or receptacle distinctly labelled with the word "Poison," the name and address of the seller, and a notice of the agricultural or horticultural purpose for which the preparation has been made.

Preparations of tobacco or the alkaloids of tobacco exclusively for use in connection with agriculture or horticulture and contained in a closed vessel or receptacle distinctly labelled with the word "Poison," the name and address of the seller, and a notice of the agricultural or horticultural purpose for which the preparation has been made.

Preparations of carbolic acid or its homologues for use as sheep-wash, or for any other purpose in connection with agriculture, horticulture, or sanitation, and contained in a closed vessel distinctly labelled with the word "Poison," the name and address of the seller, and a notice of the special purposes for which the preparations are intended.

Two minority reports signed respectively by Mr. Alexander Cross and Mr. Walter Hills were appended. Mr. Cross reported in favour of greater latitude being given in the sale of poisons employed for manufacturing purposes, and of licensing suitable persons to assist medical men in dispensing, whether such persons have passed the Pharmaceutical Society's examination or not. Mr. Walter Hills dissented from the findings of the Committee. He reported against any relaxation of the restrictions imposed by the Pharmacy Act, 1868, and against any "departure from the sound principle of that Act."

In 1880, in *The Pharmaceutical Society v. The London Provincial Supply Association*, the House of Lords held that the word "person" in the 1st and 15th sections of the Pharmacy Act did not include a corporate body.

Such corporate bodies, whether consisting of qualified persons or not, were in consequence of that decision free to sell and keep open shop for the retailing, dispensing, and compounding of poisons, and to use all or any of the titles reserved by the Pharmacy Acts to the use of registered chemists. Corporate bodies were liable to none of the penalties under the Pharmacy Acts except those imposed by section 17 of the 1868 Act for breach of the regulations provided by that section for the liability and recording of the sales of poisons.

The Pharmaceutical Society made repeated unsuccessful attempts to remove this anomaly by legislation.

The Poisons and Pharmacy Bill, 1908, was introduced by the Lord President in the main to give effect to the report of the Departmental Committee referred to, and as far as was practicable to apply to corporate bodies the provision of the Pharmacy Acts. In addition, opportunity was taken (*a*) to amend the provisions for modifying the schedule of poisons, (*b*) to require that branch chemists' shops shall be *bonâ fide* conducted by registered chemists, and (*c*) to extend the power of the Pharmaceutical Society to make bye-laws relating to the course of studies and the examinations to be undertaken by candidates for registration as pharmaceutical chemists or chemists and druggists.

Section 1 replaces the schedule of poisons in the Pharmacy Act, 1868, by the schedule to this Act, and extends the power of the former Act, whereby substances might be added to the schedule so as to

include the power to remove substances therefrom and from one part of the schedule to the other.

Section 2 provides for the granting by local authorities of licences to persons other than registered chemists, enabling them to sell the poisonous substances referred to in the section for use for specified purposes in connection with agriculture and horticulture, it being a condition precedent to the grant that the licensing authority shall take into consideration whether in the neighbourhood where the applicant for a licence is carrying on business the reasonable requirements of the public with respect to the purchase of such poisonous substances are satisfied.

Section 3 casts upon pharmaceutical chemists, chemists and druggists, and the executors, administrators or trustees carrying on the business of a deceased chemist, the duty of providing that in every premises where they carry on the business of a pharmaceutical chemist or a chemist and druggist the business shall be *bonâ fide* conducted by a duly qualified person. The section also in effect prohibits the use by incorporate bodies, and in Scotland firms or partnerships, of the title pharmacist and the titles reserved by the 1852 Act. It imposes conditions respecting the use by them of any of the other reserved titles and upon the carrying on by them of the business of a pharmaceutical chemist or chemist and druggist.

Section 4 adds to the powers of the Pharmaceutical Society to make bye-laws dealing with examinations and courses of study and exemptions therefrom.

Section 5 provides that certain substances other than scheduled poisons shall only be sold when

labelled as required by the section and under such regulations as may be made by Order in Council.

Section 6 applies, subject to necessary modifications, sections 2 and 5 of the Act to Ireland.

Section 7 provides conditions under which the business of a deceased chemist and druggist or registered druggist in Ireland may be continued. The continuation of the business on the death of a pharmaceutical chemist in Ireland was previously provided for.

Section 8 provides that the Act may be cited as the Poisons and Pharmacy Act, 1908, and that it should come into operation on April 1, 1909.

It will be observed that the only parts of the Act which apply to Ireland are sections 2, 5, and 7.

The Arsenic Act which applies to the United Kingdom provides restrictions upon the sale of arsenic. These provisions are in addition to those of the Pharmacy Acts.

Apart from the foregoing statutes there are various enactments dealing with criminal and quasi-criminal offences connected with the use of poisons, etc., to which separate chapters of this work have been devoted.

THE LAW RELATING TO POISONS AND PHARMACY.

CHAPTER I.

TITLES.

THE titles and signs which are the subject of restrictions imposed by the Pharmacy Acts are as follows:—

(a) Those reserved by section 12 of the Pharmacy Act, 1852 (15 & 16 Vict. c. 56).

(1) Pharmaceutical Chemist.*

(2) Pharmaceutist.*

(3) Any name, title, or sign implying that the person using, assuming, or exhibiting it is either registered under the Pharmacy Act, 1852, or a member of the Pharmaceutical Society.

(b) Those reserved by sections 1 and 15 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121).

(4) Chemist and Druggist. (5) Chemist.

(6) Druggist. (7) Pharmacist.

(8) Dispensing Chemist.

(9) Dispensing Druggist.

* The restrictions relating to the titles "Pharmaceutical Chemist" and "Pharmaceutist" are re-enacted in sections 1 and 15 of the Act of 1868.

The titles and signs reserved by the Pharmacy Act, 1852:—

From and after the passing of this Act, it shall not be lawful for any person, (*a* 3) not being duly registered (*b* 4) as a pharmaceutical chemist according to the provisions of this Act, to assume or use the title of pharmaceutical chemist or pharmacist (*c* 4) in any part of Great Britain, or to assume, use, or exhibit (*d* 5) any name, title, or sign implying that he is registered under this Act, (*e* 8) or that he is a member of the said society (Pharmacy Act, 1852, s. 12).

Upon the decease of any pharmaceutical chemist or chemist and druggist actually in business at the time of his death it shall be lawful for any executor, administrator, or trustee of the estate of such pharmaceutical chemist or chemist and druggist to continue such business (*p.* 23) if and so long only as such business shall be *bonâ fide* conducted by a duly qualified assistant, and a duly qualified assistant within the meaning of this clause shall be a pharmaceutical chemist or a chemist and druggist registered by the registrar under the Pharmacy Act * or this Act (Pharmacy Act, 1868, s. 16).

The provisions of section 16 of the Pharmacy Act, 1868, which enable the executor,

* The Pharmacy Act, 1852.

administrator, or trustee of the estate of a deceased pharmaceutical chemist or chemist and druggist to continue his business so long as such business is *bonâ fide* conducted by a duly qualified assistant, shall be construed as enabling such executor, administrator, or trustee to carry on the business if and so long only as, in every premises where the business is carried on, the business is *bonâ fide* conducted by a duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises [Poisons and Pharmacy Act, 1908 (8 Edw. 7, c. 55), s. 3, sub-s. 2.]

(a) "Any Person"—Corporate Bodies, and in Scotland Firms, or Partnerships.—Prior to April, 1909, in consequence of the decision in the *Pharmaceutical Society v. The London and Provincial Supply Association* (see p. 336), limited liability companies, and, in Scotland, also firms or partnerships, were not infringing this section by assuming any of the titles referred to. The Poisons and Pharmacy Act, 1908 (s. 3), provides that under certain circumstances a body corporate, and, in Scotland, also a firm or partnership, may carry on the business of a pharmaceutical chemist, but it does not empower them to assume, use, or exhibit that or any of the other titles referred to in section 12 of the Act of 1852. It overrides the decision referred to by enacting that, subject to provisions which do not affect these titles, section 12 of the Pharmacy Act shall apply to a corporate body, and, in Scotland, to a firm or

partnership, in like manner as it applies to an individual (Poisons and Pharmacy Act, 1908, s. 3, sub-s. 4).

It therefore follows that no corporate body, and, in Scotland, no firm or partnership, may use these titles, for it is impossible for them to be registered under the Pharmacy Act. The members of a firm or partnership in Scotland may, if they are pharmaceutical chemists, use these titles in connection with their individual names, *e.g.*, Macdonald & Co. (A. B. Morrison, Pharmaceutical Chemist; C. D. Grey, Pharmaceutical Chemist).

As to firms or partnerships in England and Wales see p. 24.

The position of companies in regard to the use of the titles reserved by the 1868 Act is dealt with at p. 21.

(b) **Duly Registered.**—The registrar under this Act appointed by the Council of the Pharmaceutical Society is required to keep a register of pharmaceutical chemists. Those who were members of the Society at the time of the passing of the Act were to be registered as pharmaceutical chemists, and any person who has obtained from the examiners under the Act a certificate of competent skill and knowledge, and qualification to exercise the business or calling of pharmaceutical chemist is entitled to be registered as a pharmaceutical chemist. (Pharmacy Act, 1852, ss. 4, 6, and 8.) Persons in business as chemists and druggists prior to 1852 who became members of the Society after the passing of the 1852 Act, according to its bye-laws and charter, were entitled to be put upon the register of pharmaceutical chemists, although they had been admitted as members of the Society without being examined according to the provisions of the Act. *Reg. v. Pharmaceutical Society* * (1855), 24 L. J. Q. B. 177; 1 Jur. N. S. 198, 3 W. R. 215.

(c) **Pharmaceutical Chemist, or Pharmaceutist.**—These titles are specifically named in section 12 of the Act of 1852, and by that section their use is restricted to registered pharmaceutical chemists. It seems right to say that apart from the provision of section 16 of the Pharmacy Act, 1868, which relates to executors, administrators, or trustees of the estate of a

* Also reported *Pharmaceutical Journal*, Dec., 1853, p. 247; Feb., 1854, p. 387; Feb., 1855, p. 337.

deceased pharmaceutical chemist, the restrictions imposed by section 12 of the 1852 Act are subject to no exemption. The prohibition of the use of the titles pharmaceutical chemist and pharmacist is re-enacted by section 15 of the Act of 1868, and by section 16 of that Act nothing contained in its first fifteen sections "shall extend to or interfere with the business of any legally qualified apothecary, or of any member of the Royal College of Veterinary Surgeons of Great Britain, nor with the making and dealing in patent medicines, nor with the business of wholesale dealers in supplying poisons in the ordinary course of wholesale dealing." The Pharmacy Act, 1869, also contains exemptions from the provisions of the first fifteen sections of the Act of 1868, but neither in the Act of 1852, nor in any subsequent statute are the provisions of section 12 of the 1852 Act amended so as to allow any person other than a registered pharmaceutical chemist to use the titles referred to in that section, except that the Pharmacy Acts Amendment Act, 1898, section 3, enables registered chemists and druggists to become members of the Society. The exemptions contained in section 16 of the Act of 1868, and section 1 of the Pharmacy Act, 1869, apply only to the titles which are restricted by the Act of 1868. This being so, in so far as the use of the titles reserved by the Act of 1852 is concerned, "Apothecaries," "Medical Practitioners," "Veterinary Surgeons," "Dealers in Patent Medicines," and "Wholesale Dealers," have no special privileges.

(d) **Assume, Use, or Exhibit.**—A person may contravene the section if, being an unqualified partner or unqualified servant, he allows his firm or employers to use any of the restricted titles in connection with his name.

In a case heard on April 3rd, 1882, reported only in the technical press, Wright, who was not a registered chemist, carried on business under the style of "Knowles and Wright, Shipping Druggists." Knowles was a registered chemist, and it was with his permission that Wright used his name. In November, 1880, Wright sold his interest in the business to Knowles, who continued to use the style of "Knowles and Wright, Shipping Druggists," Wright being employed by him as a servant. In

an action against Wright for illegal use of the title, it was contended that as Wright was a servant he had no control over the labels used in the business, and that it was not Wright but his master, Knowles, who had exhibited the title. It was admitted by Wright that the label bearing the name "Knowles and Wright, Shipping Druggists," was within his knowledge the only one in use in the shop both prior to and since November, 1880, and that he, Wright, was the person designated as "Wright" on the label. The Court of Exchequer held that Wright was liable to the penalty. (*Pharmaceutical Society v. Wright*, p. 395.)

It is possible for a person to exhibit any of the titles without in any way suggesting thereby that in so exhibiting it he claims to describe himself by the title. An unqualified person may exhibit for sale a non-poisonous substance bearing the name and style of the manufacturers, who may be described on the label as "Chemists." This would not be an exhibition of the title within the meaning of the section. It seems apparent that what is intended is to prohibit the assuming, using, or exhibiting of the title in such a way as to imply that the person so assuming, using, or exhibiting it is registered under the Pharmacy Acts. If this is so unqualified masters or companies do not infringe the section by stating on their premises, or upon the labels they use, that their manager is, say, "A. B. Pharmaceutical Chemist," if such is the case. It would be a question of fact whether the use or exhibition of the title was intended to, or, in fact, did imply that the unqualified employers were claiming to be "Pharmaceutical Chemists."

Use of Predecessor's Name.—The use of a title in connection with a predecessor's name may give rise to difficulties. By the Dentists Act, 1878 (41 & 42 Vict. c. 33), s. 3, and the Medical Act, 1886 (49 & 50 Vict. c. 48), s. 26, a person is not entitled to take or use the name or title of "dentist" (either alone or in combination with any other words), or of "dental practitioner," or any name, title, addition, or description implying that he is registered under the Dentists Act, or that he is a person specially qualified to practise dentistry unless he is registered under that Act.

In a case under the Dentists Act the defendant who was neither on the Dentists' Register, nor a legally qualified medical practitioner, carried on a practice as a dentist at certain premises, where, on the front railings, there was a white marble slab, with the words "Mr. W. Lawson Whitlock, 10-5," upon it. At the side of the front door were the words "Mr. C. R. Stent, R.D.S. Eng., Surgeon Dentist." In the forecourt was a gas-lamp on which was written "Mr. C. R. Stent, Surgeon Dentist." There was a further notice outside the premises "Messrs. Stent, Surgeon Dentists, established 1840, hours of attendance," etc. Mr. Whitlock admitted that he was not a registered dentist, and when seen at the surgery, in reply to a question, he stated that he was not Mr. Stent, that Mr. Stent had been dead some time, and that he, Mr. Whitlock, had a perfect right to use the name as he was doing, as he had purchased the practice from the personal representative of Mr. Stent and the right to keep his (Stent's) name and qualifications upon the premises in the way he was doing. The magistrate held that Mr. Whitlock did not, contrary to the Dentists Act, 1878, take and use an addition or description "R.D.S. Eng., Surgeon Dentist," implying that he was then registered under the said Act, or that he was specially qualified to practise dentistry as alleged, and he dismissed the information.

The Divisional Court held that the magistrate's decision was a finding of fact with which the Court could not interfere.

LORD ALVERSTONE, L.C.J., said: I cannot help thinking that if nothing was said, and if there was evidence that the respondent was passing himself off as the Stent of the present time, then it would be using not only the name and description, but the name of Stent with the description. But the magistrate had found as a matter of fact that the name of Whitlock was *bonâ fide* put up, that there was no fraud, and that the respondent was not passing himself off as Stent, but indicated that he was Whitlock, and not Stent. With reluctance I come to the conclusion that we cannot interfere with the magistrate's decision, and I regret that the practice, which is open to no objection and which would have rendered this case unnecessary,

was not followed of indicating the fact that a business is not carried on by a former proprietor by the prefix of the word "late" to his name (*Brown v. Whitlock*,* [1903] 67 J.P. 451).

(e) **Implying that he is registered under this Act.**—This phrase has not been the subject of a High Court decision. There have been a number of cases under the Dentists Acts and Veterinary Surgeons Acts on the assumption of titles dealt with in those Statutes. There is an important distinction between those Acts and this section of the Pharmacy Act. It will be noted that the offence here is to imply that the person taking, using, or exhibiting the title or sign "is registered under this Act," whereas the Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), s. 17, prohibits an unregistered person taking or using the title of veterinary surgeon or veterinary practitioner, or any name, title, addition, or description, *stating* that he is a veterinary surgeon or a practitioner of veterinary surgery or of any branch thereof, *or is specially qualified to practise the same*, and the Dentists Act, 1878 (41 & 42 Vict. c. 33), s. 3, prohibits the taking or using by an unregistered person of the name or title of "dentist" (either alone or in combination with any other word or words), or of "dental practitioner," or any name, title, addition or description *implying* that he is registered under this Act, *or that he is a person specially qualified to practise dentistry*.

Under both the Acts it has been held that the words "specially qualified" mean more than "qualified by registration." WILLS, J., in *Royal College of Veterinary Surgeons v. Robinson*,† [1892] 1 Q. B. 557; 61 L. J. M. C. 146; 66 L. T. 263; 56 J. P. 313; 17 Cox C. C. 477; 40 W. R. 412, referring to the phrase in the Veterinary Surgeons Act, said: "I think that the word 'qualified' is used in the section in its popular and not in its technical signification." In this case it was held that a person, who was not a registered veterinary surgeon, had committed an offence under the section by using the words "Veterinary Forge" in describing his premises. This

* Also reported, *Pharmaceutical Journal*, June 6, 1903, p. 803; *Chemist and Druggist*, May 30, 1903, p. 874; *British and Colonial Druggist*, May 29, 1903, p. 555.

† Also reported, *Chemist and Druggist*, Feb. 20, 1892, p. 271.

interpretation was followed in *Royal College of Veterinary Surgeons v. Collinson*,* [1908] 2 K. B. 248; 77 L. J. K. B. 689; 99 L. T. 122; 72 J. P. 267; 24 T. L. R. 530, where the words complained of were "Canine Specialist. Dogs and cats treated for all diseases."

A Pharmaceutical Chemist issued a booklet in which he described himself as a "Pharmaceutical and Veterinary Chemist," and it was held that by doing so he had not infringed the Veterinary Surgeons Act. *Royal College of Veterinary Surgeons v. Groves* † (1893), 57 J. P. 505.

In *Emslie v. Paterson* ‡ (1897), 24 R. Just. Cases 77, the defendant, who was not a registered dentist, exhibited upon a brass plate the words "American Dentistry, A. Emslie," and upon another brass plate the words "Dental Office." He was convicted by the Sheriff Substitute of an offence under the Dentists Act, but the conviction was quashed by the Court of Justiciary.

LORD MONCRIEFF said: "I agree that the description contemplated by the statute is a description personal to the individual *ejusdem generis* with the preceding words and indicating his special qualification for the work by training and practice. The terms of the statute are not satisfied by notices exhibited outside a building, which simply state that dentistry is practised therein. They do no more than notify that dentistry is carried on within, they contain no profession of the qualification of the practitioner, and the plate does not even assert that the appellant is the operator."

LORD TRAYNER said: "What the statute provided against is any one using a name or designation which is descriptive of a registered or qualified practitioner, who is not in fact entitled

* Also reported, *Pharmaceutical Journal*, April 11, 1908, p. 495; *Chemist and Druggist*, April 11, 1908, p. 555; *British and Colonial Druggist*, April 10, 1908, p. 305.

† Also reported, *Pharmaceutical Journal*, June 3, 1893, p. 1003; *Chemist and Druggist*, Feb. 11, June 3, 1893, pp. 215, 751; *British and Colonial Druggist*, June 2, 1893, p. 531.

‡ Also reported, *Pharmaceutical Journal*, June 19, 1897, p. 541; *Chemist and Druggist*, Feb. 27, March 13, June 19, 1897, pp. 362, 428, 943; *British and Colonial Druggist*, June 18, 1897, p. 839.

to the designation which the assumed name or description implies. Here the appellant has assumed no title whatever. . . he has added nothing to his own name (which I think is the thing the statute prohibits) by way of title, addition or description implying that he is registered as a dentist, or that he possesses, or claims to have, any special qualification for the performance of dental operations."

In *Barnes v. Brown*,* [1909] 1 K. B. 38 ; 25 T. L. R. 3, it was held that the words "specially qualified" in the Dentists Act, 1878, s. 3, referred to special personal qualifications to practise dentistry and not to the special qualifications or professional hall-marks mentioned in other sections of that Act. The defendant, who was not a registered dentist, exhibited a notice as follows: "H. J. Barnes. Finest Artificial Teeth at moderate prices. Extractions. Advice Free. Hours, 10-7. English and American Teeth. Advice free. Painless Extractions."

LORD ALVERSTONE, L.C.J., said: "In my opinion the words specially qualified to practise dentistry include the personal qualification of the particular individual to practise dentistry which he has acquired by practice." As to whether or not the description the defendant had put forward of himself brought him within the prohibition his Lordship expressed some doubt, but held "that the conclusion arrived at by the magistrate was one which was open to him; that the words amounted to a statement that the appellant had special qualifications to extract teeth, and that being so there was evidence of an offence against the Act." His Lordship held that his decision was not inconsistent with the case of *Emslie v. Paterson* (p. 9).

BIGHAM, J., said: "I think the expression 'specially qualified' covers the case of a man who by study and practice of his profession has acquired a knowledge and skill not acquired by men of ordinary calling. The expression is not used in any narrow or technical sense but in the popular sense of a person experienced in the work. In my opinion the

* Also reported, *Chemist and Druggist*, Oct. 17, 1908, p. 609; *British and Colonial Druggist*, Oct. 16, 1908, p. 328.

words in the present case are intended to convey, and do convey, that the appellant is so qualified. . . . I confess that I do not feel the difficulty which my Lord feels. It seems to me to be impossible to say that this is not a description within the meaning of section 3, implying that the appellant is a person specially qualified to practise dentistry."

The cases of *Barnes v. Brown*, and *Emslie v. Paterson* were reviewed in the Court of Appeal in the case of *Bellerby v. Heyworth and Bowen*, [1909] 2 Ch. 23; 53 S. J. 576; 25 T. L. R. 591. This was an action for the dissolution of a partnership. The articles of partnership provided that if any of the partners should take or use in any way whatever any name, title, addition, or description, or otherwise do anything which would be an offence and in contravention of the Dentists Act, 1878, or the Medical Act, 1886, or any statute regulating the profession or practice of dentists in the United Kingdom, then the other or others of the partners might determine the partnership as regards such last-mentioned partner or partners. The defendants fixed upon the partnership premises the following notice: "Bellerby, Heyworth and Bowen. Finest artificial teeth. Painless extraction. Advice free. Mr. Heyworth attends here." The plaintiff alleged that the notice was a contravention of section 3 of the Dentists Act, 1878, on the ground that none of the partners was registered as a dentist pursuant to the Dentists Act, 1878, nor were any of them legally qualified medical practitioners, and he brought an action for dissolution of the partnership. At the trial before Mr. Justice Parker both sides admitted that the notice in question constituted an offence against section 3 of the Dentists Act, 1878, having regard to the decision of the Divisional Court in *Barnes v. Brown*. Mr. Justice Parker accordingly made the declaration dissolving the partnership. This decision was reversed upon appeal.

The Master of the Rolls said: "This is in reality an appeal from the decision of the Divisional Court in *Barnes v. Brown*. The case undoubtedly raises a point of importance as to the true meaning and effect of the Dentists Act, 1878. To start with, it is not really disputed that there is nothing in the Act

which prevents a man from doing dentist's work. It is not wrong under the Act for any man to do dentist's work, and it is not wrong for him to inform the public that he does that which it is lawful for him to do. But the Act enacts, to put it shortly, that there should be a register, and that persons who can get on that register must have certain qualifications."

His Lordship, quoting section 3 of the Act, said: "As I read this section it is directed to the personal description of a man as distinguished from the description of the work which he does. I do not propose to express any opinion as to the precise effect to be given to the words 'specially qualified.' In my view that matter does not arise for decision. What had the defendants done?" His Lordship stated the facts, and added: "What is there in that which is taking or using the name or title of dentist or of dental practitioner, or any name, title, addition, or description implying that they are registered under the Act, or are persons specially qualified to practise dentistry? I desire to adopt for myself the language of the Lord Justice Clerk in *Emslie v. Paterson*."

His Lordship, quoting the extract from the judgment of Lord MONCRIEFF in that case (see p. 9), said that seemed to be the broad meaning and effect of section 3. He continued: "I have thus far refrained from commenting upon the judgment in *Barnes v. Brown*. It is needless to say that I have considered what has been said by the Lord Chief Justice and Mr. Justice Bigham in that case with the utmost respect, but I must confess that I am unable to follow the reasoning in that case, reasoning which seems to go the length of saying that people must not announce that they do that which by law they are entitled to do, and that by saying that they do that which the law entitles them to do, they are offending against the Act. I cannot find any personal description which brings the present case within the Act. With great deference to the decision of the Divisional Court, I think that the decision of the Scotch Court ought to be followed in preference to *Barnes v. Brown*."

It will be noticed that the prohibition in section 12 of the Pharmacy Act is not so wide as that contained in the Veterinary

Surgeons and Dentists Acts, and that in the case of the Pharmacy Act a person may imply that he possesses special skill and knowledge in pharmacy without committing an offence under this section, provided he is careful not to imply that he is registered under the Pharmacy Act, 1852.

Had it not been for the words "any name, title, or sign," implying that he is a person registered under this Act, it may have been that the use of such initials or abbreviations as Ph.C., M.P.S., etc, would not have been prohibited, but as the section stands the use by an unregistered person of such signs, or any others, which imply that the person exhibiting them is a pharmaceutical chemist, or a member of the pharmaceutical Society, constitutes an offence.

A person who is not a registered chemist, but who retailed and compounded drugs, described his shop as "The Pharmacy." In the County Court a penalty was imposed for breach of section 12 of the Pharmacy Act, 1852. In the Divisional Court, on October 28th, 1909, DARLING and BUCKNILL, J.J., held that the County Court Judge was wrong, and that the defendant had not taken a name, title, or sign implying that he was registered under that Act, or that he was a member of the Pharmaceutical Society, and had not infringed the provisions of the Pharmacy Act, 1852. (*Pharmaceutical Society v. Mercer.*)*

The terms of section 40 of the Medical Act, 1858 (21 & 22 Vict. c. 90), restricting the use of medical titles differ from those of the Pharmacy Act and from those of the Dentists and Veterinary Acts, and are as follows :—

Any person who shall wilfully and falsely pretend to be or take or use the name or title of a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner, or apothecary, or any name, title, addition, or description implying that he is registered under this Act, or that he is recognised by law as a physician or surgeon, or licentiate in medicine and surgery, or a practitioner in medicine, or an

* Reported in *Pharmaceutical Journal*, Oct. 30th, 1909, p. 545; *Chemist and Druggist*, Oct. 30th, 1909, p. 668; *British and Colonial Druggist*, Oct. 29th, 1909, p. 384.

apothecary, shall, upon a summary conviction for any such offence, pay a sum not exceeding twenty pounds.

In *Carpenter v. Hamilton* (1877), 41 J. P. 615 ; 37 L. T. 157 (a case under this section), the defendant who was not registered under the Medical Acts described himself as "John Hamilton, Doctor of Medicine of the Metropolitan Medical College of New York." He produced a diploma so describing him, and it was not proved to the satisfaction of the magistrate that he was not entitled so to describe himself. The magistrate decided that he did not wilfully or falsely pretend to be or use the name of a doctor of medicine contrary to the section, and on appeal the magistrate's decision was upheld.

Trade Name.—There appears to be nothing in the section to prohibit a pharmaceutical chemist assuming a name for trading purposes, and provided he can prove his identity with the person whose name appears on the register there is nothing in the section to prevent his using the title in connection with his assumed name. As to the name which must appear on the label affixed to poisons when sold see p. 81.

*Firms or Partnerships in England and Wales.**—If it is correct to say, as it seems to be, that a pharmaceutical chemist may assume a trade name, and exhibit the title "Pharmaceutical Chemist" in connection with that assumed name, pharmaceutical chemists may collectively, as members of a firm or partnership, assume a partnership or trade name, and use any of the titles which are open to the use of pharmaceutical chemists in connection with that firm name, but if any member of the firm is not a registered pharmaceutical chemist he would be liable to the penalty under this section, by reason of his use as a member of the firm of a title which in his individual capacity he would be prohibited from using. Whether this would be so in the case of a sleeping or "limited" partner would probably depend upon whether the firm name in connection with which the title was used was such as to identify the unqualified sleeping partner in such a way as to constitute a "holding out" that he was a registered pharmaceutical chemist.

* As to firms or partnerships in Scotland see p. 3.

Executors, Administrators, and Trustees of the Estate of a Deceased Pharmaceutical Chemist.—It will be noticed that section 16 of the Pharmacy Act, 1868, is amended by section 3, subsection 2, of the 1908 Act, whereby the business of a deceased pharmaceutical chemist may be continued by the executors, administrators, or trustees, so long as the business is *bonâ fide* conducted by a duly qualified assistant who is a duly registered pharmaceutical chemist, and the name and certificate of qualification of the person by whom the business is so conducted is conspicuously exhibited in the premises. The use of the words, "as the case may be," seems clearly to indicate that in the case of the business of a pharmaceutical chemist the *bonâ fide* manager must be a pharmaceutical chemist. Section 16 is silent as to the use of the title, and it may be that the title "Pharmaceutical Chemist" can only be used in connection with the name of the pharmaceutical chemist who is *bonâ fide* conducting the business.

It would appear from the case of *Brown v. Whitlock* (p. 6) that a sign or label bearing the words "Executors of the late A. B., Pharmaceutical Chemist" is not an infringement, provided the provisions of the exempting section as to the management of the business are complied with.

The titles and signs reserved by the Pharmacy Act, 1868:—

"It shall be unlawful for any person (a 19) . . . to assume or use the title 'chemist and druggist,' or chemist, or druggist (b), or pharmacist (c), or dispensing chemist or druggist, in any part of Great Britain, unless such person shall be a pharmaceutical chemist, or a chemist and druggist within the meaning of this Act (p. 38), and be registered under this Act, and conform to such regulations (p. 245) as to the keeping, dispensing, and selling of such poisons as

may from time to time be prescribed by the Pharmaceutical Society with the consent of the Privy Council (Pharmacy Act, 1868, s. 1).

Any person who shall . . . take, use, or exhibit the name or title of chemist and druggist, or chemist, or druggist, not being a duly registered pharmaceutical chemist or chemist and druggist, or who shall take, use, or exhibit (p. 5) the name or title pharmaceutical chemist, pharmacist, or pharmacist, not being a pharmaceutical chemist . . . shall for every such offence be liable to pay a penalty or sum of five pounds, and the same may be sued for, recovered, and dealt with in the manner provided by the Pharmacy Act for the recovery of penalties under that Act, but nothing in this Act contained shall prevent any person from being liable to any other penalty, damages, or punishment to which he would have been subject if this Act had not passed (Pharmacy Act, 1868, s. 15)."

A registered chemist or druggist may, notwithstanding anything in sections one and fifteen of the Pharmacy Act, 1868, take, use, or exhibit the name or title of pharmacist (Poisons and Pharmacy Act, 1908, s. 3, sub-s. 3).

Nothing hereinbefore contained * shall extend

* This phrase includes sections 1 and 15 of the Act of 1868 quoted above, but not section 12 of the Act of 1852.

to or interfere with the Business (*d* 23) of any legally qualified Apothecary (p. 56) or of any Member of the Royal College of Veterinary Surgeons of Great Britain (p. 56), nor with the making or dealing in Patent Medicines (p. 57), nor with the Business of wholesale Dealers in supplying Poisons in the ordinary course of wholesale Dealing (p. 57) (Pharmacy Act, 1868, s. 16).

Nothing contained in the first fifteen sections of the recited Act * shall affect any person who has been registered as a legally qualified medical practitioner (p. 69) before the passing of this Act; and the said clauses shall not apply to any person who may hereafter be registered as a legally qualified practitioner, and who, in order to obtain his diploma for such registration, shall have passed an examination in pharmacy; nor shall the said clauses prevent any person who is a member of the Royal College of Veterinary Surgeons of Great Britain, or holds a certificate in veterinary surgery from the Highland and Agricultural Society of Scotland (p. 69), from dispensing medicines for animals under his care (p. 69) (Pharmacy Act, 1869, s. 1).

Upon the decease of any pharmaceutical chemist (p. 37) or chemist and druggist actually in business at the time of his

* The Act of 1868.

death it shall be lawful for any executor, administrator, or trustee of the estate of such pharmaceutical chemist or chemist and druggist to continue such business (*e* 23) if and so long only as such business shall be *bonâ fide* conducted by a duly qualified assistant, and a duly qualified assistant within the meaning of this clause shall be a pharmaceutical chemist or a chemist and druggist registered by the registrar under the Pharmacy Act* or this Act (Pharmacy Act, 1868, s. 16.)

The provisions of section sixteen of the Pharmacy Act, 1868, which enable the executor, administrator, or trustee of the estate of a deceased pharmaceutical chemist or chemist and druggist to continue his business so long as such business is *bonâ fide* conducted by a duly qualified assistant, shall be construed as enabling such executor, administrator, or trustee to carry on the business if and so long only as, in every premises where the business is carried on, the business is *bonâ fide* conducted by a duly registered pharmaceutical chemist or chemist and druggist, as the case may be (p. 54), and the name and certificate of qualification (p. 54) of the person by whom the business is so conducted in any premises is conspicuously exhibited in the

* The Pharmacy Act, 1852.

premises (Poisons and Pharmacy Act, 1908, s. 3, sub-s. 2).

A body corporate, and in Scotland a firm or partnership (*f*, p. 23), may use the description of chemist and druggist, or of chemist or of druggist, or of dispensing chemist or druggist, if the foregoing requirements * as to the carrying on of the business are observed, and if the superintendent (p. 29) is a member of the board of directors or other governing body of the body corporate, or of the firm or partnership, as the case may be.

Subject as aforesaid, † section twelve of the Pharmacy Act, 1852, and sections one and fifteen of the Pharmacy Act, 1868, shall apply to a body corporate, and in Scotland to a firm or partnership, in like manner as they apply to an individual (Poisons and Pharmacy Act, 1908, s. 3, sub-s. 4).

(a) **Person, Corporate Bodies.**‡—In 1880, in *The Pharmaceutical Society v. The London and Provincial Supply Association, Limited* (p. 336), the House of Lords decided that the word "person" in these sections did not apply so as to make an incorporated company liable to the penalty for keeping open shop for the retailing, etc., of poisons, and from that time until April, 1909, when the Poisons and Pharmacy Act, 1908, came into force, no limited company could be prevented from using any of these titles.

* These requirements are set out at p. 29.

† That is subject to the other provisions of section 3 of the Poisons and Pharmacy Act, 1908 (see p. 235).

‡ See p. 70.

In *Bremridge v. Gray & Co., Ltd.** (1887), 14 (J) R. 60 ; 1 White 445 ; 24 S. L. R. 747, the seven shareholders in the defendant company were prosecuted in Scotland for a breach of this section. The company carried on business as "wholesale chemists and druggists and tea merchants," doing both a wholesale and retail business. The dispensing of drugs was done by duly qualified chemists, but none of the shareholders was a registered chemist. The Court of Justiciary held that the individual shareholders were not liable under sections 1 and 15 of the Pharmacy Act, 1868, to be prosecuted for the offence of unlawfully taking and using the name "chemist and druggist," and advertising the company as "chemists and druggists."

In the *Pharmaceutical Society of Ireland v. Boyd & Co., Ltd.*† (1896), 2 I. R. 294 ; 30 I. L. T. R. 121, the defendants were prosecuted for "keeping open shop for compounding medical prescriptions," contrary to the Pharmacy Act (Ireland), 1875 (38 & 39 Vict. c. 57), s. 30, which provides that "it shall be unlawful for any person" to sell or keep open shop for retailing or compounding poisons or medical prescriptions, unless such person be registered as a pharmaceutical chemist, or a chemist and druggist under the Act. *Held*, following the decision in *Pharmaceutical Society v. London and Provincial Supply Association, Ltd.* (p. 336), upon the construction of the corresponding sections of the English Pharmacy Act of 1868 (31 & 32 Vict. c. 121, ss. 1, 15), that "person" in the Act of 1875 did not include a body corporate so as to make the defendants liable to the penalty imposed by section 30 ; and *held*, further, that the contrary intention appearing on the face of the statute the provisions of the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 2) (see Summary Jurisdiction, p. 158), were inapplicable.

Subject to certain provisions, section 3, sub-section 4, of the Poisons and Pharmacy Act, 1908, applies sections 1 and 15 of

* Also reported, *Pharmaceutical Journal*, July 23rd and 30th, 1887, pp. 85 and 99 ; *Chemist and Druggist*, July 23rd, 1887, p. 88 ; *British and Colonial Druggist*, July 23rd, 1887, p. 99.

† Also reported, *Chemist and Druggist*, February 15th, 1896, p. 260 ; *British and Colonial Druggist*, February 14th, 1896, p. 158.

the Pharmacy Act, 1868, and section 12 of the Pharmacy Act, 1852, to corporate bodies, and, in Scotland, also to firms or partnerships, in like manner as they apply to an individual.

The effect of applying without qualification these sections to corporate bodies would be to prevent any corporate body, including, of course, limited liability companies, and, in Scotland, any firm or partnership, from taking any of the reserved titles, for no such body could become registered as a "Chemist and Druggist," hence the necessity for the special provisions which the new Act makes in regard to them.

The provisions referred to impose certain conditions upon corporate bodies, and, in Scotland, upon firms or partnerships carrying on the business of a pharmaceutical chemist or of a chemist and druggist. These conditions include the appointment of a registered pharmaceutical chemist or chemist and druggist as a superintendent who must control and manage the business of the body corporate, firm, or partnership, so far as it relates to the keeping, retailing, and dispensing of poisons (see p. 29).

The sub-section further empowers those corporate bodies and firms who fulfil the conditions necessary for carrying on the business of a pharmaceutical chemist or of a chemist and druggist to take any of the following titles, namely—

- (1) Chemist and Druggist, (2) Chemist, (3) Druggist,
- (4) Dispensing Chemist, (5) Dispensing Druggist,

provided that the superintendent referred to is a member of the board of directors or other governing body of the body corporate, or of the firm or partnership, as the case may be. This privilege does not extend to taking, using, or exhibiting the titles, "Pharmaceutical Chemist," "Pharmaceutist," and "Pharmacist," or the description "Member of the Pharmaceutical Society."

(b) **Chemist and Druggist, or Chemist, or Druggist.**—

The section makes it an offence for any person other than a registered chemist and druggist to take, use or exhibit the title of Chemist, it being remembered that pharmaceutical chemists are at the same time chemists and druggists. The prohibition extends to the use of the title when accompanied by qualifying

words. In *Bremridge v. Hume** (1895), (J) 2 A. 24 ; 23 R. 9 ; 33 S. L. R. 38 ; 3 S. L. T. 143, the defendant, who was not registered under the Pharmacy Acts, in an advertisement described himself as a "scientific instrument maker and technical chemist." He sold poisons. *Held*, that he was liable to the penalty for illegally using the title.

In *Bremridge v. Turnbull** (1895), (J) 2 A. 29 ; 23 R. 12 ; 33 S. L. R. 40 ; 3 S. L. T. 144, the defendant, who was not a qualified chemist, sold photographic materials. Over his shop was a sign describing him as a "photographic chemist." He sold scheduled poisons, but in his trade circular he intimated that he only sold them in wholesale quantities. In his absence an assistant, also unqualified, sold an ounce of corrosive sublimate at the ordinary retail price. *Held*, that Turnbull had infringed section 15 of the Act of 1868 by the use of the title. He was also convicted of keeping open shop for the retailing, etc., of poisons.

Penalties have also been obtained from persons who have described themselves as "Botanic Chemist,"† "Analytical Chemist,"‡ "Wholesale Druggist,"§ and "Shipping Druggist." The last title was the one used by the defendant in *Pharmaceutical Society v. Wright* (p. 395).

Use of Title "Chemist" by Persons who do not Sell or Keep Open Shop for the Sale of Poisons.—Strictly speaking, analytical chemists contravene the section by using the title, unless they are registered chemists and druggists, but the Pharmaceutical Society, which alone can take proceedings, have not hitherto interfered with the use of the titles by analysts who do, not at the same time sell or keep open shop for the sale of poisons.

* Also reported *Pharmaceutical Journal*, November 2nd and 9th, 1895, pp. 371, 396 ; *Chemist and Druggist*, November 2nd and 9th, pp. 650, 693 ; *British and Colonial Druggist*, November 8th, 1895, p. 521.

† Reported, *Pharmaceutical Journal*, Jan. 22, 1887, p. 603 ; *Chemist and Druggist*, Jan. 22, 1887, p. 87.

‡ Reported, *Pharmaceutical Journal*, Nov. 18, 1882, p. 410 ; *Chemist and Druggist*, Dec. 15, 1882, p. 527.

§ Reported, *Pharmaceutical Journal*, July 14, 1888, p. 40 ; *Chemist and Druggist*, July 14, 1888, p. 45.

(c) "**Pharmacist.**"—Prior to the passing of the 1908 Act this title could only be used by Pharmaceutical Chemists. The title was not mentioned in the Act of 1852, but it may have been contended that it was a title implying registration as a Pharmaceutical Chemist under the 1852 Act. Section 1 of the Act of 1868 made it an offence for any person, other than a Pharmaceutical Chemist, or a Chemist and Druggist, to use it, but section 15 of that Act, which provides the penalty, makes any person who uses the title "Pharmacist" liable to that penalty if he is not a Pharmaceutical Chemist. Both these sections are amended by section 3, sub-section 3, of the 1908 Act, which provides that a registered Chemist and Druggist may use the title of "Pharmacist." It is a title which cannot be taken, used, or exhibited by corporate bodies.

(d) "**Extend to or interfere with the Business.**"—The effect of these exempting sections is that any legally qualified medical practitioner (the term now includes a legally qualified apothecary) who was registered prior to the passing of the Act of 1868, or, if registered subsequent to the passing of that Act, in order to obtain his diploma for such registration, shall have passed an examination in pharmacy, may use the titles "Chemist and Druggist," "Chemist," "Druggist," or "Pharmacist." On the ground that the use of the reserved titles is not ancillary to the business referred to, the exemptions relating to the business of any member of the Royal College of Veterinary Surgeons of Great Britain, and to the making or dealing in patent medicines, appear only to apply to the provisions contained in sections 1 and 15, in so far as they relate to the selling or keeping open shop for the sale of poisons, the compounding of medicines, and the keeping and selling of poisons, and not to the provision restricting the use of the title.

(e) "**To continue such Business.**"—The provision for carrying on the business does not permit the unregistered executor or trustee to use any of the reserved titles in connection with his own name. As to the use of the title in connection with the name of the deceased registered person, see p. 6. How long the business may be continued under the provision of this exemption is dealt with elsewhere (p. 58).

(f) "Firm or Partnership."—In Scotland a firm is a legal person distinct from the partners of whom it is composed (Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 4). In consequence of the decision in *Pharmaceutical Society v. London and Provincial Supply Association, Ltd.* (p. 336), firms or partnerships in Scotland were, like corporate bodies, not amenable to the provisions of sections 1 and 15 of the 1868 Act, and this accounts for their separate treatment in the Act of 1908.

Members of a firm or partnership in England and Wales are in the same position for the purposes of the Pharmacy Acts as if they were trading as individuals. An unqualified person trading in partnership with others, qualified or unqualified, if he appears in the business as one of a firm using the title chemist and druggist would doubtless be illegally taking the title. Whether or not an unqualified sleeping or "limited" partner could be penalised for illegal use of the title is not clear. Probably it depends upon whether the firm name in connection with which the title is used is such as to constitute a "holding out" that the sleeping or "limited" partner is a registered chemist (see "Assume, use, or exhibit," p. 5).

CH AND DRUGGIST

November 15, 1924

E. G. (4/11).—(1) The disability of not being qualified to carry on the business of a chemist and druggist can, as you say, be got over by forming a limited company, but the qualified superintendent or the qualified director must be *bona fide* manager of the business. You cannot otherwise legally carry on the business of a chemist and druggist even if you employ a qualified assistant. (2) The title "pharmacy" is not protected, and can be used by unqualified persons, but there is danger in leading the public to think that the business is that of a chemist and druggist. The Pharmacy Acts were designed for the protection of the public.

I. S. M. (6/12).—It is not permissible to include the word "chemists" in the title of a firm, even a wholesale business, conducted exclusively by unregistered persons. It may only be included provided a qualified registered chemist is employed as superintendent and his name registered with the Registrar of the Pharmaceutical Society of Great Britain.

24, 1927

CHAPTER II.

SELLING AND KEEPING OPEN SHOP FOR THE RETAILING, ETC., OF POISONS.

It shall be unlawful for any person * to sell (*a* 30) or keep open shop (*b* 33) for retailing, dispensing, or compounding poisons, . . . in any part of Great Britain, unless such person shall be a pharmaceutical chemist (*c* 37) or a chemist and druggist within the meaning of this Act, (*d* 38) and be registered under this Act (*e* 38), and conform to such regulations † as to the keeping, dispensing, and selling of such poisons as may from time to time be prescribed by the Pharmaceutical Society with the consent of the Privy Council (Pharmacy Act, 1868, s. 1).

Any person who shall sell or keep an open shop for the retailing (*f* 39), dispensing, or compounding (*g* 40) poisons . . . shall for every such offence (*h* 43) be liable to pay a penalty or sum of five pounds, and the same may be sued for, recovered, and dealt with in the manner provided by the Pharmacy Act for the recovery of penalties under that Act ‡; but nothing in this Act contained shall prevent any person from being liable to any other penalty, damages, or

* As to corporate bodies, see p. 28.

† See p. 245.

‡ See p. 148.

punishment, to which he would have been subject if this Act had not passed (Pharmacy Act, 1868, s. 15).

Any person who, being a duly registered pharmaceutical chemist, or chemist and druggist, carries on the business (*i* 48) of pharmaceutical chemist, or chemist and druggist (*j* 51), shall, unless in every premises where the business is carried on the business is *bonâ fide* conducted by himself or some other duly registered pharmaceutical chemist, or chemist and druggist, as the case may be (*k* 54), and unless the name and certificate of qualification (*l* 54) of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises, be guilty of an offence under section 15 of the Pharmacy Act, 1868 (Poisons and Pharmacy Act, 1908, s. 3, sub-s. 1).

EXEMPTIONS.

Nothing hereinbefore contained shall extend to or interfere with the business of any legally qualified apothecary (*m* 56) or of any member of the Royal College of Veterinary Surgeons of Great Britain (*n* 56), nor with the making or dealing in patent medicines (*o* 57), nor with the business of wholesale dealers in supplying poisons in the ordinary course of wholesale dealing (*p* 57); and upon the decease of any pharmaceutical chemist or chemist and druggist actually in business at the time of his death it shall be lawful for any executor, administrator, or trustee of the estate of such Pharmaceutical chemist or chemist and druggist to continue such business (*q* 58) if and so long only as such business shall be *bonâ fide* conducted by a duly

qualified assistant, and a duly qualified assistant within the meaning of this clause shall be a pharmaceutical chemist or chemist and druggist registered by the registrar under the Pharmacy Act,* or this Act: Provided always, that registration under this Act shall not entitle any person so registered to practise medicine or surgery, or any branch of medicine or surgery (*r* 59) (Pharmacy Act, 1868, s. 16).

The provisions of section 16 of the Pharmacy Act, 1868, which enable the executor, administrator, or trustee of the estate of a deceased pharmaceutical chemist or chemist and druggist to continue his business so long as such business is *bonâ fide* conducted by a duly qualified assistant, shall be construed as enabling such executor, administrator, or trustee, to carry on the business if and so long only as, in every premises where the business is *bonâ fide* conducted by a duly registered pharmaceutical chemist or chemist and druggist, as the case may be (*k* 54), and the name and certificate of qualification (*l* 54) of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises (Poisons and Pharmacy Act, 1908, s. 3, sub-s. 2).

Nothing contained in the first fifteen sections of the recited Act† shall affect any person who has been registered as a legally qualified medical practitioner (*s* 69) before the passing of this Act; and the said clauses shall not apply to any person who may hereafter be registered as a legally qualified practitioner and who, in order to obtain his diploma for such registration, shall have passed an examination in pharmacy;

* The Pharmacy Act, 1852.

† The Pharmacy Act, 1868.

nor shall the said clauses prevent any person who is a member of the Royal College of Veterinary Surgeons of Great Britain, or holds a certificate in veterinary surgery from the Highland and Agricultural Society of Scotland (*t* 69), from dispensing medicines for animals under his care (*u* 69) (Pharmacy Act, 1869, s. 1).

As to poisons used in agriculture or horticulture see p. 123.

CORPORATE BODIES (*v* 70).

The House of Lords in *The Pharmaceutical Society v. The London and Provincial Supply Association, Ltd.* (p. 336) held that the word "person" in sections 1 and 15 of the Pharmacy Act, 1868, did not include a corporation, and from the time of that decision until the coming into force of the Poisons and Pharmacy Act, 1908, corporations, including limited liability companies, and in Scotland firms or partnerships, were not liable to penalties under these sections. The position of corporate bodies in relation to these sections is now settled by the Poisons and Pharmacy Act, 1908, s. 3, sub-s. 4, which provides that subject to the provisions of that sub-section, "Section 12 of the Pharmacy Act, 1852, and sections 1 and 15 of the Pharmacy Act, 1868, shall apply to a body corporate and in Scotland to a firm or partnership in like manner as they apply to an individual."

The effect of this is that as no corporate body can be a registered pharmaceutical chemist or chemist and druggist, corporate bodies, and in Scotland firms or partnerships, selling poisons or keeping open shop for the sale of poisons incur a penalty under the 15th

section of the Act of 1868, unless they prove that they comply with the provisions of s. 3, sub-s. 4 of the Poisons and Pharmacy Act, 1908.

Those provisions may be stated as follows:—

A body corporate,* and in Scotland a firm or partnership, (*w* 71) may carry on the business of a pharmaceutical chemist or chemist and druggist, provided—

- (a) The business of the body corporate, firm or partnership so far as it relates to the keeping, retailing and dispensing of poisons is under the control and management of a superintendent.
- (b) The superintendent is a duly registered pharmaceutical chemist or chemist and druggist.
- (c) The name of the superintendent has been forwarded to the registrar appointed under the Pharmacy Act, 1852, to be entered by him in a register to be kept for that purpose.
- (d) The superintendent does not act at the same time in a similar capacity for any other body corporate, firm, or partnership.
- (e) In every premises where such business as aforesaid is carried on, and is not personally conducted by the superintendent, such business is *bonâ fide* conducted under the direction of the superintendent by a manager or assistant who is a duly registered pharmaceutical chemist or chemist and druggist.
- (f) The certificate of qualification of the manager

* See pp. 3 and 19 for restrictions as to use of titles by corporate bodies.

or assistant is conspicuously exhibited in the shop or other place in which he so conducts the business.

(a) **To sell.**—These words were the subject of dicta in *Pharmaceutical Society v. London & Provincial Supply Association, Ltd.* (p. 336), and it is now clear that they create an offence apart from that of “keeping open shop.” The word “sell” also appears in the 17th section of the Act of 1868, but there the term is qualified by the addition of the words “and for the purpose of this section the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller.” In consequence of this difference in the substance as well as in the phraseology of the 17th section the interpretation of the word “sell” in the respective sections gives rise to different considerations. For its meaning under that section see p. 88.

LORD SELBORNE in *Pharmaceutical Society v. London & Provincial Supply Association, Ltd.*, said (p. 345): “The act of selling, the act of compounding, and every other definite and particular act mentioned in the first section, and in the sections by which penalties are imposed, are struck at, whether the person who does them is a principal to whom the business belongs, or any one whom he employs to carry on the business. The words ‘keep open shop’ may, perhaps, not be so; upon these words I will make an observation presently. But that the word ‘sell’ is, and that the word ‘compound’ also is, seems to me clear from that very clause in the 17th section which I just now read: that ‘for the purposes of this section, the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller.’ That, if it does not necessarily mean, beyond all doubt naturally implies, that this is a special construction for the purpose of that particular section, and that it is not to be extended to sales generally, when mentioned in other sections of the Act. I will add, that regard to the mischief, which beyond all controversy the Act was intended to prevent, leads necessarily to the same

conclusion ; namely, that he who sells, whether he be master or servant, whether he be the principal or a person to whom the conduct and management of sales is delegated, is struck at by the 15th section ; because, otherwise, a very wide door would be opened to the evils which the Act was intended to guard against. If it were otherwise, nothing more would be necessary, according to the appellant's own argument, than that the business should belong to a person who does not himself carry it on, but who is qualified under the Act ; and he might be at liberty to employ in the management of his business persons not qualified, by whom the actual sales would be conducted ; and then the public would be exposed to all the dangers which the Act was passed to prevent. The statute, therefore, in order to be effectual must strike at the particular acts of those who actually conduct the sales, who actually compound the medicines ; and it does strike at those acts."

In the same case Lord BLACKBURN said : " I hold distinctly that there can be no sale, whether a corporation be the ultimate vendor or not, unless a ' person '—meaning a natural person—manages the sale, and the actual person, if unqualified, would, in my mind, clearly become liable to the penalty under the Act."

In *Templeman v. Trafford* (p. 408), commenting on section 15, GROVE, J., said : " The word ' sell ' is contradistinguished from the words ' keep an open shop,' but there are sales which are not in ' open shop,' and those, I think, are referred to here, so that the section applies to all sellers of poisons, whether in a shop or elsewhere. I think that at the same time it imposes the penalty upon the person who actually conducts or transacts the business of the sale."

In *Tomlinson v. Bremridge** (1894), 21 R. 46 ; 31 S.L.R. 683 ; 2 S.L.T. 62, the Lord Justice CLERK said : " The word ' sell ' appears to me to be used as applying to the person doing the act of sale in a retail business, whoever may be the person

* Also reported in *Pharmaceutical Journal*, Mar. 10th, 24th, 31st ; June 9th, 1894, pp. 760, 802, 821, 1038 ; *Chemist and Druggist*, Mar. 10th, 24th ; June 9th, 1894, pp. 344, 411, 803 ; *British and Colonial Druggist*, Mar. 23rd, June 8th, 1894, pp. 281, 578.

or persons for whose behalf he acts. The words 'or keep open shop for retailing, dispensing, or compounding' set forth an offence by itself, for which the penalty of this Act might be inflicted without proof of an actual sale. But that the word 'sell' is intended to strike at the person who does the act of selling I have no doubt." In this case the High Court of Justiciary in Scotland held that an unqualified assistant to a qualified medical practitioner, who was also a registered chemist, was liable to the penalty for selling a poison, he having sold the poison in the absence of his qualified employer.

The point was also definitely decided in *Pharmaceutical Society v. Wheeldon* (p. 384), where it was held that an unqualified assistant, who was in charge of the shop of a duly qualified chemist and had sold a poison, his employer not being present or personally supervising the sale, had incurred the penalty. HAWKINS, J., said: "Nothing, to our minds, can be clearer than that the object of the Act was beyond all other considerations to provide for the safety of the public, and to guard, as far as possible, all members of the community from the disastrous consequences so frequently arising from the sale of poisons by persons unacquainted with their baneful properties; and the whole object of the Act would be frittered away, and the Act itself become a dead letter were we to declare by our judgment that an unqualified assistant can lawfully and with impunity sell any of the poisons to which the Act applies unless upon each occasion of such sale he acts under the personal supervision of a qualified employer, or a qualified assistant to such employer. By such personal supervision we mean not mere presence in the shop or room where the sale takes place, but actual personal supervision, so that every individual sale shall be so guarded round by those precautions prescribed by the Act that the safety of every member of the public may be provided for as far as the law can accomplish that object." After pointing out the dangers which, in his opinion, might arise if the selection of an assistant, without regard to any qualification, had been left to the discretion of his employer, his lordship added: "In our opinion the intention of the legislature was expressly to provide against such a state of things by insisting upon one

uniform qualification for every person who should sell, whether on his own account or for any other person, such dangerous commodities—namely, registration under the Act, based on a certificate of proper skill and knowledge granted after examination by examiners carefully selected and appointed for that purpose."

Though it is true that the actual person managing the sale must be a registered chemist, it is not clear that an unqualified master upon whose behalf the sale of the poison is made is not liable for "selling" a poison (as distinguished from "keeping open shop"), though the assistant who actually sold it may be a registered chemist. In one sense the master would undoubtedly have sold. He would be civilly liable on the contract.

In *Pharmaceutical Society v. Potter* (368) an unqualified master was sued for a penalty under section 15 of the 1868 Act. Mr. Justice HAWKINS, having read the 15th section, asked whether Mr. Williams (counsel for the plaintiff) contended that the defendant kept open shop, or sold. Mr. Williams said both. He kept open shop, and through his servant he sold, and if the sale took place in an open shop kept by the defendant, he was then and there guilty of having kept open shop for retailing poisons. He did not think there was any actual decision on the meaning of the word "sell" in the Pharmacy Act, saying in so many words that it included the master as well as the servant, but he should submit that the natural meaning would include both principal and agent in a sale. Mr. Justice HAWKINS said if it could be shown that the sale was made by the authority of the defendant, he should quite agree with that if he did not actually with his own hands sell it.

(b) "Keep open shop for Retailing, Dispensing, or Compounding Poisons."—As has been indicated (see "to sell," p. 30), this constitutes an offence apart from the act of selling. The proof of an actual sale is not necessary, per Lord Justice CLERK in *Tomlinson v. Bremridge* (p. 32). It is not easy to define what precise act constitutes the keeping of an open shop. The view that the owner of the business carried on

in an open shop, whether he actually takes any part in conducting it or not, is the shopkeeper and keeps open shop, within the meaning of this section, has been generally acted upon. In *Pharmaceutical Society v. London and Provincial Supply Association, Ltd.* (p. 346), Lord SELBORNE said: "The statute, therefore, in order to be effectual must strike at the particular acts of those who actually conduct the sales, who actually compound the medicines; and it does strike at those acts. No doubt the words 'keep open shop' may extend to something more, and comprehend a person who keeps an open shop for the sale of poison, etc., although he may not with his own hands do the business of selling or compounding medicines; one who is only the master or the proprietor of the business, if he be indeed a 'person' within the proper construction of the Act."

It may be, however, that in certain circumstances persons other than, and in addition to, the proprietor of the business may be said to "keep open shop." The phrase was the subject of a dictum by BRAMWELL, L.J., in the Court of Appeal in the case of *Pharmaceutical Society v. London and Provincial Supply Association, Ltd.* (p. 329). His Lordship, giving reasons why it was not necessary, in order to prevent the mischief aimed at by this section, to hold that the word "person" included a "corporation," pointed out that if the servant or shopman of a corporation sold poisons, not being a registered chemist, he would be liable to the penalty. He then said: "It may be asked how is the 'keeping open shop' to be reached? The servants do not keep it open. No, but the directors or managers do; they are the offenders in that case. I cannot see how they could deny that they kept open the shop. They do. They do it in fact." In the same case, in the House of Lords, Lord SELBORNE said: "'Keeping shop' is prohibited, not as a thing apart from, but as a thing involving the particular acts of sale and compounding, etc., within the shop" (p. 346).

Persons other than the owners of the business or house in which it was carried on have been convicted of "keeping"

gaming or disorderly houses. In *R. v. Williams* (1712), 1 Salk. 384, there was an indictment against both husband and wife. Upon a motion to quash it it was contended that the "keeping" a bawdy-house could not be the "keeping" of the wife, any more than it is the "keeping" of the servant. The Court overruled this objection, and held that: "The keeping is not to be understood of having or renting in point of property, for in that sense the wife cannot keep it, but the 'keeping' here is the governing and managing a house in such a disorderly manner as to be a nuisance, and the wife may have a share in the management or government of a disorderly house as well as the husband." The husband was fined and the wife put in the pillory.

In *R. v. Dixon* (1714), 10 Mod. 335, an indictment charged Dixon and his wife with unjustly and unlawfully keeping a common gaming house. It was objected to on the ground that it should have been brought against the husband only. The Court held that: "This objection would have weight in it if the property or the ownership in the house was the matter in question, but it signifies nothing here, where not the property but the criminal management of the house (in which the wife may probably have as great, nay a greater share than the husband) is the fact charged. The case is not to be distinguished from the case of *Queen v. Williams* (*supra*), which was an indictment against the husband and wife for keeping a bawdy-house and held good; for, as there the wife may be concerned in acts of bawdry, so here she may be active in promoting gaming and furnishing the guests with the convenience for that purpose."

It is probably correct to say that an unqualified person who takes charge of a shop where poisons are kept for sale, who orders or directs the operations essential to keeping open the shop, who directs or controls the business, though he is not, in fact, the owner of the business, and though he does not with his own hands sell a poison, commits the offence of keeping open shop for the sale of poisons. This opinion is consistent with the view that the general ordering and control of a business

where poisons are stored and generally dealt with should, in the interests of public safety, be in the hands of a qualified person.

A shop is kept open for the sale of poisons, within the meaning of this section, if it is kept open and sales of poison by retail take place in that shop, notwithstanding that the principal business carried on in the shop is a trade not connected with drugs, and that there is nothing to show inside or outside the premises that poisons are sold there (*Pharmaceutical Society v. Hornsey*, p. 324).

Agency.—How far an unqualified person may go in the performance of acts relating to a sale or the keeping open shop without committing an offence under this section is doubtful.

W. carried on business as a florist, and acted as agent for a firm who manufactured a weed-killer which contained arsenic. He did not keep the arsenical weed-killer in stock, but undertook to send, on behalf of a customer, an order for it to the manufacturers. He accepted payment for it, and made out a receipt on a bill-heading bearing the name and address of the manufacturers. The weed-killer was subsequently sent by rail by the manufacturers direct to the customer. W. received a commission on the sale from the manufacturers. An action was brought against W. for a penalty in respect of an offence alleged to have been committed by him in selling or keeping open shop for retailing a compound containing arsenic without being a duly registered chemist. The County Court Judge found as a fact that W. acted as agent only, and that he was in the position merely of canvasser for orders for the manufacturers. Upon those findings of fact he decided that W. was not the seller within the meaning of this section, and gave judgment for the defendant. This judgment was upheld.

In the Court of Appeal the Master of the Rolls said the Court had no jurisdiction to interfere with the findings of the County Court Judge as to the facts, if there was any evidence to support those findings. He held that there was ample evidence before the County Court Judge to support his finding

that W. merely acted as agent for the purpose of receiving the order and forwarding it to the manufacturers ; that the Court could not interfere with that finding ; and that W. did not sell the poison.

COLLINS, L.J., said : " I think that the case is to be decided on the short ground that the County Court Judge has found as a fact that there was no contract of any kind entered into between the defendant and the customer. The circumstances go very near the line beyond which they would have constituted a contract, but unless the facts give rise to an irresistible inference of law that a contract was constituted, the Court is bound by the finding of the Judge at the trial." He was of opinion that nice considerations might have arisen whether there was any contract entered into between the defendant and the customer.

ROMER, L.J., said : " The facts proved at the trial are consistent with the view that the defendant merely received and forwarded to the company at Liverpool an offer for a certain quantity of weed-killer, together with the price, and it was for the company to deal with the offer as they thought fit. . . . I do not say what view I should have taken upon it if the defendant had clearly entered into some sort of binding contract with the customer " (*Pharmaceutical Society v. White*, p. 390).

The effect of the decision in the above case goes no further than to establish that under the circumstances of the particular sale in question the County Court Judge was entitled to find that there had been no sale by the defendant.

(c) **Pharmaceutical Chemist.**—Prior to the Pharmacy Act, 1852, no statutory qualification was required on the part of those using this title or exercising the " business or calling of a Pharmaceutical Chemist."

The Act of 1852 restricted the use of the title to those who were duly registered as Pharmaceutical Chemists according to the provisions of that Act (s. 12), see p. 2, but any one was still free to carry on the business of a Pharmaceutical Chemist provided he did not use the reserved titles or signs. The Act nowhere defines the " business or calling of a Pharmaceutical Chemist,"

A Pharmaceutical Chemist is a person registered as such according to the provisions of the Pharmacy Act, 1852, ss. and 10 (see pp. 210, 211).

(d) **Chemist and Druggist within the meaning of this Act.**—This description comprises three classes (see Pharmacy Act, 1868, s. 3), namely—

- (1) All persons who at any time before the passing of the Act of 1868 had carried on in Great Britain “the business of a Chemist and Druggist in the keeping of open shop for the compounding of the prescriptions of duly qualified medical practitioners.”
- (2) All Assistants and Associates who before the passing of the Act of 1868 had been duly registered as such under or according to the provisions of the Pharmacy Act, 1852.
- (3) All such persons as may be duly registered under this Act.

(e) **Be registered under this Act.**—Registration under the Pharmacy Act, 1868, is a necessary part of the qualification.

Pharmaceutical Chemists registered under the Pharmacy Act, 1852, prior to the passing of Act of 1868, were entitled to be registered without-fee under this Act, *i.e.* the Pharmacy Act, 1868. Subsequent to the passing of the Act of 1868 it has been a condition precedent to examination for registration as a Pharmaceutical Chemist, that the candidate should produce evidence of having been registered as a Chemist and Druggist. (Bye-laws, s. 7, sub-s. 13.) All Pharmaceutical Chemists are, in fact, also registered as Chemists and Druggists under the Act of 1868, unless their names have been removed from the register under the provisions of sections 10 and 26 of the Pharmacy Act, 1868, see pp. 218 and 225.

Chemists and Druggists.—As pointed out (*supra*), persons may be chemists and druggists without being at the time registered as such under this Act, namely—(a) Persons who at any time prior to the passing of the Act of 1868 carried on the business of a Chemist and Druggist, and (b) Assistants and Associates registered as such under

the Act of 1852 prior to the passing of the Act of 1868 are chemists and druggists. They are not necessarily "registered" chemists and druggists. Section 5 of the Act of 1868 enabled them to be registered under certain conditions. Persons not included in classes (a) and (b) do not come within the term "Chemist and Druggist" unless they are registered under the Act of 1868.

Removal from the Register.—See pp. 219, 225.

(f) **Retailing.**—It is difficult to define what constitutes the sale of poison by retail. "To retail" primarily means to sell goods in small parcels, and not in gross, as opposed to the sale by wholesale, *i.e.* by the piece or in large quantities. The terms "wholesale" and "retail" are frequently used in the Licensing Acts and in the case of beer, spirits, and wines the question as to whether a particular sale is by wholesale or retail is decided for the purposes of those Acts by a limit of quantity definitely fixed by Statute (4 & 5 Will. 4, c. 85; 23 & 24 Vict. c. 27; 35 & 36 Vict. c. 94; 43 & 44 Vict. c. 24). The quantity sold at any one time cannot be said to be the only criterion for deciding whether a sale is by "wholesale" or "retail" within the meaning of the Pharmacy Acts.

It is important to consider the bearing of the words in the next section, by which it is provided that the provisions of this and the other preceding sections of the Act shall not interfere "with the business of wholesale dealers in supplying poisons in the ordinary course of wholesale dealing." (See p. 57.) The exemption relating to wholesale dealing contained in the 17th section of this Act should also be compared. (See p. 77.) In *Treacher & Co., Ltd. v. Treacher* (1874), 9 W. N. 4, which was an action for breach of covenant, BACON, V.C., said: "As a general rule, wholesale merchants dealt only with persons who bought to sell again, whilst retail merchants dealt with consumers." The Pharmacy Act was not in question in that case, but, with some modification, that dictum appears to apply "to the ordinary course of wholesale dealing" in poisons. As a general rule, the wholesale dealer in poisons deals only with (a) persons who buy to resell, (b) medical men, and (c) others who purchase poisons for use in their profession or business, in such

quantities as it is the custom of wholesalers to supply. In the absence of any direct legal authority to the contrary, it is probably correct to say that sales of poisons to persons outside those classes are for the purposes of this section sales by retail, irrespective of the quantity sold, and can only be made by registered chemists and druggists. The preamble to the Act (see p. 215) seems to support this contention. It says, "It is expedient, for the safety of the public, that persons keeping open shop for the retailing, dispensing, or compounding of poisons should possess a competent practical knowledge of their business." Persons whose business it is to sell, dispense, or use poisons in their vocation may be supposed to be aware of the nature of the poisons they handle, and not to require the safeguard of only being able to purchase them at the hands of the trained seller, who is competent to give the necessary warning or advice to the unwary purchaser.

(g) **Dispensing or Compounding.**—The word "dispensing" as applied to medicine is often used as synonymous with "compounding." It seems, however, even when it involves "compounding," to imply something more, namely, the element of distribution, meting, or dealing out. The definition of "dispense" in relation to medicine, given in Murray's Oxford Dictionary, is "to make up (medicine) according to a prescribed formula; to put up a prescription," and the same authority defines the word "compound" as meaning "to put together, unite, combine, mix (elements), now chiefly used of the mixing of various ingredients so as to form a composite product."

The Century Dictionary gives the respective meanings as follows:—

"Dispense: To deal or divide out, give forth diffusively, or in some general way; practise distribution of; as, the sun dispenses heat and light; to dispense charity, medicine, etc."

"Compound: To put together, or mix (two or more elements or ingredients), as to compound drugs."

In section 3 of the Pharmacy Act, 1868, the expression "keeping open shop for the compounding of the prescriptions of duly qualified medical practitioners" is used so that it cannot

be said that the term "dispensing" refers only to medicines prescribed by a medical practitioner, and that "compounding" refers to mixing, or making up, of recipes or formulæ other than medical prescriptions. The meanings of the respective words cannot be distinguished on any such grounds.

Compounding implies the mixing, putting together, or uniting two or more ingredients. The act is complete when this is done, and it is not necessary that the compound so produced should be sold, delivered, or handed out. This being so, an open shop where poisons are mixed, or compounded, is within the meaning of the section, although there may be no evidence of a sale or delivery of what has been compounded. Dispensing, on the other hand, does not necessarily involve compounding but does involve dealing out or delivery to a customer or patient. LUSH, J., in *Berry v. Henderson* (p. 299), said he understood the word "dispensing" to involve "the making up something that is prescribed and selling it with directions how it is to be used."

In *Apothecaries Co. v. Greenough* (1841), 1 Q. B. 799, 11 L. J. Q. B. 156; 1 G. & D. 378, it being suggested by the plaintiff's counsel that section 28 of the Apothecaries Act, 1815 (see p. 60), contained no word that would sanction prescribing, the Judge (MAULE, B.) adverted to the word "dispense" which he apprehended to mean "furnishing" or "giving."

In the course of the case the following definitions were quoted: "A dispensation (in pharmacy) is when the simples of a composition are set in order, lest any of the ingredients should be forgotten" (Bailey's Dictionary, 14th ed., 1751). "Dispensation, in pharmacy, the disposition and arrangement of several medicines, either simple or compound, all weighed in their proper doses or quantities, in order to be employed in the making of a composition" (Rees's Encyclopædia).

A prescription may be an order for two or more drugs to be mixed, or an order for a simple drug involving no mixing or compounding, but involving making up in the sense of being put ready in a suitable vessel appropriately labelled. In either event when the medicine so compounded

or prepared is delivered, an act of dispensing has been performed. Though medicines are usually dispensed in response to a prescription by a medical practitioner, the making up or preparing or compounding of a medicine, coupled with delivery to a customer or patient is "dispensing," notwithstanding that what is so dispensed is prescribed by the dispenser himself or by the customer or patient to whom it is delivered without the order of a third person, medical practitioner, or otherwise.

In the *Apothecaries Co. v. Allen* (1833), 1 N. & M. 413; 4 B. & Ad. 625, DENMAN, C.J., said: "Dispensing most properly means a dispensing in pursuance of a man's own advice as well as the advice of a physician."

The question also arises upon the construction of the 17th section of the Pharmacy Act, 1868, and is further dealt with in that connection (see p. 76).

Except in the case of persons who act as assistants to apothecaries (p. 56) there is no statute requiring persons who compound or dispense medicine, whether the medicines contain poison or not, to be qualified. It is for the *selling* of poisons, and for the *keeping of open shop* for the retailing and dispensing of poisons that the Pharmacy Acts require a qualification. In Ireland unqualified persons are also prohibited from keeping open shop for the dispensing or compounding of "medical prescriptions," whether a poison is included in the prescription or not (Pharmacy Act (Ireland), 1875, 38 & 39 Vict. c. 57). The Apothecaries Act, 1815, 55 Geo. III., c. 194, s. 17, provides as follows: "It shall not be lawful for any Person or Persons (except the Persons then acting as Assistants to any Apothecaries as aforesaid, and excepting Persons who have actually served an Apprenticeship of Five Years to an Apothecary), to act as an Assistant to any Apothecary, in compounding or dispensing Medicines, without undergoing an Examination by the said Court of Examiners, or the major part of them, or by Five Apothecaries so to be appointed as hereinafter is mentioned, and obtaining a Certificate of his or their Qualification to act as such Assistant from the said Court of Examiners, or the major part of them, or from the said Five Apothecaries, who are hereby authorised and empowered to examine all Persons

applying to them for that Purpose, and to grant a Certificate of such Fitness and Qualification."* If a dispenser in compounding medicines is doing so in the capacity of an assistant to an apothecary, though he may be a pharmaceutical chemist, or chemist and druggist, he is acting illegally unless he is qualified under the above section of the Apothecaries Act. Proceedings under this section cannot be taken except by the Apothecaries' Society, and they do not appear to have enforced its provisions.

(h) **For every such Offence.**—The act of selling is a separate offence from that of keeping open shop, and an unqualified person may commit two offences, namely, that of keeping open shop, and that of selling a poison, if in a shop which he, in fact, keeps open, he, by his own hand, sells a poison.

In *Pharmaceutical Society v. Hornsey* (p. 234), whether the defendant in whose shop a poison had been sold on December 23, 1893, and on January 5, 1894, was liable to two penalties for keeping open shop for the sale of poisons. The case was contested on another point, and Mr. Justice CAVE, having decided in favour of the plaintiffs, on that point, said: "The plaintiffs have, I think, sued for two penalties, but I think only one is recoverable." Mr. *Crump*, Q.C., for the plaintiffs, said: "That appears to be so, my Lord," and judgment was accordingly given for one penalty.

The Apothecaries Act, 1815, s. 20, provides:

If any person shall act or practise as an apothecary without having obtained such certificate as aforesaid, every person so offending shall for every such offence forfeit and pay the sum of £20; and if any person shall act as an assistant to any apothecary to compound and dispense medicines without having obtained such certificate as aforesaid, every person so offending shall for every such offence forfeit and pay the sum of £5, etc.

In *Apothecaries Co. v. Jones* [1893], 1 Q. B. 89; 57 J. P. 56;

* A person holding this certificate is not thereby entitled to sell or keep open shop for the retailing, etc., of poisons, or to use the titles reserved by the Pharmacy Acts.

67 L. T. 667; 41 W. R. 267; 17 Cox, 588; 5 R. 101, it was decided that if a person does several distinct acts amounting to practising as an apothecary on the same day, he can only be sued for one penalty incurred on that day. The offences are sufficiently set out in the judgment of HAWKINS, J., who said: "I also am of opinion that the County Court Judge was right in the view he took in holding that the advising and prescribing proved against the respondent constituted in law but one offence, for which one penalty only was recoverable, and that, consequently, the respondent is entitled to our judgment. Three separate actions were brought by the appellants against the respondent to recover under the 20th section of the Apothecaries Act (55 Geo. 3, c. 194), three separate penalties of £20, by reason as was alleged that thrice in one day, namely, the May 6th, 1892, he had acted and practised as an apothecary by giving advice and medicine to three persons, named Newman, Eaton, and Page, without having obtained a proper certificate, entitling him so to do. In the first of these cases the learned judge gave judgment for the plaintiff for the penalty of £20. In the other cases he gave judgment for the defendant upon the ground that although either case might have been relied on to support an action, and all three cases might in either case have been 'proved as evidence of the defendant's infringement of section 20, still the three cases, together, formed but one offence in law within the true meaning of that section. The material words of the section were as follows: 'If any person shall act or practise as an apothecary without having obtained such certificate every person so offending shall for every such offence forfeit £20.' It may be convenient here to add that the same section imposes upon any unqualified person who shall act as assistant to an apothecary to compound and dispense medicines for every offence a penalty of £5. Were there no authorities to assist in forming a judgment upon the case, I can hardly suppose that, had the penalty been imposed merely for practising as an apothecary, it would have been seriously contended that a person would have been convicted of more than one offence even though in the course of the same day one hundred patients had been prescribed for. It could never have

been in the contemplation of the legislature that each day during which a person illegally practised should be divided into hours and minutes, during each of which the heavy penalty of £20 would be incurred; nor could it have been the intention of the legislature that each individual act of prescribing should be deemed such separate offence. To 'practise' a calling does not mean to exercise it upon an isolated occasion, but to exercise it frequently, customarily, or habitually. (See *Clarke v. R.*, 14 Q. B. D. 92, in which it was held that to render a person liable to be convicted of frequenting a public place with intent to commit a felony it was not sufficient to prove that, on one occasion only, the prisoner was in the place with intent to commit a felony, but it ought to be shown that he was there habitually.) And though it is true each individual act would afford cumulative evidence of practising, yet bare proof of one individual act would not of itself amount to a 'practising.' The words of the section, however, are 'act or practise;' it becomes, therefore, necessary to ascertain the meaning of the word 'act' as there used. During the argument, I was disposed to think the words act and practise were used synonymously, and I am not sure that this is not the correct view. Be that as it may, another interpretation may be given to the word equally favourable to the defendant. It may be the word 'act' was used in addition to practise, to meet the case of persons who, without practising habitually as apothecaries might, nevertheless, occasionally act as such. But here again the legislature could never have intended, and the language of the section does not force one to such a conclusion, that whilst a person habitually practising without a certificate could only incur one penalty each day he so practised, a person who did not habitually practise, and, therefore, was not so grave an offender, should, nevertheless, be liable to a separate penalty for every act of prescribing without limit as to number; in other words, that twenty acts of practice in one day would, in the case of a person habitually practising only constitute one offence, whereas, against a much less persistent offender, each act must be treated as a separate offence, and visited with a separate penalty. Applying the same considerations to the case of an assistant, it seems impossible

to suppose that every act of assistance, *e.g.*, the making of every pill or mixture, could be visited with a separate penalty of £5; good sense revolts at the idea of such a construction of the section. Very few cases are to be found in the books directly touching the point under discussion, and in neither of them is the point actually decided. In *Apothecaries Co. v. Bentley*, 1 C. & P. 538, Lord Tenterden expressed his doubts 'whether a fresh penalty attached for every acting as an apothecary towards each different patient, and whether more than one penalty attached for a continued practising as an apothecary though the party attended different persons as patients.' In *Apothecaries Co. v. Burt*, 5 Ex. 363, the question was again mooted, but it was not thought necessary for the Court to express any opinion upon it. I must, however, observe as a significant fact that in no reported case, since these doubts were expressed, has more than one penalty been recovered, probably for the reason that it has been felt that Lord Tenterden's doubts were well founded. The case of *Crepps v. Durden*, Cowp. 640, is a valuable authority for the respondent. It is true that case was determined upon the construction of another statute; but the grounds of the decision are applicable to the case before us. In *Crepps v. Durden*, the plaintiff had been convicted in four separate convictions for unlawfully exercising his ordinary calling of a baker by selling rolls on Sunday, November 10, 1776, contrary to the statute 29 Ch. 2, c. 7, the words of that statute being that 'no tradesman or other person shall do or exercise any worldly labour, business, or work of their ordinary calling on the Lord's Day.' It was assumed that there were several sales by the plaintiff of rolls on the Sunday mentioned in the convictions; but it was urged that the nature of the offence was such that it could only be committed once on the same day, and that if the plaintiff had continued baking from morning till night, it would still be but one offence. The Court held that this was so; and, in giving judgment, Lord Mansfield stated, as the ground for it, that 'the offence is exercising his ordinary trade upon the Lord's Day, and that without any fractions of a day, hours, or minutes. It is but one entire offence, whether

longer or shorter in point of duration ; so whether it consist of one or a number of particular acts the penalty incurred by this offence is five shillings. There is no idea conveyed by the Act itself that if a tailor sews on the Lord's Day, every stitch he takes is a separate offence, or, if a shoemaker or carpenter work for different customers at different times on the same Sunday, that those are so many separate and distinct offences. There can be but one entire offence on one and the same day.' Suppose, for a moment, the 20th section had stated in so many words, that which is clearly the meaning of it, 'if any person shall, on any day in the week, act or practise, etc.,' it would have required some ingenuity to distinguish the present case from *Crepps v. Durden*. The same reasons which guided the Court in *Crepps v. Durden*, viz., that the offence created by the statute can alone be made the subject of conviction and the overt acts done in the commission of that offence are but so many pieces of evidence, had already been acted upon in the cases of *Marriot v. Shaw*, 2 Com. 274, and *R. v. Mathews*, 10 Mod. 26, in proceedings to recover penalties under the statute 5 Anne, c. 14, s. 4, which forbade the keeping by unqualified persons of dogs and engines for the destruction of game. It was there sought to recover a separate penalty for each hare killed ; but it was decided that the offence being the keeping and the using of the dogs for the forbidden purpose only one offence could be committed on the same day, and that the number of hares killed was immaterial. It was said by the Court in that case, 'If a man not qualified go a hunting and kills ever so many hares upon the same day he would forfeit but one five pounds, for it is but one offence.' This may be further illustrated by taking the case of two men charged each with using a gun to kill game without a licence ; if they shot through a whole day from morning till night each would be guilty of one offence only, and each separate use of the gun by firing a shot would not constitute a separate offence. If it were otherwise a man who fired twenty shots would incur penalties amounting to £100, whilst one who, for want of opportunity, only fired one shot, would only subject himself to a fine of £5. None of the cases cited need comment beyond

that which I have already made. I do not wish it to be understood that in cases arising under the Act now under consideration the fact that an uncertificated person on two separate days prescribed and made up medicine for different persons would necessarily justify a conviction for a separate offence on each day, for it is not difficult to imagine cases in which acts of prescribing and making up medicine on several closely following days might, taken together, afford abundant evidence of practising. No such conclusion could fairly be drawn if the acts of each day had stood alone. Again, even though a patient be attended by a person clearly practising as an apothecary, it does not follow that because the attendance, prescription for, and supply of medicine to such patient had extended over two whole days or parts of two days two offences must necessarily have been committed. Take the case of a patient to whom in a case of urgency an unqualified person had attended continuously, say from ten p.m. on one day to ten a.m. on the following. Under such circumstances, I should think one offence only would be committed, for all would be one continuous action. This view might be further illustrated by supposing a case of night poaching, where the offender commenced his offence at 11 p.m. and continued it till 2 or 3 a.m. the next day. It is idle to attempt to lay down a golden rule upon the subject. Each case must depend upon the particular circumstances attending it. In the present case I have already said I think one offence only was committed, and I agree in the very sensible and sound judgment of the County Court Judge. The result is, that I think this appeal should be dismissed with costs."

See also *Berry v. Henderson* (p. 297), as to separate offences constituted by one act.

(i) *Carries on the Business.* "There is not, I think, any principle of law which lays down 'what carrying on trade' is. There are a multitude of things which together make up the carrying on of trade, but I know no one distinguishing incident, for it is a compound fact made up of a variety of things," *per* JESSEL, M.R. *Erichesen v. Last* (1881), 8 Q. B. D. 414; 51 L. J. Q. B. 86; 45 L. T. 703; 48 J. P. 357; 30 W. R. 301.

The truth of that dictum is established by a perusal of the various cases in which the words have been the subject of decisions or dicta.

In *Buckley v. Hann* (1850), 5 Ex. 43; 19 L. J. Ex. 151; 7 D. & L. 188, a clerk in the Admiralty who, as such, attended daily at an office within the City of London, was held not to be a person who "carries on his business" there, within the meaning of section 40 of the London Small Debts Act, 10 & 11 Vict. c. 71.

In *Sangster v. Kay* (1850), 5 Ex. 386, it was held that a clerk to the Privy Council is not a person who "carries on his business" at the office of the Privy Council, within the meaning of the County Court Act, 9 & 10 Vict. c. 95. "The term 'business' may mean the employment, or the occasional occupation, of a person, but the term 'carrying on business,' within the meaning of this Act of Parliament, implies something more than mere service, from which the person may be discharged at a moment's notice," *per* POLLOCK, C.B. "The foreman at a haberdasher's shop could not be said to carry on business there because he attends to the shop, and does what he is employed to do by his master," *per* ROLFE, B.

In *Allen v. Taylor* (1871), 39 L. J. Ch. 627; 24 L. T. 249; 19 W. R. 556, the defendant sold his business of a "rag-merchant," to the plaintiff, and in the agreement for sale and purchase undertook for five years not to "exercise or carry on the trade" of a rag-dealer, either in his own name or that of any other person or persons within a certain distance of Nottingham. Within that time he acted as the manager at Nottingham of the business of a rag-merchant, carried on there by a Mr. Crowther, of Leeds, and was receiving from him a fixed salary. It was held that this was not a breach of the agreement. Lord ROMILLY, M.R., said: "A man cannot properly be said to exercise or carry on a trade unless he receives some portions of the profits."

In *Graham v. Lewis* (1888), 22 Q. B. D. 1; 58 L. J. Q. B. 117; 59 L. T. 35; 53 J. P. 116; 37 W. R. 73, it was held that a clerk employed by a solicitor at his office, within the City of London, did "not carry on business" there, within the meaning of section 12 of the Mayor's Court (Extension) Act, 1857, 20 & 21 Vict. c. 97. Lord ESHER in his judgment distinguished this case

from that of *Ex parte Breull, In re Bowie* (*infra*), where he said that the Court, according to their view of the object and intent of the Bankruptcy Rules, had given to the words an enlarged sense, but that in this case there was nothing to oblige them to say that the words should have any other than "the primary and ordinary business sense which would be accepted in the city." He added: "I think that those words mean to describe a person managing or conducting his own and not somebody else's business. He must either manage or conduct a business of his own, or the business which is managed or conducted for him must be his own. I am of opinion that the words are not meant to apply to a clerk who assists any other person to carry on his business, and is bound to obey his employer's orders, and has himself the control or direction with respect to that business." FRY, L.J., said: "I think that the expression has a narrower meaning than that of doing business or having business to do. In my opinion it imports that the person has control and direction with respect to a business, and also that it is a business carried on for some pecuniary gain." LOPES, L.J., expressed the same opinion.

On the other hand, in *Ex parte Breull, In re Bowie* (1880), 16 Ch. D. 484; 50 L. J. Ch. 386; 43 L. T. 580; 29 W. R. 299, it was held that a debtor, who was employed as a clerk in a bank, in the district of the London Bankruptcy Court, was within the meaning of Rule 17 of the Bankruptcy Rules, 1870, "carrying on business" within the district of the Court, and that consequently that Court had jurisdiction to grant a debtor's summons against him. "I cannot doubt that for all commercial purposes in the language of commercial men this debtor does carry on business in the City of London. His business in life is that of a bank clerk, and it is not the less his business, because he receives a fixed salary for it. He is really and truly for all purposes carrying on business in the City of London," *per* JAMES, L.J.

"I am clearly of opinion that he carries on business in the city. It is said that a man does not carry on business unless he is a principal, but I do not see that that is necessary. In ordinary language a man is said to carry on business whether he be a

principal or not," *per* COTTON, L.J. "It cannot, I think, be intended that the words 'carries on business' should be confined to persons carrying on business on their own account as principals. I think that a man carries on business at the place where he is to be found during the business hours of the day. In the present case the employment of a banking clerk is the business of the debtor's life," *per* LUSH, L.J.

In *Palmer v. Mallett* (1887), 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460, the question was whether or not the defendant by acting as an assistant to a surgeon had broken an agreement not to set up or carry on the business or profession of a surgeon. The Court decided that he had, and distinguished this case from that of *Allen v. Taylor* on the ground that the terms of the agreement differed, and also that "an agreement not to carry on a trade is a very different thing not to carry on the business or profession."

The Pharmacy Acts repeatedly distinguish between those in business as pharmaceutical chemists, or as chemists and druggists in the keeping of open shop, and those who were assistants (Pharmacy Act, 1852, s. 8; Pharmacy Act, 1868, s. 3; and Schedules C, D, & E). The Poisons and Pharmacy Act, 1908, section 3, clearly contemplates cases where "he who carries on the business" is not the person who *bonâ fide* conducts it, and expressly provides that "corporate bodies" may under certain circumstances "carry on the business." The phrase throughout the Pharmacy Acts appears to be applied to the functions of the master, owner, or his trustee, or executor, *i.e.* the person who has the power to continue or discontinue the business, and not to those of a servant who merely obeys orders.

(j) **The Business of a Pharmaceutical Chemist or Chemist and Druggist.**—The Act of 1852 provided no restrictions upon the practice of Pharmacy, though it reserved certain titles to the use of persons registered as pharmaceutical chemists. The Act of 1868 confined the right to perform certain acts to registered pharmaceutical chemists and chemists and druggists alike, namely, the right (a) to keep open shop for the retailing, dispensing, or compounding of poisons; (b) to sell

poisons. With these exceptions whatever may be the business or calling of a pharmaceutical chemist or chemist and druggist respectively, unregistered persons are not prohibited by the Pharmacy Acts from exercising it or carrying it on. The question as to what is meant by the phrase "business of pharmaceutical chemist or chemist and druggist" is likely to arise under section 3 of the Poisons and Pharmacy Act, 1908, which casts upon registered persons, who carry on the business, the duty to provide, in every premises where the business is carried on, a duly registered pharmaceutical chemist or chemist and druggist, as the case may be, to conduct it. The Pharmacy Acts contain no definition of the business of a pharmaceutical chemist. The selling and keeping open shop for the retailing, dispensing, and compounding of poisons is obviously, by reason of sections 1 and 15 of the Act of 1868, a part of the business of both pharmaceutical chemists and chemists and druggists, and section 3 of the Act of 1868 refers to those who, prior to the passing of that Act, carried on "the business of a chemist and druggist in the keeping of open shop for the compounding of the prescriptions of duly qualified medical practitioners."

The business of a chemist and druggist is also described in the Apothecaries Act, 1815, 55 Geo. III., c. 194, s. 28, which is as follows:—

"Provided always, and be it further enacted, That nothing in this Act contained shall extend, or be construed to extend, to prejudice or in any way to affect the trade or business of a chemist and druggist, in the buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinale compounds, wholesale and retail; but all persons using or exercising the said trade or business, or who shall or may hereafter use or exercise the same, shall and may use, exercise, and carry on the same trade or business in such manner, and as fully and amply to all intents and purposes, as the same trade or business was used, exercised, or carried on by chemists and druggists before the passing of this Act."

As to whether a registered chemist may carry on, by the hands of a servant who is not registered under the Pharmacy

Act, 1868, a drug store in which poisons are not sold, dispensed, or compounded, depends upon whether the courts will adopt, for the purposes of this section, the description of the business of a chemist and druggist contained in the section of the Apothecaries Act above quoted. If they do so neither a pharmaceutical chemist or a chemist and druggist may carry on the business of vending drugs or medicines, though they may be non-poisonous, unless in every premises where the business is carried on it is *bonâ fide* conducted by a registered pharmaceutical chemist and chemist and druggist, as the case may be, while an unregistered person would not be under that disability. It is probable that a chemist and druggist may not carry on a business in premises in connection with which he uses his name and the title chemist and druggist in such a way as to hold out that the business is that of a chemist and druggist, without it being conducted by a registered person, even if poisons are not sold there.

Though there is no definition or description of the business of a pharmaceutical chemist apart from that of a chemist and druggist, and in practice there is no difference in the functions which pharmaceutical chemists and chemists and druggists respectively perform, it is likely that in every shop where a pharmaceutical chemist holds out, by using the title or description "pharmaceutical chemist" in connection with it, that he is carrying on the business of a pharmaceutical chemist, there must be therein a pharmaceutical chemist to personally conduct such business. The words "as the case may be" indicate that there is a difference between the business of a pharmaceutical chemist and that of a chemist and druggist, and for the purposes of this section it is suggested that the difference depends upon the style or description used at the premises by the person carrying it on.

As a pharmaceutical chemist is also a chemist and druggist there appears to be no reason why he may not carry on a business of a pharmaceutical chemist, which he personally conducts at one address, and the business of a chemist and druggist at another address, that business being conducted by a chemist

and druggist, provided the title "pharmaceutical chemist" is not used in connection with the business conducted by the chemist and druggist.

(k) **As the case may be.**—In the case of the business of a pharmaceutical chemist the manager or assistant who *bonâ fide* conducts the business must be a pharmaceutical chemist, whilst in the case of the business of a chemist and druggist it would be sufficient if a chemist and druggist *bonâ fide* conducts it.

(l) **Name and Certificate of Qualification.**—The Poisons and Pharmacy Act, 1908, s. 3, requires that in the case of a business carried on by a pharmaceutical chemist or chemist and druggist (sub-s. 1), and of the business of a deceased chemist carried on by his executor, administrator, or trustee (sub-s. 2), the name *and* certificate of qualification of the person by whom the business is conducted in any premises is conspicuously exhibited in the premises, but in the case of corporate bodies (sub-s. 4) the word "name" is omitted, it being sufficient if the certificate of qualification of the manager or assistant who *bonâ fide* conducts the business is conspicuously exhibited in the shop or other place in which he so conducts the business. Probably a certificate of qualification on which the name of the person qualified is so written or printed as to be conspicuous will suffice in all cases, provided the certificate is so placed in the shop as to render it a conspicuous exhibition of the name.

The question as to what is meant by the "certificate of qualification" is a difficult one. The phrase "certificate of qualification" appears in several connections in the 1852 and 1868 Acts, but nowhere is a certificate so described stated to be a certificate qualifying the owner to sell or keep open shop for the sale of poisons, nor "to conduct the business of a chemist and druggist." Section 8 of the Act of 1852 refers to "certificates of competent skill and knowledge and qualification to exercise the business or calling of pharmaceutical chemist," which certificate the examiners are empowered to grant, but by sections 10, 11, and 12 of that Act it is clear that registration, and not the holding of the examiner's certificate, is the qualification. Section 6 of the Act of 1868 empowers examiners to grant

a "certificate of competent skill and knowledge and qualification," and entitles the owner of such a certificate to be registered as a chemist and druggist, but the holder of such a certificate is not necessarily a chemist and druggist. Except in the cases of (a) those in business as chemists and druggists prior to the passing of the Act of 1868, and (b) those registered as assistants or associates under the Act of 1852, the only persons coming within the definition of a chemist and druggist are "such persons as may be duly registered under this Act" (Pharmacy Act, 1868, s. 3).

By section 3 of the Poisons and Pharmacy Act, 1908, for the first time, a qualification is declared to be necessary for the purpose either of conducting the business of a pharmaceutical chemist or that of a chemist and druggist. The respective necessary qualifications are that of being duly registered as a pharmaceutical chemist or as a chemist and druggist, as the case may be. It seems right therefore to say that the qualification referred to in the section is the qualification to act as the conductor of the business of a pharmaceutical chemist or chemist and druggist, as the case may be, and that no certificate meets the requirements of the section which does not, in the case of a person conducting the business of a pharmaceutical chemist, certify that he is registered as a pharmaceutical chemist, or in the case of a person conducting the business of a chemist and druggist that he is registered as a chemist and druggist. If this is so the exhibition of the certificate granted by the examiners to persons who have passed the qualifying examination entitling them to be registered as chemists and druggists (known as the "Minor" Certificate) is not strictly a compliance with the section. Against this contention it may be argued that a certificate certifying registration is described in the Act of 1852, s. 16, as a "Certificate of Registration," which is not the term used in the 1908 Act for the certificate which has to be exhibited. It has been contended that the exhibition of the examiners' certificate is a compliance with the section, because such certificate is referred to in the Acts as "a certificate of qualification," but that description is also applied by section 8 of the Act of 1852 to the certificates granted to those "entitled

to be engaged or employed as students, apprentices, or assistants," which certificate is obviously not meant by the phrase "certificate of qualification" in the section under discussion. A person holding a certificate of qualification entitling him to be registered as a chemist and druggist may never apply to be registered, and in consequence may never become a "chemist and druggist," or, if once registered, he may by reason of sections 10 and 26 of the Act of 1868 have ceased to be registered, and no certificate under such circumstances will avail him in an action for breach of section 15 of the Act of 1868, if, in fact, his name is not on the register, unless it is a certificate given under section 13 of that Act, certifying that at the time in question he is registered. It is, however, the practice of the Pharmaceutical Society, which alone can recover penalties for a breach of this section, not to proceed in the case of a manager whose name is, in fact, on the register of chemists and druggists, if the examiners' certificate referred to is duly exhibited.

(m) **Legally Qualified Apothecary.**—In England and Wales a legally qualified apothecary is a person who is a licentiate of the Society of Apothecaries, London; that is, a person who has obtained from that Society a certificate to practise as an apothecary under the provisions of the Apothecaries Acts, 1815, 55 Geo. III., c. 194, and 1874, 37 & 38 Vict. c. 34. Since June 30, 1887, every person applying for a certificate to practise as an apothecary has been required to pass a qualifying examination in medicine, surgery, midwifery, and such licentiates have been entitled to be registered under the Medical Acts as fully qualified medical practitioners. Apothecaries who are for the time being registered under the Medical Acts are within the more complete exemption of section 1 of the Pharmacy Act, 1869, in favour of a "legally qualified medical practitioner."

(n) **Business of any Member of the Royal College of Veterinary Surgeons.***—Wharton's Law Lexicon defines a

* As to the use of the titles reserved by the Pharmacy Acts, see "interfere with the business of," p. 23.

veterinary surgeon as "a person who treats the diseases or injuries of animals." It is probable that the exemption does not cover the sale of a veterinary medicine, containing a poison by a member of the Royal College of Veterinary Surgeons, not being a registered chemist and druggist, for any purpose other than the treatment of an animal under his care. See Pharmacy Act, 1869, s. 1, p. 329.

(o) **Patent Medicines.**—The expression means a medicine protected by letters patent under the Great Seal, and does not include "proprietary" medicines which are not so patented. This was decided in *Pharmaceutical Society v. Piper* (p. 355).

LAWRANCE, J., said: "I come to the conclusion that the words 'patent medicines' in section 16 mean medicines that are protected by letters patent under the Great Seal." See also the judgment of COLLINS, J., p. 365. In *Pharmaceutical Society v. Armson* (p. 315), this case was followed and approved by the Court of Appeal. KAY, L.J., said: "I think it is plain that in section 16 the words patent medicines mean that which they express *primâ facie* as medicine, the maker or owner of which has obtained letters patent for it; the term does not extend and is not intended to extend to mere proprietary medicines."

"It is abundantly clear that the exemption was of patent medicines only and not of proprietary medicines," *per* A. L. SMITH, L.J. (p. 320).

A medicine for which the patent has lapsed is not within the exemption, *Pharmaceutical Society v. Fox* (p. 323).

(p) **The Business of Wholesale Dealers in Supplying Poisons in the ordinary course of Wholesale Dealing.**—There is no case defining this phrase. Though sections 15 and 17 of this Act differ as to their objects, and different considerations arise in their interpretation, it is important to notice that the 17th section exempts from certain provisions of that section "articles to be exported from Great Britain by wholesale dealers," and "sales by wholesale to retail dealers in the ordinary course of wholesale dealing" (p. 92). It is clear that the exemption in this 16th section does not permit an unregistered person, even if his ordinary business is that of

dealing by wholesale, to keep a shop or warehouse into which persons may enter and purchase poisons by retail, nor does it exempt a person in the employ of such a wholesaler from the liabilities of the penalty for selling a poison by "retail." As to the difference between a sale of a poison by retail and a sale in the ordinary course of wholesale dealing. (See "Retailing," p. 39.)

(*q*) **To continue such Business.***—As to how long the business may be so continued is still a matter of some doubt. In the *Pharmaceutical Society v. London and Provincial Supply Association*, Lord COCKBURN, C.J., in the Divisional Court, said: "The widow of a deceased chemist will not be entitled to go on keeping up his business further than is necessary to the winding-up of the estate; she is not to go on for the rest of her life because she employs a qualified assistant" (*Pharmaceutical Journal*, March 22, 1879, p. 780). The point was not in issue in that case, and there have been cases in which the dictum has not been followed.

At Warwick County Court in November, 1886, the Pharmaceutical Society proceeded against the widow of a deceased chemist for keeping open shop for the sale of poisons, and for taking and assuming the title of chemist and druggist. The defence was that the defendant was appointed under the will of her husband, who died in 1873, that she had carried on the business solely as an executrix to support herself and children. The name of Judd (her late husband's surname) simply was over the door, and her own name did not appear in any way in connection with the business. The business was under the management of a qualified chemist, and the sale of the poison in question was made by him. The County Court Judge held that the defendant was exempted from the penalty by the 16th section of the Act of 1868. He said he could see no reason for making the word "executor" mean an executor "during a limited time only." He gave judgment for the defendant, but said it was desirable that there should be an opinion of a court of authority expressed on the point, and

* See p. 23 as to Titles.

expressed his willingness to grant a case. The plaintiffs did not appeal.*

Section 32 of the Pharmacy Act (Ireland), 1875, 38 & 39 Vict. c. 57, provides a similar exemption for the executors of the estate of a deceased pharmaceutical chemist. In *Pharmaceutical Society of Ireland v. Preston*,† the question at issue was whether the defendant came within the terms of the exemption. Mr. Bowers, a qualified pharmaceutical chemist, carried on business up to the date of his death, intestate, on June 29, 1895. He was a bachelor, and his father being deceased his mother took out a limited administration to her son. Until she died in January, 1902, she carried on the business without objection on the part of the plaintiffs under the management of a qualified pharmaceutical chemist. On April 1, 1902, letters of administration for the unadministered personal estate of Mr. Bowers were granted to his sister, Mrs. Josephine Preston. She carried on the business under the management of a qualified pharmaceutical assistant. The magistrate discussed the question in a lengthy judgment, in which he held that what the defendant was doing was within the terms of the exemption.

(r) Not entitled to Practise Medicine or Surgery—Acting as an Apothecary.—The Apothecaries Act, 1815 (55 Geo. III., c. 194), is the only statute which restricts the right of any one to practise medicine or surgery, except that the Medical Act, 1858, 21 & 22 Vict., c. 90, and its amendments prohibit the assumption of any titles falsely implying qualification or registration, and provide that only persons registered under the Medical Acts can recover in any Court of Law any charges for medical or surgical advice or attendance, or for performing any operation, or for any medicines both prescribed and supplied by him. By section 55 of the Medical Act, 1858, nothing in that Act is to prejudice or affect the lawful

* Reported, *Pharmaceutical Journal*, Nov. 27th, 1886, p. 442; *Chemist and Druggist*, Nov. 20th, 1886, p. 664; *British and Colonial Druggist*, Nov. 19th, 1886, p. 531.

† Reported, *Chemist and Druggist*, July 5th, 1902, p. 11; *British and Colonial Druggist*, July 4th, 1902, p. 11.

occupation, trade, or business of chemists and druggists, so far as the same extends to selling, compounding, and dispensing medicine.

The effect of the 16th section of the Pharmacy Act, 1868, is that registration under that Act does not entitle any person so registered to practise medicine or surgery, and that such a person is in no better position so far as the right to practise medicine and surgery goes than any other person not registered under the Medical Acts. It provides no exemption from the provisions of the Apothecaries Act, 1815, s. 20, which, in effect, prohibits persons who are not legally qualified medical practitioners from practising that branch of medicine comprised by the phrase "acting or practising as an apothecary." The section enacts:—

"That if any person (except such as are then actually practising as such) shall, after the said first day of August, 1815, act or practise as an apothecary in any part of England or Wales without having obtained such certificate as aforesaid, every person so offending shall for every such offence forfeit and pay the sum of £20; and if any person (except such as are then acting as such, and excepting persons who have actually served an apprenticeship as aforesaid) shall, after the said 1st day of August, 1815, act as an assistant to any apothecary to compound and dispense medicines without having obtained such certificate as aforesaid, every person so offending shall for every offence forfeit and pay the sum of £5."

Section 28 provides for the protection of the rights of chemists and druggists in the following terms:—

"That nothing in this Act contained shall extend, or be construed to extend, to prejudice or in any way to affect the trade or business of a chemist and druggist, in the buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinale compounds, wholesale and retail; but all persons using or exercising the said trade or business, or who shall or may hereafter use or exercise the same, shall and may use, exercise, and carry on the same trade or business in such manner, and as fully and

amply to all intents and purposes, as the same trade or business was used, exercised, or carried on by chemists and druggists before the passing of this Act."

In view of the foregoing enactments it is important to ascertain what are the peculiar functions of an apothecary as distinguished from those of a physician, surgeon, and chemist and druggist.

Murray's Oxford Dictionary defines an apothecary as follows :—

"(1) Orig. One who kept a store or shop of non-perishable commodities, spices, drugs, comfits, preserves, etc.

"(2) Spec. The earlier name for one who prepared and sold drugs for medicinal purposes; the business now (since about 1800) conducted by a druggist or pharmaceutical chemist. From about 1700 apothecaries gradually took a place as qualified medical practitioners, and the modern apothecary holds this status legally by examination and licence of the Apothecaries Company; but in proper usage the word is archaic."

In *Davies v. Makuna* (1885), 29 Ch. D. 606, 54 L. J. Ch. 1148; 53 L. T. 314; 50 J. P. 5; 33 W. R. 668, COTTON, L.J., said: "Dispensing, mixing medicines, giving advice and attending the sick as medical adviser, must be considered as acting as an apothecary."

The subject is thus dealt with in "Glenn's Law Affecting Medical Men," 1871, p. 207 :—

"An apothecary was originally only a compounder of medicines prescribed by physicians, and the legislature has always considered this a most important part of his duty (see 55 Geo. III., c. 194, s. 5, and the judgment in *Apothecaries Co. v. Warburton*, 3 B. & Ald. 40. In more modern times, however, apothecaries have been in the habit of attending patients and administering medicines upon their own judgment. Their right to do this was first recognised in *College of Physicians v. Rose*, 6 Mod. 44; 3 Salk. 17. Latterly it has been held that an apothecary is not merely to make up medicines but is to have a

certain portion of competent skill for the administering of them (*per* Parke, J., in *Allison v. Haydon*, 3 C. & P. 248), and an apothecary has been defined as 'a person who professes to judge of internal disease by its symptoms and applies himself to cure that disease by medicine.' (*per* Cresswell, J., in *Apothecaries Co. v. Lotinga*, 2 Moo. & R. 499). The practice of an apothecary may now be said to consist in attending and advising patients afflicted with diseases requiring medical as distinguished from surgical treatment, and prescribing, compounding, and supplying medicines for their cure and relief."

Though the matter is not free from doubt, the effect of the decisions appears to be that the following functions are those which are peculiar to an apothecary, and that they are what is meant by "acting or practising as an apothecary."

- (a) The attending and advising patients and professing to judge of their diseases by symptoms.
- (b) The prescribing medical as distinguished from surgical treatment for such patients.
- (c) The supplying and, if necessary, compounding the medicines so prescribed.

A person may do either (a), (b), or (c), without acting as an apothecary, but if he performs all three functions he then comes within the statute.

It is true that licentiates of the Apothecaries Society are now also physicians and surgeons, and may act in either or both of those capacities, but the foregoing comprise their functions *qua* apothecaries.

In most cases what is known as "counter-prescribing" by chemists is, strictly speaking, within the terms of the prohibition, but each case may be decided by the foregoing test.

In the case of *Apothecaries Co. v. Nottingham* (see p. 65), BRAMWELL, B., indicated that there may be cases where the advising "might be too trivial to be worth taking notice of under this Act."

The right of apothecaries to attend patients as well as to make up and sell medicines seems to be recognised by the Apothecary Act (1694), 6 & 7 Will. III., c. 4, and was

directly established by a decision of the House of Lords in *Rose v. College of Physicians* (1703), 5 Bro. P. C. 553.

In *Allison v. Haydon* (1828), 3 C. & P. 246 ; 4 Bing, 619, the plaintiff claimed for work and labour as a surgeon and apothecary, with counts for medicine sold and delivered. It was contended that the plaintiff could not succeed because he was not qualified to practise as an apothecary. BEST, C.J., said, "He was lowering a typhus fever, which is the province of a physician or apothecary. The business of a surgeon is, properly speaking, with external ailments and injuries to the limbs. . . . A chemist may prepare and vend, but not prescribe or administer medicine. Each is protected in his own branch and neither must interfere with the province of the other. We think the plaintiff has interfered with the province of the apothecary."

PARKE, J., said : "The object of the Act was to keep the business of apothecary distinct from the other branches of the profession. The privileges of the three other branches of the profession, those of physicians, surgeons, and chymists are preserved. But a chemist can only recover for medicine sold, not for advice or attendance ; and a surgeon cannot charge for his attendance, or for administering medicines, except in cases within his own department."

It was held in *Apothecaries Co. v. Allen* (1833), 1 N. & M. 413 ; 4 B. & Ad. 625, that a person who advises patients and compounds and sells the medicines recommended by himself, but does not and cannot make up physicians' prescriptions, is liable to the penalties of 55 Geo. III., c. 194, s. 20, for practising as an apothecary without a certificate. DENMAN, C.J., said : "Dispensing most properly means a dispensing in pursuance of a man's own advice as well as of the advice of a physician." //

In *Woodward v. Ball* (1834), 6 C. & P. 577, WILLIAMS, J., defined the practising as an apothecary as "the mixing up and preparing of medicines prescribed by a physician or other medical practitioner who prescribes, or the mixing up or preparing of medicine prescribed by the party himself." He added : "The cure of a wound or the treatment of any case, which is purely a surgical case, would not be practising as an apothecary, nor do I think that the mere application of a friend for medicine to

give a young man the aspect of business would be sufficient practising within the Act."

The *Apothecaries Co. v. Greenough* (1841), 1 Q. B. 799; 11 L. J. Q. B. 156; 1 G. & D. 378, was an action to recover penalties under the Apothecaries Act, 1815, for practising as an apothecary by attending, advising, and furnishing medicines without a certificate. The defence was that the defendant was a chemist and druggist, and therefore protected by sec. 28 of the Apothecaries Act. *Held*, that the defendant, to bring himself within this clause (if available) was bound to show by evidence that chemists and druggists did, in fact, attend, advise, and furnish medicines before the statute passed. A verdict found for the defendant on the ground that no evidence had been given on this point by the plaintiffs was set aside on motion for a new trial. On re-trial WIGHTMAN, J., said: "The distinction between apothecaries and chemists appeared to be that apothecaries might not only prepare, dispense, and sell, but apply and administer medicines; if a chemist not only sold but also applied and administered medicines in the ordinary course of attending patients, he practised as an apothecary."

In *Richmond v. Coles* (1842), 11 L. J. Q. B. 155; 1 D. N. S. 560; 6 Jur. 238, it was held that in an action to recover the amount of a chemist's bill, it being suggested that the items are properly within the scope of an apothecary's profession, the proper question for the jury is under the Apothecaries Act, 1815, 55 Geo. III., c. 194, ss. 14 and 28, whether the plaintiff has *acted* as an apothecary, and not whether he has charged as a chemist or an apothecary.

In 1843, in *Apothecaries Co. v. Lotinga*, 2 M. & Rob. 495, at Durham Assizes, CRESSWELL, J., in summing up, said: "Now I apprehend that an apothecary is a person who professes to judge of internal* disease by its symptoms, and applies himself to cure that disease by medicines. . . . But then it is said that if he did not supply the medicines as a surgeon, still he did not supply them as an apothecary, but as a chemist. But

* Cf. the summing up of Baron Pollock, *Apothecaries Co. v. Shepperley*, see p. 66.

a chemist is one who sells medicines which are asked for, whereas if you believe the evidence the present defendant himself selected the medicines and determined on which he ought to give."

In *Apothecaries Co. v. Nottingham* (1876), 34 L. T. 76,* the defendant, a chemist, but not an apothecary, had been applied to for advice and medicines, both of which he gave to the applicants, but did so as an ordinary shopkeeper behind the counter. It did not appear that he ever went from his shop to attend to patients, and it was proved in cases of serious illness that he had always referred the patient to the doctor, with whom he was in partnership. BRAMWELL, B., said: "On the defendant's admission he says he prescribed, and that if a person had brought a child suffering from, say diarrhoea, and asked what was good for it he gave the medicine. If, however, the case was serious he sent the doctor. Surely that is acting and practising as an apothecary within the meaning of the Act. Possibly, if on some one or two occasions a customer had gone to the shop and asked for medicine, and the defendant had said it was good for his complaint, the advising might be too trivial to be worth taking notice of under this Act, but here the defendant admits that he dispensed and at the same time advised medicine habitually."

In 1877 the case of *Apothecaries Co. v. Shepperley*, which the plaintiffs stated was brought to test the question whether persons carrying on business as chemists and druggists were entitled to carry on their trade in the way in which the defendant had done, and in which he claimed the right to continue to do, was tried at Nottingham County Court and judgment given for the plaintiffs. Upon appeal to the Court of Exchequer the case was ordered to be re-tried in that Court. A report of the re-trial, which took place on November 7, 1878, does not appear in any of the recognised Law Reports, but lengthy reports were published in the technical press.† The defendant

* Also reported, *Chemist and Druggist*, Feb. 15th, 1876, p. 70.

† See *Pharmaceutical Journal*, Nov. 9th, 1878, p. 368; *Chemist and Druggist*, Nov. 15th, 1878, p. 477.

obtained judgment. During the course of a lengthy summing-up POLLOCK, B., said—

“A difficulty arises in saying what is ‘acting and practising as an apothecary.’ Now, although observations have been made by learned counsel in this case as to what learned judges have said from time to time with regard to the proper definition of an apothecary, it is no part of my duty, nor of the duty of any learned judge, to define who is an apothecary. It is not a word of legal art, but is a word of common use—a word in the English language to be understood and appreciated, and to have a meaning attributed to it by the world at large. In this particular case my duty is to apply the law as we find it. I pay great deference to what has been said by learned judges who have preceded me upon the subject, and especially to so distinguished a judge as Mr. Justice Cresswell, who said that an apothecary was a person who professed to judge of internal disease by its symptoms, and who tried to cure that disease by medicine. Mr. Justice Cresswell, I presume, did not mean ‘internal’ as opposed to ‘external’ diseases in the sense of a man having an eruption produced by some diseased condition of the body. That, of course, would not be any less an external disease, and if one proceeded to judge of it by the symptoms, and apply medicine for its cure, the law would equally apply as it would to a man who attempted to cure a persistent condition of lungs, or any of the other evils to which flesh was heir, and which affected mankind internally. Happily, however, in this case the Court was not without assistance as to what was an apothecary, because there could be no rule of construction so healthy or useful with regard to Acts of Parliament—as with respect to all other documents—as to see when you are looking at a word used in one part of the statute how it stands in regard to other words of a cognate character employed in the same statute. This Act, passed in 1815, assumed the existence of persons who were apothecaries, and stated in the plainest language what was the duty of

an apothecary as distinguished from a chemist. The Act was passed in consequence of what was said to be a deficiency in the clauses of a charter granted so far back as the reign of James I. to the Company of Apothecaries. It created a system by which apothecaries were to be examined, and certificates given them, and it also dealt with different duties which the Legislature assumed had been carried out before, and which the Legislature put upon them with regard to their conduct under the Act. For instance, the fifth clause said: 'Whereas it is the duty of every person using and exercising the art and mystery of an apothecary to prepare with exactness and dispense' such medicines as may be prescribed for the sick by any physician lawfully licensed for the practice of physic. It was, therefore, the duty of an apothecary before the passing of the Act to 'prepare' and 'dispense' in cases where the physician had given written prescriptions. So, in that case, the apothecary would be merely following up what was done by a chemist and druggist. But it was also clear that the apothecary did more. He not only prepared these medicines when prescribed by others, but he saw patients and judged of their symptoms, and, acting upon that judgment, gave them medicines themselves without any written prescriptions. The same kind of assistance was to be gained by reference to other sections of the Act. For instance, section 14 said that no apothecary was to practise without having first undergone an examination. There was to be a Court of Examiners appointed, and they were to be authorised to examine all persons seeking to be apothecaries, for the purpose of ascertaining their skill and ability. In what? Not in the mere compounding of medicines, but in 'the science and practice of medicine.' This shows, therefore, that the apothecary was a person who was to be skilled in the science and practice of medicine according to the opinion of these examiners. It clearly shows that the apothecary is a different person from the chemist and druggist. Then there is also section 20 of the Act, as to

the penalty attaching to the practising as an apothecary without having undergone examination and received the required certificate of the Apothecaries' Society, and, lest it should be supposed that this was putting a penalty on chemists and druggists for doing what they had properly been doing before, it was provided in section 28 that 'nothing in this Act shall prejudice or interfere in any way to affect the trade or business of a chemist and druggist in buying, preparing, compounding, dispensing, and vending drugs and medicines and medicinal compounds, wholesale or retail. But all persons using or exercising the said trade or business shall and may use, exercise, and carry on the same trade or business in such a manner, and as fully and amply to all intents and purposes, as the same trade or business used to be exercised or carried on by chemists and druggists before the passing of the Act.' That meant to say that the trade or business of a chemist and druggist was included in the acts of 'buying, preparing, compounding, dispensing, and vending drugs and medicines.' If, then, it has been proved during the trial that chemists and druggists before the Act of 1815 had acted as physicians, the obvious conclusion would be that they had done so illegally. The fact that they had so acted could in no way assist those who sought to do it now. Such actions would be illegal, being contrary to the statute and to the spirit of the exemption provided in their favour in the 28th section. What is then said to be the duty of an apothecary? It must be to form an opinion on the case, and advise and give medicine and treatment in consequence of that opinion. There may be such a case as this: A poor man, or even an educated man, may go into the chemist's shop, and say, 'I want some pills.' The chemist replies, 'There is a well-known remedy; take this box of pills.' That could not be said to be an infringement of the Act; but the thing might go further. The man might say, 'I will take six of these pills when I go to bed.' The chemist will say, 'No, you should not take six; if you look at the

box you will find that only one or two are to be taken.' Or, if there is nothing on the box, the man might say, 'Is it a strong medicine?' and the chemist would answer accordingly. Then a conversation might take place of this kind, as to the medicine relating to the purpose for which the medicine was to be taken, which still would be very far from bringing a man within the scope and intention of the Act of Parliament itself, which was passed to prevent people from prescribing on the basis of what they themselves discovered to be possibly the matter with the patient, unless they had received the necessary certificate after passing the required examination."

(s) **Legally Qualified Medical Practitioner.**—The Medical Act, 1858, s. 34, enacts as follows:—"After the 1st day of January, 1859, the words 'legally qualified medical practitioner,' or 'duly qualified medical practitioner,' or any words importing a person recognised by law as a medical practitioner, or member of the medical profession, when used in any Act of Parliament, shall be constituted to mean a person registered under this Act."

(t) **A Certificate in Veterinary Surgery from the Highland and Agricultural Society of Scotland.**—By the Veterinary Surgeons' Act, 1881, 44 & 45 Vict., c. 62, s. 17, persons who at the time of the passing of that Act held one of these certificates was entitled to use the titles reserved by that Act to the use of qualified persons. The Society ceased to grant these certificates in 1881. The holders of such certificates were not exempted by the Pharmacy Act, 1868, from any of the provisions of that Act, and the provisions of section 1 of the Act of 1869 only exempt them from such provisions in the first 15 sections of the 1868 Act as would prevent them dispensing for animals under their care.

(u) **Dispensing Medicines for Animals under his Care.**—Nothing contained in the first fifteen sections of the Pharmacy Act, 1868, is to prevent either a member of the Royal College of Veterinary Surgeons, or a person who holds a certificate in veterinary surgery from the Highland and Agricultural Society of Scotland, from dispensing medicines for animals under his care. It is not easy to see why in the case of a member of the

Royal College of Veterinary Surgeons it was necessary to enact this, seeing that section 16 of the Pharmacy Act, 1868, provided that the business of a member of the Royal College of Veterinary Surgeons was not to be interfered with by reason of anything contained in the previous fifteen sections. Probably it was considered necessary to make it clear that the "dispensing of medicines for animals under his care" was a part of the business of such a member. Its enactment lends weight to the argument that, apart from dispensing for animals under his care, it is no part of the business of a member of the Royal College of Veterinary Surgeons to sell or keep open shop for the sale of poisons. Apart from the provisions of this section a holder of the certificate from the Highland and Agricultural Society of Scotland, as such, would not have been exempted from the provisions of the first fifteen sections of the Pharmacy Act, 1868. It is important to notice that neither class of veterinary practitioners are exempt from the provisions of section 17 of the Pharmacy Act, 1868, which provides regulations to be complied with upon the sale of a poison, see p. 222.

(v) **Corporate Bodies.**—There appears to be no statutory definition of this term, but the Century Dictionary defines it as "an association of persons legally incorporated for the promotion of some specific object." In Blackst. Com., p. 467, a corporation is described as "an artificial person created by law, having perpetual succession, a distinctive name, and common seal."

There are various kinds of corporate bodies: (1) Those incorporated by Royal Charter; (2) Companies incorporated by special Act of Parliament; (3) Companies incorporated under the Companies Act, 1844 (7 & 8 Vict., c. 110); (4) Societies incorporated under the Building Societies Act, 1874 (37 & 38 Vict., c. 42) (see s. 9), and the Building Societies Act, 1894 (57 & 58 Vict., c. 47); (5) Societies incorporated under the Industrial and Provident Societies Act, 1893 (56 & 57 Vict., c. 39) (see s. 21). Most of the Industrial Co-operative Societies come within this category. (6) Those incorporated under the Companies (Consolidation) Act, 1908 (see s. 16, sub-s. 2).

Section 7 of the Public Health Act, 1875 (38 & 39 Vict., c. 55), enacts that Urban and Rural Sanitary Authorities shall be corporate bodies, and the Local Government Act, 1888 (51 & 52 Vict., c. 41) (see s. 79), contains a similar enactment regarding County Councils.

Trade Unions and Societies formed under the Friendly Societies Act, 1896 (59 & 60 Vict., c. 25), are not corporate bodies.

Though a firm or partnership in Scotland, as in England, is not a corporate body, it is, unlike an English partnership, a legal person distinct from the partners of whom it is composed.

(w) **Firm or Partnership**—*In Scotland*.—A firm or partnership in Scotland is a legal person (Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 4).

In England and Wales.—Members of a firm or partnership in England and Wales are for purposes of the Pharmacy Acts in the same position as if they were trading as individuals.

What is the position in relation to this section of the Pharmacy Act of an unqualified member of a firm or partnership in England and Wales which is keeping open shop for the sale of poisons is by no means free from doubt. The question has not been the subject of a High Court decision. It appears to depend upon the exact meaning of "selling" and "keeping open shop," and these phrases still await authoritative definition. (See pp. 30, 33.) It is clear that if he sells a poison with his own hands he is liable. (See p. 30.)

If any person upon whose behalf as principal a sale of a poison is made by an agent must be qualified (see To sell, p. 33), then all the partners in a firm which "sells," or in other words, which is civilly liable on the contract of sale, must be registered chemists. If an unqualified partner takes any part in the conduct of the business he is almost certainly liable for keeping open shop for the retailing of poisons, and if it is decided that the phrase "keeping open shop" includes mere ownership of the business, he would be liable, though he in fact took no part in the business.

In the *Pharmaceutical Society v. London & Provincial Supply Association, Ltd.*, in the Court of Appeal (p. 331),

BRAMWELL, L.J., said: "I am also aware that there is ground for saying that under section 15 all of several partners keeping a shop must be qualified though none attend, and the shopman need not be qualified. If so, it may be said so must all the shareholders and directors of a corporation. I do not know. The Act may have a more limited meaning and be more reasonable." And in the same case (4 Q. B. D. 316), COCKBURN, C.J., said: "It was fully admitted on the argument, nor could it be contested, that if this had been an ordinary partnership the individual partners, at all events such of them as were not qualified under the statute, would have incurred the penalties it imposes. . . . Two parties could not combine to carry on the joint business of grocer and chemist, though the one attending to the latter department of the business might be a qualified chemist."

See also *Pharmaceutical Society v. Potter* (p. 368).

The Limited Partnership Act, 1907 (7 Edw. 7, c. 24, s. 6), provides that a limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm. In Lindley's Supplement on the Law of Partnerships, 1909 (p. 22), the opinion is expressed that the word management is wide enough to include "conduct," and doubt is expressed whether a limited partner could safely discharge ministerial functions in connection with the business. Unless it is held that a person who owns or jointly owns a business in which poisons are sold is by reason of that fact alone "keeping open shop" for the retailing, etc., of poisons, or that a sleeping partner is a "seller" within the meaning of section 15 of the 1868 Act of poisons sold in the partnership business, it is difficult to see how such a limited partner can be penalised for selling or keeping open shop for the retailing of poisons. As to whether he takes or uses any of the reserved titles, see p. 23.

CHAPTER III.

REGULATIONS TO BE COMPLIED WITH IN THE KEEPING, DISPENSING, AND SALE OF POISONS AND POISONOUS SUBSTANCES.

APART from the question of the qualification of the seller, the Pharmacy Acts provide regulations dealing with:—

Keeping or storage;	Labelling;
The recording of sales;	Sales to unknown purchasers;

The vessels or packages in which poisons or poisonous substances are sold.

The Pharmacy Acts, unlike the Arsenic Act, do not prohibit sales to purchasers under full age.

The Arsenic Act, 1851, also provides regulations (p. 143) governing the sales of such substances as come within the operation of that Act.

The sales of *scheduled* poisons are governed by regulations imposed by the Pharmacy Acts, and in the case of the sale of an article which comes within the purview of the Arsenic Act and the Pharmacy Acts, the provisions of both these Statutes must be complied with.

The regulations prescribed by the Pharmacy Acts, and by the Poison and Pharmacy Act, 1908, are contained in the following sections:—

1. Section 17 of the 1868 Act, which, in one way or another, affects the sale and dispensing of all poisons.
2. Sections 1 and 15 of the 1868 Act, which empower regulations to be made regarding the keeping, selling, and dispensing of poisons. Regulations made thereunder deal with the keeping of all scheduled poisons, and with the dispensing and selling of certain poisons, namely, all liniments, embrocations, lotions, and liquid disinfectants containing poison. They also make it necessary because of the form of the entry in the schedule to the Act of 1908 relating to carbolic acid, to use a special label for certain liquid preparations of carbolic acid and its homologues (p. 239), unless such preparations are treated, for the purposes of the Pharmacy Acts, as poisons included in the schedule.
3. Section 2 of the Poisons and Pharmacy Act, 1908, and the regulations made thereunder by Order in Council, which apply to the keeping and selling of the poisonous substances to be used exclusively in agriculture or horticulture for certain specified purposes, when they are kept or sold by licensees under the provisions of that section.
4. Section 5 of the Poisons and Pharmacy Act, 1908, which deals with the labelling of certain specified poisonous substances as distinguished from poisons within the meaning of the Pharmacy Acts. The section

enables regulations dealing with matters relating to the sale of these substances to be made by Order in Council.

KEEPING OF POISONS.

The regulations to be observed in the keeping of poisons may be divided into two classes, namely :

1. Those prescribed by the Pharmaceutical Society, with the consent of the Privy Council, under the provisions of section 1 of the Pharmacy Act, 1868.

Regulations under this section were duly framed and approved in 1899 (see p. 245), and so far as they affect the keeping of poisons (presumably for the purpose of selling or dispensing them) are as follows :—

(1) That in the keeping of poisons each bottle, vessel, box, or package containing a poison be labelled with the name of the article, and also with some distinctive mark indicating that it contains poison.

(2) Also that in the keeping of poisons each poison be kept on one or other of the following systems (*a* 76), viz.

- (a) In a bottle or vessel tied over, capped, locked, or otherwise secured in a manner different from that in which bottles or vessels containing ordinary articles are secured in the same warehouse, shop, or dispensary ; or
- (b) In a bottle or vessel rendered distinguishable by touch from the bottles or vessels in which ordinary articles are kept in the same warehouse, shop, or dispensary ; or
- (c) In a bottle, vessel, box, or package kept in a room or cupboard set apart for dangerous articles.

Persons * (including corporate bodies †) committing a breach of these regulations are liable to the penalty of £5 imposed by section 15 of the Act of 1868.

The foregoing regulations do not apply to those poisonous substances which come within section 2 of the Poisons and Pharmacy Act, 1908, when they are stored and sold by licensees under the provisions of that section.

2. Those which are provided by Order in Council under section 2 of the Poisons and Pharmacy Act, 1908, and relate to certain poisonous substances for use exclusively in agriculture and horticulture for the purposes specified in the section. These only refer to such poisons when kept by licensees under that Act, and are enumerated on p. 133.

(a) "One or other of the following Systems."—It is obvious that the keeper has the choice of using any one of the systems for any particular poison, but it is probable that he is not complying with the requirements unless he keeps *each* poison on one uniform system. If he keeps a portion of a particular poison in vessels tied over, capped, or locked, other portions of that poison in vessels distinguishable by touch, and other portions in ordinary bottles or vessels kept in a special room or cupboard, he has not adopted one or other of the systems for that particular poison, but has used a combination of the three systems.

LABELLING.

(1) *Medicines*.—Medicines (a 81), which are poisons, or contain poison, when supplied by a legally qualified apothecary (p. 56), or legally qualified medical

* As to responsibility of a master for the act of his servant, see p. 165.

† See Poisons and Pharmacy Act, 1908, s. 3, sub-s. 4, p. 235.

practitioner (p. 69), to his patient, or are dispensed (p. 40) by any person registered under the Pharmacy Act, 1868 (p. 38), in either case under circumstances which amount to a "sale" of the medicine, must be distinctly and legibly labelled with the name and address (*b* 81) of the seller (*c* 88), who for this and all other purposes of the 17th section of the 1868 Act is "the person on whose behalf the sale is made." (Pharmacy Act, 1868, s. 17; Pharmacy Act, 1869, s. 3.)

(2) *Exporting and Wholesale Dealing*.—Articles which contain poison, and are exported from Great Britain by wholesale dealers, or sold by wholesale to retail dealers (*d* 92), in the ordinary course of wholesale dealing, must be distinctly labelled with (*a*) the name of the article (p. 96), and (*b*) the word "poison," but they need not bear the name and address of the seller. (Pharmacy Act, 1868, s. 17.)

(3) *Upon all other Sales of Poisons*, including those sold by licensees under section 2 of the Poisons and Pharmacy Act, 1908, the box, bottle, vessel, wrapper, or cover in which such poison is contained must be distinctly labelled with (*a*) the name of the article (p. 96), (*b*) the word "poison," and (*c*) the name and address of the seller (p. 81). (Pharmacy Act, 1868, s. 17.)

(4) *Liniments, Embrocations, Lotions, or Liquid Disinfectants*.—If these are poisons within the meaning of the Pharmacy Acts and are not patent medicines (p. 57) the label, in addition to being in conformity with the foregoing requirements, must contain a notice that the contents of the bottle are not to be taken internally. (Pharmacy Act, 1868, s. 15, and Regulations (p. 246)

prescribed thereunder and published in the *London Gazette*, January 31st, 1899, and July 4th, 1902.) Legally qualified apothecaries, legally qualified medical practitioners, registered prior to the passing of the Act of 1868, legally qualified medical practitioners registered as such since the passing of that Act, who have passed an examination in Pharmacy, Members of the Royal College of Veterinary Surgeons, and wholesale dealers when supplying poisons in the ordinary course of wholesale dealing, need not comply with this regulation. (Pharmacy Act, 1868, s. 16; Pharmacy Act, 1869, s. 1.)

(5) *Poisonous Substances used in connection with Agriculture or Horticulture* for certain specified purposes, when sold by licensees under the provisions of section 2 of the Poisons and Pharmacy Act, 1908, must only be sold in an enclosed vessel or receptacle as received from the manufacturer distinctly labelled (a) with the name of the substance; (b) the word "poison"; (c) the name and address of the seller (p. 92); - (d) a notice of the special purpose for which it has been prepared. In the case of liquid preparations each bottle, tin, drum, or cask, must have the word "poisonous" printed, marked, or branded, in easily legible characters in a conspicuous position apart from the label, which must bear the word "poison." Packages containing solid preparations must have indelibly printed, marked, or branded in easily legible characters in a conspicuous position notice that it must not be used for any other purpose. (Poisons and Pharmacy Act, 1908, s. 2, and Regulations made thereunder, published in the *London Gazette*, April 2nd, 1909; see p. 250.)

(6) *Carbolic Acid, and Liquid Preparations of Carbolic Acid* and its homologues containing more than three per cent. of those substances, must be treated as any other scheduled poison and labelled accordingly, except that such a preparation for use as sheep wash, or for any other purpose in connection with agriculture or horticulture, if contained in a closed vessel, may be treated as not being a poison within the meaning of the Pharmacy Act, 1868, but in that case it must be distinctly labelled with (a) the word "poisonous"; (b) the name and address of the seller (p. 81); and (c) a notice of the special purposes for which it is intended. (Pharmacy Act, 1868, ss. 1 and 15, and the Schedule to the Poisons and Pharmacy Act of 1908.)

(7) *Poisonous Mineral Acids, etc.*—Certain poisonous substances, as distinguished from poisons within the meaning of the Pharmacy Act, 1868, enumerated in section 5 of the Poisons and Pharmacy Act, 1908, or to which, by Order in Council, that section is made to apply, must not be sold unless the box, bottle, vessel, wrapper, or cover in which the substance is contained is distinctly labelled with (a) the name of the substance; (b) the word "poisonous"; and (c) the name and address of the seller (p. 92). The substances at present within these provisions are sulphuric acid, nitric acid, hydrochloric acid, and soluble salts of oxalic acid.

Penalties.—For a breach of such of the foregoing provisions as are contained in section 17 of the Pharmacy Act, 1868, the penalty is, for a first offence, a fine not exceeding £5, for a second or any subsequent

offence, a fine not exceeding £10, recoverable upon a summary conviction before two Justices of the Peace, in England and Wales, or the Sheriff, in Scotland. (Pharmacy Act, 1868, s. 17.)

For not labelling in accordance with the regulations made under sections 1 and 15 (*supra*) as to poisonous liniments, etc., the penalty is £5, recoverable in the manner provided by the Pharmacy Act, 1852, s. 12, for the recovery of penalties under that Act (see p. 148). This penalty is also incurred by any person who is not a registered chemist or one of the persons exempted by section 16 of the 1868 Act and section 1 of the Act of 1869, and who commits a breach of the provisions as to labelling the special preparations of carbolic acid and its homologues referred to in paragraph 6 (p. 79), the offence being in that case the sale of a poison by a person not registered under that Act.

If a licensee under the Poisons and Pharmacy Act, 1908, s. 2, when selling poisonous substances to which that section refers, fails to comply with the provisions as to labelling, he is liable to (1) the revocation or suspension of the licence (p. 135); (2) a penalty of £5, recoverable under section 15 of the Pharmacy Act, 1868, for selling a poison, he not being a registered chemist; (3) the fine imposed by section 17 of the Pharmacy Act, 1868 (*supra*), if the article is not labelled in accordance with the requirements of that section.

For a breach of section 5 of the Poisons and Pharmacy Act, 1908, as to labelling the poisonous substances referred to in that section the penalty is a

fine not exceeding £5, recoverable upon conviction under the Summary Jurisdiction Acts (p. 158).

(a) **Medicine.**—In *Berry v. Henderson* (p. 298) the mixture in question consisted of two drachms of Scheele's hydrocyanic acid in two ounces of rose water, and was labelled as a lotion to be used three times a day. It was proved that it might be used as a lotion. It was contended that the thing sold was not a medicine, but a poison partially diluted. LUSH, J., said: "The first question is, Was this mixture a medicine? This was scarcely disputed by the counsel for the respondent. The word 'medicine' is comprehensive enough to include everything which is to be applied for the purpose of healing, whether externally or internally. According to the prescription, this mixture was intended to be used as a lotion, and the case states that it might properly be used as a lotion. . . . If a duly qualified medical man had directly supplied or delivered to his patient this compound of hydrocyanic acid and rose water as a lotion, he would have been protected under the proviso; and we must apply the same rule to a registered chemist making up that compound from a prescription."

(b) **"Name and Address of the Seller."**—There has been no decision of the High Court as to what is meant by the term "name and address of the seller" as used in this section, but the question has been the subject of varying magisterial decisions. All that can be gathered from the decisions quoted below as to the meaning of similar expressions in other statutes is that the words "name" and "address" have a variety of meanings, according to the statute or document in which they are used. It may be that the provision in this section has two distinct objects. In *Templeman v. Trafford* (p. 404), GROVE, J., was of opinion that section 15 of this Act, which makes it penal for any person, not being a duly registered chemist and druggist, to "sell or keep open shop for the retailing of poisons," throws light upon this section, and that the object and intention of this requirement as to the name and address of the seller is "to protect the public by insuring that the person who controls the business of the sale of poisons should be a duly qualified

registered chemist and druggist, whose name and address should appear on the package." Apparently, this means that it should be possible, by examining the label, to say whether the seller is registered under the Pharmacy Acts. That the object of the provision is to enable the purchaser to be traced, and the circumstances under which any particular poison was purchased ascertained, is also extremely probable. For the purpose of ascertaining the qualification of the seller, the best name and address would be that which could be identified with the name and address of the person in the Register of Chemists and Druggists; but for the purpose of tracing the sale, the "trade" name of the seller, if any, might be just as useful as his registered name; and the address of the shop at which the poison was sold might be even a better address for that purpose than the person's registered address. At the time of the passing of the Act the existence of branch shops was rare, and in the majority of cases the seller's address in the register would coincide with that of the shop at which the poison was sold. In the present state of the law it is impossible to assert with certainty what is meant by "the name and address" as here used, but in the case of persons using trade names on their labels they would be well advised, pending a definite decision, to print upon the labels used for poisons, in addition to the trade name and a clear indication of the particular shop at which the poison was sold, the name and address of the seller as it appears in the Register of Chemists and Druggists.

The following are instances of convictions where the label did not contain the address of the shop at which the poison in question was sold, or where there were more than one address on the label and nothing to indicate at which address the poison was sold. They have all been magisterial decisions, but in no case has the conviction been the subject of appeal.

In 1900 T. W. & Co. sold a poison at their branch shop at Petersfield. The label used was "Oxalic Acid—Poison. T. W. & Co., Chemists, by examination. Pharmacies throughout the south of England." It bore no other address.*

* *Pharmaceutical Journal*, September 29th, 1900, p. 378; *Chemist*

In 1905 W. & H. sold at their branch shop at Hastings a poison labelled with the name of the firm and the following addresses: Sun Street, Canterbury; Bank Street, Ashford; George Street, Hastings; and East Road, London. The address at Canterbury was in larger type than the others, and there was nothing to indicate at which of the shops the poison was purchased. At the request of the defendant the magistrates expressed their willingness to state a case, but there was no appeal. On the same day and at the same court the S. D. Co. were convicted for selling a poison at Hastings, the label used bearing a number of addresses, the most prominent of which was that of a shop at Brighton.*

In 1909 J. C. M. was convicted for selling a poison at 21, Ferme Park Road, N., labelled with the name and addresses as under:—J. C. M., Dispensing Chemist, From Apothecaries' Hall. Chief Depôt, 61, Stroud Green Road N., and at 192, Stroud Green Road; 286, Seven Sisters Road; 21, Ferme Park Road; and 1A, Wood Street, Cheapside, E.C.

The defendant's address in the register of chemists and druggists was 61, Stroud Green Road, but the poison was sold at 21, Ferme Park Road.†

In 1901 the Pharmaceutical Society prosecuted in a case, in which the following were the facts:—

Mr. Reece carried on business as a chemist at several addresses, amongst other places at 176, Uxbridge Road. At that shop a bottle containing laudanum (a scheduled poison) was sold. The name upon the label on the bottle was "Squire, Cash Chemist," and the address, "61, Goodge Street." Mr. Reece traded under the name of "Squire," and resided at 61, Goodge Street, which was also the address of his head office. The alleged offence was that the poison was not labelled with the

and Druggist, September 29th, 1900, p. 553; *British and Colonial Druggist*, September 28th, 1900, p. 371.

* *Pharmaceutical Journal*, August 5th, 1905, p. 207; *Chemist and Druggist* (Supplement), July 29th, 1905; *British and Colonial Druggist*, August 4th, 1905, p. 123.

† *Pharmaceutical Journal*, May 1st, 1909, p. 593; *Chemist and Druggist*, May 1st, 1909, p. 670.

name and address of the seller. The magistrate (Mr. Lane, K.C.) held that the address upon the label was in compliance with the 17th section of the Act of 1868, but that the name was not the defendant's name for the purposes of that section, and he convicted the defendant.

The points are considered at length in his judgment which was not appealed from. (*Pharmaceutical Society v. Reece*, p. 378.)

Name.—By the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 21, a seller of coal is required under certain circumstances to deliver to the purchaser a ticket or note according to the form in schedule 3 to that Act, or according to a form to the like effect. F. B. Cameron carried on business as a coal merchant under the style of the Co-operative Coal Co., Ltd. There was, in fact, no registered company, limited or otherwise, in existence. Cameron delivered to the purchaser a ticket whereon the seller was described as the Co-operative Coal Co. Ltd. The justices held that the real name of the seller "F. B. Cameron" ought to have appeared on the ticket as the seller of the coal, and convicted the defendant. On appeal the conviction was quashed. DARLING, J., said: "The Weights and Measures Act provides that where any quantity of coal exceeding 2 cwt. is delivered by means of any vehicle to a purchaser the seller of the coal shall therewith deliver or send to the purchaser, before any part of the coal is unloaded, a ticket according to the form given by the Act, or one similar to it. The form says: 'Here insert the name of seller,' and I think the direction is complied with when the name of the firm under which the appellant carried on business was inserted on the ticket. I think, moreover, in the present case he might equally well have described himself either by his own real name, or the name under which he carried on business." CHANNELL, J., added: "I am of the same opinion. The general law of this country is that a man can take any name he chooses under which to carry on business, and there is nothing in the Weights and Measures Act to derogate from his right to do so." (*Cameron v. Tyler*, [1899] 2 Q. B. 94; 68 L. J. Q. B.

759 ; 80 L. T. 764 ; 63 J. P. 567 ; 15 T. L. R. 369 ; 19 Cox C. C. 353 ; 47 W. R. 559.)

The Engraving Copyright Act, 1734, 8 Geo. 2, c. 13, directs that a copyrighted engraving shall be truly engraved with the name of the proprietor. Where the statement on a print was : "Published by Henry Graves & Co., May 1st, 1861, Print-sellers to the Queen, 6, Pall Mall," and it was proved that Henry Graves was in fact the sole proprietor, it was held that the name of the proprietor was sufficiently shown to satisfy the statute. (*Graves v. Ashford* (1867), 36 L. J. C. P. 139 ; L. R. 2 C. P. 410 ; 16 L. T. 98.)

W. F. Rock and J. Payne were partners carrying on business under the style of "Rock & Co." On the engravings they published were printed the words "Rock & Co." It was held that this was a sufficient compliance with 8 Geo. 2, c. 13, and that it was not necessary that the name of every member of the firm should appear. MALINS, V.C., said : "The name of the firm itself gave the public as much information as was necessary, and there will be no difficulty in ascertaining the names of the partners if required." (*Rock v. Lazarus* (1872), 15 L. R. Eq. 104 ; 42 L. J. Ch. 105 ; 27 L. T. 744 ; 21 W. R. 215.)

Under the Municipal Corporations Act, 1835 (5 & 6 Wm. 4, c. 76), s. 23, a voting paper had to be "signed" with the name of the burgess voting. It was held that a paper signed "A. T. Powning" by a voter whose name was "Ambrose Toop Powning" was in compliance with the statute, and that it was not necessary to give the christian name in full. (*R. v. Avery* (1852), 18 Q. B. 576 ; 21 L. J. Q. B. 153.)

Address.—The terms "residence" and "place of abode" have also been construed in various ways.

"Residence" has a variety of meanings according to the statute (or document) in which it is used (*per* ERLE, C.J., *Naef v. Mutter* (1862), 12 C. B. (N. S.) 816, 31 L. J. C. P. 357 ; 9 Jur. (N. S.) 384 ; 10 W. R. 758). It is an ambiguous word and may receive a different meaning according to the position in which it is found (*per* COTTON, L.J., *Ex parte Breull In re Boure* (1880), 16 Ch. D. 484 ; 50 L. J. Ch. 386).

In *Reg. v. Fermanagh Justices*, (1897) 2 I. R. 563, the

question in issue was whether the applicant for a statutory certificate for a grocer's spirit licence resided in the district where the premises proposed to be licensed were situated. GIBSON, J., said : "The words 'residence' and 'place of abode' are flexible, and must be construed according to the object and intent of the particular legislation where they may be found. Primarily they mean the dwelling and house where a man is supposed usually to live and sleep. This is their interpretation in registration (*Reg. v. Hammond*, 17 Q. B. 772). In liquidation under the Act of 1869 (*Ex parte Jerningham*, 9 Ch. D. 466) and in poor law settlement, they may also include a man's business abode, the place where he is to be found daily (*Ex parte Breull*, 16 C. D. 487). They have this meaning in the Bills of Sale Act (*Hewer v. Cox*, 3 Ell. & Ell. 428, and *Blackwell v. England*, 8 Ell. & Bl. 541 ; see the judgment of ERLE, J.). In these cases personal presence seems an ingredient. To make the business house a residence, it must not be merely a place where business is transacted, but where the trader's duty and occupation would lead one to expect that under ordinary circumstances he would be found. Examples of both meanings are supplied by our Common Law Procedure Acts. Interpreting the term in its most extensive sense we cannot treat 'residence' as convertible and identical with 'ownership.' A domiciled Australian, who never saw nor intended to see Ireland, might succeed to or acquire property in this country which (among other uses) might be adapted to the business of a spirit grocer ; but it would be manifest abuse of language, without warrant in dictionary law or usage, to describe such a permanent absentee as resident here merely by virtue of such ownership." This dictum was approved by HOLMES, L.J., in *R. v. Tyrone Justices*, [1901] 2 I. R. 510.

The Uniformity of Process Act, 2 & 3 Wm. IV., c. 49, prescribed the form of the indorsement of a writ as follows : "This writ was issued in person by A.B. who resides at . . ." It was held that an attorney's place of business is the proper "residence" of which to describe him, but that if he were described of his private house, where he did not carry on his business, it would be sufficient also (*Yardley v. Jones* (1835) 4 Dowl. 45).

The Secret Bills of Sale Act, 1854 (17 & 18 Vict. c. 36, s. 1),

requires an affidavit containing a "description of the residence and occupation" of the party giving the bill of sale and of the attesting witness thereto. It was held that it is sufficient to state, in the case of a clerk, the place where his employers carry on their business. POLLOCK, C.B., in the Court of Appeal, said: "The Court thought that the purpose of the Act will be best arrived at by construing the words 'residence' or 'place of abode' (which in English mean the same thing) as meaning not the place where a man sleeps, but where he is chiefly to be found, which, in the present case, is the place where he carries on business, or assists his employers in carrying on their business. Upon that ground the Court of Queen's Bench decided, and, for the same reason, we think that our decision should be in conformity with theirs. There may be occasions on which it may be necessary to construe the word 'residence' as meaning the place where a man resides with his family, but there are other cases where it is not necessary so to construe words which do not necessarily of themselves mean the place where he sleeps. A place of abode is the place where a man abides, and residence is where he resides, and a man may abide or reside not where he sleeps, but in some other place. Now the object of the Act was that information should be given where the man might be found, met with, seen, and inquired of, and where parties might be sure of getting the information they required. And my opinion entirely goes along with that of the Court of Queen's Bench in construing the term as used in this Act in the sense which will satisfy that object. It is to be observed that our decision is that the place of business, being the place where the party 'abides' for a considerable portion of his time, is quite sufficient as a place of residence, not that the other description of it might not also be sufficient. It must not be understood that the mention of the place where the man slept would not be a sufficient description of his place of residence under this Act; we only decide that the present description of it is sufficient to satisfy the Act." (*Attenborough v. Thompson* (1857), 2 H. & N. 559; 27 L. J. Ex. 23.)

A man's residence where he lives with his family and sleeps

at night is always his place of abode in the full sense of that expression (*per* CAMPBELL, C.J., in *Reg. v. Hammond* (1852), 17 Q. B. 772; 21 L. J. Q. B. 153; 16 Jur. 194).

The Rules of the Supreme Court (1883), Ord. IV., Rule 1, require a writ or summons to be indorsed with the address of the plaintiff, and the form in Appendix A, Part I., refers to the plaintiff, who "resides at . . ." In *Stoy v. Rees* (1890), 24 Q. B. D. 748; 59 L. J. Q. B. 310; 63 L. T. 49; 38 W. R. 683, it was held that for this purpose the address must be that of the plaintiff's ordinary residence as distinguished from his place of business.

(c) "**The Seller.**"—The section adds: "and for the purposes of this section the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller." It is clear that the definition includes the master or person on whose behalf the contract of sale is made, but it may be that a person, who is neither the master nor the person by whose hand the sale is actually made, is also within the term "seller" as used in this connection.

It is important to consider the bearing on this question of section 15 of the 1868 Act, and of the provisions of the Poisons and Pharmacy Act, 1908, as to the management of shops. By reason of section 15 it is illegal for an unqualified servant or apprentice to sell a poison unless under the direct supervision of a registered Chemist (*Pharmaceutical Society v. Wheeldon*, p. 384). It may be that a sale made by such a servant or apprentice is made "on behalf of" the qualified person whose duty it is to supervise the sale—though by reason of the want of qualification on the part of the servant or apprentice the sale would be illegal. Section 3 of the Act of 1908 requires that in every premises where the business of a pharmaceutical chemist or chemist and druggist is carried on the business must be *bonâ fide* conducted by a pharmaceutical chemist or chemist and druggist, whose certificate of qualification must be exhibited in the premises, and this person may be a manager or assistant. The 17th section does not say that the seller is "the person for whose pecuniary benefit the sale is made," but that he is "the person on whose behalf the sale is made," and this latter

description may apply to more than one person. A sale is obviously made on behalf of the person who owns the business and takes the pecuniary profit upon the transaction, but it may be also true in one sense that all sales of poison in a shop are made by or on behalf of the person, who is, by law, required to conduct the business at the shop where the sale is made. Whoever is the seller the section appears to contemplate his actual presence at the time of the sale. He is the person to whom, in the case of the sale of certain poisons, the purchaser must be known or introduced. Whoever is the person whose name it is the section requires shall be upon the poison label as the seller, it is open to question whether certain sales of poisons in Part I. of the Schedule (p. 111) made on his behalf by any person qualified or unqualified are not illegal if made in his absence.

In *Templeman v. Trafford* (p. 104) the facts were shortly these: A scheduled poison was purchased at a shop in Friars Street, Oxford, over which no name was painted up. The poison in question was labelled, "W. Paterson, Chemist and Druggist, 3, Cowley Road, Oxford." It was served by a woman who was behind the counter. Trafford, who was not a registered chemist, was the occupier of the shop in respect of which he alone was rated. Paterson, who was a registered chemist, carried on business at Cowley Road, Oxford. He paid Trafford 4s. a month for the partial use of one of his windows and part of the shop at Friars Street. He was accustomed to send down different articles to Trafford to be sold, but he did not sell them to Trafford, nor did he invoice them to him. He kept an account against him, and allowed him a commission of 15 per cent. on the sales, but paid him no salary. He considered the poison in question sold to Templeman was his property and not Trafford's. Trafford was charged with selling a poison not labelled with the name and address of the seller. The magistrates dismissed the case. On appeal the respondent was not represented, and the Court allowed the appeal.

GROVE, J., said: "In the present case it was a woman who actually delivered the poison to the appellant, and clearly she was not the 'seller' within the meaning of that word in the section—but the person who actually conducts or controls the

business of the sale, and of the shop where the sale takes place. Now clearly Paterson, the chemist who supplied the poison to the respondent, was not the seller within the meaning of the Act, for he lived and carried on his own business in another street in the town, at a distance from the respondent's shop, and so could not possibly conduct or control the business of the shop. By section 17 the 'seller' of the poison must comply with various regulations and directions prescribed by the section to be observed on the occasion of every sale of a poison; for instance, he must, amongst other things, before delivering the article to the purchaser make an entry in the book to be kept for the purpose, stating the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, and so forth. Now a person living as Paterson did at a distance from the place of sale could not possibly fulfil any of those conditions, and, therefore, although he himself was a duly qualified chemist and druggist, and though his name and address were on the packet of poison, yet, as he could not comply with the other specific directions and requirements of section 17, it is clear that he could not be the seller within the meaning of section 17, and that the justices were in error in deeming him to be so. The seller here was the person on the spot, keeping the shop where the sale to the customer took place, and having control over and the general management and regulation of the business of the sale, and his name and address it is that the Act requires to be distinctly labelled on the packet containing the poison sold, the object and intention being to protect the public by insuring that the person who controls the business of the sale of poisons should be a duly qualified and duly registered chemist and druggist, whose name and address should appear on the packet. That person here was the respondent. From the moment that the chemist Paterson sent the goods in question to the respondent he had no control of any kind over the sale of them, nor had he anything whatever to do with them, except to receive from the appellant the amount, less the latter's commission, realised by their sale. If the decision of the justices were to

be upheld, the consequence would be that the Act of Parliament would be distinctly evaded and defeated, and it would be open, as Mr. Higgins observed, for a qualified chemist at Aberdeen to send poisons to unqualified persons in London for sale by them on commission, over which sales he could have no possible means of control. The questions, therefore, which the justices have put to the Court in this case must be answered in the negative. '

LOPES, J., said: "I am of the same opinion. The real question for our determination in this case is, what is the meaning of the word 'seller' in section 17? When that is once determined all further difficulty is at an end. It is, I think, clear that that word means the person who keeps, or carries on business at, the shop or place, or under whose control the shop or place is, at which the poison is sold. The respondent is that person, and, therefore, he is the person meant by the section in question as 'the seller.'"

Apparently in the above case Trafford was the master or owner of the business carried on at the shop where the poison was sold, but some of the reasons given by the Court for not holding that Paterson was the seller also apply in the case of persons owning branch shops at which they do not personally attend. Where the business belongs to a corporate body the owner of the business cannot personally conduct it. Such an owner can neither personally "know," nor "be introduced to" a purchaser.

In the above case, GROVE, J., said: "I think the word 'seller' does not apply to the remote seller, but that the name and address on the label must be that of the person actually conducting the business of the sale" (8 Q. B. D. 402).

In 1882 the magistrates at Carmarthen, on the authority of *Templeman v. Trafford*, convicted a manager of a branch shop for selling a poison which did not bear his name and address, the name and address on the label being that of the owner of the business, a chemist who carried on business as such in London.

* *Pharmaceutical Journal*, March 11th, 1882, p. 739.

† *Chemist and Druggist*, March, 1882, p. 122.

Whether the provisions of the 1908 Act, which provide that the business of the sale of poisons in any shop shall be conducted by a qualified person specially set apart for that purpose, taken together with the definition of the word "seller" in the 17th section of the 1868 Act, require that poisons must be labelled with the name and address of that person whether owner or manager, is doubtful, but the object of the requirement, namely, to facilitate the identification of a particular sale, appears to be one more likely to be attained than if the poison bore the name of a person who, though he may be the owner of the business, has no personal knowledge of the transaction in question.

See also "Keeping open shop" (p. 33), and "Carries on the business" (p. 48).

Though the word "seller" is not expressly defined in the Regulations applicable to the labelling of the poisonous substances under section 2 of the Poisons and Pharmacy Act, 1908 (p. 252), as it is in the 17th section of the Pharmacy Act, 1868, it is probable that it has the same meaning there and in section 5 of the Poisons and Pharmacy Act, 1908, namely, "the person on whose behalf any sale is made by any apprentice or servant." (See p. 88.)

(d) "**Sales by Wholesale to Retail Dealers in the ordinary course of Wholesale Dealing.**"—(See "Retailing," p. 39.) Section 16 of the Act provides that the provisions of the first fifteen sections of the Act shall not extend to or interfere with "the business of Wholesale Dealers in supplying poisons in the ordinary course of Wholesale Dealing." In this section the phrase is "**Sales by Wholesale to Retail Dealers in the ordinary course of Wholesale dealing.**" Strictly speaking, a casual transaction between one retail dealer and another, or the occasional supply of medicines, which are scheduled poisons, by a retail chemist to a medical man for his own use is not within the terms of this exemption. It may be argued that a medical man, who dispenses medicines for his patients and charges for the dispensed medicine, is a "retail dealer." In the event of a prosecution it would be for the defendant to

prove this, and the safer course for a retail chemist would be to treat all such transactions as "retail sales."

The similar exemption in the Arsenic Act is in still stricter terms, for in that case the order must be in writing (see p. 144).

THE RECORDING OF SALES.

The Arsenic Act, 1851, provides that upon every sale of arsenic and the substances included by the statute in that term, the particulars of the sale are to be entered in a book by the seller in a form set forth in the Schedule to that Act (p. 242). The provisions of the Pharmacy Acts are in addition to, and not in substitution for, the provisions of the Arsenic Act. Upon the sale or dispensing of an article coming within the provisions of both the Pharmacy Acts and the Arsenic Act the requirements of both Acts must be complied with. For a suitable form of entry in such cases, see p. 147.

By one or other of two methods prescribed by the 17th section of the Pharmacy Act, 1868, the following transactions must be recorded:—

- (1) Ordinary retail sales as distinguished from dispensing (p. 40) of poisons named or described in Part I. of the Schedule.
- (2) The supplying by a medical man to his patient, or the dispensing by a registered chemist and druggist (in both cases under circumstances involving a sale) of a medicine (p. 81), which is a poison named or described in Part I. of the Schedule, but if the medicine is a poison named or described in Part II. of the Schedule the medical

practitioner or chemist, as the case may be, may either make an entry of the transaction,* or treat it as an ordinary retail sale (not requiring to be entered), in which case the medicine must be distinctly labelled with the name of the article, the word "poison," and the name and address of the seller (pp. 81 and 88). (See "Labelling," p. 76.)

Ordinary Retail Sales.—The 17th section of the Pharmacy Act, 1868, provides that on every sale of any poison, which is in Part I. of the Schedule to that Act (now the schedule to the Poisons and Pharmacy Act, 1908), the seller (p. 88) shall before delivery make, or cause to be made, an entry in a book to be kept for that purpose, stating, in the form set forth in Schedule F to the 1868 Act (p. 228),—

The date of the sale;

The name and address of the purchaser (*a* 95).

The name and quantity of the article† (*b* 96) sold, and

The purpose for which it is stated by the purchaser to be required.

The signature (*c* 97) of the purchaser, and of the person, if any, who introduced him, must be affixed to the entry.

Exemptions.—The section exempts from the foregoing provisions as to the entry—

(*a*) Articles to be exported from Great Britain by wholesale dealers;

* See "Dispensed Medicines," p. 95.

† The words in Schedule F are: "The name and quantity of poison sold."

(b) Sales by wholesale to retail dealers in the ordinary course of wholesale dealing (p. 92).

Dispensed Medicines.—As to medicines supplied by a medical practitioner to his patient, or dispensed by a registered chemist and druggist, the section provides as follows:—Nor shall any of the provisions of this section (amongst others those dealing with the entry of the sale) apply to any medicine supplied by a legally qualified apothecary* to his patient, nor to any medicine (p. 81) dispensed (d 98) by a person registered under this Act, provided—

Such medicine be labelled in the manner aforesaid (e 98) with the name and address of the seller; and

The ingredients thereof be entered with the name of the person to whom it is sold or delivered (f 98) in a book to be kept by the seller for that purpose (g 99).

Penalty.—A breach of these provisions constitutes an offence under the 17th section of the Pharmacy Act, 1868 (p. 156).

(a) “Name and Address of the Purchaser,” see “Name and Address of Seller,” but probably all that is required in this case is such a name and address as will serve to ascertain who is the actual purchaser and where he may be reached.

Where a poison is purchased by a messenger or agent on behalf of a third party the question may arise whether for purposes of this section the purchaser is the messenger or agent to whom the poison is delivered, or the principal on whose behalf the purchase is made. In the case of dispensed medicines containing poisons, the section directs that, among the particulars to be entered is the name of the person “to whom it is sold or delivered” (p. 98).

The provisions contained in the earlier part of the section relating to the sale of poisons in the first part of the schedule,

* Extended by the Act of 1869, s. 3, to any “legally qualified medical practitioner.”

when these do not come within the exemption in favour of dispensed medicines, differ. The direction there is that the name and address of "the purchaser" is to be entered, and it does not give the alternative of entering the name of the person to whom the poison is delivered. It would appear that in a case of the sale of such poisons the section contemplated the actual presence of the purchaser at the time of the sale. If unknown to the seller he must be introduced to the seller, and in any case he must sign the entry of the sale before the delivery of the poison.

The safer course would seem to be to treat the person who actually makes the purchase, whether on his own behalf or as agent for another, as the purchaser within the meaning of this section.

(b) "**Article.**"—The word "article" is used five times in section 17 of the 1868 Act, and, in the opinion of COLLINS, J. (*Pharmaceutical Society v. Piper*, p. 363), not always with the same meaning. The question arises whether in the entry of the sales, which the Statute directs shall be made in the form set forth in Schedule F of the Act, it is sufficient to enter the name and quantity of a preparation or compound containing a scheduled poison, or whether it is necessary to insert the name and the quantity of the scheduled poison contained in the compound or admixture. The words used in the schedule are, "The name and quantity of the poison sold," and not, as in the section itself, "The name and quantity of the article sold."

Under the old schedule, the question as to what was meant by the word "article" in this connection gave rise to difficulties, and was discussed in *Pharmaceutical Society v. Piper* (see judgments, p. 356). The question is less likely to arise in future, for the last paragraph in the schedule to the 1908 Act (p. 239) makes it clear that a preparation or admixture within the purview of the Pharmacy Acts, by reason of its containing one or more scheduled poisons, is itself a scheduled poison. This being so, when making the entry of the sale, all that is required to be entered in the column headed "Name and quantity of poison sold" is the name and quantity of the

compound, preparation, or admixture, and not necessarily the name and quantity of the ingredients which are poisons.

(c) "**Signature.**"—Speaking generally, the signature is the writing or otherwise affixing a person's name or a mark to represent his name by himself or by his authority, with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so affixed. In connection with orders for poisons coming within Part I. of the schedule, the expedient has sometimes been adopted of cutting from the bottom of the order the customer's signature and pasting that against the entry in the Register of the Sales of Poisons. That this is in compliance with the section is extremely doubtful. If the seller is expressly authorised by the purchaser to affix the signature in that way, it is possible that the seller may be the purchaser's agent for that purpose. In the absence of such specific directions given by the purchaser, it seems impossible to say that his signature affixed to some other document, cut off and attached to the entry in the Poisons Book by the seller without the purchaser's authority, is a compliance with this requirement.

"In every case where an Act requires a signature, it is a pure question of construction on the terms of the particular Act whether its words are satisfied by signature by an agent. In some cases on some Acts, the courts have come to the conclusion that personal signature was required. In other cases on other Acts, they have held that the signature by an agent was sufficient" (per BOWEN, L.J., *In re Whitley Partners, Ltd.* (1886), 32 Ch. D. 337; 52 L. J. Ch. 540; 52 L. T. 912; 34 W. R. 505).

In *Reg. v. Justices of Kent* (1873), 8 L. R. Q. B. 305; 42 L. J. M. C. 112; 21 W. R. 635, BLACKBURN, J., said: "No doubt at common law, where a person authorises another to sign for him, the signature of the person so signing is the signature of the person authorising it; nevertheless, there may be cases in which a statute may require personal signature."

"The signature does not necessarily mean writing a person's christian and surname, but any mark which identifies it as the act of the party" (per MAULE, J., in *Morton v. Copeland* (1855),

16 C. B. 517 ; 24 L. J. C. P. 169 ; 1 Jur. (N. S.) 979 ; 3 W. R. 593). The reporter qualifies this by adding in a note—

“Provided it be proved or admitted to be genuine, and be the accustomed mode of signature of the party.”

(d) “Dispensed.”—In *Berry v. Henderson* (p. 298) LUSH, J., said : “The proviso seems to put upon the same footing a legally qualified practitioner supplying the thing to his patient, and a registered chemist dispensing such a thing. If a duly qualified medical man had directly supplied or delivered to his patient this compound of prussic acid and rosewater, as a lotion, he would have been protected under the proviso ; and we must apply the same rule to a registered chemist making up that compound from a prescription, which is what I understand to be involved in the word ‘dispensing,’—the making up something that is prescribed, and selling it with directions how it is to be used.” See also “Dispensing or Compounding,” p. 40.

(e) “Labelled in the manner aforesaid :” “by which I understand,” said LUSH, J., in *Berry v. Henderson* (p. 299), “distinctly and legibly.” The reference is apparently to the manner in which the earlier part of the section directs that poisons must be labelled, *i.e.* “distinctly.”

(f) “The person to whom it is sold or delivered.”—The seller complies with the section if he enters in the book the name of the person to whom he actually delivers the medicine, or the name of the person to whom it is found that he has reasonably believed he had sold it. In the case of *Berry v. Henderson* (p. 291) a person unknown to the chemist handed him a prescription for a lotion which contained prussic acid, and received from the chemist the lotion so made up. The name of “Mrs. Newton” was written at the bottom of the prescription as the person for whose use it was intended, and the initials “R.M.L.,” which were the initials of a legally qualified medical practitioner, were written thereon. The chemist copied the prescription into a book, in which he entered all the prescriptions he made up, with the name “Mrs. Newton.” There was no evidence whether there was or was not such a person as Mrs. Newton, but the chemist *bonâ fide* reasonably believed that a medical man had prescribed the lotion for a Mrs. Newton, and

that she was the person for whose use he was selling it. The Justices convicted the chemist of an offence under section 17 of the Pharmacy Act, 1868. The High Court quashed the conviction. LUSH, J., said: "The statute, by saying the 'name of the person to whom it is sold or delivered,' has, I think, meant to give the option of putting down the name of the person to whom the medicine is actually delivered over the counter, or the name of the person for whose use it was intended, and whose agent the person actually receiving it across the counter is. Taking it to be found that the appellant reasonably believed that this lotion was duly prescribed for Mrs. Newton, Mrs. Newton must be taken to be the person to whom he sold it, and therefore he complied with the provisions of the Act."

HANNEN, J., in his judgment in the same case, said: "I think we are able to pronounce our judgment at once, upon the assumption which has been agreed to, that it is to be taken that the justices have found that the appellant acted *bonâ fide*, believing Mrs. Newton was the person to whom the medicine was sold. Without that admission, I should have thought it necessary that there should be further inquiry; . . . for it will only be where the chemist establishes that he has entered the name of the person to whom he delivered the medicine, or of the person to whom it shall be found that he has reasonably believed he had sold it, that he will succeed in bringing himself within the terms of this proviso."

(g) "Book to be kept by the seller for that purpose."—LUSH, J., in *Berry v. Henderson* (p. 299), said: "It is found in the case that the ingredients were entered in what the appellant calls his prescription book, which, I think, satisfies the requirements of the Act as a 'book kept for the purpose,' a book in which he enters all prescriptions which he makes up."

SALES TO UNKNOWN PERSONS.

The Pharmacy Act, 1868, s. 17, enacts that subject to exemptions in favour of "dispensed" medicines (s. 17), and medicines supplied by legally qualified

medical practitioners (Pharmacy Act, 1869, s. 3), "it shall be unlawful to sell any poison of those which are in the first part of Schedule A to this Act (now the Schedule to the Poisons and Pharmacy Act, 1908), or may hereafter be added thereto under section 2 of this Act,* to any person unknown to the seller (*a*), unless introduced by some person known to the seller." The signature of the person introducing the purchaser must be affixed to the entry of the sale (p. 93). A breach of this provision constitutes an offence under section 17 of the Pharmacy Act, 1868, and may be dealt with accordingly (p. 156).

There is no legal prohibition of the sale to strangers of poisons in Part II. of the Schedule, unless such poisons come within the scope of the Arsenic Act (p. 143).

Licensees under section 2 of the Poisons and Pharmacy Act, 1908, must comply with the provision when selling such poisonous substances as come within Part I. of the Schedule to that Act.

(*a*) "**Person unknown to the Seller.**"—What degree of knowledge of the purchaser is required on the part of the seller is an open question, but it would be reasonable to hold, in view of the object of the provision, that it should be sufficient to enable the seller to judge of the accuracy of the name and address which the purchaser gives, or to give to the authorities sufficient data to enable them to identify the purchaser. The following are instances of magisterial decisions on the point:—

In 1885, F. W., a chemist at Guildford, was summoned under the Arsenic Act for selling arsenic to a person unknown to him. He was further charged with selling the arsenic without having entered the name and surname of the purchaser. The purchaser's name was Eliza Fenn, and she lived at Worplesden. The name in the entry of the sale was "Eliza Mardon,"

* See also Poisons and Pharmacy Act, 1908, s. 1 (p. 233).

and the entry was signed "Eliza Marten." The purchaser committed suicide by taking the arsenic, and at the inquest the chemist said he only knew the purchaser by sight. She had been in the habit of dealing with him, and he was able to identify her from a photograph. He was convicted of both offences.*

In 1887, W. S. was summoned at Manchester, under the 17th section of the Pharmacy Act, 1868, for selling to a person unknown to him strychnine, with which the purchaser afterwards poisoned herself. The defendant's solicitor stated that the defendant had known the purchaser as a frequent customer at the shop for about twelve months, and that he knew she was the wife of the man who lived at Bagley Fold Farm, though he did not know her husband's name. The Stipendiary thought the defendant could fairly say that the purchaser was not unknown to him, and dismissed the case, but he expressed the opinion that the onus was thrown upon the seller of the poison to show that the person to whom it was sold was not unknown to him.†

In 1889, T. J. was summoned at Salford Police Court for selling strychnine to a person unknown to him, and not introduced to him. The purchaser poisoned herself with the strychnine, and at the inquest the defendant stated that he had seen her before when she had purchased some glycerine from him. At the Police Court his solicitor said that if he had been able to put the defendant in the box he would have been able to prove that for months she had been in the habit of going into the shop, and that although he did not know the purchaser's christian name he knew her surname. The Stipendiary, in dismissing the case, said the only evidence against the defendant was what he had said, or was supposed to have said, before the coroner, and he was not prepared to say that

* *Pharmaceutical Journal*, August 22nd, 1885, p. 181; *Chemist and Druggist*, August 15th, 1885, p. 460; *British and Colonial Druggist*, August 25th, 1885, p. 262.

† *Pharmaceutical Journal*, July 23rd, 1887, p. 87; *Chemist and Druggist*, July 23rd, 1887, p. 89; *British and Colonial Druggist*, July 30th, 1887, p. 113.

there was sufficient in that evidence to convict him under the statute. In the opinion of the Stipendiary it did not require an intimate knowledge in order to comply with the Act. If a person, for instance, had been seen passing the shop once a week, the druggist would probably say, "I know that face: she is a respectable woman," and he was not prepared to say that that would not be enough. In the opinion of the Stipendiary it was incumbent on the prosecution to make out affirmatively that the person to whom the poison was sold was unknown to the seller.*

VESSELS OR PACKAGES IN WHICH POISONS OR POISONOUS SUBSTANCES ARE SOLD.

1. *Liniments, embrocations, lotions, and liquid disinfectants* containing poison when sold or dispensed must be sent out in bottles rendered distinguishable by touch from ordinary medicine bottles. (Pharmacy Act, 1868, ss. 1 and 15, and regulations (p. 245) made thereunder.) A breach of this provision constitutes an offence under section 15 of the 1868 Act, involving a penalty of £5 (p. 148). Qualified apothecaries and the other persons exempted by section 16 of that Act and section 1 of the 1869 Act (p. 26) are not bound by this provision.

2. *Carbolic acid and liquid preparations of carbolic acid and its homologues*, containing more than 3 per cent. of those substances, when sold for use as sheep-wash, or for any other purpose in connection with agriculture or horticulture by any person who is neither a registered chemist, nor one of the persons exempted

* *Pharmaceutical Journal*, March 2nd, 1889, p. 720; *Chemist and Druggist*, March 2nd, 1889, p. 290.

by section 16 of the 1868 Act, and section 1 of the 1869 Act, must be sold in a closed vessel, or a penalty of £5 under section 15 of the 1868 Act will be incurred. (Pharmacy Act, 1868, s. 15, and the Schedule to the Poisons and Pharmacy Act, 1908.)

3. *Agricultural and Horticultural Poisons*.—The regulations made by Order in Council under the Poisons and Pharmacy Act, 1908, s. 2, which affect licensees under that section contain provisions dealing with the receptacles for the poisonous substances which are within the purview of that section (p. 233).

(a) The licensee must keep such poisonous substances in a separate drawer or closed receptacle apart from any other goods (Reg. 13).

(b) The poisonous substances must not be sold loose or from bulk, but only in an enclosed vessel or receptacle as received from the manufacturer (Reg. 14).

(c) Liquid preparations must only be sold in bottles, tins, drums, or casks of sufficient strength to bear the ordinary risk of transport without leakage, and when sold in bottles the bottles must be of a distinctive character so as to be easily distinguished by touch from ordinary bottles. Each bottle, tin, drum, or cask must have the word "Poisonous" indelibly printed, marked, or branded in easily legible characters in a conspicuous position. This is in addition to the label, which must bear the word "Poison" (Reg. 15).

(d) Solid preparations must be securely packed in such a manner as to avoid, so far as possible, the risk of breaking or leakage in transport, and the package shall have indelibly printed, marked, or branded in

easily legible characters in a conspicuous position notice that it must not be used for any other purpose (Reg. 16).

For the penalties for a breach of these regulations, see p. 135.

CHAPTER IV.

POISONS WITHIN THE MEANING OF THE PHARMACY ACTS.

THE term "poison" * means for the purpose of the Pharmacy Acts any article named or described in the Schedule to the Poisons and Pharmacy Act, 1908. Prior to the passing of this Act it referred to the articles named or described in Schedule A of the Pharmacy Act, 1868, and to articles named or described in a number of resolutions passed by the Pharmaceutical Society, and approved of by the Privy Council under the provisions of section 2 of the 1868 Act. The Act of 1908, s. 1, repeals the Schedule to the 1868 Act in terms, and the said resolutions (which in section 17 of the 1868 Act were referred to as additions to the Schedule) are, by implication, also repealed.

The Council of the Pharmaceutical Society of Great Britain may from time to time, by resolution, declare that any article named in that resolution ought to be added to Part I. or Part II., as the case may be, of the Schedule of the Act of 1908. Upon the passing of such a resolution the Society must submit the same for the approval of the Privy Council, and if such approval is given and the resolution and the

* For the ordinary meaning, see p. 119.

approval are advertised in the *London Gazette* on the expiration of one month from the advertisement any article named in the resolution shall be deemed to be a poison within the meaning of the Act. By resolution similarly passed, approved, and advertised, any article may be removed from the Schedule, or may be transferred from one part thereof to the other. (Poisons and Pharmacy Act, 1908, s. 1, sub.-s. 2; and Pharmacy Act, 1868, s. 2.)

In order to ascertain whether any particular article is a poison within the meaning of these Acts it will be necessary to examine the Schedule to the Act of 1908, and to compare it with the terms of any and every resolution made and approved, in the manner aforesaid, subsequent to the passing of the Act of 1908.

The Schedule is divided into two parts. Certain restrictions upon sales are common to poisons in both parts of the Schedule, but special and more stringent regulations apply to those articles which come within Part I.

The Schedule (now repealed) to the Pharmacy Act, 1868, gave rise to serious difficulties of interpretation. The following extracts from that schedule will serve as illustrations:—

Prussic acid.

Arsenic and its preparations.

Opium, and all preparations of opium or poppies.

The questions arising were:

(1) Did the term "prussic acid" extend to substances containing prussic acid?

(2) Was the expression "arsenic and *its* preparations" synonymous with "preparations of arsenic"? In the

phrase relating to arsenic the expression *its* preparations is used, whilst in reference to opium the expression used is "all preparations of opium."

In cases under section 15 of the 1868 Act, which restricts the sale of poisons to registered chemists, the first question was discussed at length (*Pharmaceutical Society v. Piper*, p. 355; *Pharmaceutical Society v. Armson*, p. 315; *Pharmaceutical Society v. Delve*, p. 321). In those cases compounds which contained scheduled poisons had been sold by unregistered persons, and it was held that subject to the principle *de minimis non curat lex*, the sale of the compound was the sale of a poison within the meaning of the Pharmacy Act.

It is open to doubt, however, whether these judgments decided that the sale of a compound, containing a poison in Part I. of the schedule, was to be treated for the purposes of the 17th section as the sale of the poison it contained. This question was dealt with at length in *Brown v. Leggett* (p. 300).

The issue in *Brown v. Leggett* was complicated by reason of the fact that upon the construction of the Schedule the article in question may have been within descriptions contained in both parts of the Schedule, and it is impossible to say definitely that that case is an authority for holding that the sale of a compound, containing a very small percentage of strychnine, for example, was to be dealt with for purposes of section 17 as if it was the sale of strychnine itself.

The second question has not been the subject of any authoritative ruling.

The doubts referred to led to the Schedule to the

Poisons and Pharmacy Act, 1908, which is now in force, being framed on a principle of percentages of the poisonous ingredients present, and the decisions in the cases referred to under the old Schedule cannot be applied without qualification to the interpretation of the present Schedule.

The questions which arise under the Schedule are :

(1) What substances are poisons within the meaning of the Poisons and Pharmacy Acts ?

(2) Under which part of the Schedule does any given poison come ?

The several articles named or described in the Schedule to the Poisons and Pharmacy Act, 1908, as amended from time to time, are clearly poisons within the meaning of these Acts. (Pharmacy Act, 1868, s. 2 ; Poisons and Pharmacy Act, 1908, s. 1.)

The final description in the Schedule removes many of the difficulties of interpretation which arose under the old Schedule. The effect of this description may be stated as follows :—

(a) All substances named or described in either part of the Schedule, and

(b) "All preparations or admixtures," which contain any of these substances (*a* 110),

are poisons within the meaning of the Act, except the following :—

(1) Solid preparations of carbolic acid and liquid preparations of carbolic acid and its homologues containing not more than 3 per cent. of those substances, and preparations of carbolic acid and its homologues for use as sheep wash or for any other purpose in connection with agriculture or

horticulture, if contained in a closed vessel distinctly labelled with the word "Poisonous," the name and address of the seller, and a notice of the special purposes for which the preparations are intended.

(2) Preparations or admixtures which contain not more than 20 per cent. of chloroform and no other scheduled poison.

(3) Preparations or admixtures of coca containing not more than 0.1 per cent. of coca alkaloids and no other scheduled poison.

The question under which part of the Schedule any given poison comes is a difficult one where it involves the interpretation of certain phrases in the Schedule relating to preparations.

In the Schedule to the Poisons and Pharmacy Act, 1908, the respective phrases "its preparations," "preparations of," and "preparations or admixtures containing" are used.

In the absence of any authority to the contrary it seems right to say that the expressions "its preparations," and "preparations of" mean the same thing, but it is submitted that the phrase "preparations containing" has a wider meaning than the terms "its preparations" or "preparations of." Presumably a preparation may contain a substance without necessarily being a preparation of that substance. (See judgment of COLLINS, J., as to "Chlorodyne," in *Pharmaceutical Society v. Piper*, p. 361.) The compound rhubarb pill of the Pharmacopœia contains rhubarb, aloes, myrrh, soap, peppermint, and glucose. It is doubtful whether it can be accurately described

as a preparation of any one of its ingredients. To describe it as a preparation of soap, peppermint, or glucose appears to be a misnomer. It is, however, "a preparation or admixture containing" each one of those ingredients.

A simple solution of atropine is obviously a preparation of atropine, but it is conceivable that a compound of several substances, to which a small percentage of atropine has been added, is not a preparation of atropine, but that it is a preparation or admixture containing atropine. In view of the uncertainty as to the respective meaning of these phrases the following list of poisons has been drawn up upon the principle that "preparations containing" has a different meaning from "preparations of," or "its preparations."

(a) **Preparations or Admixtures containing Scheduled Poisons.**—The principle *de minimis non curat lex* applies. (*Pharmaceutical Society v. Piper*, p. 363; *Pharmaceutical Society v. Armson*, p. 315.) In the latter case (p. 319) A. L. SMITH, L.J., said: "It is not a matter *de minimis*—if it were I should hold it as being equivalent to no poison at all—for there is a scheduled poison in the contents of this bottle, which, if taken by a child or an infant in any quantity, would certainly do damage to the taker." And in the same case KAY, L.J., said (p. 317): "I can quite understand that although a case might otherwise be within the Act, if the proportion of one of the poisons mentioned in the schedule was so exceedingly small as to be perfectly innocuous, or comparatively innocuous, if the whole bottle were taken, then the maxim *de minimis non curat lex* might possibly apply in an action of this kind, but this is not such a case."

It is not enough to prove that the substance contains a scheduled poison. The plaintiff is bound to prove the relative quantity of the poison present. (*Pharmaceutical Society v. Delve*, p. 321.)

SUBSTANCES NAMED OR DESCRIBED IN THE
SCHEDULE* TO THE POISONS AND PHARMACY
ACT, 1908.

*The figures in brackets denote the part of the Schedule in which
the substance is named or described.*

Aconite (1).

Preparations of (1).

Preparations or admixtures containing aconite, except
those coming within the description "Aconite and its
preparations (2)."

Aconitine (1). See poisonous vegetable alkaloids.

Alkaloids. See p. 115.

Almonds, Essential Oil of (unless deprived of prussic acid) (2).

Preparations or admixtures containing essential oil of
almonds which has not been deprived of prussic acid (2).

Antimonial Wine (2).

Preparations or admixtures containing antimonial wine (2).

Arsenic (1). †

Medicinal (*a* 118) preparations of arsenic (*b* 118) (1).

Preparations or admixtures containing arsenic (except
preparations coming within the term "Arsenic and its
medicinal preparations") (2).

Atropine (1). See poisonous vegetable alkaloids.

Belladonna (1). See poisonous vegetable alkaloids.

Cantharides (1).

All preparations and admixtures containing cantharides (2).

All vesicating liquid preparations or admixtures of can-
tharides (2).

All preparations or admixtures containing vesicating liquid
preparations or admixtures of cantharides (2).

The poisonous (*c* 119) derivatives ‡ of cantharides (1).

All preparations and admixtures containing the poisonous
derivatives of cantharides (2).

* The schedule may be altered from time to time, see p. 106.

† See Arsenic Act, p. 143.

‡ For meaning of "derivatives," see Aconitine, p. 116.

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Tincture of cantharides (2).

All preparations and admixtures containing tincture of cantharides (2).

Carbolic Acid (2).

Liquid preparations of carbolic acid and its homologues containing more than 3 per cent. of those substances, except preparations for use as sheep wash or for any other purpose in connection with agriculture or horticulture, contained in a closed vessel distinctly labelled with the word "Poisonous," the name and address of the seller, and a notice of the special purposes for which the preparations are intended (2).

Chloral Hydrate (2).

All preparations and admixtures containing chloral hydrate (2).

Chloroform (2).

All preparations and admixtures containing more than 20 per cent. of chloroform (2).

Coca (Preparations of).

Coca itself is not a scheduled poison, but see poisonous vegetable alkaloids.

Any preparation or admixture of coca containing 1 or more per cent. of coca alkaloids (1).

Any preparation or admixture of coca, containing more than 0.1 per cent. but less than 1 per cent. of coca alkaloids (2).

Corrosive Sublimate (1).

All preparations or admixtures containing corrosive sublimate (2).

Cyanides, all poisonous (c 119) (1).

Preparations of any poisonous cyanide (1).

Preparations or admixtures containing any poisonous cyanide, except preparations which come within the descriptions "All poisonous cyanides and *their* preparations," or cyanide of potassium and *its* preparations (2).

Cyanide of Potassium (1).

Cyanide of potassium comes within the term all poisonous cyanides, but it is set out separately because it is so dealt with in the schedule.

All preparations of cyanide of potassium (1).

Preparations or admixtures containing cyanide of potassium, except preparations which come within the description "Cyanide of potassium" and *its* preparations (2).

Digitalis (2).

Preparations or admixtures containing digitalis (2).

Emetic Tartar (1).

Preparations or admixtures containing 1 or more per cent. of emetic tartar (1).

Preparations or admixtures containing less than 1 per cent. of emetic tartar (2).

Ergot of Rye (1).

Preparations or admixtures containing ergot of rye (except preparations which come within the description "Preparations of ergots") (2).

Ergots, Preparations of (1).

Preparations or admixtures containing preparations of ergots (2).

Mercuric Iodide (2).

Preparations or admixtures containing mercuric iodide (2).

Mercuric Sulphocyanide (2).

Preparations or admixtures containing mercuric sulphocyanide (2).

Mercury, Oxides of (2).

Preparations or admixtures containing oxides of mercury (2).

Morphine (1). See poisonous vegetable alkaloids.

Nux Vomica (1). See also poisonous vegetable alkaloids.

Opium (1). See also poisonous vegetable alkaloids.

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Oxalic Acid * (2).

Preparations or admixtures containing oxalic acid (2).

Picrotoxin (1).

Preparations or admixtures containing picrotoxin (2).

Poppies. Poppies themselves are not a scheduled poison.

All preparations of (except red poppy petals and syrup of red poppies, *papaver rhæas*) (2).

Preparations or admixtures containing the scheduled preparations of poppies (2).

Precipitate, Red (2).

Preparations or admixtures containing red precipitate (2).

Precipitate, White (2).

Preparations or admixtures containing white precipitate (2).

Prussic Acid (1).

All preparations or admixtures containing 0·1 or more per cent. of prussic acid (1).

All preparations or admixtures containing less than 0·1 per cent. of prussic acid (2).

The term Prussic acid is very commonly applied to a solution of hydrogen cyanide. The British pharmacopœia contains such a solution to which it gives the name of dilute hydrocyanic acid. The extent of the toxic properties of prussic acid depends upon the amount of hydrogen cyanide it contains. The term used probably means in this connection hydrogen cyanide itself.

Savin (1).

All preparations or admixtures containing savin (1).

Savin, its Oil (1).

All preparations or admixtures containing oil of savin (1).

Strophanthus (2).

Preparations or admixtures containing strophanthus (2).

Strychnine (1). See poisonous vegetable alkaloids.

Sulphonal (2).

Preparations or admixtures containing sulphonal (2).

* See Poisons and Pharmacy Act, 1908, s. 5, as to soluble salts of oxalic acid, which term includes the oxalates of Ammonium, Potassium and Sodium, Salt of Lemons, and Salt of Sorrell.

Alkaloids.

Poisonous (c 119) vegetable alkaloids, Part I.

Two poisonous vegetable alkaloids, aconitine and atropine, are specifically named as being in the schedule, and others are brought in by the phrase "all poisonous vegetable alkaloids not specifically named in the schedule." The distinction has an important bearing on the question whether the salts, preparations of, and the preparations and admixtures containing, certain alkaloids are within Part I. or Part II. of the schedule. It seems right to say that aconitine and atropine are the only two alkaloids "specifically named" in the schedule, for though belladonna alkaloids, coca alkaloids, strychnine, and morphine are referred to the words are used as part of the description of certain preparations and admixtures, and not to specifically name the alkaloids themselves as being within the schedule. It is clear that apart from the comprehensive wording of the description in the schedule under the heading "alkaloids," belladonna alkaloids, coca alkaloids, morphine, and strychnine would not be within the schedule, though preparations and admixtures containing belladonna alkaloids, strychnine, and morphine, and preparations and admixtures of coca would be included.

Aconitine.

Aconitine (a poisonous vegetable alkaloid) (1).

Preparations of Aconitine (1).

Preparations or admixtures containing aconitine (except such as come within the descriptions "Preparations of aconitine," or "Preparations of aconite") (2).

Salts of Aconitine. The reference in the schedule to aconitine omits the words, "and its salts." Possibly the salt of an alkaloid may be properly described as a preparation of the alkaloid or a preparation containing the alkaloid. This seems a chemical question. In reference to the alkaloid atropine a distinction appears to be drawn in the schedule between salts and preparations, for both are mentioned. It may also be that the salt of an alkaloid is a preparation of the plant in which the alkaloid is found, in which case "salts of aconitine" come within the description "Preparations of aconite." There is a further possibility that salts of an

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alkaloid come within the description "Poisonous derivatives of an alkaloid," and if so they are in Part I. In any of those events salts of aconitine are in Part I. If salts of aconitine are not preparations of aconite, or preparations of aconitine, or preparations containing aconitine, or derivatives of aconitine, they are not scheduled at all. A salt of aconitine, however, is so deadly a poison, that if it is omitted from the schedule it must be by an oversight, and it would be unwise not to treat it as a poison in Part I.

Preparations or admixtures containing salts of aconitine, if salts of aconitine are in the schedule (see above), are in Part 2, except such, if any, as come within the terms, preparations of aconite, preparations of aconitine.

Poisonous derivatives of aconitine (1).

The term "derivative" as applied to an alkaloid is a term used by chemists to describe an article produced by a molecular change in the alkaloid from which it is derived, *e.g.* apomorphine is a derivative of morphine or codeine. Doubt has been expressed as to whether the term may be correctly used to describe a salt of an alkaloid (see salts of aconitine). Technically the term would appear not to be capable of meaning a salt.

Preparations of admixtures containing poisonous derivatives of aconitine, except such as may come within the terms "Preparations of aconite," or "Preparations of aconitine" (2).

Atropine.

Atropine (a poisonous vegetable alkaloid specifically named in the schedule. It is also included as one of the alkaloids of belladonna) (1).

Preparations of atropine (1).

Preparations or admixtures (except belladonna plaisters) containing 0.1 or more per cent. of atropine (see belladonna alkaloids) (1).

Preparations or admixtures (except such as come within the term "Preparations of atropine") containing less than 0.1 per cent. of atropine (2).

Salts * of atropine (1).

Preparations of the salts of atropine (1).

Preparations or admixtures containing salts of atropine (except such as may come within the term "Preparations of salts of atropine") (2).

Poisonous derivatives * of atropine (1).

Preparations or admixtures containing poisonous derivatives of atropine (2).

* See Aconitine, p. 115.

Belladonna Alkaloids.

The respective poisonous alkaloids of belladonna (like all other poisonous vegetable alkaloids) (1).

The reference in the schedule under "belladonna" groups the various alkaloids of belladonna under the term "belladonna alkaloids." This is likely to give rise to confusion in the cases of preparations or admixtures containing atropine (see Atropine), and also in those containing a poisonous vegetable alkaloid or alkaloids common to belladonna and other drugs.

All preparations or admixtures (except belladonna plaisters, which if they contain belladonna or belladonna alkaloids are in Part II.) containing 0.1 per cent. of belladonna alkaloids (1).

It seems right to say that whether the preparations or admixtures containing one or more than one of the alkaloids of belladonna, if the total per centage of such alkaloid or alkaloids present exceeds 0.1 per cent. it is in Part I.; if less than that per-centage, then it is in Part II.

Cocaine.

Cocaine is a poisonous vegetable alkaloid not specifically named in the schedule. It is one of the alkaloids of coca (1).

Preparations or admixtures containing cocaine (other than preparations of coca, see Coca, p. 112) (2).

Salts * of cocaine (1).

Preparations or admixtures containing salts of cocaine (other than preparations of coca, see Coca, p. 112) (2).

Poisonous derivatives * of cocaine (1).

Preparations or admixtures containing any poisonous derivatives of cocaine (other than preparations of coca, see Coca, p. 112) (2).

Morphine.

Morphine is a poisonous vegetable alkaloid. It is one of the alkaloids of opium (1).

Preparations or admixtures containing 1 or more per cent. of morphine (1).

Preparations or admixtures containing less than 1 per cent. of morphine (2).

Salts * of morphine (1).

Preparations or admixtures containing salts of morphine (2).

It is a chemical question whether salts of morphine can be said to contain the alkaloid morphine. If they do, preparations containing the salts of morphine may come within the same categories as preparations containing morphine.

* See Aconitine, p. 115.

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Poisonous derivatives* of morphine (1).

Preparations or admixtures containing any poisonous derivative of morphine (2).

Strychnine.

Strychnine is one of the poisonous vegetable alkaloids. It is one of the alkaloids of nux vomica. (See Nux Vomica, p. 113.) (1).

Preparations or admixtures containing 0·2 or more per cent. of strychnine (1).

Preparations or admixtures containing less than 0·2 per cent. of strychnine (2).

Salts* of strychnine (1).

Preparations or admixtures containing salts of strychnine (2).

It is a chemical question whether salts of strychnine can be said to contain the alkaloid strychnine. If they do, preparations containing the salts of strychnine may come within the same categories as preparations containing strychnine.

Poisonous derivatives of strychnine (1).

Preparations or admixtures containing any poisonous derivative of strychnine (2).

Any Poisonous Vegetable Alkaloids* other than the foregoing (1).

Preparations or admixtures containing the alkaloids (but note the special per-centages relating to preparations or admixtures of coca, and the alkaloids of belladonna) (2).

Salts of the alkaloids (1).

Preparations or admixtures containing the salts of the alkaloids (2).

Poisonous derivatives of the alkaloids (1).

Preparations or admixtures containing any poisonous derivative of the alkaloids (2).

(a) **Medicinal.**—The word “medicinal” is used in this connection for the first time in the schedule to the Act of 1908. In the schedule to the Act of 1868 all preparations of arsenic were included in Part I. See “Medicines,” p. 81.

(b) **Arsenic.**—For the purposes of the Arsenic Act, 1851, the term “Arsenic” has a special meaning as defined in section 6 of that Act (see p. 143); but there appears to be no valid reason for so defining the term as used in this schedule. The Enc. Brit. (vol. 2, p. 634) says: “To the present day the term Arsenic is more frequently applied to arsenious acid (the

* See Aconitine, p. 115.

white arsenic of commerce) than to the metallic element to which it more strictly applies." The effect of applying the term as used in this section to one particular compound of arsenium would be to exclude from the schedule all other arsenical preparations however toxic they may be. This could hardly have been intended, and it is probably correct to say that the word "Arsenic" is here used as synonymous with arsenicum or arsenium, *i.e.* the element. In Attfield's Chemistry (18th ed., p. 26) "Arsenic" is given as one of the names of the element. Murray's Oxford Dictionary defines arsenic as the "name of one of the chemical elements and some of its compounds which are violent poisons." The Century Dictionary contains the following definitions: (1) Arsenic, "originally a yellow mineral called specifically yellow arsenic; the trisulphide of the element, to which it has given its name, orpiment. (2) Chemical symbol: As. Atomic weight, 75. A chemical element having a greyish white colour of metallic lustre and specific gravity of 5.727. (3) The popular name of arsenic trioxide (As_2O_3), the preparation of arsenic usually retailed in trade." Webster's Dictionary also defines it as "one of the elements."

(c) **Poisonous.**—It seems impossible to give definitely and with certainty a definition of the word "poisonous" as used in this schedule. To say that it means "having the qualities of poison" does not materially help.

The late Sir Thomas Stevenson, M.D., said: "An exact definition of the word 'poison' is by no means easy. There is no legal definition of what constitutes a poison, and the definitions usually proposed are apt to include either too much or too little. Generally, a poison may be defined to be a substance having an inherent deleterious property, rendering it capable of destroying life by whatever avenue it is taken into the system; or it is a substance which, when introduced into the system, or applied externally, injures health or destroys life, irrespective of mechanical means or direct thermal changes. In popular language a poison is a substance capable of destroying life when taken in small quantity, but a substance which destroys life by mechanical means, as *e.g.* powdered glass, is not, strictly speaking, a poison." (Enc. Brit. vol. 19, 275.)

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According to Dr. Littlejohn, "There is no exact definition of a poison. Popularly, substances which destroy or endanger life when swallowed in small quantity are called poisons, but a scientific definition would also include many substances which are injurious to health in large doses, or only after repeated administration, and which act not only when swallowed but also when taken into the system through the channels, *e.g.* the skin or the lungs." (H. H. Littlejohn, M.B., B.Sc., *Enc. Brit.* vol. 30, 608.)

Another authority says: "A substance may be called a poison if it is capable of being taken into any living organism, and causes, by its own inherent chemical nature, impairment or destruction of function." (Wynter Blyth, "Poisons: their Effect and Detection" (1906), p. 23.)

In a case under the "Offences against the Person Act, 1861" (24 & 25 Vict. c. 100, s. 58), a prisoner charged with administering a poison or other noxious drug was proved to have given oil of juniper in large doses. Lord COLERIDGE, C.J., said: "It was contended that 'noxious thing' in the statute means some kind of poison, and probably that is so. But what is a poison? It is something which, when administered, is injurious to health or life. There is hardly any active drug which, if taken in large quantities, may not be so, and, on the other hand, there is hardly a poison which may not in small quantities be useful and salutary. It is therefore in each case a question of the quantity and the circumstances under which it is administered." (*Reg. v. Cramp*, 5 Q. B. D. 307; 49 L. J. M. C. 44; 42 L. T. 442; 44 J. P. 441; 14 Cox 401; 28 W. R. 701.)

Whether any particular alkaloid is poisonous or not is a question of fact to be determined upon the evidence of medical experts. As the term "poisonous" is a relative one the difficulty arises in arriving at the degree of toxicity necessary to bring the alkaloid within the schedule. Probably the alkaloids and preparations of alkaloids specifically named in the schedule may be taken as a guide, and the expression "all poisonous vegetable alkaloids not specifically named in the schedule" be taken to mean alkaloids *ejusdem generis* (as to toxicity) with those specifically named. Again, whether any particular cyanide is

"poisonous" or not is a question of fact to be similarly determined. What degree of harmfulness is necessary to bring a "cyanide" within the schedule it is difficult to say, the only apparent guide being a comparison with "cyanide of potassium," the only cyanide specifically named in the schedule (see Poison, p. 173).

CHAPTER V.

AGRICULTURAL AND HORTICULTURAL POISONS.

A DEPARTMENTAL Committee of the Privy Council reported in 1903 in favour of an amendment of the law whereby provision may be made for the sale of poisonous substances for use in agriculture or horticulture in places where reasonable facilities for the purchase of these articles are not offered by persons qualified under the Pharmacy Acts to sell poisons. That recommendation has been given effect to by section 2 of the Poisons and Pharmacy Act, 1908, which provides for the granting of licences in suitable cases to persons (*a* 129) who may be authorised thereby to sell,* or keep open shop* for the sale of certain agricultural and horticultural poisons, notwithstanding that such persons possess no statutory qualification to retail poisons.

Grounds upon which licences may be granted.—The provisions are obviously intended to be put into operation only where the licensing authorities are satisfied that unless a licence is granted the public in a particular district would not have reasonable facilities for obtaining the poisons in question. A grant of a licence to a person carrying on business in

* See p. 25.

proximity to a chemist who meets the reasonable requirements of the public does not appear to have been contemplated by the legislature, for the section provides that :

Before granting any licence under this section the local authority shall take into consideration whether in the neighbourhood where the applicant for the licence carries on or intends to carry on business the reasonable requirements of the public with respect to the purchase of such poisonous substances as aforesaid are satisfied (s. 2, sub-s. 2).*

Licensing Authorities.—The power to grant these licences is conferred on the following local authorities :—

(1) As respects the area of any municipal borough in England, having a population of more than 10,000, according to the last published census for the time being. . . . The council of that borough.

(2) As respects the area of any royal, parliamentary, or police burgh in Scotland. . . . The town council.

(3) As respects any other place. . . . The council of the county (s. 2, sub-s. 4).

Poisonous substances to which the licences may apply.—(1) They must be poisonous (p. 119) only by reason of their containing arsenic (b 131), or tobacco, or the alkaloids of tobacco. Any poison may hereafter be added to this list, and substances may be withdrawn from the operation of this provision by Order in Council. If there is any other scheduled poison present, the seller is not within the protection of the licence (s. 2, sub-s. 1).

* See also Reg. 5, p. 250.

(2) They must be substances to be used exclusively in agriculture or horticulture, and for one or more of the purposes specified in the section, namely—

- (a) The destruction of insects, fungi, or bacteria, or for use as
- (b) Sheep-dips, or
- (c) Weed-killers (s. 2, sub-s. 1).

The licensing authority may confine the licence to substances which are to be used in either agriculture or horticulture only, and from the form of the licence (p. 253) it appears that its operation may be confined to particular substances named therein; for instance, the licence may name specific weed-killers or sheep-dips, to which alone the licence would apply.

Regulations by Order in Council.—In addition to adding to or removing from the list of substances which a person who is not a registered chemist may be licensed to sell His Majesty may by Order in Council make regulations as to:—

- (a) The granting of licences under this section; and
- (b) The duration, renewal, revocation, suspension, extent, and production of such licences; and
- (c) The keeping, inspection, and copying of registers of licences; and
- (d) The fees to be charged for licences and for inspection and copying of registers; and
- (e) the keeping, transporting, and selling of the poisonous substances to which this section applies;

and generally for the purposes of carrying the section into effect (s. 2, sub-s. 3).

Any order in Council made for any of the foregoing

purposes must be laid before both Houses of Parliament as soon as may be after it is made. See Rules Publication Act, 1893, 56 & 57 Vict. c. 66, s. 2, sub-s. 5.

The effect of this provision is to bring such orders within the operation of the Rules Publication Act, which provides that at least forty days before making any statutory rules to which this section applies, notice of the proposal to make the rules, and of the place where copies of the draft rules may be obtained, shall be published in the *London Gazette* (Rules Publication Act, s. 1, sub-s. 1).

During these forty days any public body may obtain copies of such draft rules on payment of not exceeding threepence per folio, and any representations or suggestions made in writing by a public body interested to the authority proposing to make the rules shall be taken into consideration by that authority before finally settling the rules; and on the expiration of those forty days the rules may be made by the rule-making authority, either as originally drawn or as amended by such authority, and shall come into operation forthwith or at such time as may be prescribed in the rules (Rules Publication Act, s. 1, sub-s. 2).

Where a rule-making authority certifies that on account of urgency or any special reason, any rule should come into immediate operation, it shall be lawful for such authority to make any such rules to come into operation forthwith as provisional rules, but such provisional rules shall only continue in force until rules have been made in accordance with the foregoing provisions of this Act (Rules Publication Act, s. 2).

The Regulations now in force were made by Order in Council, dated the 2nd day of April, 1909, and were published in the *London Gazette* of that date. In so far as they affect the authority granting the licences they provide :—

Fitness of applicant.—That the local authority must be satisfied that the applicant is fit to be entrusted with the sale of poisonous substances (Reg. 1).

Horticultural businesses, preference to.—That in granting licences for the sale of poisonous substances for use exclusively in horticulture, the local authority shall give preference to nurserymen, florists, seedsmen, and other persons whose business is specially connected with horticulture (Reg. 2).

Form of application.—Licences can only be granted upon applications made in the form set forth in Schedule A of the Regulations, see p. 252 (Reg. 3).

Notice of application.—A licence must not be granted until after the expiration of at least fourteen days from the receipt of the application by the local authority (Reg. 5).

Requirements of the public.—Before granting a licence the local authority must take into consideration whether in the neighbourhood where the applicant for the licence carries on or intends to carry on business the reasonable requirements of the public with respect to the purchase of poisonous substances are satisfied (Reg. 5).

Objections to grant of licence.—Any objections that may be received from the chief officer of police, or

from any existing vendors of the substances* to which the application relates, must be considered by the local authority before the licence is granted (Reg. 5).

Form of licence.—The licence must be in the form set forth in Schedule B to the Regulations, see p. 253 (Reg. 6).

Duration of licence.—The licence shall expire on such day as the local authority fix, but may be renewed for one year at a time, see Renewal (Reg. 7).

Fees.—The fees charged in respect to the grant of a licence shall be such as the local authority may determine, not exceeding 10s. 6d., and in the case of the renewal of a licence, 1s. 6d. (Reg. 10).

Premises licensed.—The local authority cannot authorise the licensee to sell, or keep open shop for the sale of poisonous substances, except from or on premises to be specified in the licence, and it must be within the area of the local authority granting the licence, and for this purpose a municipal borough the council of which is a local authority for the purposes of these regulations, and in Scotland a police burgh, shall not be treated as forming part of any county (Reg. 11).

Premises upon which food is sold.—A licence cannot authorise the sale of poisonous substances upon premises at which articles of food for human consumption are sold, unless the local authority is satisfied that convenient arrangements for their sale cannot

* The regulations provide that the applicant shall give notice to the public and to the chief of police in the area in which his premises are situated.

otherwise be made, and in that case they may be sold upon premises where articles of food for human consumption are sold, provided they are sold at a separate counter, or part of a counter, which is shown to the satisfaction of the local authority to be adequately separated from the rest of the counter (Reg. 13).

Renewal of licences, annual.—An application for renewal must be made annually in the form set forth in Schedule C of the Regulations.* (See p. 254.) The renewal of a licence shall be in the form set forth in Schedule D to these Regulations. (See p. 254, Reg. 7).

The matters which by the regulations the local authority are to take into consideration before granting a licence have also to be considered upon the application for the renewal, and at least 14 days from the receipt of the application for the renewal by the local authority must expire before the renewal is granted (Reg. 7).

Revocation or suspension of a licence.—A licence may be revoked or suspended for such term as the local authority may think fit, if the local authority is satisfied that the licensee has failed to comply with the requirements of these regulations or of the Poisons Acts, or that the licensee is not a fit person to be entrusted with the sale of poisons.

Register of licences.—Every authority shall keep a register of the licences granted by them for the time

* An applicant for a renewal is not required to give notice to the public, or to the police, as he is in the case of an application for a new licence.

being in force, and any person shall, at all reasonable times, upon payment of such reasonable fees as may be fixed by the local authority, be entitled to inspect and to make copies of, or take extracts from, the register (Reg. 12).

Powers of local authority over licensee. Production of licence.—A licensee shall, on being required to do so by any officer of the local authority or any police officer, produce his licence, and any renewal thereof (Reg. 9).

Inspection.—All premises from or on which a licensee is authorised to sell or keep open shop for the sale of poisonous substances shall at all reasonable times be open to inspection by officers appointed by a local authority (Reg. 17).

(a) *Persons—Corporate Bodies.*—Neither section 2 of the Poisons and Pharmacy Act, nor the regulations made thereunder, appear to authorise the granting of a licence to a limited liability company, or other corporate body, or, in Scotland, to a firm or partnership, as such. The section is really an amendment of sections 1 and 15 of the Pharmacy Act, 1868, as they are amended by section 3, sub-section 4 of the Poisons and Pharmacy Act, 1908, and should be read together with those sections.

As the law stood before the passing of the Poisons and Pharmacy Act, subject to the special exemptions (p. 26), any person other than a registered chemist who sold with his own hand one of these poisonous substances, or who kept an open shop where they were retailed, committed an offence under section 15 of the Act of 1868. The licence is to enable the holder to sell and keep open shop for the sale of these substances without being liable to a penalty for so doing.

A corporate body cannot "sell" in the sense of transacting the physical act of sale, and whether it is the company or its

directors or manager who keep open shop "within the meaning of the 1868 Act" is not free from doubt. (See "To sell," p. 30; "Keep open shop for retailing, dispensing, or compounding of poisons," p. 33.)

The section under which the licences are granted contains the phrases: "If the person so selling or keeping open shop is licensed," and "any person so licensed." The "person" so licensed is required to comply with the provisions of the Arsenic Act, 1851, and section 17 of the Pharmacy Act, 1868, which provide, amongst other things, that in the case of certain articles the seller (according to section 17 of the 1868 Act "the person on whose behalf the sale is made") must know or be introduced to the purchaser, a provision with which an impersonal body cannot comply. The form of application for the licence is in the first person, and before granting a licence to any person the authority must be "satisfied he is fit to be entrusted with the sale of the poisonous substances," apparently referring to "personal" fitness.

Where the business in connection with which a licence is needed is owned by a corporate body, or, in Scotland, a firm or partnership, the correct course seems to be to grant a licence to a responsible officer "to keep open shop and sell" on behalf of the corporate body, firm, or partnership.

Partnerships other than those in Scotland.—The position of partners in relation to the Pharmacy Act is dealt with in Chapter II. (p. 71). The licence to one partner does not exempt a co-partner. Each partner, other than a sleeping or limited partner, requires to be licensed, and the phraseology of the regulations appears to indicate that a licence is required for each licensee.

Servants of Licensees.—A person is only legally entitled to "sell," *i.e.* to perform the physical act of selling, any of these poisonous substances, if he is qualified under the Pharmacy Act, 1868, or licensed under the Poisons and Pharmacy Act, 1908. The qualification or licence of the master does not extend to exempt his servants. The selling and keeping open shop are two distinct functions, and though the form of the licence and application therefore uses the phrase "sell *and* keep open shop,"

the phraseology of the Act (section 2) is "if the person so selling or keeping open shop is duly licensed for the purpose," so that it seems right to say that a person may be licensed either to sell, or to keep open shop, or both.

(b) **Arsenic.**—The word as used in this section probably means the element "Arsenium" (p. 118), so that any compound containing arsenium is, subject to the principle *de minimis non curat lex*, a poison within the meaning of the Act of 1868. As the substances referred to in this section apparently are not "medicinal" preparations, as that term is ordinarily used, the arsenical preparations which may legally be sold by licensees are not subject to the regulations as to the recording of sales, etc. (p. 93), applicable to poisons in Part I. of the Schedule, but in many cases the preparations will be within the definition of "Arsenic" for the purposes of the Arsenic Act, and will be subject to regulations imposed by that Act (see p. 143).

REGULATIONS TO BE COMPLIED WITH BY AN APPLICANT FOR A LICENCE.

Form of application.—An application must be in the form set forth in Schedule A to the Regulations. (See p. 252, Reg. 3.)

Notice.—Before sending an application for a licence to the local authority an applicant shall (a) publish notice of his intention to apply in two newspapers circulating in the district of the local authority, and (b) send notice by registered post to the chief officer of police of the police area within which his premises are situated (Reg. 4).

Time allowed for delivery of application.—Having published and given the above notice the applicant must send or deliver the application so that it is received by the local authority at least 14 days before the granting of the licence (Reg. 5).

Renewal: Form of application.—The application for renewal of a licence must be in the form set forth in Schedule C of the Regulations. (See p. 254, Reg. 7.)

Notice of application for renewal.—This must reach the authorities at least 14 days before the renewal is to be granted, but the applicant need not publish nor give to the chief officer of police notice of the application (Reg. 7).

REGULATIONS AFFECTING THE LICENSEE.

Production of licence.—A licensee shall, on being required to do so by any officer of the local authority or any police officer, produce his licence and any renewal thereof (Reg. 9).

Inspection of premises.—All premises from or on which a licensee is authorised to sell or keep open shop for the sale of poisonous substances shall at all reasonable times be open to inspection by officers appointed by a local authority (Reg. 17).

Place of sale.—The licence does not authorise the licensee to sell or keep open shop for the sale of poisonous substances, except from or on the premises specified in the licence (Reg. 11). He is “licensed *thereat* to sell and keep open shop.” (See Form of licence, p. 253.)

Place of storage.—He must keep all poisonous substances in a separate drawer or closed receptacle apart from any other goods (Reg. 13).

Restrictions where food for human consumption is sold.—Without the consent of the local authority he must not sell poisonous substances upon the same

premises as articles of food for human consumption (Reg. 13).

With the consent of the local authority he may sell poisonous substances upon the same premises as articles of food for human consumption are sold, provided he has satisfied the local authority that convenient arrangements for their sale cannot otherwise be made. A part of the counter which is shown to the satisfaction of the local authority to be adequately separated from the rest of the counter may be treated for this purpose as a separate counter (Reg. 13).

Packages and containers.—The poisonous substance must not be sold loose or from bulk: that is, it must only be sold in an enclosed vessel or receptacle as received from the manufacturer. It must be labelled (a) with the name of the substance;* (b) the word "Poison"; (c) the name and address of the sellers (a 135), and (d) a notice of the special purpose for which it has been prepared (Reg. 14).

Liquid preparations.—These shall be sold only in bottles, tins, drums, or casks of sufficient strength to bear the ordinary risk of transport without leakage (Reg. 15).

Directions to be printed, etc., on container.—Each bottle, tin, drum, or cask shall have the word "Poisonous" indelibly printed, marked, or branded, in easily legible characters in a conspicuous position, and the label must bear the word "Poison" (Reg. 15).

Distinctive bottles.—When liquid preparations are sold in bottles the bottles shall be of a

* See "Article," p. 96.

distinctive character, so as to be easily distinguished by touch from ordinary bottles (Reg. 15).

Solid preparations.—These shall be securely packed in such a manner as to avoid, so far as possible, the risk of breaking or leakage in transport (Reg. 16).

Directions on container.—The package shall have indelibly printed, marked, or branded in easily legible character in a conspicuous position notice that it must not be used for any other purpose* (Reg. 16).

Provisions of the Pharmacy and Arsenic Acts.—In addition to complying with the foregoing Regulations the licensee must comply with the provisions of the 17th section of the Pharmacy Act, 1868, and of the Arsenic Act, 1851. The provisions of the 17th section of the Pharmacy Act, 1868, provide for the labelling of poisons within the meaning of that Act. The poisonous substances to which these regulations apply are poisons within the meaning of the Pharmacy Act, 1868, but a label in conformity with Regulation 14 will be a compliance with the provisions of the Pharmacy Act, 1868, as to labelling. If the poisonous substance is named, or comes within a description in Part I. of the Schedule to the Pharmacy Act, 1868 (see p. 111), it will be necessary to record the sale in the manner prescribed by the 17th section of the Pharmacy Act, 1868. (See p. 93.)

* It may be that when solid preparations are packed in bottles the bottle may constitute a package; if so the bottle would require to be printed, marked, or branded with the notice provided for in this Regulation.

Poisonous substances which come within the definition of arsenic contained in the Arsenic Act, 1851, may only be sold if the provisions of the Arsenic Act are also complied with. (See p. 143.)

(a) "Name and Address of the Seller."—Apparently this phrase has the same meaning in this connection as it has when used in the 17th section of the Pharmacy Act, 1868, which directs that poisons must be labelled with the "name and address of the seller." The licensee must, in addition to complying with these Regulations, observe the provisions of that section, and a label which is in compliance therewith will doubtless be labelled with the "name and address of the seller" in a manner which satisfied these Regulations. As to what is the "name and address" see p. 81, and as to "who is the seller" for the purpose of labelling, see p. 88.

PENALTIES FOR BREACH OF THE REGULATIONS.

Revocation or suspension of licence.—A licence may be revoked or suspended for such term as the local authority think fit, if the local authority are satisfied that the licensee has failed to comply with the requirements of these Regulations or of the Poisons Acts, or that the licensee is not a fit person to be entrusted with the sale of poisons.

Penalties under the Pharmacy and Arsenic Acts.—If in the selling or keeping for sale the Regulations are not complied with, the licensee is outside the protection of the licence. He is then in the same position as any other person who is not qualified under the Pharmacy Act, 1868, and who sells or keeps open shop for the sale of poisons; he commits an offence under section 15 of the Pharmacy Act, 1868, the

penalty being £5, recoverable at the instance of the Pharmaceutical Society (see p. 148).

If he fails to comply with section 17 of the Pharmacy Act, 1868, or with the Arsenic Act, 1851, he appears to be liable to various penalties. The sale would not be in conformity with the terms of the licence, which states that the licensee is licensed to sell and keep open shop, subject to the provisions of the Pharmacy Act, 1868, the Arsenic Act, 1851, and of the Regulations made by Order in Council. A sale contrary to these provisions would therefore not be covered by the licence, and the licensee would be liable to the £5 penalty as a person not entitled to sell poisons. He would be liable under the 17th section of the Pharmacy Act, 1868, for an offence committed under that section, the penalty being a sum not exceeding £5 for the first offence, or £10 for a second offence, recoverable by summary jurisdiction at the instance of the police or any common informer. For the above reasons if the licensee fails to comply with the provisions of the Arsenic Act, 1851, he is liable to the penalty incurred under section 15 of the Pharmacy Act, 1868, as a person not entitled to sell poisons, and a penalty not exceeding £20 for a breach of the Arsenic Act, 1851.

CHAPTER VI.

THE COMPOUNDING OF MEDICINES OF THE BRITISH PHARMACOPŒIA.

Any person (*a*) "... who shall compound (*b* 138) any medicines of the British Pharmacopœia (*c* 141) except according to the formularies of the said Pharmacopœia shall for every such offence be liable to pay a penalty or sum of £5" (Pharmacy Act, 1868, s. 15).

(*a*) "**Any person who shall Compound.**"—The question as to who is liable for compounding was incidentally discussed in the *Pharmaceutical Society v. London & Provincial Supply Association, Ltd.* (p. 330). In the Court of Appeal BRAMWELL, L.J., said: "Further than this I am by no means certain that the statute is not levelled at the individual actually acting, and not (at least in all cases) his employer. Who would be liable under section 15 for compounding medicines of the British Pharmacopœia otherwise than according to its formularies? Surely the actual person compounding."

In the same case, in the House of Lords, SELBORNE, L.C., after quoting the earlier part of the section, said: "The words follow shortly afterwards: 'or who shall compound,' etc.; having reference to the particular act of compounding on each occasion on which medicines may be made up; fortifying what I may describe as the individual, I was going to say 'personal' construction. The very suggestion of that word exemplifies the difficulty of applying the word 'person' in a colloquial and popular sense to any but individuals." Later on his Lordship

added: "The act of selling, the act of compounding, and every other definite and particular act mentioned in the first section, and in the sections by which penalties are imposed, are struck at, whether the person who does them is a principal to whom the business belongs, or any one whom he employs to carry on the business. . . . The statute, therefore, in order to be effectual, must strike at the particular acts of those who actually conduct the sales, who actually compound the medicines; and it does strike at those acts" (p. 346).

It is therefore clear that the person who actually compounds, whether master or servant, is liable, but it is also probable that under certain circumstances, the master is also liable for an act of wrongful compounding by his assistant. (See p. 161.) A corporate body incurs the same liability (if any) as an individual master under this section. (Poisons and Pharmacy Act, s. 3, sub-s. 4.)

(b) **Compound any Medicines of the British Pharmacopœia.**—It is not an offence under this section to sell an incorrectly compounded medicine, the offence created by this provision being that of improperly compounding the article.

The Apothecaries Act, 1815, s. 5, provides—"That if any person using or exercising the Art and Mystery of an Apothecary shall at any time knowingly, wilfully, and contumaciously refuse to make, mix, compound, prepare, give, apply, or administer, or any way to sell, set on Sale, put forth, or put to Sale to any Person or Persons whatever, any Medicines, compound Medicines, or medicinal Compositions, or shall deliberately or negligently, falsely, unfaithfully, fraudulently, or unduly make, mix, compound, prepare, give, apply, or administer, or any way sell, set on Sale, put forth, or put to Sale to any Person or Persons whatever, any Medicines, compound Medicines, or medicinal Compositions, as directed by any Prescription, Order, or Receipt, signed with the Initials, in his own Handwriting, of any Physician so lawfully licensed to practise Physic, such Person or Persons so offending shall . . . unless such Offender can show some satisfactory Reason, Excuse, or Justification in this Behalf, forfeit for the first Offence the sum

of Five Pounds, for the Second Offence the sum of Ten Pounds, and for the Third Offence, he shall forfeit his Certificate, and be rendered incapable in future of using or exercising the Art and Mystery of an Apothecary."

The provision in the Pharmacy Act, 1868, deals only with medicines in the British Pharmacopœia, but unlike the Apothecaries Act, its operation is not confined to any particular class of compounder. Presumably the intention was to deal with medicines compounded for sale or dispensing, though the section does not so limit it in terms. The question as to what is a medicine in the British Pharmacopœia has arisen in several cases under the Sale of Foods and Drugs Acts. In *White v. Bywater** (1887), 19 Q. B. D. 582; 51 J. P. 821; 36 W. R. 280, the purchaser asked for Tincture of Opium, and was supplied with a Tincture which was not made in accordance with the formula of the article so named in the Pharmacopœia. Evidence was given that Tincture of Opium was a well-understood term in the trade, and that the material sold by the defendant was not of the nature, substance, and quality of Tincture of Opium as understood by persons usually dealing in that article. The Court held that upon that evidence the defendant was rightly convicted, he having sold an article not of the nature, substance, and quality demanded, although the purchaser had not specifically asked for Tincture of Opium as prescribed by the British Pharmacopœia.

In *Dickins v. Randerson*,† [1901] 1 K. B. 437; 70 L. J. K. B. 344; 84 L. T. 204; 65 J. P. 262; 19 Cox, C. C. 643, the defendant was asked for Mercury Ointment, and supplied an Ointment containing 12·5 per cent. of Mercury. According to the formulary for Mercury Ointment in the British Pharmacopœia it should contain 48·5 per cent. Evidence was tendered to show that it was the universal practice among chemists to

* Also reported, *Pharmaceutical Journal*, May 21st, 1887, p. 966; *Chemist and Druggist*, May 21st, 1887, p. 605; *British and Colonial Druggist*, May 21st, 1887, p. 513.

† Also reported, *Pharmaceutical Journal*, February 2nd, 1901, p. 122; *Chemist and Druggist*, February 2nd, 1901, p. 204; *British and Colonial Druggist*, February 1st, 1901, p. 108.

supply the weaker Ointment unless the stronger one was prescribed or specially asked for. Bruce and Phillimore, JJ., held that he was rightly convicted.

PHILLIMORE, J., said: "If a drug is to be found in the Pharmacopœia, and if that drug is asked for, that drug must be supplied; and if it is not sold with the ingredients, and in the proportions presented by the Pharmacopœia, there is at least *primâ facie* evidence that what is sold is not of the nature, substance, and quality which was demanded."

In *Boots, Cash Chemists (Southern), Ltd. v. Cowling* * (1903), 67 J. P. 195; 88 L. T. 539; 19 T. L. R. 370, the defendants when asked for Liniment of Soap sold Liniment of Soap made with Methylated Spirit and not with Rectified Spirit as prescribed by the British Pharmacopœia. They tendered evidence to show that there is a commercial standard for the drug different from that of the British Pharmacopœia, but the evidence was rejected by the magistrate on the authority of *Dickins v. Randerson* (*supra*). The Divisional Court held that the evidence ought to have been received, but expressly refrained from expressing any opinion as to what its value might be.

Lord ALVERSTONE, C.J., said: "It was quite clear that Phillimore, J., never meant to lay down in that case (*Dickins v. Randerson, supra*) that nothing could be looked at except the British Pharmacopœia. On the other hand, if it were a sale of some drug recognised by a special name in the Pharmacopœia, a very strong *primâ facie* case would be made out as to what the drug ought to contain. Any evidence, therefore, tendered to show that a commercial standard did exist different from that prescribed by the Pharmacopœia ought to be received. To say that no evidence of this kind was admissible because of the decision in *Dickins v. Randerson* was, in the opinion of the Court, going too far."

The effect of these cases seems to be that when a person asks for a compounded medicine by a name which is used in

* Also reported, *Pharmaceutical Journal*, April 4th, 1903, p. 504; *Chemist and Druggist*, March 28th, 1903, p. 521; *British and Colonial Druggist*, March 27th, 1903, pp. 332 and 337.

the Pharmacopœia to denote a compound medicine for which the Pharmacopœia gives the formulary that is strong *primâ facie* evidence that it is the Pharmacopœia article that is demanded. Applying this rule to compounding, it is an offence for any person to compound except according to the formulary of the British Pharmacopœia any medicine which he expressly or impliedly holds out to be so compounded, and there is strong *primâ facie* evidence of such holding out if the compounder gives to, or adopts for, the article the name used in the British Pharmacopœia. It will be open to the compounder to tender evidence that the name used by him is commonly used to describe a compound other than the one mentioned under that name in the Pharmacopœia. To set up that defence successfully would be almost impossible, so general has become the practice of using the Pharmacopœia name (without the letters "B.P." or other distinguishing mark) solely for the purpose of describing the Pharmacopœia medicinal compound. When a medicinal compound described by the name which appears in the Pharmacopœia is not made in accordance with the formulary in the Pharmacopœia it is the usual practice to add to the name letters or words distinguishing it from the Pharmacopœia article.

The difficulty of obtaining evidence of actual compounding probably accounts for the fact that the Pharmaceutical Society, which alone can take proceedings, rarely proceed for a breach of this provision.

(c) **British Pharmacopœia.**—By the Medical Act of 1858, 21 & 22 Vict. c. 90, s. 54, it is enacted that "the General Council shall cause to be published under their direction a book containing a list of medicines and compounds, and the manner of preparing them, together with the true weights and measures by which they are to be prepared and mixed, and containing such other matter and things relating thereto as the General Council shall think fit, to be called the 'British Pharmacopœia;' and the General Council shall cause to be altered, amended, and republished, such Pharmacopœia as often as they shall deem it necessary." The Medical Council Act, 1862, 25 & 26 Vict. c. 91, which recites amongst other things

that different Pharmacopœias have hitherto been in use in England, Scotland, and Ireland, and that the Pharmacopœia to be published by the General Council is intended to supersede the above-mentioned Pharmacopœias, enacts that the "British Pharmacopœia, when published, shall for all purposes be deemed to be substituted throughout Great Britain and Ireland for the several above-mentioned Pharmacopœias; and any Act of Parliament, Order in Council, or custom relating to any such last-mentioned Pharmacopœias shall be deemed, after the publication of the *British Pharmacopœia*, to refer to such Pharmacopœia."

The preface to the *British Pharmacopœia* says, "The present work is produced in compliance with, and under the sanction and authority of, these Acts of Parliament. It is intended to afford to the members of the Medical Profession and those engaged in the preparation of medicines throughout the British Empire one uniform standard and guide, whereby the nature and composition of substances to be used in medicine may be ascertained and determined."

CHAPTER VII.

THE ARSENIC ACT, 1851.*

SIXTEEN years before the passing of the Pharmacy Act, 1868, restricting the sale of other poisons, "An Act to regulate the Sale of Arsenic (14 Vict. c. 13)" was passed, apparently because, as the preamble stated, "the unrestricted sale of arsenic facilitates the commission of crime." It should be noted that probably all the substances coming within the purview of the Arsenic Act are poisons within the meaning of the Pharmacy Acts, and that the provisions of sections 15 and 17 of the Pharmacy Act, 1868, also apply to them (see "Arsenic," p. 111).

For the purposes of the Arsenic Act the word "Arsenic" includes, subject to certain exemptions, Arsenious Acid and the Arsenites; Arsenic Acid and the Arseniates; all other colourless poisonous preparations of arsenic (section 6). (See (a 145) as to compounds containing these substances.)

The exemptions referred to are:—

- (a) Arsenic when it forms part of the ingredients of any medicine † required to be made up or compounded according to the prescription

* This Act also applies to Ireland.

† See p. 81.

of a legally qualified medical practitioner (*b* 146), or a member of the medical profession; and

- (b) sales of arsenic by wholesale to retail dealers upon orders in writing in the ordinary course of wholesale dealing (*c* 146) (section 5).

Arsenic may not be sold except under the following conditions:—

(1) Before sale it must be mixed with at least 1 oz. of soot, or at least $\frac{1}{2}$ oz. of indigo to 1 lb. of arsenic, but it need not be so coloured if the purchaser states it is not for use in agriculture, and that the colour would render it unfit for the use for which it is required (section 3).

(2) It must not be sold to a person under 21 years of age (section 2).

(3) A book must be kept by the seller (*d* 146) for the purpose of recording in the form set forth in the Schedule (*e* 146) to the Act particulars of all sales, the particulars which require to be recorded before delivery of the arsenic to the purchaser being—

- (a) The date of the sale.
- (b) The quantity sold.
- (c) The purpose for which it is required or stated to be required.
- (d) The name and surname, place of abode,* and condition or occupation of purchaser.†

The seller is authorised, and, in fact, compelled to put inquiries to the purchaser which may be necessary for the purposes of entering the foregoing particulars.

* For definition of "place of abode," see "address," p. 85.

† As to who is the "purchaser," see p. 95.

The entry in the book must be signed * by the purchaser as well as the seller, unless the purchaser is unable to write, in which case the seller must enter in relation to such sale the words "cannot write" (section 1).

If the purchaser gives false information to the seller in relation to the foregoing particulars he will be guilty of an offence under the Act (section 4).

(4) It must not be sold to any one unknown (p. 100) to the person selling it unless the unknown purchaser is introduced to the seller by a witness of the sale who is known to both buyer and seller (section 2). Before delivery of the arsenic to the buyer the witness must sign his name, with his place of abode, against the entry recording the sale in the book kept by the seller for that purpose (section 1). If a person signs his name as a witness to a sale of arsenic to a person unknown to him he will be guilty of an offence under the Act (section 4).

If the seller fails to comply with any of the foregoing provisions he will be guilty of an offence under the Act (section 4).

Any person committing any offence under this Act is liable upon a summary conviction before two Justices of the Peace in England or Ireland, or before two Justices of the Peace or the Sheriff in Scotland, to a penalty not exceeding twenty pounds (section 4).

(a) **Compounds containing Arsenic.**—The sale of a compound containing any substance within the meaning of the term "Arsenic," as defined in section 6, is probably within the provisions of the Act. In cases under the Pharmacy Acts it

* See "signature," p. 97.

was held that, subject to the principle "*de minimis non curat lex*," a compound containing a scheduled poison was a poison within the meaning of the Pharmacy Acts, 1868. (*Pharmaceutical Society v. Piper*, p. 355; *Pharmaceutical Society v. Armson*, p. 315; *Pharmaceutical Society v. Delve*, p. 321; *Berry v. Henderson*, p. 291; *Brown v. Leggett*, p. 300.)

(b) **Prescription of a legally qualified Medical Practitioner or a Member of the Medical Profession.**—To be within the exemption it should be noted that the medicine must be in accordance with the prescription of a medical man. The corresponding exemption in section 17 of the Pharmacy Act, 1868, applies to any medicine dispensed by a chemist and druggist, and does not, as in this case, stipulate that it shall be dispensed in accordance with a medical man's prescription.

(c) **Sales by Wholesale to Retail Dealers upon Orders in writing in the ordinary course of Wholesale Dealing.**—The exemption in section 17 of the Pharmacy Act, 1868, relating to wholesale dealing is in the same terms except that in that case it is not necessary that the sale should be upon orders in writing. As to the meaning of wholesale and retail dealing, see p. 39.

(d) **"Seller."**—The 17th section of the Pharmacy Act, 1868, defines the word "seller" for the purposes of that section as "the person on whose behalf the sale is made." It is probable that the word has the same meaning here. (See p. 88.)

(e) **The form set forth in the Schedule** (see p. 242).—As has been pointed out certain sales of arsenic may be affected by the provisions of the Arsenic Act and of section 17 of the Pharmacy Act, 1868. These provisions as to registering the particulars of the sale vary. Where the article sold comes within the provisions of the Arsenic Act, and of those applicable to substances in Part I. of the Schedule to the Poisons and Pharmacy Act, 1908, it is necessary either to make two separate entries for the respective purposes of the two Acts, or to adopt a form of entry which will satisfy both Acts. The 17th section of the Pharmacy Act permits of no departure from the form set forth in the Schedule to that Act, but the entry for the purposes of the Arsenic Act need not be in the exact form in

the Schedule to that Act. It may be found convenient to use a book exclusively for the purpose of recording the sales of substances which come within the purview of both the Acts. If so, the following form meets the requirements of both the statutes:—

Date.	Name (a) and address (b) of purchaser.	Name and quantity of poison sold.	Purpose for which it is required.	Signature of purchaser (c).	Signature of person introducing purchaser (d).

Signature of Seller _____.

(a) Insert the christian as well as the surname of the purchaser.

(b) The address of the purchaser must be that of his place of abode, and must be accompanied by a statement of his condition or occupation.

(c) If the purchaser professes to be unable to write, the seller must insert the words "Cannot write."

(d) Insert in this column the place of abode as well as the signature of the person introducing the purchaser.

CHAPTER VIII.

PENALTIES UNDER THE PHARMACY ACTS AND THE ARSENIC ACT AND PROCEEDINGS THEREFOR.

OFFENCES UNDER THE PHARMACY ACT, 1852, s. 12, AND PHARMACY ACT, 1868, ss. 1 AND 15.

THESE are:—

1. The illegal use of titles reserved by the Pharmacy Act, 1852 (p. 1).

2. The illegal use of titles reserved by the Pharmacy Act, 1868 (p. 15).

3. The keeping open shop for the retailing, dispensing, or compounding of poisons by any person who is not a registered chemist, or especially exempted person, or by a corporate body, or in Scotland by a firm or partnership (except under the conditions imposed by the Poisons and Pharmacy Act, 1908) (p. 25).

4. The sale of a poison by a person who is not a registered chemist, or especially exempted person (p. 25).

5. Failing to conform with regulations as to the keeping or selling of poisons made in pursuance of sections 1 and 15 of the Pharmacy Act, 1868 (p. 74).

6. Compounding medicines of the British Pharmacopœia, except according to the formularies of the said Pharmacopœia (p. 137).

7. The carrying on of the business of a pharmaceutical chemist, or chemist and druggist, by a pharmaceutical chemist or chemist and druggist, or by the executor, administrator, or trustee of a deceased chemist, unless in every premises where the business is carried on the business is *bonâ fide* conducted by a duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises (p. 26).

For committing * any of the foregoing offences the penalty is £5 (*a* 150).† It is recoverable by the Registrar under the Pharmacy Acts in the name and by the authority of the Pharmaceutical Society. *In England and Wales* (*b* 151), in the County Court, by plaint under the provisions of any Act in force for the more easy recovery of small debts and demands, and *in Scotland* (*c* 154), by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county, or in the royal burghs before the magistrates of the burghs where the offence may be committed or the offender resides, who, upon proof of the offence or offences either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, ‡ as also in expenses; and it shall be lawful for the

* As to the liability of the master for the acts of his servant, see p. 161.

† See also Removal from the Register, p. 157.

‡ See power to reduce penalties, p. 155.

sheriff or magistrates, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding.

Provided always, that it shall be lawful to the sheriff or magistrate, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff or magistrate in such summary application shall be final and conclusive, and not subject to review, by advocation, suspension, reduction, or otherwise.* (Pharmacy Act, 1852, s. 12.)

No action, or other proceedings, for any of the foregoing offences may be brought after the expiration of six months from the commission of such offence. (Pharmacy Act, 1852, s. 13.)

In every such action the party who shall prevail shall recover his full costs of suit or such other proceedings. (Pharmacy Act, 1852, s. 13.)

All and every sums and sum of money which shall arise from any conviction and recovery of penalties for offences incurred under this Act shall be paid as the Commissioners of His Majesty's Treasury shall direct. (Pharmacy Act, 1852, s. 14.) This also applies to proceedings under section 15 of the Act of 1868.

(a) "**Penalty of Five Pounds.**"—This is a fixed penalty. Section 30 of the Pharmacy (Ireland) Act, 1875, 38 & 39 Vict. c. 57, corresponds with section 15 of the English Act of 1868, and provides that for every offence under the section a person shall

* See "Appeals," pp. 153 and 155.

"be liable to pay a penalty of five pounds." In *M'Gann v. Kelly* (1894),* 2 I. R. 8; 28 I. L. T. 196, the Court held that the magistrates were bound to impose a fine of £5 and no less sum. The Scotch Courts, however, have power to reduce the penalty, see p. 155.

(b) *Proceedings in England and Wales.—Enforcing Judgment.*—The judgment may be enforced just as in the case of an ordinary judgment for debt by execution against the goods of the defendant, attachment, by garnishee proceedings, of debts owing to the defendant, and by judgment summons and committal to prison thereunder.

Imprisonment of the defendant without proof of means.—The Debtors' Act, 1869 (32 & 33 Vict. c. 62, s. 4), enacted that with certain exceptions no person shall be arrested or imprisoned for making default in payment of a sum of money. The Act also provided that even in the case of the exceptions the imprisonment could not be for a longer term than one year. The first exception is "default in payment of a penalty or sum in the nature of a penalty other than a penalty in respect of any contract."

The view that judgments for penalties under the Pharmacy Acts come within the above exception has been acted upon by several County Court Judges.

The Judicature Act, 1873 (36 & 37 Vict. c. 66, sect. 89), provides that "every inferior court which now has, or which may after the passing of this Act, have jurisdiction in equity or at law and in equity and in admiralty respectively shall as regards the cause of action within its jurisdiction for the time being have power to grant and shall grant in any proceeding within such Court, such relief, redress, or remedy . . . in as full and complete a manner as may and ought to be done in the like case by the High Court of Justice."

Order 25 (Rule 57), County Court Rules, 1903-1908, provides "that orders in the nature of an injunction, and of orders interlocutory or otherwise within the competence of the Court, which

* Also reported, *Chemist and Druggist*, May 6th, 1893, p. 620; *British and Colonial Druggist*, May 5th, 1893, p. 431.

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if the same were made in an action or matter pending in the High Court, could in such Court be enforced by attachment of the person, or committal, may be enforced by order of the Judge by warrant of attachment, which shall be according to the form in the Appendix." In *Pharmaceutical Society v. Denham*,* Judge BOMPAS, K.C., in a considered ruling, held that if the action had been in the High Court judgment could have been enforced by attachment or committal, and on that ground was of opinion that he had power to commit the defendant without requiring proof of his means. In the *Law Times* for August 22nd, 1903, vol. 115, p. 396, this view is dissented from on the ground that Rule 57 does not apply except in a case where the County Court has concurrent jurisdiction with the High Court, and that in this case the High Court would have no jurisdiction. See *Martin v. Bannister* (1874), 4 Q. B. D. 491; 48 L. J. Q. B. 667; *Richards v. Cullerne* (1881), 7 Q. B. D. 623; *Reg. v. Lambeth C.C. Judge* (1888), 36 W. R. 475; *Reg. v. Brompton C.C. Judge* [1893], 2 Q. B. 195; 62 L. J. Q. B. 604; 68 L. T. 829; 57 J. P. 648.

The following are cases in which the Pharmaceutical Society have obtained orders of attachment:—*Pharmaceutical Society v. Eames*; † *Pharmaceutical Society v. Barford*; ‡ *Pharmaceutical Society v. John Thompson*. §

In the *Pharmaceutical Society v. Amy Smith*,|| at Salford

* *Pharmaceutical Journal*, June 20th, 1903, p. 849, and August 8th, 1903, p. 245; *Chemist and Druggist*, June 20th, 1903, p. 979, and August 8th, 1903, p. 267; *British and Colonial Druggist*, June 19th, 1903, p. 618, and August, 1903, p. 162.

† *Pharmaceutical Journal*, March 14th, April 11th, 1903, pp. 397 and 535; *Chemist and Druggist*, April 18th, 1903, p. 608; *British and Colonial Druggist*, April 10th, 1903, p. 377.

‡ *Pharmaceutical Journal*, May 2nd, 1903, p. 632; *Chemist and Druggist*, May 9th, 1903, p. 730; *British and Colonial Druggist*, May 8th, 1903, p. 489.

§ *Pharmaceutical Journal*, March 3rd, 1906, p. 269; *Chemist and Druggist*, March 3rd, 1906, p. 333; *British and Colonial Druggist*, March 9th, 1906, p. 215.

|| *Pharmaceutical Journal*, February 14th, 1903, p. 225; *Chemist and Druggist*, February 14th, 1903, p. 260; *British and Colonial Druggist*, February 13th, 1903, p. 156.

County Court, Judge PARRY expressed the opinion that he had the power to commit the defendant, a girl of eighteen years of age, as to whose means no evidence was tendered.

Appeals.—Where the penalties claimed exceed £20 either party may appeal against the determination or direction of the judge in point of law and equity, or upon the admission or rejection of evidence. The point must be taken at the trial, and the judge should be asked to take a note of any such question raised, of the facts in evidence relating thereto, and of his decision thereon. Where the penalties claimed do not exceed £20 there is no right of appeal without leave of the judge.

The appeal is to the Divisional Court, whose determination is final, unless leave to appeal is given by that Court, or by the Court of Appeal, in which event the appeal may finally reach the House of Lords.

New Trial.—Where judgment is given in the defendant's absence the judge may grant a new trial on such terms as he thinks fit. The judge may also order a new trial on such terms as he thinks fit on the grounds: (1) that a witness on whose testimony the verdict has been obtained has since been convicted of perjury committed in the cause; (2) misdirection, and improper reception or rejection of evidence, if substantial wrong or miscarriage of justice has been occasioned thereby; (3) a miscarriage of justice caused by the default or misconduct of an officer of the Court; (4) default or misconduct of the opposite party. The unexpected discovery after the trial of new evidence has sometimes been allowed to be a ground for a new trial. Application for a new trial may be made and determined on the day of trial, if both parties be present, or at the first Court held next after the expiration of twelve clear days from such date. If made after the day of trial the party intending to make the application should deliver to the registrar and the opposite party a notice of his intention, stating the ground of the application. An appeal lies against the order of the judge granting or refusing a new trial. The ground of appeal appears to be the "determination or direction of the judge in point of law or equity." The time for giving notice of appeal is within

twenty-one days from the order granting or refusing a new trial.

(c). "In Scotland."—*Proceedings in Scotland*.—These come within the provisions of the Summary Jurisdiction (Scotland) Act, 1908, 8 Edw. VII. c. 65, the result being that the provisions contained in the Pharmacy Acts dealing with proceedings for penalties in Scotland are considerably modified.

Concurrence of the Procurator-Fiscal.—Section 18 of the Summary Jurisdiction (Scotland) Act, 1908, provides that "complaints at the instance of private prosecutors for offences at common law and for statutory offences where imprisonment without the option of a fine is competent, shall, unless otherwise provided in the statute, require the concurrence of the Procurator-Fiscal or other public prosecutor of the court in which they are brought." In the case of offences under the Pharmacy Acts imprisonment without the option of a fine is not competent, and the concurrence of the Procurator-Fiscal in such cases does not appear to be strictly necessary.

Offences by Companies.—Section 28 of the Summary Jurisdiction (Scotland) Act, 1908, provides as follows:—

"With regard to the prosecution of offences committed by a company, association, incorporation, or body of trustees, the following provisions shall, without prejudice to any other or wider powers conferred by statute, apply:—

"(1) Proceedings may be taken against such company, association, incorporation, or body of trustees, in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in manner hereinafter provided; or

"(2) Proceedings may be taken against an individual representative of such company, association, or incorporation, as follows:—

"(a) In the case of an ordinary company or firm, any one of the partners thereof, or the manager, or the person in charge or locally in charge of the affairs thereof, may be dealt with as if he was the person offending;

“(b) In the case of an association, incorporation, or incorporated company, the managing director or the secretary, or other principal officer thereof, or the person in charge or locally in charge of the affairs thereof, may be dealt with as if he was the person offending;

“(c) The offence shall be deemed to be the offence of such company, association, or incorporation, and a conviction thereof may be libelled as an aggravation of any subsequent offence of the same nature by the same company, association, or incorporation, although the individuals charged and convicted are different.”

Power to reduce Penalty.—Notwithstanding the terms of the section the Court in Scotland, unlike Courts in England and Wales, may reduce the amount of the penalty. (Summary Jurisdiction (Scotland) Act, 1908, s. 43.)

Appeals.—Either party may, notwithstanding the provisions of the section, apply to the Court to state a case for the opinion of the High Court, and subject to the conditions imposed by the Summary Jurisdiction (Scotland) Act, 1908, the Court is bound to state a case for such opinion, and thereupon the High Court may review (1) the relevancy of the complaint, (2) any irregularity in procedure, (3) any alleged error of the Court in point of law, and (4) generally any matter which may be competently reviewed by suspension, advocacy, or appeal, under the Heritable Jurisdictions (Scotland) Act, 1746; or otherwise (Summary Jurisdiction Scotland Act, 1908, c. 65, s. 60).

Enforcing Judgment—Imprisonment.—The section provides that this may be levied and recovered by poinding, but section 47 of the Summary Jurisdiction (Scotland) Act, 1908, provides that “where the accused is found liable in any penalty the Court may, whether the statute or order imposing such penalty does or does not provide any method for the recovery thereof adjudge the accused to be imprisoned in the event of failure to pay such penalty either immediately or within such period as the Court

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may fix." The maximum term of imprisonment corresponding to the amount of the penalty is fixed by the same statute. In *Gardner v. Bremridge** (1901) (J), 3 Adams Rep. 309; 3 F. 46; 38 S. L. R. 539; 8 S. L. T. 397, the Court of Justiciary held that in a proceeding upon a complaint under the Summary Jurisdiction (Scotland) Acts, 1868 and 1881,† for a contravention of section 15 of the Pharmacy Act, 1868, (1) it was competent under the Summary Jurisdiction Act, 1881, to grant warrant for imprisonment, and (2) the warrant for imprisonment might be in default of payment of the penalty or recovery thereof by poinding or sale. It was not necessary that it should also have been in default of recovery by arrestment.

OFFENCES UNDER THE PHARMACY ACT, 1868, s. 17.

These are :—

1. The sale of a poison not labelled in accordance with the provisions of the section.

2. The sale of a poison named or described in Part I. of the schedule to the Poisons and Pharmacy Act, 1908, to a person unknown to the seller unless introduced by some person known to the seller.

3. The sale of a poison named or described in Part I. of the schedule to the Poisons and Pharmacy Act, 1908, without making an entry recording the sale in accordance with the provisions of the section.

A person ‡ committing any one of these offences (*a* 157) is liable upon summary conviction (*b* 158) before two justices of the peace, in England (*p.* 158), or the sheriff, in Scotland (*p.* 160), to a penalty not

* *Pharmaceutical Journal*, March 23rd, 1901, p. 367. *Chemist and Druggist*, March 23rd, 1901, p. 485. *British and Colonial Druggist*, March 22nd, 1901, p. 277.

† These Acts were repealed by 8 Edw. VII. c. 65.

‡ See "Aiding and Abetting," p. 159, and "Liability of the Master for the Acts of his Servant," p. 161.

exceeding £5 for the first offence, and not exceeding £10 for the second or any subsequent offence (*c* 161).

Removal from the register.—The Privy Council may direct the name of any person who is convicted of any offence against the Pharmacy Act, 1868, which, in their opinion, renders him unfit to be on the register under that Act, to be erased from such register, and it shall be the duty of the registrar to erase the same accordingly. (Pharmacy Act, 1868, s. 26.)

OFFENCE UNDER THE POISONS AND PHARMACY ACT,
1908, s. 5.

The sale of any substance, to which the section applies, not labelled in accordance with the provisions of the section, or not in accordance with regulations which may be prescribed under this section. This offence* is punishable on conviction under the Summary Jurisdiction Acts (*b* 158) by a fine not exceeding £5.

OFFENCES UNDER THE ARSENIC ACT, 1851.

For any offence (*a*) under the Arsenic Act, 1851, the penalty is a sum not exceeding £20, recoverable upon a summary conviction (*b* 158) for the same before two justices of the peace in England and Wales, or Ireland, or before two justices of the peace or the sheriff in Scotland.

(*a*) "Offences."—*Double Penalty for one act.*—The question whether a defendant could be convicted for one act of more than

* See "Aiding and Abetting," p. 159, and "Liability of Master for the Acts of his Servant," p. 161.

one offence under this section was discussed in *Berry v. Henderson* (p. 297). LUSH, J., said: "The language of the section does not suggest to my mind that it was the intention to make a person liable to a double penalty for one act."

(b) "Summary Jurisdiction."—*Corporate Bodies*.—In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include a body corporate. (Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 2, sub-s. 1.) In *Pharmaceutical Society v. London and Provincial Supply Association, Ltd.* (see p. 345), the Lord Chancellor, referring to the 17th section of the 1868 Act, said: "the thing being made universally unlawful, 'person' must, I think, there include a corporation, if the sale is made by any apprentice or servant on behalf of a corporation." In *Lawler v. P. & H. Egan, Ltd.*,* [1901] 2 I. R. 589, which was a prosecution under section 2 of The Poisons (Ireland) Act, 1870, 33 & 34 Vict. c. 26, corresponding with section 17 of the English Act of 1868, a servant of the defendants sold a poison, which was not labelled in accordance with the statute. It was held that the section applies to corporate bodies as well as to individuals, and that the defendant ought to have been convicted. The Court agreed "both in the construction and in the reasoning on which it is grounded" given to section 17 of the English Act by the Lord Chancellor in the case above mentioned.

"*In England and Wales*."—The proceedings for penalties under the Pharmacy Act, 1868, s. 17, the Poisons and Pharmacy Act, 1908, s. 5, and the Arsenic Act, are all regulated, in England and Wales, by the Summary Jurisdiction Act, 1848 (formerly known as "Jervis" Act), 11 & 12 Vict. c. 43; the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49; and the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43.

They are commenced by the laying of an information before

* Also reported, *Pharmaceutical Journal*, May 18th, 1901, p. 637; *Chemist and Druggist*, May 11th, 1901, p. 766; *British and Colonial Druggist*, May 10th, 1901, p. 498.

one or more justices having jurisdiction where the offence is alleged to have been committed. The information need not be on oath, but it is advisable that it should be in writing. It must be for one offence only. (Summary Jurisdiction Act, 1848, s. 10.) The information and summonses issued thereupon should state shortly the matter of the offence, describing it clearly and definitely, without duplicating and uncertainty, and where the statute creating the offence uses the term "unlawfully, and maliciously," "wilfully," "knowingly," or any other equivalent expression it should also be used in the information. (*Ibid.*, s. 1, and see *R. v. Turner* (1829), 1 M. C. C. 239; and *Carpenter v. Mason* (1840), 12 A. & E. 629; 4 P. & D. 439.) It is well to describe the offence in the words of the Act.

It must be laid within six calendar months from the time when the matter of the complaint arose. (*Ibid.*, s. 11.)

The hearing of the information must be in open court by two or more justices, or by a stipendiary magistrate, or one of the magistrates of the metropolitan police courts, or by the Lord Mayor or any Alderman of London, as the case may be. (Summary Jurisdiction Act, 1848, ss. 29, 33, 34; Summary Jurisdiction Act, 1879, ss. 20, 54.)

Aiding and Abetting.—Every person who shall aid, abet, counsel, or procure the commission of any offence, punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against either in the county, borough, or place where the principal offender may be convicted, or in that in which the offence of aiding, etc., may have been committed. (Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, s. 5.) A veterinary surgeon advised that a horse was in a fit condition to work, though he knew it would be an act of cruelty to work it in its then state. The owner worked the horse. A summons against the veterinary surgeon was dismissed on the ground that he did not "cause" the act of cruelty. The Queen's Bench Division held defendant should have been convicted

under this section of cruelly illtreating the horse, as any one who counsels the commission of an offence may be proceeded against as a principal, although the advice given by him was the remote and not the proximate cause of the cruelty. (*Benfield v. Simms*, [1898] 2 Q. B. 641; 67 L. J. Q. B. 655; 78 L. T. 718; 14 T. L. R. 424.)

Appeal.—In none of the cases under these Acts is there an appeal to quarter sessions, but by the Summary Jurisdiction Act, 1857, 20 & 21 Vict. c. 43, s. 2, and by the Summary Jurisdiction Act, 1879, s. 33, any person aggrieved, who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law or is in excess of jurisdiction, may apply to the court to state a special case setting forth the facts of the case and the ground upon which the proceeding is questioned, and if the court decline to state the case may apply to the High Court of Justice for an order requiring the case to be stated. The justices may, if they are of opinion the application is merely frivolous, but not otherwise, refuse to state a case, in which case they must, on request of the applicant, sign and deliver to him a certificate of such refusal. (Summary Jurisdiction Act, 1857, s. 4.) The application to state a case under the Summary Jurisdiction Act, 1879, must be in writing, and left with the Clerk of the Court within seven clear days from the date of the proceedings to be questioned. There must also be left with him a copy of the application for each of the justices.

The appeal is heard by the Divisional Court of the King's Bench Division, whose order is final and conclusive on all parties.

“IN SCOTLAND.”—See Proceedings in Scotland under section 12 of the Pharmacy Act, 1852, and section 15 of the Pharmacy Act, 1868 (p. 154), which also apply to the recovery of these penalties.

The right of the Registrar under the Pharmacy Acts to prosecute, in Scotland, for offences under sect. 17 of the 1868 Act.—In *Bremridge v. Smith** (1902) (J), 4 F. 50; 3 *Adams Rep.*

* Also reported, *Pharmaceutical Journal*, March 1st, 1902, p. 178; *Chemist and Druggist*, Feb. 22nd, 1902, p. 299; *British and Colonial Druggist*, Feb. 28th, 1902, p. 188.

565; 39 S. L. R. 504; 9 S. L. T. 371, it was held that the Registrar under the Pharmacy Acts, 1852 and 1868, in name and by the authority of the Pharmaceutical Society of Great Britain, has a title to prosecute a summary complaint with the concurrence of the Procurator-Fiscal,* charging a contravention of section 17 of the Pharmacy Act, 1868. The Court also expressed the opinion that the Procurator-Fiscal might institute a prosecution as representing the public interest in his own name.

(c) **Subsequent Offences.**—The increased amount of the fine for an offence under section 17 cannot be imposed unless the previous conviction has been set forth in the complaint. (Summary Jurisdiction (Scotland) Act, 1908, s. 34.)

Liability under the Pharmacy Acts of the Master or Employer for the acts of his servant.—It seems right to say that a registered chemist cannot be penalised for selling poison by the hands of an unqualified servant, but he is made expressly liable by the Poisons and Pharmacy Act, 1908, if he does not provide a duly qualified manager or assistant to *bonâ fide* conduct the business for each of the premises at which he carries on the business of a pharmaceutical chemist or chemist and druggist. Presumably, however, for a breach of the regulations made under 15th section relating to the keeping or selling of poisons;† for compounding a medicine of the British Pharmacopœia, except according to the formularies of the Pharmacopœia; for any offence under the Arsenic Act, the 17th section of the Pharmacy Act, 1868, and section 5 of the Poisons and Pharmacy Act, 1908, the master or employer, as well as the servant who actually contravenes the provisions, may be liable to the penalty. There is no necessity to prove *mens rea* in order to convict of these offences. In *Cundy v. Le Cocq*, (1884) 13 Q. B. D. 207; 53 L. J. M. C. 125; 51 L. T. 215; 48 J. P. 599; 32 W. R. 769, Stephen, J., said: "The question lies in a very small compass and turns on the words, 'If any licensed person sells any intoxicating liquor to any

* See "Concurrence of the Procurator-Fiscal," p.154.

† Section 1 of the Pharmacy Act, 1868, indicates that the person who keeps open shop must conform to these Regulations.

drunken person he shall be liable to a penalty.' Do these words imply that the offender must know or have reasonable means of ascertaining that the customer is drunk, or do they contain an absolute prohibition against selling intoxicating liquors to a drunken person, whether the licensed person does or does not know that the customer is drunk? There is in my opinion an absolute prohibition of the sale irrespectively of the knowledge of the licence-holder."

MATHEW, J., said: "The argument put forward as to the *mens rea* is an argument that the word 'knowingly' must be put into every offence in an Act of Parliament."

In *Brown v. Foot* (1892), 61 L. J. M. C. 110; 66 L. T. 649; 56 J. P. 581; 17 Cox C. C. 509, the defendant was summoned for selling adulterated milk under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63, s. 6). The defendant proved that he took exceptional precautions to prevent his servants adulterating the milk. In spite of these precautions a servant of the defendant's admitted he had watered the milk without his master's knowledge. Held by the Divisional Court (HAWKINS and WILLS, JJ.) that the defendant was rightly convicted on the ground that he was the seller within the meaning of the Act, and was liable for his servant's action in selling adulterated milk, and further that the fact of the sale was sufficient proof of the offence without any evidence of connivance by the defendant, though evidence rebutting connivance might properly be admitted with a view to mitigating the penalty. HAWKINS, J., was of opinion that "the Act is expressly enacted to prevent the sale of adulterated articles. It is the sale of such articles which is the offence, and there is nothing in the Act requiring that the person selling in fact an adulterated article must be shown to have connived at the sale of an adulterated article" . . . and that "not merely a servant, but also a master employing a servant to sell articles of food, is made equally responsible under this section for the sale by his servant of adulterated food."

WILLS, J., said: "The servant here was admittedly employed in the general business of the appellant in selling milk by retail. If so, there is no reason to excuse the appellant as the master, by reason of, it may be, his unfaithful servant merely because he,

the master, did not do the actual selling himself. He must, to escape from the terms of the Act, take care that other persons do not sell adulterated milk for him or in his name."

In *Pearks, Gunston & Tee, Ltd. v. Ward*, [1902] 2 K. B. 1; 71 L. J. K. B. 656; 87 L. T. 51; 66 J. P. 774; 20 Cox C. C. 279, CHANNELL, J., said: "By the general principles of the criminal law, if a matter is made a criminal offence, it is essential that there should be something in the nature of *mens rea*, and therefore in ordinary cases a corporation cannot be guilty of a criminal offence, nor can a master be liable criminally for an offence committed by his servant. But there are exceptions to this rule in the case of quasi-criminal offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty, such as imprisonment, at any rate in default of a fine; and the reason for this is that the legislature has thought it so important to prevent this particular act from being committed, that it absolutely forbids it to be done, and if it is done the offender is liable to a penalty whether he had any *mens rea* or not, and whether or not he intended to commit a breach of the law. Where the act is of this character, then the master, who, in fact, has done the forbidden thing through the servant is responsible, and is liable to a penalty. There is no reason why he should not be, because the very object of the legislature was to forbid the thing absolutely."

In *Pharmaceutical Society v. Potter* (p. 368), decided in the Queen's Bench Division by HAWKINS and CHANNELL, JJ., on December, 8th, 1897, the defendant P. carried on business in partnership with a Mr. Hawthorne as a dealer in garden utensils and implements. His assistant sold a weed-killer, which was a poison within the meaning of the Pharmacy Act, 1868. The defence was that the defendant did not stock the weed-killer, or any other poison, and that he had procured the particular tin sold for his own purposes, not for the purpose of sale, and that the shopman on his own authority and without the knowledge of his employers had sold it. The offence alleged against the defendant was that of selling and keeping open shop for the sale of poison, but one penalty only was sued for. The

plaintiffs' counsel, in reply to HAWKINS, J., said that he contended that the defendant both kept open shop and sold. He kept open shop and through his servant he sold, and if the sale took place in an open shop kept by the defendant he was then and there guilty of having kept open shop for retailing poisons. He did not think there was any actual decision on the meaning of the word "sell" in the Pharmacy Act, saying in so many words that it included the master as well as the servant, but he should submit that the natural meaning would include both principal and agent in a sale.

Mr. Justice HAWKINS said if it could be shown that the sale was made by the authority of the defendant, he should quite agree with that if he did not actually with his own hands sell it.

The Court was of opinion that the County Court Judge decided that the weed-killer was not there for the purpose of sale, and that the defendant did not intend to sell that tin. "It was put aside as an article not to be sold at all; it was not an article they had ever dealt in before, and was certainly sold in the absence of any authority." Upon these facts it was held that the County Court Judge had rightly decided in favour of the defendant. Both Judges expressed valuable dicta on the question of the liability of the master for the acts of his servant, and HAWKINS, J., differentiated this case from that of *Brown v. Foot* (*supra*).

HAWKINS, J., said: "I can thoroughly understand that if there was in a shop poisonous matter kept in stock, and if the principal intended to sell with his own hand, or his manager sells it for him, it would be a reasonable argument that what the manager did in the conduct of the business the principal must be responsible for. . . . I think if it had been made out that he did intend to sell the tin, it would be utterly immaterial what was the hand which delivered it over to the purchaser, or the person who by word of mouth made the contract, he being authorised to conduct the general business of the shop. I should have said it was absolutely immaterial, and the plaintiff would be entitled to have the verdict entered for him. . . . If they had been dealing in that shop with articles of a similar description, and if this

had been placed on the counter—I will not say by either of the masters—or had been there, and both Potter and Hawthorne [the partners], or one of them, had seen it in the window exposed for sale, although they did not mean actually to sell it, and had said to the assistant, ‘If anybody comes in to buy this tin, do not sell it,’ then, if a person had come in, and the person who was in charge of the shop, having been asked for a tin of this description, had actually sold it, I should have said myself it would have been within the scope of his authority; that is to say, within the scope of his assumed authority, not of his actual authority. Not of his actual authority, because he had himself received express instructions not to sell it, but in the scope of this assumed authority, because by allowing the thing to be put in the window as an article for sale, the assistant is supposed to have, and is assumed to have, authority for the purpose of selling it. . . . I do not at all differ from those cases—nor could I—in which it had been said that if a man is acting within the scope of his authority, the master must be responsible in a matter of this description. In the case of the adulterated milk [*Brown v. Foot, supra*], the defendant was a milk-seller, and it was part of the business which he carried on to sell milk. The man was entrusted with the sale of milk, and the man choose to adulterate it. Then the sales so made by him were made properly on account of his master, and the master was held responsible because the man had adulterated the milk, which in its pure state he was authorised to sell, and which it was part of his duty to sell. I do not think that class of cases assists us in the least here. But suppose even in the milk case some one had said to the man, can you sell me any cocoa, or anything of that sort? not being part of his business at all, and the man happened to have a packet of cocoa in the house, and said yes, and sold it, and it turned out that the cocoa was altogether adulterated in such a manner as rendered the real seller of it liable to penalties, could it be said that the milk-seller was authorised by his master, either expressly or impliedly to sell and dispose of an article in which the master never dealt at all, and which he had never given him authority to sell?”

CHANNELL, J., said: “It is said that the penalty is sought to

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be recovered here in civil proceedings, and no doubt that is so, but at the same time it is a penalty for what is called an offence; and it seems to me that, although that offence would be committed by a master who sells through his servant, and probably even if he sold through his servant a matter stocked in the shop, though contrary to particular orders or anything of that sort, yet it can only apply to a sale that there is some real authority to make, and not to a sale which accidentally operates as it were by virtue of the doctrine of estoppel."

In *Bremridge v. Turnbull* * (1895) (J.), 2 A. 29; 23 R. 12; 33 S. L. R. 40; 3 S. L. T. 144, the defendant, a dealer in photographic requisites, who was not a registered chemist, instructed his assistants not to sell poisons except to persons engaged in photography or to chemists. He intimated in his trade circular that he only sold poisons in wholesale quantities. In his absence an assistant sold an ounce of corrosive sublimate, a scheduled poison, at the ordinary retail price. The Court of Justiciary in Scotland held that the sale in question was within the scope of the employment of the assistant, and that the defendant was liable to the penalty for keeping open shop for the retailing, etc., of poisons.

The master or servant, in cases under the Summary Jurisdiction Acts, which include those under section 17 of the Pharmacy Act, 1868, section 5 of the Poisons and Pharmacy Act, 1908, and the Arsenic Act, 1851, may also be liable as an accessory. (See "Aiding and Abetting," p. 159. See also cases under "Intoxicating Liquor Laws," cited in Stone's Justices' Manual (41 ed. 1909), p. 580, and "Guilty Animus," *ibid.* 932.)

FALSIFICATION, ETC., OF REGISTERS OR CERTIFICATES UNDER THE PHARMACY ACTS.

Any registrar who shall wilfully make or cause to be made any falsification in any matter relating to

* *Pharmaceutical Journal*, Nov. 2nd and 9th, 1895, pp. 371 & 396; *Chemist and Druggist*, Nov. 2nd and 9th, 1895, 651 & 697; *British and Colonial Druggist*, Nov. 1st and 8th, pp. 497 and 521.

the registers, and any person who shall wilfully procure or attempt to procure himself to be registered under the Pharmacy Act, 1852, or under the Pharmacy Act, 1868, by making or producing, or causing to be made or produced any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding or assisting him therein, shall be deemed guilty of a misdemeanor in England, and in Scotland of a crime or offence punishable by fine or imprisonment, and shall on conviction thereof be sentenced to be imprisoned for any term not exceeding twelve months. (Pharmacy Act, 1868, s. 14.)

The Pharmacy Act, 1852, s. 15, makes it a misdemeanor for any registrar under that Act to make, or cause to be made, any falsification in any matters relating to any certificate given under the provisions of that Act. It is also a misdemeanor for any person to wilfully procure by any false or fraudulent means a certificate purporting to be a certificate of registration under this Act, or to fraudulently exhibit a certificate purporting to be a certificate of membership of the Pharmaceutical Society. (Pharmacy Act, 1852, s. 16.)

The Bye-laws (s. 18, sub-s. 6) empower the Council to order legal proceedings in its discretion against "all persons pirating, or imitating, or improperly using, or inciting any person to pirate, imitate, or improperly use, any diploma, or any or either of the certificates, or the Common Seal of the Society, or falsely holding themselves forth to the public by means of advertisements, handbills, labels, circulars, or otherwise, as members, or registered under the Statute, 1852, or Act, 1868, or as Student-Associates."

CHAPTER IX.

EXEMPTION OF PHARMACEUTICAL CHEMISTS FROM JURY SERVICE.

IN England and Wales registered pharmaceutical chemists, actually practising, were first exempted from liability to serve on juries by the Juries Act (1862), 25 & 26 Vict. c. 107, s. 2.

The list of exempted persons was revised by the Juries Act (1870), 33 & 34 Vict. c. 77, s. 9, which enacts that "The persons described in the schedule hereto shall be severally exempt as therein specified from being returned to serve and from serving upon any juries or inquests whatsoever, * and their names shall not be inserted in the lists of the persons qualified and liable to serve on the same; but save as aforesaid no man otherwise qualified to serve on such juries or inquests shall be exempt from serving thereon, any enactment, prescription, charter, grant, or writ to the contrary notwithstanding."

The schedule includes: registered pharmaceutical chemists, if actually practising as such. Medical practitioners are also included.

* The phrase includes coroners' juries. *In re Dutton*, [1892] 1 Q. B. 486; 61 L. J. Q. B. 190; 56 J. P. 455; 66 L. T. 324; 40 W. R. 270.

Chemists and druggists, as such, are not within the exemption, and the exemption of pharmaceutical chemists does not apply in Scotland, but any person registered under the Dentists Act (1878), 41 & 42 Vict. c. 33, is by section 30 of that Act, throughout the United Kingdom, exempt from jury service "if he so desires."

No person whose name shall be in the jury book as a juror shall be entitled to be excused from attendance on the ground of any disqualification or exemption other than illness not claimed by him at or before the revision of the list by the justices of the peace, and a notice to that effect shall be printed at the bottom of every jury list. (Juries Act, 1870, s. 12.)

The jury lists must be prepared by the churchwardens and overseers of the poor of parishes, and the overseers of the poor of townships. They must affix a printed copy of such list, with a notice of the time when and place where the justices in petty sessions will hear objections to it, on the three first Sundays in September of each year, on the principal door of every church, chapel, or other public place of worship within the parish or township, and must allow any inhabitant to inspect the original list. (Juries Act, 1862, s. 4, and schedule.)

CHAPTER X.

POISONS AND THE "OFFENCES AGAINST THE PERSON ACT, 1861."

Administering Poison, etc., with intent to murder.—Whosoever shall administer to, or cause to be administered to, or to be taken by, any person any poison or other destructive thing . . . with intent . . . to commit murder, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life. (Offences against the Person Act, 1861, 24 & 25 Vict. c. 100, s. 11.)

Attempting to administer Poison with intent to murder.—Whosoever shall attempt to administer to, or shall attempt or cause to be administered to, or to be taken by any person, any poison or other destructive thing . . . with intent . . . to commit murder, whether any bodily injury be effected or not, is guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life (section 14).

Administering, etc., Chloroform, etc., in order to commit indictable offences.—Whosoever shall unlawfully apply or administer to or cause to be taken by, or attempt to apply or administer to, or attempt to cause to be administered to or taken by, any person,

any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any such cases thereby to assist any other person in committing any indictable offence (*a* 173), shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for life (section 22).

Administering Poison with intent to endanger life or inflict grievous bodily harm.—Whoever shall unlawfully and maliciously administer to, or cause to be administered to, or taken by, any other person, any poison or other destructive or noxious thing so as thereby to endanger the life of such person, or so as thereby to inflict upon any person any grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for any term not exceeding ten years (section 23).

Administering Poison with intent to injure or annoy.—Whosoever shall unlawfully and maliciously administer to, or cause to be administered to, or taken by, any other person, any poison or other destructive or noxious thing (*p.* 173), with intent to injure, aggrieve or annoy such person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable . . . to be kept in penal servitude . . . (section 24).

Using Explosives or Corrosive Fluid with intent to do grievous bodily harm.—Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance, or any other dangerous or noxious

thing, or put or lay at any place, or cast or throw at or upon or otherwise apply to any person, any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life . . . or to be imprisoned . . . and, if a male under the age of sixteen years, with or without whipping (section 29).

Attempts to procure Abortion by administering Poison.—Every woman being with child (*b* 173) who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing (*c* 173), or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her (*d* 174), or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for life (section 58).

Supplying or procuring Poison or Instruments with like intent.—Whoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with

intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanor, and being convicted thereof shall be liable . . . to be kept in penal servitude . . . (section 59).

(a) "To Commit an Indictable Offence."—*Procuring Defilement of a Woman or Girl by Administering a Stupefying Drug.*—The Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69, s. 3, sub-s. 3), also provides: "Any person . . . applies, administers to, or causes to be taken by any woman or girl, any drug, matter, or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour."

(b) "Being with child."—If a woman, with intent to procure her own miscarriage, does any of the acts prohibited by section 58, she is not guilty of an offence under the section unless she be with child, but although she may not, in fact, be with child she may be convicted of conspiring with other persons to procure her own miscarriage. (*R. v. Whitchurch* (1890), 24 Q. B. D. 420; 59 L. J. M. C. 77; 62 L. T. 124; 54 J. P. 472; 16 Cox C. C. 743; 38 W. R. 336.)

(c) "Poison or other Noxious Thing."—"If the thing administered is a recognised poison the offence may be committed, though the quantity given is so small as to be incapable of doing harm," per FIELD, J., in *Reg. v. Cramp* (1880), 5 Q. B. D. 307; 49 L. J. (M. C.) 44; 42 L. T. 442; 44 J. P. 411; 14 Cox 401. In that case half an ounce of oil of juniper was administered, and it was held that there was evidence that it was a noxious thing, and that the prisoner was rightly convicted under this section. Lord COLERIDGE, C. J., said: "The intent with which the oil of juniper was given was proved, and it was further proved that it was noxious in the quantity administered. What is a poison? That which when administered is injurious to health or life, such is the definition of the word 'poison.'"

Some things administered in small quantities are useful, which when administered in large quantities are noxious. In the present case the oil of juniper as administered was noxious."

"Where a person administers with the proper and forbidden intent large quantities of a thing which so administered is noxious, though when administered in small quantities it is innocuous, the case falls within the statute," per DENMAN, J. (*ibid.*).

On the other hand, when the substance, when administered in large quantities, is noxious, yet if in the quantity administered by the defendant it is innocuous, he is not guilty of the administration of a "noxious thing" within the statute. See *R. v. Hennah* (1877), 41 J. P. 171; 13 Cox 547, which was a case in which the defendant was charged under section 24 of the Offences against the Person Act, 1861, with administering to a girl a small quantity of cantharides, and in which it was held that as the quantity administered by the defendant was innocuous he was not guilty of the offence of administering a noxious thing. (See also *R. v. Perry* (1847), 2 Cox 223.)

The administration of a purely innocuous drug has been held not to be an offence under section 58 of the Act. *R. v. Isaacs* (1862), 32 L. J. M. C. 52; 7 L. T. 365; L. & C. 220; 9 Cox 228; 11 W. R. 95, where the substance administered was "some vegetable decoction of a harmless character."

(d) "Administer to her."—Where the prisoner had given to a woman a drug for the purpose of procuring abortion, and the woman took it for that purpose in the prisoner's absence, this was held to be a causing of it to be taken. (*R. v. Wilson* (1856), Dears & B. 127; 25 L. J. M. C. 18; 7 Cox 190. *R. v. Farrow* (1857), Dears & B. 164; 3 Jur. (N. S.) 167; 5 W. R. 269.)

CHAPTER XI.

OFFENCES RELATING TO THE POISONING OF DOMESTIC ANIMALS, FISH, AND GAME.

Administration of Poisonous Drugs to Horses and other animals by disqualified Persons.—Any person wilfully and unlawfully administering to or causing to be administered to or taken by any horse, cattle, or domestic animal, any poisonous or injurious drug or substance, shall (unless some reasonable cause or excuse is shown on his behalf) be liable, on summary conviction, to a penalty not exceeding five pounds or at the discretion of the court, to imprisonment, with or without hard labour for any term not exceeding one month in the case of a first offence, or three months in the case of a second or any subsequent offence. (Drugging of Animals Act, 1876, 39 Vict. c. 13, s. 11.)

The Act does not extend to the owner or person acting by authority of the owner of the animal (section 2).

Putting Lime or other Noxious Material in any Fish Pond, etc.—Whosoever . . . shall unlawfully and maliciously put any lime or other noxious material in any fish pond or any water, which shall be private property, or in which there shall be any private right

of fishery (extended to any "salmon river" by the Salmon Fisheries Act, 1873, 36 & 37 Vict. c. 71, s. 13) with intent thereby to destroy any of the fish that may then be or may thereafter be put therein may be indicted for misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years . . . or to be imprisoned . . . and, if a male under the age of sixteen years, with or without whipping. (Malicious Damage Act, 1861, 24 & 25 Vict. c. 97, s. 32.)

Poisoning Freshwater Fish.—Any person who unlawfully and maliciously puts any poison, lime, or noxious material in any water frequented by freshwater fish, with intent thereby to destroy any of the fish that may then be or may thereafter be put therein, shall be liable on summary conviction to fine not exceeding twenty pounds, or to imprisonment with or without hard labour for a term not exceeding two months. (Freshwater Fisheries Act, 1884, 47 Vict. c. 11, s. 7.)

Poisoning Salmon Rivers.—Subject to exemptions in favour of persons exercising their legal rights, every person who causes or knowingly permits to flow or puts or knowingly permits to be put into any waters containing salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish, is liable to a penalty not exceeding five pounds upon a first conviction, with increased penalties for subsequent offences. (Salmon Fishery Act, 1861, 24 & 25 Vict. c. 109, ss. 5, 6.)

Laying Poison to kill Game.—Any person putting any poison or poisonous ingredient with intent to destroy or injure game on any ground whether open or enclosed, where game usually resort, or in any highway, shall, on conviction thereof before two justices of the peace, be liable to a fine not exceeding ten pounds (Game Act, 1831, 1 & 2 Wm. IV. c. 32, s. 3).

The Ground Game Act, 1880, 43 & 44 Vict. c. 47, s. 6, provides that any person who employs poison for killing ground game shall, on summary conviction, be liable to a penalty not exceeding two pounds.

Selling or using Poisoned Grain (see The Poisoned Grain Prohibition Act, 1863 (p. 242).

Placing Poisoned Flesh in Fields, etc. (see The Poisoned Flesh Prohibition Act, 1864 (p. 244).

CHAPTER XII.

OFFENCES UNDER THE POST OFFICE PROTECTION ACT, 1884.

Prohibition of sending by Post Explosive, Inflammable, or Deleterious Substances or Indecent Prints, etc.

—Any person who sends or attempts to send a postal packet which either encloses any explosive substance, dangerous substance, filth, noxious or deleterious substance, sharp instrument not properly protected, living creature which is either noxious or likely to injure other postal packets in course of conveyance or an officer of the post-office, or any article or thing whatsoever which is likely to injure other postal packets in course of conveyance, or an officer of the post-office; or who encloses any indecent or obscene print, painting, photograph, lithograph, engraving, book, or card, or any indecent or obscene article whether similar to the above or not is guilty of a misdemeanor, and is liable on summary conviction to a fine not exceeding ten pounds, and on conviction on indictment to imprisonment with or without hard labour for a period not exceeding twelve months (Post Office Protection Act, 1884, 47 & 48 Vict. c. 76, s. 4).

The detention in the post-office of the packet is not to exempt the sender from proceedings.

APPENDIX A

THE PHARMACEUTICAL SOCIETY OF GREAT BRITAIN

ITS CONSTITUTION, FUNCTIONS, AND DUTIES

THE Pharmaceutical Society of Great Britain, founded in 1841, is a body to which, by Charter and Statutes, important duties and privileges have been assigned.

Charter.—A Royal Charter of Incorporation (p. 254) was granted to the Society in 1843, and a Supplemental Charter in 1901 (p. 262). The Charter of 1843 was, subject to modifications, confirmed by the Pharmacy Act, 1852, s. 1, and in order to ascertain what are the privileges and duties of the Society it is necessary to read the charters referred to in conjunction with the Pharmacy Acts of 1852, 1868, 1869, 1898, and the Poisons and Pharmacy Act, 1908.

Objects.—The Charter (1, l. 9) declares that the Pharmaceutical Society was formed for the following purposes :—

(a) The advancing of chemistry and pharmacy ; (b) promoting a uniform system of education of those who should practise the same ; (c) the protection of those who carry on the business of chemists and druggists ; and (d) to provide a fund for the relief of the distressed members and associates of the Society, and of their widows and orphans.

Constitution.—The persons who were members of the Society at the date of the charter were constituted members of the body corporate (Ch. 1, l. 26), and power was given to the Society to frame regulations and bye-laws regulating the admission of persons to the Society (Ch. 1, l. 27).

At the present time the Society consists of the following

classes—members, student-associates, honorary members, and corresponding members.

Members.—Prior to the passing of the 1852 Act there was no statutory distinction between pharmaceutical chemists and chemists and druggists, and any chemist and druggist, in business on his own account, was eligible as a member of the Society (Ch. 1, *l.* 72). The 1852 Act created a distinction between pharmaceutical chemists and chemists and druggists, and after the passing of that Act chemists and druggists, who were not at that time members of the Society, were not eligible for election as members without first qualifying as pharmaceutical chemists (Pharmacy Act, 1852, ss. 6 and 10). The charter also made eligible for membership persons elected as “superintendents” by the Council (Ch. 1, *l.* 76). The council has for many years ceased to elect such “superintendents,” who must not be confused with the “superintendents” referred to in the Poisons and Pharmacy Act, 1908, s. 3, sub-s. 4. The latter must be registered pharmaceutical chemists or chemists and druggists.

Any person registered as a pharmaceutical chemist or a chemist and druggist is now eligible to be elected a member of the Society according to the bye-laws thereof. (Pharmacy Acts Amendment Act, 1898, s. 3; B.-L., s. 1, sub-s. 3.) The eligibility of chemists and druggists has been brought about by gradual changes made by the statutes and bye-laws.

Pharmaceutical Chemists.—By the Pharmacy Act, 1852, s. 10, every person registered as a pharmaceutical chemist was made eligible for admission according to the bye-laws of the Society.

Chemists and Druggists.—Under the charter (*l.* 83) and the Act of 1852, s. 5, two classes of persons, other than “members,” namely, (*a*) associates and (*b*) apprentices or students, were entitled to be admitted to all the privileges and benefits of the Society, except the right of being present at the general meeting thereof or of holding any office in the same. Under the charter (*l.* 84) an associate was required to be an assistant to a chemist and druggist. By the Act of 1852, s. 6, a register of persons qualified to act as assistants was created, and the eligibility to become associates was confined to those registered as such prior to the passing of that Act, and to those who were subsequently registered

as assistants (s. 10). By the Act of 1868, ss. 3 and 5, such associates as were registered prior to the passing of that Act were given the right to become registered as chemists and druggists, and if they were or had been in business on their own account they became eligible for election as members of the Society, but no more than seven members who were not registered as pharmaceutical chemists could at any one time be members of the council (ss. 18 and 19). By section 20 those persons who became qualified by examination, after the passing of the Act, to be registered as chemists and druggists, were made eligible to be elected as associates of the Society, with the same rights and privileges as those possessed by the associates under the Act of 1852. If they were in business on their own account they were given the same rights and privileges as members, except that of eligibility for membership of the council. The various grades of associates created by the Act of 1868 were abolished by the Act of 1898 (s. 8), and the associates became members of the Society with the full privileges of membership (s. 3). The Act of 1898 (s. 3) provides that any person registered as a chemist and druggist shall be eligible to be elected a member of the Society according to the bye-laws thereof. Though eligible it does not appear that any registered chemist and druggist is entitled to be elected. The bye-laws (s. 1, sub-s. 2) require that a resolution proposing the election of any person shall be proposed and seconded by members of the council at a meeting of the council, and empowers the council to accept or reject, as it shall think fit, any proposal for election submitted to it.

Student-Associates.—The Act of 1852 (s. 5) provided a register of apprentices or students, and apprentices or students of the Pharmaceutical Society. After the passing of that Act the only persons entitled to join the Society as students or apprentices were those who had been registered prior to the passing of the Act as students or apprentices of the Society, and those who subsequently passed the examination provided for that purpose by the Act (ss. 6 and 10). In the 1898 Act (s. 2) it was provided that a person who, at the time of the passing of that Act, was a student of the Society should be

registered as a "student-associate," and that those who, at the time of the passing of that Act, had been registered as apprentices or students, or who became so registered, after the passing of that Act, should be eligible for election as student-associates.

Members of the Medical Profession.—No member of the medical profession in practice is entitled to be registered under the Pharmacy Act, 1852, *e.g.* as a pharmaceutical chemist or member of the Society, and if any registered pharmaceutical chemist obtains a diploma or licence of a medical or surgical corporate body his name is not to be retained on the register during the time he is engaged in practice as a medical man (Pharmacy Act, 1852, s. 11). The 1868 Act (s. 23) provided that "persons registered under the Medical Act shall not be or continue to be registered as a chemist and druggist," but this section was repealed by the Act of 1869 (s. 4), and the position now is that, in so far as registration as chemists and druggists is concerned, the Pharmacy Acts place no disability upon medical men. Their registration as chemists and druggists is not prohibited, and on becoming registered as a chemist and druggist a medical man is eligible for election as a member of the Pharmaceutical Society (Pharmacy Act, 1898, s. 3). The restriction referred to as applying to medical men becoming registered as or remaining on the register of pharmaceutical chemists is, however, still in force.

Corresponding Members and Honorary Members.—The charter (l. 212) gives the Society power to elect honorary and corresponding members of the said Society, who shall have all the privileges thereof except the right of being present at general meetings, and of voting for the election of auditors and council (B.-L., s. 5, sub-s. 3). The power given by the charter to the council of the Society to establish bye-laws enables the council to regulate by bye-law the number, qualification, and privileges of such persons as they may from time to time deem it proper to admit as honorary or corresponding members (Ch. 1, l. 256), and the bye-laws empower the council at its discretion to elect in the manner prescribed therein as honorary or corresponding members such scientific workers as

have distinguished themselves in any of the branches of knowledge embraced in the educational objects of the Society. (B.-L., s. 2).

The bye-laws (s. 1) determine the conditions to be complied with by an applicant for admission to the Society as a member or student-associate, and provide that all members and student-associates must before the 1st day of April in any year pay an annual subscription (members one guinea and student-associates half a guinea), and in default direct their names to be omitted from the register of members or of student-associates.

Upon payment of a life composition of ten guineas members are entitled to become life members pursuant to the bye-laws, and to be exempt from further subscription (B.-L., s. 1, subss. 8 and 9).

The charter (1, l. 170) declares that it shall be lawful for any meeting of the council, at which not less than twelve members shall be present, and with the consent of three-fourths of the members so present, to remove any member from the said Society, and the powers of the council to remove a member or student-associate, and the conditions under which those powers may be exercised are defined in the bye-laws (s. 14).

Any member or student-associate desiring to retire from the Society must send notice thereof to the secretary in writing, together with the certificate of membership, if any, held by him, and he may be called upon to pay his annual subscription until such time as the certificate of membership, if any, shall have been returned (B.-L., s. 14, sub-s. 3).

Council.—The charter (1, l. 96) declares “that there shall always be a council to direct and manage the affairs” of the Society, and that the general meeting and the council shall have the entire direction and management of the Society. The council must consist of a president, vice-president, and treasurer, and eighteen other members (Ch. 1, l. 108).

The 1868 Act rendered certain chemists and druggists eligible as members of the Society, but the Act provided that at no one time should the council consist of more than seven such chemists and druggists. This restriction has been repealed. All registered chemists and druggists are now eligible as

members of the Society, and so far as membership of the council is concerned no distinction is now made between pharmaceutical chemists and chemists and druggists (Pharmacy Act, 1898, s. 3).

The Council must hold a meeting at least once in every month, but no business shall be done at any such meeting unless a quorum as determined by the bye-laws be present (Ch. 1, l. 184), B.-L., s. 6, sub-s. 1.

The times of meeting, and the mode of its proceedings, are determined by the bye-laws (s. 6) and standing orders made thereunder.

The president, or, in his absence, the vice-president, or, in his absence, such member of the council as shall be elected for that purpose by the other members present, shall preside at all meetings of the council, and the majority of the members present having a right to vote thereat shall decide upon the matters propounded to such meetings, the person presiding thereat having in the case of an equality of members a second or casting vote (Ch. 1, l. 105).

The bye-laws give the council power to appoint such committees as shall appear to it expedient (B.-L., s. 6, sub-s. 4).

It must be appointed by ballot annually at the meeting of the Society, to be held on the third Tuesday in May, or as near thereto as conveniently may be. The charter provided that two-thirds of the members of the council should retire annually, but this was amended by the Act of 1898, which enacts that the number retiring annually shall be seven, the retiring members being eligible for re-election (Pharmacy Act, 1898, s. 4).

The method of election of the council is determined by the bye-laws, s. 5, p. 267.* All members, except honorary and corresponding members, are entitled to vote at such an election, and every life member, and every member other than honorary and corresponding members, who has paid his subscription for the current year, is eligible for nomination as a member of the council, and has the right to nominate any member so qualified (B.-L., s. 5, sub-s. 3).

The council has power to co-opt any member of the Society

* See also Pharmacy Acts Amendment Act, 1898, s. 5, p. 231.

to fill any casual vacancy occurring in the council (Ch. 1, l. 164 ; B.-L., s. 13, sub-s. 2).

The charter (1, l. 140) provides that the members of the Society shall assemble at the annual meeting, and proceed by method of ballot to nominate and appoint the members of the council, and by the Act of 1898 (s. 5) it is provided that the votes may be given either personally or by voting papers in a form to be defined in the bye-laws of the Society (B.-L., s. 5, sub-s. 6). In practice, voting papers delivered or forwarded in accordance with the bye-laws are received at the annual meeting, which is adjourned for the purpose of a count, the result being declared at the adjourned meeting.

Powers and Duties.—In addition to the foregoing, various powers and duties are given to the council.

By the charter (1, l. 223) it is provided " that the council shall have the sole control and management of the real and personal property of the Society, subject to the bye-laws," and further " that the whole property of the said body politic and corporate shall be subject to the management, direction, and control of the council of the said Society, and that they shall have full power and authority to sell, alienate, charge, or otherwise to dispose of the same as they shall think proper " ; but that no sale or mortgage of any messuage, lands, tenements, or hereditaments belonging to the said body corporate shall be made except with the approbation and concurrence of a general meeting of the members of the said Society specially convened for that purpose. The foregoing powers appear to be somewhat modified by an earlier reference in the charter (1, l. 97), which states :—" That the ' said general meetings and the council shall have the entire direction and management of the same Society,' in the manner and subject to the regulations therein-after mentioned." Excepting that the making, altering, or abrogating of any bye-law, or any regulation, to be prescribed by the Society, in accordance with any statute, must be referred to a special general meeting of the members of the Society, the bye-laws give no power to the members to control the acts of the council ; in fact, they provide that all resolutions carried at the meeting of the council, except such as relate to the making,

altering, or abrogating bye-laws, shall be acted upon without confirmation (Pharmacy Act, 1852, s. 2 ; B.-L., s. 6, sub-s. 3).

It therefore appears that the powers of the council in regard to the affairs of the Society are absolute, subject to the right of thirty members of the Society to require a special general meeting to be called (Ch. 1, l. 125), and to it obtaining the consent of the members to (a) The sale or mortgage of any messuage, lands, tenements, or hereditaments belonging to the Society ; (Ch. 1, l. 227), and (b) The making, altering, or abrogating of the bye-laws (Pharmacy Act, 1852, s. 2 ; B.-L., s. 4).

The following powers and duties are specifically given to the Council by the charters, or statutes, or the bye-laws :

To manage, direct, and control the whole property of or under the control of the Society, and to invest it "in or upon mortgage or properties or securities for the time being from time to time recognised by lawful authority as proper investment for trustees" (Ch. 1, l. 223, B.-L., s. 15), but not to sell or mortgage any messuage, lands, tenements, or hereditaments belonging to the Society, except with the approbation and concurrence of a general meeting of the members specially convened for such purpose" (Ch. 1, l. 228).

To make, subject to confirmation by a special general meeting of the members, and the privy council, bye-laws for regulating the affairs of the Society (Ch. 1, l. 236 ; Pharmacy Act, 1852, s. 2 ; B.-L., s. 4).

To declare by resolution that articles named therein shall be deemed to be poisons, and be added to Part I. or Part II. of the Schedule to the Poisons and Pharmacy Act, 1908, or that the articles named therein shall be removed from the said Schedule, or that articles named therein shall be transferred from one part of the said Schedule to the other, but such resolutions shall only take effect if they are approved by the Privy Council, and when they have been subsequently advertised in the *London Gazette* (Pharmacy Act, 1868, s. 2 ; Poisons and Pharmacy Act, 1908, s. 1).

Subject to confirmation by a special general meeting of the members of the Society, and by the Privy Council, to make

regulations as to the keeping, dispensing, and selling of poisons (Pharmacy Act, 1868, s. 1 ; B.-L., s. 4).

To authorise proceedings for the recovery of penalties for certain offences under the Pharmacy Acts (Pharmacy Act, 1852, s. 12, and Pharmacy Act, 1868, s. 15).

It must appoint a Registrar under the Pharmacy Acts (Pharmacy Act, 1852, s. 4 ; Pharmacy Act, 1868, s. 6).

It has the power to remove a Registrar, to fill any vacancy in the office, to appoint a deputy registrar, and such clerks and subordinate officers as may be requisite for carrying out the purposes of the Act of 1852, and to pay suitable salaries to any of the foregoing (Pharmacy Act, 1852, s. 4). (Ch. 1, l. 214.)

To direct, if it think fit, the restoration to the register of chemists and druggists of the name of any person which has been erased from it by the registrar under the provisions of the Pharmacy Act, 1868, s. 10.

To make orders or regulations for regulating the register of chemists and druggists (Pharmacy Act, 1868, s. 9).

To decide on appeal from the decision of the Registrar whether there is satisfactory evidence that a person claiming to be registered as a chemist and druggist is entitled to be so registered (Pharmacy Act, 1868, s. 12).

To restore to the register of members, or of student-associates, any person whose name has been omitted by reason of his subscription being in arrear, provided he pays his subscription for the current year (B.-L., s. 1, sub-s. 6).

To appoint a president, vice-president, treasurer, and secretary (Ch. 1, l. 181).

To censure or remove from membership under conditions defined in the bye-laws any member of the Council who shall commit any act derogatory to the honour of his office (B.-L., s. 14, sub-s. 1).

To elect honorary and corresponding members (Ch. 1, l. 212, B.-L., s. 2).

To nominate, in default of the nomination of a sufficient number of members willing to accept office as members of the council, and auditors, as many as may be required to form a

complete list of members willing to fill all the vacancies on the council and a complete list of auditors (B.-L., s. 5, sub-s. 4).

Upon the requisition in writing of thirty members, it is required to convene a special general meeting for the purpose specified in such requisition, and it may hold such other special general meetings as it may think proper (Ch. 1, l. 125).

The members of council may by themselves, or such competent persons as they shall think fit to appoint, examine and decide upon the admission or rejection of members, associates, apprentices, and students of the Society, and to grant to such persons such certificates or diplomas as they shall think proper (Ch. 1, l. 203).

To appoint or remove, in England and Scotland, examiners to conduct examinations under the Pharmacy Acts (Ch. 1, l. 205; Pharmacy Act, 1852, ss. 8 & 9; B.-L., s. 7, sub-s. 1).

To direct the times at which such examinations shall take place (B.-L., s. 7, sub-s. 9).

To make regulations for the conduct of the examinations (B.-L., s. 7, sub-s. 10). The regulations in force are published in the calendar of the Pharmaceutical Society.

To decide upon the form of diplomas and certificates (B.-L., s. 18, sub-s. 4).

To arrange the order of business to be transacted at the annual general meeting (B.-L., s. 17).

A report of its proceedings during the past year must be prepared by the council and presented to the annual general meeting, and inserted in the *Pharmaceutical Journal* (B.-L., s. 17).

To sanction the affixing of the common seal of the Society (B.-L., s. 3).

To remove under certain circumstances any member or student-associate from the Society (Ch. 1, l. 240, B.-L., s. 14, sub-s. 2).

To require persons ceasing to be members to deliver up to the registrar any diploma or certificate held by virtue of membership (B.-L., s. 18, sub-s. 5).

Bye-laws.—Power to make bye-laws for regulating the affairs of the Society was given to the council of the Society by the charter (l. 236). This power was confirmed by the Act of

1852 (s. 2), with the added proviso that the original bye-laws, and all alterations, or amendments of, or additions thereto, must be confirmed and approved by a special general meeting of the members of the Society, and by one of the principal Secretaries of State. For "one of the principal Secretaries of State" should now read "the Privy Council" (Pharmacy Act, 1868, s. 25).

The bye-laws (s. 4) prescribe the manner of making, altering, or abrogating any bye-law or any regulation to be prescribed by the Society in accordance with any Statute.

A copy of the bye-laws shall be given free to any member and student-associate on his election, and shall at any time afterwards be delivered to any member or student-associate on his applying for the same and paying one shilling (B.-L., s. 4, sub-s. 2).

The following are the purposes for which the charter empowers the bye-laws to be made :—

For regulating,

The affairs of the Society (*l.* 237).

The whole property is subject to the management, direction and control of the council of the Society, and they have full power and authority to sell, alienate, charge, or otherwise dispose of the same, as they think proper, but no sale or mortgage of any messuage, lands, tenements, or hereditaments belonging to the said body corporate shall be made except with the approbation and concurrence of a general meeting of the members of the Society specially convened for that purpose (*l.* 223).

The number and description of its officers (*l.* 238).

Time, place, and manner of examining candidates for admission (*l.* 239).

The electing to and removing from the Society of members, and student-associates (*l.* 240).

The electing to and removing from office of all subordinate servants, officers, and attendants (*l.* 242).

The filling-up from time to time of any vacancies which may happen by death, resignation, removal, or otherwise of the president, vice-president, treasurer, members of Council,

auditors, secretary, or any of the officers, or appointments constituted or established for the execution of the business and concerns of the Society (*l.* 244).

The qualification of persons to become members and student-associates of the Society, and for ascertaining those qualifications (*l.* 250).

Granting diplomas and certificates to members and student-associates (*l.* 251).

The sums of money to be paid towards carrying on the purposes of the Society by members and student-associates respectively, whether upon admission or otherwise (*l.* 253).

The number, qualifications, and privileges of such persons as may be deemed proper to be admitted as honorary or corresponding members (*l.* 256).

The amount and mode of relief to be afforded to persons who may be, or have been, registered as pharmaceutical chemists or chemists and druggists, and the widows and orphans of such persons (*l.* 258).

The making, alteration, varying, or revoking of bye-laws (*l.* 261).

The various Statutes have also conferred upon the Society the right to make bye-laws enabling them

To determine the subjects, in addition to the Latin language, botany, materia medica and pharmaceutical and general chemistry, in their knowledge of which persons presenting themselves for examination for certificates of qualification as pharmaceutical chemists, or student-apprentices or assistants, are to be examined. But no such examination is to include the theory and practice of medicine, surgery, or midwifery (Pharmacy Act, 1852, s. 8).

To fix the fees payable for examinations by candidates for certificates of qualification to be registered as chemists and druggists (Pharmacy Act, 1868, s. 7).

To fix the fee or fees to be paid for registration as a pharmaceutical chemist (Pharmacy Act, 1852, s. 10).

To fix fees payable for registration as a chemist and druggist by persons other than those entitled to registration without fee, *i.e.* other than

- (a) Pharmaceutical chemists who had been admitted as such at the passing of the Act of 1868 ; and
- (b) Persons who before the passing of the 1868 Act had carried on the business of a chemist and druggist, or who had been registered as assistants or associates, and who had claimed before 1869 to be registered.

To vary from time to time the examination required to be passed by those desirous of being registered as chemists and druggists (Pharmacy Act, 1868, s. 6).

To require a sufficient preliminary practical training in the subjects of the examination on the part of persons presenting themselves for examination (Poisons and Pharmacy Act, 1908, s. 4).

To divide the qualifying examination into two parts (Poisons and Pharmacy Act, 1908, s. 4).

To provide for periods of time and courses of study in connection with the qualifying examination (Poisons and Pharmacy Act, 1908, s. 4).

To provide for the registration as pharmaceutical chemists or chemists and druggists without examination of persons who produce evidence satisfactory to the council that they are persons of sufficient skill and knowledge to be so registered, and who are

- (a) Persons holding colonial diplomas : or
- (b) Qualified military dispensers : or
- (c) Certified assistants to apothecaries under the Apothecaries Act, 1815.

(Poisons and Pharmacy Act, 1908, s. 4).

Examiners.—The Charter (1, l. 203) empowers the council by themselves, or such competent persons as they shall think fit to appoint, to examine and decide upon the admission or rejection of members, associates, apprentices, or students of the Society. The Act of 1852, s. 8, empowered the persons appointed as above to conduct all the examinations provided for and contemplated by that Act. By sec. 6 of the Act of 1868 the examiners under the 1852 Act became the examiners for the purposes of the 1868 Act with the added proviso that no person may conduct any examination for the purposes of the

1868 Act until his appointment has been approved by the Privy Council and that such appointment and approval is not to be in force for more than five years.

Any officer appointed for that purpose by the Privy Council is entitled to be present during the progress of any examination held for the purposes of the Act of 1868 (Pharmacy Act, 1868, s. 6).

The council are required similarly to appoint examiners in Scotland to meet in Edinburgh, or Glasgow, or elsewhere in Scotland, to examine such students, apprentices, or assistants in Scotland as may desire to be examined there (Pharmacy Act, 1852, s. 9).

The charter (1, l. 208) gives power to the council to grant such certificates, or diplomas, as they shall think proper, to the persons whom they shall deem qualified to be members, associates, apprentices, or students, but it is not clear whether the charter extends to the examiners the power to grant such certificates and diplomas. The point is immaterial, for the Pharmacy Act, 1852, s. 8, expressly provides that the examiners "are empowered to grant or refuse to such persons as in their discretion may seem fit certificates of competent skill and knowledge and qualification to exercise the business or calling of pharmaceutical chemists, or as the case may require, to be engaged or employed as students, apprentices, or assistants respectively," and the Pharmacy Act, 1868, s. 6, similarly empowers the examiners to grant certificates of competent skill, knowledge, and qualification to be registered as chemists and druggists under that Act (B.-L., s. 7, sub-s. 16).

The council must appoint at its November meeting each year a Board of Examiners for England and Wales, consisting of not less than eight persons, exclusive of the president and vice-president, six to form a quorum, and a similar Board for Scotland, consisting of not less than four persons, exclusive of the president and vice-president, who are *ex officio* members of both Boards, four to form a quorum, to act for the year commencing the following first day of January (B.-L., s. 7, sub-ss. 1, 2, 3, and 4).

The council shall fill any vacancy in the office of examiner,

remove any member of the Boards, appoint a special examiner or examiners to conduct any or part of any examination, or to assist the other examiners (B.-L., s. 7, sub-s. 7).

No person can be appointed as an examiner who has attained the age of sixty-five years (B.-L., s. 7, sub-s. 4).

No member of the council or person who has acted during one year prior to appointment may be appointed an examiner, and the election of any examiner to be a member of the council vacates his appointment as an examiner (B.-L., s. 7, sub-s. 5).

The Boards of Examiners shall meet at such times as the council shall direct, and shall report the result of every examination to the council at the monthly meeting immediately following the same. They must conduct all examinations according to the bye-laws, and such regulations as shall be made by the council from time to time (B.-L., s. 7, sub-ss. 9, 10).

Examinations and Fees.—In addition to any facilities for examination provided by the council in England and Wales, the council are required, by section 9 of the Pharmacy Act, 1852, to provide for the examination in Scotland of such students, apprentices, or assistants in Scotland as may desire to be examined there, by appointing fit and proper persons in Scotland for the purpose of conducting there all such examinations as are provided for and contemplated by the 1852 Act. By section 6 of the 1868 Act such examiners are empowered and required to examine all such persons as shall tender themselves for examination, under the provisions of the Act of 1868 (B.-L., s. 7, sub-ss. 1 and 2).

Examinations may be held by the Board of Examiners in England and Scotland respectively, as often as may be required, at such times as the council may from time to time direct (B.-L., s. 7, sub-s. 9).

The **Minor Examination**, *i.e.* the examination for certificates of competent skill and knowledge to be registered as chemists and druggists.

Candidates for this examination must first be registered as apprentices or students (B.-L., s. 7, sub-s. 12).

G.P.

In order to be registered as apprentices or students they must deliver to the registrar a certificate of having passed an examination in preliminary knowledge previously approved by regulations (see *Pharmaceutical Journal*, Oct. 9, 1909, p. 450) made by the council, and pay to him a fee of two guineas (B.-L., s. 7, sub-ss. 11 and 12).

Section 6 of the Act of 1868 provided that the Examination for certificates of qualification to be registered as chemists and druggists should be such as was provided under the 1852 Act for the purposes of a qualification to be registered as assistant under the Act, or as it might be varied from time to time by any bye-law. The bye-laws now provided that candidates for this examination, described therein as "the minor examination," shall be examined in (a) the translation and dispensing of prescriptions; (b) Botany; (c) Materia Medica; (d) Pharmaceutical and General Chemistry; (e) Physics; (f) Posology; and (g) the Law relating to the Sale of Poisons (B.-L., s. 7, sub-s. 12).

Modified Examination.—Any person who before 1870 produced to the registrar certificates according to Schedule E to the Act of 1868 that he had been for a period of not less than three years actually engaged and employed in the dispensing and compounding of prescriptions as an assistant to a pharmaceutical chemist, or to a chemist and druggist, is entitled, on passing a modified examination, to be registered as a Chemist and Druggist (Pharmacy Act, 1868, s. 4). The scope of this examination, together with the conditions as to notice and fees to be complied with by the candidate, are set out in the bye-laws, s. 7, sub-s. 15, and 17 to 23.

The Major Examination.—*I.e.* for persons desiring certificates of competent skill and knowledge to exercise the business or calling of pharmaceutical chemists.

The charter (1, l. 203) empowered the Council of the Society to examine or appoint persons to examine candidates desirous of becoming members, associates, apprentices, and students of the Society. Section 8 of the 1852 Act empowered such examiners to conduct all such

examinations as are provided for or are contemplated by that Act, and to examine candidates in their knowledge of the Latin language in botany, in materia medica, and in pharmaceutical and general chemistry, and such other subjects as may from time to time be determined by any bye-law, provided that such examinations should not include the theory and practice of medicine, surgery, or midwifery. Upon passing such an examination, a person who was entitled to be registered as a pharmaceutical chemist became eligible to be elected as a member of the Society. The bye-laws require that persons desiring these certificates shall (a) produce to the registrar evidence of being previously registered as chemists and druggists, and (b) be examined in more extended knowledge of botany, materia medica, chemistry, and physics, or such of them as the council may from time to time determine (B.-L., s. 7, sub-s. 13).

The requirements as to notices of intention to attend examinations and the fees payable (a) for registration as chemists and druggists and pharmaceutical chemists (b) for subsequent examination by candidates who have attended the examination and failed to pass, or who have given notice of intention to attend, and failed to attend at the time appointed, are set out in the bye-laws, s. 7, sub-s. 17 to 23. In *Strachan v. Pharmaceutical Society* (1901),* 8 S. L. T. 298, the Court of Session held that the pursuer, who had attended on the first day of the examination, but owing to illness had failed to attend on the second day, was a person who had failed duly to attend at the time appointed within the meaning of the Bye-Laws, and was entitled to be re-examined at the reduced fees.

Diplomas and Certificates.—Certificates under the Pharmacy Acts are of two classes, namely (a) certificates granted by the examiners under the Pharmacy Acts, and (b) certificates or diplomas granted by the council of the Pharmaceutical Society or the registrar. The former certify the qualification of the

* Also reported, *Pharmaceutical Journal*, Feb. 2nd, 1901, p. 114; *Chemist and Druggist*, Feb. 2nd, 1901, p. 207; *British and Colonial Druggist*, Feb. 1st, 1901, p. 106.

grantee *to be* registered, the latter constitute evidence that the grantee is registered in the manner certified in the certificate.

Every member, whilst a member, is entitled to possess and use a certificate of membership (B.-L., s. 18, sub-s. 1), but he may be required by resolution of the council to deliver up to the registrar any diploma or certificate held by him by virtue of membership, and in any event must, on ceasing to be a member, deliver up such diploma or certificate (B.-L., s. 18, sub-s. 5).

No member shall be released from his obligation to pay his annual subscription until such time as the certificate of membership, if any, shall have been returned (B.-L., s. 14, sub-s. 3).

Every person registered as a pharmaceutical chemist, by reason of having passed the major examination, is, whilst so registered, entitled to possess and use a diploma stamped with the seal of the Society (B.-L., s. 18, sub-s. 1).

Persons who have passed the minor or the major examination may receive appropriate certificates (B.-L., s. 18, sub-s. 3).

Examiners are empowered to grant or refuse to such persons as they have examined, and as in their discretion may seem fit, (a) certificates of competent skill and knowledge and qualification to exercise the business or calling of pharmaceutical chemist, or, as the case may require, to be engaged or employed as students, apprentices, or assistants respectively (Pharmacy Act, 1852, s. 8), and (b) certificates of competent skill and knowledge and qualification to be registered as a chemist and druggist (Pharmacy Act, 1868, s. 6). The grantees of such certificates must, however, be registered as pharmaceutical chemists or chemists and druggists, as the case may be, in order to be legally qualified to take the respective titles or to sell or keep open shop for the sale of poisons.

The registrar is bound, on the application of any person paying one shilling, to certify under his hand whether or not any person, whose name and address shall be furnished to him, appears in the register of pharmaceutical chemists, assistants, or "apprentices or students," or as a member of the Pharmaceutical Society or not, and such certificate, signed by the registrar, and countersigned by the president or two members of the council

of the said Society, shall, in the absence of evidence to the contrary, be sufficient evidence of the facts therein stated up to the date of the said certificate (Pharmacy Act, 1852, s. 7).

Diplomas and certificates shall be in such form as shall from time to time be determined upon by the council (B.-L., s. 18, sub-s. 4).

If any person shall wilfully procure by fraudulent means a certificate or registration under the Act of 1852, or shall fraudulently exhibit a certificate purporting to be a certificate of membership of the Society, every such person so offending shall be adjudged guilty of a misdemeanor (Pharmacy Act, 1852, s. 16).

All persons pirating or imitating or improperly using or inciting any person to pirate, imitate, or improperly use any diploma, or any or either of the certificates, will be subject to legal proceedings, and the council may from time to time order the same in its discretion (B.-L., s. 18, sub-s. 6).

Auditors.—Five auditors of the accounts of the Society must be appointed by ballot by the annual general meeting (Ch. 1, l. 142). The method of election is the same as that provided for the election of the council and is regulated by bye-laws, s. 5 (p. 267).

The duties of the auditors are set out in the bye-laws, s. 11 (p. 278).

The report of the auditors must be presented at the annual general meeting, and inserted in the *Pharmaceutical Journal* (B.-L., s. 17, sub-s. 1).

No one but a life member, or member who has paid his subscription for the current year, is eligible to nominate or to be nominated for this office (B.-L., s. 5, sub-s. 3).

In the event of a casual vacancy the secretary must report it in the summons for the next meeting of the council, and at that meeting some member of the Society shall be appointed by the council to fill the vacancy (Ch. 1, l. 162 ; B.-L., s. 13, sub-s. 2).

President.—The council must at its first meeting elect and appoint from among its number a president (Ch. 1, l. 180). The president, if present, shall preside at all general meetings of the Society (Ch. 1, l. 193).

He is an *ex officio* member (a) of all committees of the council (B.-L., s. 6, sub-s. 4); (b) of the boards of examiners, and either he or the vice-president, if present, at any meeting of either of such board shall preside thereat (B.-L., s. 7, sub-s. 3).

He shall have the custody of one of the two keys giving access to the common seal of the Society (B.-L., s. 3, sub-s. 3).

Either he or the vice-president shall instruct the secretary on any business requiring attention between the various meetings of the council (B.-L., s. 10).

No subject shall be introduced to any meeting of the Society, held for the reading of papers and discussion of subjects relating to the scientific objects of the Society, without his sanction, or, in his absence, that of the vice-president, or chairman of the meeting (B.-L., s. 20, sub-s. 3).

In the event of a vacancy occurring in the office of president the secretary shall report the same and the cause thereof in the summons for the next meeting of the council, which meeting shall thereupon find and declare such vacancy and immediately proceed to elect one of its number to fill the office (B.-L., s. 13, sub-s. 1).

Vice-President.—The council at its first meeting must elect and appoint from among its number a vice-president (Ch. 1, l. 182). In the absence of the president he shall preside at all general meetings of the Society and at all meetings of the council (Ch. 1, l. 194).

He is an *ex officio* member of all committees of the council (B.-L. s. 6, sub-s. 4), and of the boards of examiners, and either he or the president, if present, shall preside at any meeting of either board (B.-L., s. 7, sub-s. 3).

He has the custody of one of the two keys giving access to the common seal of the Society (B.-L., s. 3, sub-s. 3).

He or the president shall instruct the secretary on any business requiring attention between the various meetings of the council (B.-L., s. 10).

All communications intended to be made at meetings of the Society, held for the reading of papers and discussion of subjects relating to the scientific objects of the Society, must, in the

absence of the president, be submitted to him or to the chairman of the meeting for his sanction (B.-L., s. 20, sub-s. 3).

A vacancy in the office of vice-president must be reported and filled as directed in the case of a vacancy in the office of president, see p. 198.

Treasurer.—At its first meeting the council must appoint from among its number a treasurer (Ch. 1, l. 182).

It shall be the duty of the treasurer to take charge of all moneys, to pay such accounts as the council may order by the signature of six members of the council in council assembled, and to render his account at each monthly meeting (B.-L., s. 9).

In the event of a vacancy in the office of treasurer it must be reported and filled in the manner prescribed in the case of a vacancy in the office of president, see p. 198 (B.-L., s. 13, sub-s. 1).

Registrar.—This office was created by section 4 of the 1852 Act, which gives the council the right of appointing or removing any registrar or deputy-registrar.

The registrar appointed under the 1852 Act is the registrar for the purposes of the Act of 1868 (s. 8).

His statutory duties are as under:—

He is to make out and maintain (in accordance with such orders or regulations as may from time to time be made by the council, B.-L., s. 8, sub-s. 5) the following registers—

- (a) Members of the Society ;
- (b) Associates of the Society ;
- (c) Apprentices or students of the Society (Pharmacy Act, 1852, s. 5) ;
- (d) Pharmaceutical chemists ;
- (e) Assistants ;
- (f) Apprentices or students (Pharmacy Act, 1852, s. 6 ; B.-L., s. 8, sub-s. 2) ;
- (g) Chemists and druggists (Pharmacy Act, 1868, s. 10 ; B.-L., s. 8, sub-s. 2).
- (h) Student-associates of the Society (Pharmacy Act, 1898, s. 2).
- (i) Superintendents appointed by corporate bodies and, in Scotland, firms or partnerships carrying on the

business of pharmaceutical chemists or druggists (Poisons and Pharmacy Act, 1908, s. 3, sub-s. 4).

- (j) All such other registers as may be required by the council for giving effect to the bye-laws, and to the provisions of the Act of 1852 (Pharmacy Act, 1852, s. 5).

He is guilty of a misdemeanor if he wilfully makes or causes to be made any falsification in any matter relating to any register or certificate the maintaining or granting of which is part of his duties under the Pharmacy Act (Pharmacy Act, 1852, s. 15, and Pharmacy Act, 1868, s. 14).

He was bound to register as "pharmaceutical chemists," "assistants," or "apprentices or students," as the case might be, all such persons as at the time of the passing of the Act of 1852 were "members," "associates," "apprentices, or students," of the Pharmaceutical Society (Pharmacy Act, 1852, s. 6). The bye-laws, s. 8, sub-s. 4, provide that the names of any such persons who have not been examined under the 1852 Act, but who by reason of their election as members of the Society have been registered as pharmaceutical chemists, and who have not paid life subscriptions, shall, upon failing to pay their annual subscriptions before the 1st day of April in any year, be omitted from the register of pharmaceutical chemists. It is open to doubt whether the Statute gives the Society the power to make a bye-law directing the removal for such cause of the name of any person from the register of pharmaceutical chemists, provided he was duly registered.

He is bound to register according to the provisions of the Act of 1852, and upon payment of such fee or fees as shall be fixed by the bye-laws, all persons, except members of the medical profession in practice, who have obtained from the examiners a certificate of qualification to be registered as pharmaceutical chemists or as students or apprentices, as the case may be (Pharmacy Act, 1852, s. 10).

He must make out and keep a correct register in accordance with the provisions of the 1868 Act of all persons who shall be entitled to be registered under the 1868 Act, and he has power to erase from that register the name of all registered persons

who shall have died, and (after making the inquiries prescribed in the Statute) the names of those who do not reply to such inquiries (Pharmacy Act, 1868, s. 10).

He must be satisfied by the proper evidence that the person claiming to be registered as a chemist and druggist is entitled to be so registered, but an appeal from his decision may be made to the council of the Society (Pharmacy Act, 1868, s. 12).

He must comply with such orders or regulations for regulating the registers to be kept by him as may from time to time be made by the council (B.-L., s. 8, sub-s. 5).

He must report to the council at the next ensuing meeting the names of the persons registered as apprentices or students (B.-L., s. 7, sub-s. 11).

He must cause to be printed, published, and sold in the month of January of every year a correct register of pharmaceutical chemists, and a correct register of chemists and druggists, and in such registers respectively the names shall be in alphabetical order according to the surnames, with the respective residences, in the form set forth in Schedule (B) to the Act of 1868, or to the like effect, of all persons appearing on the register of pharmaceutical chemists, and on the register of chemists and druggists, on the 31st day of December last preceding, and such printed register shall be called "The Registers of Pharmaceutical Chemists and Druggists." The absence of the name of any person from such printed register shall be evidence, until the contrary shall be made to appear, that such person is not registered according to the provisions of the 1852 Act or of the 1868 Act (Pharmacy Act, 1868, s. 13).

He is bound, on the application of any person paying a fee of one shilling, to certify whether or not any person, whose name and address is furnished to him, is registered or not as a pharmaceutical chemist, assistant, or apprentice, or student, or is a member of the Pharmaceutical Society of Great Britain (Pharmacy Act, 1852, s. 7).

He is not bound to grant a certificate of registration as a chemist and druggist under the Act of 1868, but any certificate, under the hand of the registrar, and countersigned by the president, or two members of the council, shall be evidence in

all courts and before all justices of the peace and others that the persons therein specified are registered according to the provisions of the Pharmacy Act, 1852, or of the Pharmacy Act, 1868, as the case may be, until the contrary shall be made to appear (Pharmacy Act, 1852, s. 7; Pharmacy Act, 1868, s. 13).

He must receive and preserve for at least five years the pass lists issued by the examiners of the Society (B.-L., s. 8, sub-s. 1).

He is the person who is entitled in the name and by the authority of the council of the society to recover any penalty incurred by any person guilty of any offences under section 12 of the Act of 1852, and sections 1 and 15 of the Act of 1868.

A vacancy occurring in the office of registrar must be dealt with and a successor appointed in the manner prescribed for dealing with a vacancy in the office of secretary (B.-L., s. 13, sub-s. 3).

Secretary.—The council at its first meeting has to appoint a secretary (Ch. 1, l. 183). His general duties are set out in the bye-laws, s. 10, p. 277.

In the event of any vacancy occurring in the office of president, vice-president, treasurer, or of any casual vacancy in the council, auditors or in committees, it is his duty to report the same and the cause thereof in the summons for the next meeting of the council (B.-L., s. 13, sub-ss. 1 and 2).

In the event of a casual vacancy occurring in the office of secretary, the president or vice-president must appoint some person to fulfil temporarily the duty of the office, and in the summons for the next meeting of the council the vacancy must be declared, and some person being proposed and seconded at such meeting the election shall take place but shall not be final unless confirmed at the next meeting of the council (B.-L., s. 13, sub-s. 3).

He must from time to time submit to the Privy Council for approval, in accordance with the 1868 Act, all appointments of examiners made by the council, and shall also give notice to the officer appointed by the Privy Council of all examinations to be held for the purposes of that Act, stating the times and places at which such examinations will be held,

at least three days prior to the holding of the same (B.-L., s. 7, sub-s. 8).

Lands, Funds, and other Property.—Power to buy and hold lands, the total yearly value of which was not to exceed £2000, was conferred by the Charter (1, l. 40), and by the Supplemental Charter (1, l. 35) powers were given to buy and hold lands to the total value of £10,000. Any of these lands may be sold and other lands purchased in their place, provided the total lands held at any one time does not exceed the value indicated (Ch. 1, l. 52 and Sup. Ch. 1, l. 49).

The whole property of and under the control of the Society shall be subject to the management, direction, and control of the Council, and may, under the direction of the Council, be invested in or upon mortgage of property or securities for the time being, from time to time recognised by lawful authority as proper for investment by trustees (B.-L., s. 15, sub-s. 1), but see Charter (1, l. 228) as to sale or mortgage of any messuage, lands, tenements, or hereditaments belonging to the Society.

The property and funds of the Society, other than moneys from time to time in the hands of the treasurer or secretary, shall not be disposed of, or otherwise dealt with, except in pursuance of an order of the council, signed by six members, at the least, in council assembled (B.-L., s. 15, sub-s. 2).

The Benevolent Fund.—The charter (1, l. 218) directs the council to make provision out of the real and personal property of the Society, or such part thereof as they shall think proper, for the relief of the distressed members and associates of the Society, and of their widows and orphans, subject to the regulations and bye-laws of the Society. It also authorises the making of bye-laws regulating the amount and mode of relief to be so given (Ch. 1, l. 259).

The Pharmacy Act, 1868, s. 22, extended the foregoing provisions so as to make eligible for relief, subject to the regulations and bye-laws, “all persons who may have been and have ceased to be members or associates of the said Society or who may be or have been duly registered ‘pharmaceutical chemists’ or ‘chemists and druggists,’ and the widows and orphans of such persons.”

The bye-laws (s. 16) provide (a) that the benevolent fund shall consist of donations (which must be invested), and subscriptions, and such grants as the council may make from the general fund for the particular objects of each benevolent fund, in addition to the sum already invested in respect of the same fund. No part of the invested capital is to be distributed among the recipients of the relief.

(b) That the interest accruing from the invested portion of the benevolent fund, together with annual subscriptions and grants made from the general fund in aid thereof, shall be applicable, in the discretion of the council, towards the relief of persons eligible to receive the same, and any unapplied portion of the same in any year may be invested and thenceforward form part of the invested fund.

Meetings.—At all general meetings of the Society the president, or, in his absence, the vice-president, or, in his absence, such member of the council as shall be elected by the members present at the meeting, or, if there be no such member of the council present, then such other member of the Society as shall be elected by the members present, shall preside (Ch. 1, l. 192).

At all general meetings and meetings of the council the majority of the members present having a right to vote thereat respectively, shall decide upon the matters propounded to such meetings, the person presiding therein having in case of an equality of numbers a second or casting vote (Ch. 1, l. 105).

Annual Meetings.—The members of the Society must meet on, or as near as conveniently may be, the third Tuesday in May in each year, and proceed, by method of ballot, to nominate and appoint the council and auditors (Ch. 1, l. 134).

Summonses, notices, or advertisements convening the meeting shall be given not less than ten clear days before the day thereby appointed for the meeting (B.-L., s. 13, sub-s. 2).

The proceedings of the preceding annual general meeting need not be read or confirmed (B.-L., s. 17, sub-s. 2).

The reports of the proceedings of the council during the past year, together with the report of the auditors, must be presented at the meeting (B.-L., s. 17, sub-s. 1).

The council must meet previous to the meeting and arrange the order of business to be transacted thereat (B.-L., s. 17, sub-s. 2).

Special General Meetings.—The council may hold such special general meetings of the members as they may think proper, and upon the requisition in writing of thirty members the council is required to convene such a meeting for the purpose specified in the requisition, within such reasonable time as the council shall think fit, they first giving due notice thereof and of the purposes for which the same is convened (Ch. 1, l. 125).

Summonses, notices, or advertisements convening the special meeting shall be given not less than ten clear days before the day thereby appointed for the meeting (B.-L., s. 12, sub-s. 2).

No business shall be brought forward at any special meeting, but that for which it is convened, and of which due notice has been given to the members (B.-L., s. 17, sub-s. 3).

Meetings for the reading of Papers.—Meetings of the Society, notice of which shall be given in the *Pharmaceutical Journal*, may be held for the reading of papers relating to the scientific objects of the Society (B.-L., s. 20).

All communications intended to be made at such meetings shall be submitted to the president, or, in his absence, to the vice-president, or to the chairman of the meeting, for his sanction, and without such sanction no subject shall be introduced (B.-L., s. 20, sub-s. 3).

Summonses for Meetings.—For all meetings other than the annual or special general meeting, summonses, notices, or advertisements must be given not less than three clear days before the day thereby appointed for the meeting, and in all cases there shall appear notice of the general nature of the business to be discussed at the meeting (B.-L., s. 12, sub-s. 2).

All such summonses, notices, or advertisements must be issued by the secretary, and, if left at or transmitted by post, addressed to the place of business or residence of the person summoned, shall be considered as received (B.-L., s. 12, sub-s. 1).

The "Pharmaceutical Journal." — The *Pharmaceutical*

Journal must be edited, printed, and published in such manner as the council shall from time to time direct, and the transactions of the Society required to be published shall be inserted in the said journal, and all notices or advertisements shall be considered duly made or given if inserted therein (B.-L., s. 19).

The bye-laws specifically direct that the following shall be published in the *Pharmaceutical Journal*, namely, all altered or new regulations for the conduct of examinations (s. 7, sub-s. 10); the annual report of the proceedings of the council; and the annual report of the auditors (s. 17, sub-s. 1).

Common Seal.—The Society possesses a common seal with full power and authority to alter, vary, break, or renew the same at their discretion (Ch. 1, l. 33).

It is described in the bye-laws, s. 3, p. 266, which also prescribe regulations for its custody and use. They also provide that "any person pirating, imitating, or improperly using, or inciting any person to pirate, imitate, or improperly use the common seal," will be subject to legal proceedings, and the council may from time to time order the same in its discretion (B.-L., s. 18, sub-s. 6).

APPENDIX B

STATUTES, CHARTERS, BYE-LAWS, AND
REGULATIONS.

PHARMACY ACT.

(15 & 16 VICT. c. 56.)

*An Act for Regulating the Qualifications of Pharmaceutical
Chemists.*

[30th June, 1852.]

WHEREAS it is expedient for the Safety of the Public that Persons exercising the Business or Calling of Pharmaceutical Chemists in *Great Britain* should possess a competent practical Knowledge of Pharmaceutical and General Chemistry and other Branches of useful Knowledge : And whereas certain Persons desirous of advancing Chemistry and Pharmacy, and of promoting an uniform System of educating those who should practice the same, formed themselves into a Society, called "The Pharmaceutical Society of *Great Britain*," which said Society was on the Eighteenth Day of *February* One thousand eight hundred and forty-three incorporated by Royal Charter, whereby it was provided that the said Society should consist of Members who should be Chemists and Druggists who were or had been established on their own Account at the Date of the said Charter, or who should have been examined in such Manner as the Council of the said Society should deem proper, or who should have been certified to be duly qualified for Admission, or who should be Persons elected as Superintendents by the Council of the said Society : And whereas it is expedient to prevent ignorant and incompetent Persons from assuming

the Title of or pretending to be Pharmaceutical Chemists or Pharmaceutists in *Great Britain*, or Members of the said Pharmaceutical Society, and to that end it is desirable that all Persons before assuming such Title should be duly examined as to their Skill and Knowledge by competent Persons, and that a Register should be kept by some legally authorised Officer of all such Persons : And whereas for the Purposes aforesaid, and for extending the Benefits which have already resulted from the said Charter of Incorporation, it is desirable that additional Powers should be granted for regulating the Qualifications of Persons who may carry on the Business of Pharmaceutical Chemists : Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same.

I. *Charter dated 18th Feb., 1843, confirmed, save as altered.*—That the said Charter of Incorporation granted to the said Society on the Eighteenth Day of *February* One thousand eight hundred and forty-three, save and except such Part or Parts thereof as are hereby altered, varied, or repealed, shall be and the same is hereby confirmed and declared to be in full force and virtue, and shall be as good and effectual to all Intents and Purposes as if this Act had not been passed.

II. *Power to Council to alter Bye-laws, provided they are approved by a General Meeting of Society and the Secretary of State.*—The Council of the said Pharmaceutical Society shall be and the same are hereby authorised and empowered to alter and amend the Bye-laws of the said Society made and established under or in pursuance of the said Charter of Incorporation, and to make and establish such new or additional Bye-laws as they shall deem proper and necessary for the Purposes contemplated by the said Charter or by this Act : Provided always, that all such original Bye-laws, and all altered, amended, or additional Bye-laws, shall be confirmed and approved by a Special General Meeting of the Members of the said Pharmaceutical Society, and by One of Her Majesty's Principal Secretaries of State.

Repealed by 38 and 39 Vict. c. 66.

Provided also, that the existing Bye-laws of the said Society shall continue in force until the next Annual Meeting of the said Society to be held in the Month of *May*, One thousand eight hundred and fifty-three.

III. At all Meetings of the said Society at which Votes shall be given for the Election of Officers, all Members entitled to vote may give their Votes either personally, or in Cases of Residence exceeding Five Miles from the General Post Office, *Saint Martin's le Grand, London*, by Voting Papers authorised by Writing, in a Form to be defined in the Bye-laws of the said Society, or in a Form to the like Effect, such Voting Papers being transmitted under Cover to the Secretary not less than Five clear Days prior to the Day on which the Election is to take place.

IV. *Council to appoint Registrar, etc.*—The Council of the said Pharmaceutical Society shall,

Repealed by 38 and 39 Vict. c. 66.

within three calendar months after the passing of this Act,

appoint a fit and proper Person as a Registrar under this Act, and the Council of the said Society shall have the Power to remove the said Registrar, or any future Registrar to be appointed under this Act, from the said Office, and from Time to Time to appoint a new Registrar in the Room of any Registrar who may die, or retire, or be removed from Office as aforesaid, and also to appoint and remove from Time to Time a Deputy Registrar, and such Clerks and other subordinate Officers as may be requisite for carrying out the Purposes of this Act, and also to pay suitable Salaries to the said Registrar, Deputy Registrar, Clerks, and Officers.

V. *Registrar to make Registers of Members of Society, etc, and to keep an Index and Books as may be required.*—The Registrar
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to be appointed under or by virtue of this Act shall from Time to Time make out and maintain a complete register of all Persons being Members of the said Society, and also of all Persons being Associates and Apprentices or Students respectively, according to the Terms of the Charter of Incorporation, and shall keep a proper Index of the Register, and all such other Registers and Books as may be required by the Council of the said Society, and may be necessary for giving Effect to the Bye-laws of the said Society and to the Provisions of this Act.

VI. *All Members, Associates, etc., of the Society, at the passing of this Act, entitled to be registered.*—All such Persons as shall at the Time of the passing of this Act be Members, Associates, Apprentices, or Students of the said Pharmaceutical Society of *Great Britain*, according to the Terms of the said Charter of Incorporation, shall be registered as Pharmaceutical Chemists, Assistants, and Apprentices or Students respectively.

VII. *Registrar bound to certify, etc., and his Certificate good Evidence in Absence of the contrary.*—The Registrar to be appointed under or by virtue of this Act shall be bound, on the Application of any Person paying One Shilling, to certify under his hand whether or no any Person whose Name and Address shall be furnished to him appears in the said register or is a Member of the Pharmaceutical Society of *Great Britain* or not; and the Certificate of such Registrar, signed by the said Registrar, and countersigned by the President or Two Members of the Council of the said Society, shall, in the Absence of Evidence to the contrary, be sufficient Evidence of the Facts therein stated up to the date of the said Certificate.

VIII. *Persons appointed under Charter or Bye-laws, or this Act, to conduct Examinations.*—All such Persons as shall from Time to Time be appointed under or in pursuance of the said Charter of Incorporation or the Bye-laws thereof, or under this Act, shall be and the same are hereby declared to be fit and proper Persons to conduct all such Examinations as are provided for or contemplated by this Act, and shall respectively have full Power and Authority and are hereby authorized and empowered to examine all Persons who shall present themselves for Examination under the Provisions of this Act in their

Knowledge of the Latin Language, in Botany, in Materia Medica, and in Pharmaceutical and General Chemistry, and such other Subjects as may from Time to Time be determined by any Bye-law: provided always, that such Examinations shall not include the Theory and Practice of Medicine, Surgery, or Midwifery; and the said Examiners are hereby empowered to grant or refuse to such Persons, as in their Discretion may seem fit, certificates of competent Skill and Knowledge and Qualification to exercise the Business or Calling of Pharmaceutical Chemists, or, as the Case may require, to be engaged or employed as Students, Apprentices, or Assistants respectively.

IX. *Examiners to be appointed for Scotland.*—And to enable the said Society to provide for the Examination in *Scotland* of such Students, Apprentices, or Assistants in *Scotland* as may desire to be examined there, it shall be lawful for the Council of the Society, and they are hereby required, to appoint such fit and proper Persons in *Scotland*, to meet in *Edinburgh* or *Glasgow*, or such other Place or Places as the Council may think desirable, and to conduct there all such Examinations as are provided for and contemplated by this Act, with such and the like Powers and Authorities in respect thereof as are herein conferred, and to grant to the Persons to be so examined such and the like Certificates as are herein-before specified and referred to, or to refuse the same; and all the Provisions of this Act shall be equally applicable to the Examiners, Examinations, and Parties examined in *Scotland* as to the Examiners, Examinations, and Parties examined in *England*.

X. *Persons who have obtained Certificates entitled to be registered: Persons registered as Pharmaceutical Chemists eligible to be Members: Eligibility of Persons registered as Assistants, etc.*—Every such Person who shall have been examined by the Persons appointed as aforesaid, and shall have obtained a Certificate of Qualification from them, shall be entitled to be registered by the Registrar according to the Provisions of this Act, upon Payment of such Fee or Fees as shall be fixed by the Bye-laws; and every such Person duly registered as a Pharmaceutical Chemist shall be eligible to be elected as a Member of the said Society;

Repealed by 61 and 62 Vict. c. 25.

and every such person duly registered as an Assistant shall be eligible for Admission as an Associate of the said Society ;

and every such Person duly registered as a Student or Apprentice to a Pharmaceutical Chemist shall be eligible for Admission into the said Society ; according to the Bye-laws thereof.

XI. *Exceptions.*—That no Person who is a member of the Medical Profession, or who is practising under Right of a Degree of any University, or under a Diploma or Licence of a Medical or Surgical Corporate Body, shall be entitled to be registered under this Act ; and if any registered Pharmaceutical Chemist shall obtain such Diploma or Licence, his name shall not be retained on the said register during the Time that he is engaged in Practice as aforesaid.

XII. *Persons not duly registered shall not assume or use Name or Title of Pharmaceutical Chemist or any Name, Title, or Sign implying the same.*—From and after the passing of this Act, it shall not be lawful for any Person, not being duly registered as a Pharmaceutical Chemist according to the Provisions of this Act, to assume or use the Title of Pharmaceutical Chemist or Pharmaceutist in any Part of *Great Britain*, or to assume, use, or exhibit any Name, Title, or Sign implying that he is registered under this Act, or that he is a Member of the said Society ; and if any Person, not being duly registered under this Act, shall assume or use the Title of Pharmaceutical Chemist or Pharmaceutist, or shall use, assume, or exhibit any Name, Title, or Sign implying that he is a person registered under this Act, or that he is a Member of the said Society, every such Person shall be liable to a Penalty of Five Pounds ; and such Penalty may be recovered by the Registrar to be appointed under this Act, in the Name and by the Authority of the Council of the said Society, in manner following (that is to say,)

Penalties how recoverable in England and Wales.—In *England or Wales*, by Plaint under the Provisions of any Act in force for the more easy Recovery of Small Debts and Demands :

In Scotland.—In Scotland, by Action before the Court of Session in ordinary Form, or by summary Action before the Sheriff of the County, or in the Royal Burghs before the Magistrates of the Burghs where the Offence may be committed or the Offender resides, who, upon Proof of the Offence or Offences either by Confession of the Party offending or by the Oath or Affirmation of One or more credible Witnesses, shall convict the Offender, and find him liable in the Penalty or Penalties aforesaid, as also in Expenses; and it shall be lawful for the Sheriff or Magistrate, in pronouncing such Judgment for the Penalty or Penalties and Costs, to insert in such Judgment a Warrant, in the event of such Penalty or Penalties and Costs not being paid, to levy and recover the amount of the same by Poinding :

Provided always, that it shall be lawful to the Sheriff or Magistrate, in the event of his dismissing the Action and assoilzieing the Defender, to find the Complainer liable in Expenses; and any Judgment so to be pronounced by the Sheriff or Magistrate in such summary Application shall be final and conclusive, and not subject to Review, by Advocation, Suspension, Reduction, or otherwise.

XIII. *Limitation for Recovery of Penalties.*—Provided always, That no Action or other Proceeding for any Offence under this Act shall be brought after the Expiration of Six Months from the Commission of such Offence; and in every such Action or Proceeding the Party who shall prevail shall recover his full Costs of Suit or of such other Proceedings.

XIV. *Application of Penalties.*—All and every Sums and Sum of Money which shall arise from any Conviction and Recovery of Penalties for Offences incurred under this Act shall be paid as the Commissioners of Her Majesty's Treasury shall direct.

XV. *Registrar falsifying Register, etc., guilty of a Misdemeanor.*—If any Registrar under this Act shall wilfully make or cause to be made any Falsification in any matters relating to any Register or Certificate aforesaid, every such Offender shall be deemed guilty of a Misdemeanor.

THE PHARMACY ACT, 1868.

(31 & 32 VICT. c. 121.)

An Act to Regulate the Sale of Poisons, and Alter and Amend the Pharmacy Act, 1852.

Repealed by 56 & 57 Vict. c. 14.

[31st July 1868.]

WHEREAS it is expedient for the Safety of the Public that Persons keeping open Shop for the retailing, dispensing, or compounding of Poisons, and Persons known as Chemists and Druggists, should possess a competent practical Knowledge of their Business, and to that End that from and after the Day herein named all Persons not already engaged in such Business should, before commencing such Business, be duly examined as to their practical Knowledge, and that a Register should be kept as herein provided, and also that the Act passed in the 15th and 16th Years of the Reign of her present Majesty, intituled *An Act for regulating the Qualification of Pharmaceutical Chemists*, hereinafter described as the Pharmacy Act, should be amended: Be it enacted, by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by Authority of the same, as follows:—

I. *Persons selling or compounding Poisons, or assuming the Title of Chemist or Druggist, to be qualified.*—From and after the 31st Day of December, 1868.

It shall be unlawful for any Person to sell or keep open Shop for retailing, dispensing, or compounding Poisons, or to assume or use the Title "Chemist and Druggist," or Chemist or Druggist, or Pharmacist, or Dispensing Chemist or Druggist, in any Part of *Great Britain*, unless such Person shall be a Pharmaceutical Chemist, or a Chemist and Druggist within

the Meaning of this Act, and be registered under this Act, and conform to such Regulations as to the keeping, dispensing, and selling of such Poisons as may from Time to Time be prescribed by the Pharmaceutical Society with the Consent of the Privy Council.

II. *Articles named in Schedule (A) to be deemed Poisons within the Meaning of this Act.*—The several Articles named or described in the Schedule (A) shall be deemed to be Poisons within the Meaning of this Act, and the Council of the Pharmaceutical Society of Great Britain (herein-after referred to as the Pharmaceutical Society) may from Time to Time, by Resolution, declare that any Article in such Resolution named ought to be deemed a Poison within the Meaning of this Act; and thereupon the said Society shall submit the same for the Approval of the Privy Council, and if such Approval shall be given, then such Resolution and Approval shall be advertised in the *London Gazette*, and on the Expiration of One Month from such Advertisement the Article named in such Resolution shall be deemed to be a Poison within the Meaning of this Act.

III. *Chemists and Druggists within Meaning of this Act.*—Chemists and Druggists within the Meaning of this Act shall consist of all Persons who at any Time before the passing of this Act have carried on in Great Britain the Business of a Chemist and Druggist, in the keeping of open Shop for the compounding of the Prescriptions of duly qualified Medical Practitioners, also of all Assistants and Associates who before the passing of this Act shall have been duly registered under or according to the Provisions of the Pharmacy Act, and also of all such persons as may be duly registered under this Act.

Repealed by 56 & 57 Vict. c. 14.

IV. *Assistants to be registered.*—Any person who at the Time of the passing of this Act shall be of full age, and shall produce to the Registrar on or before the 31st Day of December, 1868, Certificates according to Schedule (E) to this Act that he had been for a Period of not less than Three Years actually engaged and employed in the

dispensing and compounding of Prescriptions as an Assistant to a Pharmaceutical Chemist, or to a Chemist and Druggist as defined by Clause III. of this Act, shall, on passing such a modified Examination as the Council of the Pharmaceutical Society with the Consent of the Privy Council may declare to be sufficient Evidence of his Skill and Competency to conduct the Business of a Chemist and Druggist, be registered as a Chemist and Druggist under this Act.

V. *Registration of Chemists and Druggists.*—The Persons who at the time of the passing of this Act shall have been duly admitted Pharmaceutical Chemists, or shall be Chemists and Druggists within the Meaning of the Act, shall be entitled to be registered under the Act without paying any fee for such Registration ; provided however, as regards any such Chemist and Druggist, that his Claim to be registered must be by Notice in Writing, signed by him, and given to the Registrar, with Certificates according to the Schedules (C) and (D) to this Act ; and provided also, that for any such Registration of a Chemist and Druggist, unless it be duly claimed by him on or before the 31st Day of December, 1868, the Person registered shall pay the same fee as Persons admitted to the Register after Examination under this Act.

VI. *Examiners under Pharmacy Act to be the Examiners under this Act.*—All such Persons as shall from Time to Time have been appointed to conduct Examinations under the Pharmacy Act shall be and are hereby declared to be Examiners for the Purposes of this Act, and are hereby empowered and required to examine all such Persons as shall tender themselves for Examination under the Provisions of this Act : and every Person who shall have been examined by such Examiners, and shall have obtained from them a Certificate of competent Skill and Knowledge and Qualification, shall be entitled to be registered as a Chemist and Druggist under this Act ; and the Examination aforesaid shall be such as is provided under the Pharmacy Act for the Purposes of a Qualification to be

registered as Assistant under that Act, or as the same may be varied from Time to Time by any Bye-law to be made in accordance with the Pharmacy Act as amended by this Act; provided that no Person shall conduct any Examination for the Purposes of this Act until his Appointment has been Approved by the Privy Council; and such Appointment and Approval shall not in any Case be in force for more than Five Years; moreover it shall be the duty of the said Pharmaceutical Society to allow any Officer appointed by the said Privy Council to be present during the Progress of any Examination held for the Purposes of this Act.

VII. *Application of Fees to Purpose of Pharmaceutical Society.*—Upon every such Examination and Registration as aforesaid such Fees shall be payable as shall from Time to Time be fixed and determined by any Bye-law to be made in accordance with the Pharmacy Act as amended by this Act, and shall be paid to the Treasurer of the said Society for the Purposes of the said Society.

VIII. *Registrar under Pharmacy Act to be so under this Act.*—The Registrar appointed or to be appointed under or by virtue of the Pharmacy Act shall be Registrar for the purposes of this Act.

IX. *Council of Pharmaceutical Society to make Orders for regulating Register to be kept.*—The Council of the Pharmaceutical Society shall, [with all convenient Speed after the passing of this Act, and] (a) from Time to Time as occasion may require, make Orders or Regulations for regulating the Register to be kept under this Act as nearly as conveniently may be in accordance with the Form set forth in the Schedule (B) to this Act or to the like Effect, and such Register shall be called the Register of Chemists and Druggists.

X. *Duty of Registrar to make and keep Register.*—It shall be the Duty of the Registrar to make and keep a correct Register, in accordance with the provisions of this Act, of all Persons who shall be entitled to be registered under this Act, and to erase the Names of all registered Persons who shall have died, and from Time to Time to make the necessary Alterations in the

(a) Repealed by 56 & 57 Vict. c. 14.

Addresses of the Persons registered under this Act : to enable the Registrar duly to fulfil the Duties imposed upon him, it shall be lawful for the Registrar to write a Letter to any registered Person, addressed to him according to his Address on the register, to inquire whether he has ceased to carry on Business or has changed his Residence, such Letter to be forwarded by Post as a Registered Letter, according to the Post-Office Regulations for the Time being, and if no Answer shall be returned to such Letter within the Period of Six Months from the sending of the Letter, a Second, of similar Purport, shall be sent in like Manner, and if no Answer be given thereto within Three Months from the Date thereof it shall be lawful to erase the Name of such Person from the Register : Provided always, that the same may be restored by Direction of the Council of the Pharmaceutical Society should they think fit to make an Order to that effect.

XI. *Notice of Death of Pharmaceutical Chemist, etc., to be given by Registrars.*—Every Registrar of Deaths in Great Britain, on receiving Notice of the Death of any Pharmaceutical Chemist, or Chemist and Druggist, shall forthwith transmit by Post to the Registrar under the Pharmacy Act a Certificate under his own Hand of such Death, with the Particulars of the Time and Place of Death, and on the receipt of such Certificate the said Registrar under the Pharmacy Act shall erase the Name of such deceased Pharmaceutical Chemist, or Chemist and Druggist, from the Register, and shall transmit to the said Registrar of Deaths the Cost of such Certificate and Transmission, and may charge the cost thereof as an expense of his Office.

XII. *Evidence of Qualification to be given before Registration.*—No Name shall be entered in the Register, except of Persons Authorized by this Act to be registered, nor unless the Registrar be satisfied by the proper Evidence, that the Person claiming is entitled to be registered ; and any Appeal from the Decision of the Registrar may be decided by the Council of the Pharmaceutical Society ; and any Entry which shall be proved to the Satisfaction of such Council to have been fraudulently or incorrectly made may be erased from or amended in the Register by Order in Writing, of such Council.

XIII. *Annual Register to be published and be Evidence.*—The Registrar shall, in the Month of *January* in every year, cause to be printed, published, and sold a correct Register of the Names of all Pharmaceutical Chemists, and a correct Register of all Persons registered as Chemists and Druggists, and in such Registers respectively the Names shall be in alphabetical Order according to the surnames, with the respective Residences, in the form set forth in Schedule (B) to this Act, or to the like Effect, of all Persons appearing on the Register of Pharmaceutical Chemists, and on the Register of Chemists and Druggists, on the 31st Day of *December* last preceding, and such printed Registers shall be called “The Registers of Pharmaceutical Chemists and Chemists and Druggists,” and a printed Copy of such Registers for the Time being, purporting to be so printed and published as aforesaid, or any Certificate under the Hand of the said Registrar, and countersigned by the President or two Members of the Council of the Pharmaceutical Society, shall be Evidence in all Courts, and before all Justices of the Peace and others, that the Persons therein specified are registered according to the Provisions of the Pharmacy Act or of this Act, as the case may be, and the Absence of the Name of any Person from such printed Register shall be Evidence, until the contrary shall be made to appear, that such Person is not registered according to the Provisions of the Pharmacy Act or of this Act.

XIV. *Penalty of wilful Falsification of Register, or for obtaining Registration by false Representation.*—Any Registrar who shall wilfully make or cause to be made any Falsification in any Matter relating to the said Registers, and any Person who shall wilfully procure or attempt to procure himself to be registered under the Pharmacy Act or under this Act, by making or producing or causing to be made or produced any false or fraudulent Representation or Declaration, either verbally or in Writing, and any Person aiding or assisting him therein, shall be deemed guilty of a Misdemeanor in *England*, and in *Scotland* of a Crime or Offence punishable by Fine or Imprisonment, and shall on Conviction thereof be sentenced to be imprisoned for any Term not exceeding twelve months

XV. *Protection of Titles and Restrictions on Sale of Poisons.*—[From and after the 31st Day of *December*, 1868], (a) any Person who shall sell or keep an open Shop for the retailing, dispensing, or compounding Poisons, or who shall take, use, or exhibit the Name or Title of Chemist and Druggist, or Chemist or Druggist, not being a duly registered Pharmaceutical Chemist, or Chemist and Druggist, or who shall take, use, or exhibit the Name or Title Pharmaceutical Chemist, Pharmaceutist, or Pharmacist, not being a Pharmaceutical Chemist, or shall fail to conform with any Regulation as to the keeping or selling of Poisons made in pursuance of this Act, or who shall compound any Medicines of the British Pharmacopœia except according to the Formularies of the said Pharmacopœia, shall for every such Offence be liable to pay a Penalty or Sum of Five Pounds, and the same may be sued for, recovered, and dealt with in the Manner provided by the Pharmacy Act for the Recovery of Penalties under that Act; but nothing in this Act contained shall prevent any Person from being liable to any other Penalty, Damages, or Punishment, to which he would have been subject if this Act had not passed.

XVI. *Reserving Rights of certain Persons.*—Nothing hereinbefore contained shall extend to or interfere with the Business of any legally qualified Apothecary or of any Member of the Royal College of Veterinary Surgeons of *Great Britain*, nor with the making or dealing in Patent Medicines, nor with the Business of wholesale Dealers in supplying Poisons in the ordinary course of wholesale Dealing; and upon the Decease of any Pharmaceutical Chemist or Chemist and Druggist actually in Business at the Time of his Death it shall be lawful for any Executor, Administrator, or Trustee of the Estate of such Pharmaceutical Chemist or Chemist and Druggist to continue such Business if and so long only as such Business shall be *bonâ fide* conducted by a duly qualified Assistant, and a duly qualified Assistant within the meaning of this Clause shall be a Pharmaceutical Chemist or a Chemist and Druggist registered by the Registrar under the Pharmacy Act or this Act; Provided always, that Registration under this Act shall not entitle any

(a) Repealed by 56 & 57 Vict. c. 14.

Person so registered to practise Medicine or Surgery, or any Branch of Medicine or Surgery.

XVII. *Regulations to be observed in the Sale of Poisons.*—It shall be unlawful to sell any Poison, either by Wholesale or Retail, unless the Box, Bottle, Vessel, Wrapper, or Cover in which such Poison is contained be distinctly labelled with the Name of the Article and the word Poison, and with the Name and Address of the Seller of the Poison ; and it shall be unlawful to sell any Poison of those which are in the First Part of Schedule (A) to this Act, or may hereafter be added thereto under Section II. of this Act, to any Person unknown to the Seller, unless introduced by some Person known to the Seller ; and on every Sale of any such Article the Seller shall, before Delivery, make or cause to be made an Entry in a Book to be kept for that Purpose stating, in the Form set forth in Schedule (F) to this Act, the Date of the Sale, the Name and Address of the Purchaser, the Name and Quantity of the Article sold, and the Purpose for which it is stated by the Purchaser to be required, to which Entry the Signature of the Purchaser and of the Person, if any, who introduced him shall be affixed ; and any Person selling Poison otherwise than is herein provided shall, upon a Summary Conviction before two Justices of the Peace in *England* or the Sheriff in *Scotland*, be liable to a Penalty not exceeding Five Pounds for the First Offence, and to a Penalty not exceeding Ten Pounds for the Second or any subsequent Offence, and for the Purposes of this Section the Person on whose Behalf any Sale is made by any Apprentice or Servant shall be deemed to be the Seller ; but the Provisions of this Section, which are solely applicable to Poisons in the First Part of the Schedule (A) to this Act, or which require that the Label shall contain the Name and Address of the Seller, shall not apply to Articles to be exported from *Great Britain* by wholesale Dealers nor to Sales by wholesale to retail Dealers in the ordinary Course of wholesale Dealing, nor shall any of the Provisions of this Section apply to any Medicine supplied by a legally qualified Apothecary to his Patient, nor apply to any Article when forming Part of the Ingredients, of any Medicine dispensed by a Person registered under this Act ; provided such

Medicine be labelled in the Manner aforesaid, with the Name and Address of the Seller, and the Ingredients thereof be entered, with the Name of the Person to whom it is sold or delivered, in a Book to be kept by the Seller for that Purpose ; and nothing in this Act contained shall repeal or affect any of the Provisions of an Act of the Session holden in the Fourteenth and Fifteenth Years in the reign of Her present Majesty, intituled *An Act to regulate the Sale of Arsenic*.

Repealed by 61 and 62 Vict. c. 25.

XVIII. Every Person who at the Time of the passing of this Act is or has been in Business on his own Account as a Chemist and Druggist as aforesaid, and who shall be registered as a Chemist and Druggist, shall be eligible to be elected and continue a Member of the Pharmaceutical Society according to the Bye-laws thereof ; but no Person shall, in right of Membership acquired pursuant to this Clause, be placed on the Register of Pharmaceutical Chemists, nor, save as is hereinafter expressly provided, be eligible for Election to the Council of the Pharmaceutical Society.

XIX. Every person who is or has been in Business on his own Account as a Chemist and Druggist as aforesaid at the Time of the passing of this Act, and who shall become a Member of the Pharmaceutical Society, shall be eligible for Election to the Council of the Pharmaceutical Society ; but the said Council shall not at any Time contain more than seven Members who are not on the Register of Pharmaceutical Chemists.

XX. Every person who shall have been registered as a Chemist and Druggist under this Act by reason of having obtained a Certificate of Qualification from the Board of Examiners shall be eligible to be elected an Associate of the Pharmaceutical Society, and every such person so elected and continuing as such Associate, being in Business on his own Account, shall have the Privilege

of attending all Meetings of the said Society and of voting thereat, and otherwise taking Part in the Proceedings of such Meetings, in the same Manner as Members of the said Society ; Provided always that such Associates contribute to the Funds of the said Society the same Fees or Subscriptions as Members contribute for the Time being under the Bye-laws thereof.

XXI. At all Meetings of the Pharmaceutical Society at which Votes shall be given for the Election of Officers all or any of the Votes may be given either personally or by Voting Papers in a Form to be defined in the Bye-laws of the said Society, or in a form to the like effect, such Voting Papers being transmitted under Cover to the Secretary not less than one clear Day prior to the Day on which the Election is to take place.

XXII. *Benevolent Fund may be applied to past Members and Associates, also to Pharmaceutical Chemists and registered Chemists and Druggists.*—And whereas by the Charter of Incorporation of the said Pharmaceutical Society it is provided that the Council of the said Society shall have the sole Control and Management of the Real and Personal Property of the said Society, subject to the Bye-laws thereof, and shall make Provision thereout, or out of such Part thereof as they shall think proper, for the Relief of the distressed Members or Associates of the said Society, and their Widows and Orphans, subject to the Regulations and Bye-laws of the said Society : And whereas, for extending the Benefits which have resulted from the said Provision in the said Charter of Incorporation, it is desirable that additional Power should be granted to the said Council : Be it enacted That [from and after the passing of this Act] (a) the said Council may make Provision out of the real and Personal Property aforesaid, and out of any special Fund known as the Benevolent Fund, not only for the relief of the distressed Members or Associates of the said Society and their Widows and Orphans, subject to the said Regulations and Bye-laws,

(a) Repealed by 56 and 57 Vict. c. 14.

but also for all persons who may have been and have ceased to be Members or Associates of the said Society, or who may be or have been duly registered as "Pharmaceutical Chemists" or "Chemists and Druggists," and the Widows and Orphans of such Persons, subject to the Regulations and Bye-laws of the said Society.

Repealed by 32 and 33 Vict. c. 117.

XXIII. Persons registered under "The Medical Act," shall not be or continue to be registered under this Act.

Repealed by 38 and 39 Vict. c. 63, s. 1.

XXIV. The provisions of the Act of the Twenty-third and Twenty-fourth of *Victoria*, Chapter Eighty-four; intituled *An Act for Preventing the Adulteration of Articles of Food or Drink*, shall extend to all Articles usually taken or sold as Medicines, and every Adulteration of any such Article shall be deemed an Admixture injurious to Health; and any Person registered under this Act, who sells any such Article adulterated, shall, unless the contrary be proved, be deemed to have Knowledge of such Adulteration.

XXV. *Acts of Privy Council*.—[On and after the passing of this Act] (a) all Powers vested by the Pharmacy Act in one of Her Majesty's Principal Secretaries of State shall be vested in the Privy Council, and the Seventh Section of the Public Health Act, 1858, shall apply to all Proceedings and Acts of the Privy Council herein authorised.

XXVI. *Power to Privy Council to erase Names of Persons*

(a) Repealed by 56 and 57 Vict. c. 14.

from Register.—The Privy Council may direct the Name of any Person who is convicted of any Offence against this Act which in their Opinion renders him unfit to be on the Register under this Act to be erased from such Register, and it shall be the Duty of the Registrar to erase the same accordingly.

XXVII. *Extent of Act.*—This Act shall not extend to *Ireland*.

XXVIII. *Short Title.*—This Act may be cited as the Pharmacy Act, 1868.

SCHEDULES.

Repealed by 8 Edw. 7, c. 55, s. 1.

SCHEDULE (A).

Sect. 2.

PART 1.

Arsenic and its Preparations.	Aconite and its Preparations.
Prussic Acid.	Emetic Tartar.
Cyanides of Potassium and all metallic Cyanides.	Corrosive Sublimate.
Strychnine and all poisonous vegetable Alkaloids and their Salts.	Cantharides.
	Savin and its Oil.
	Ergot of Rye and its Pre- parations.

PART 2.

Oxalic Acid.	Essential Oil of Almonds unless deprived of its Prussic Acid.
Chloroform.	Opium and all Preparations of Opium or of Poppies.
Belladonna and its Prepara- tions.	

SCHEDULE (B).

Sect. 9, 13.

Name.	Residence.	Qualification.
A. B.	Oxford Street, London	In business prior to Pharmacy Act, 1868.
C. D.	George Street, Edin- burgh	Examined and certified.
E. F.	Cheapside, London	Assistant prior to Pharmacy Act, 1868.

Rep. (see s. 5) by 56 & 57 Vict. c. 14.

SCHEDULE (C).

Declaration by a Person who was in Business as a Chemist and Druggist in Great Britain before the Pharmacy Act, 1868.

To the Registrar of the Pharmaceutical Society of Great Britain.

I, _____, residing at _____, in the County of _____, hereby declare that I was in Business as a Chemist and Druggist, in the keeping of open shop for the compounding of the Prescriptions of duly qualified Medical Practitioners at _____, in the County of _____, on or before the _____ Day of _____, 186 .

Signed (Name)

Dated this _____ Day of _____, 18 .

SCHEDULE (D).

Declaration to be signed by a duly qualified Medical Practitioner, or Magistrate, respecting a Person who was in Business as a Chemist and Druggist in Great Britain before the Pharmacy Act, 1868.

To the Registrar of the Pharmaceutical Society of Great Britain.

I, _____, residing at _____, in the County of _____, hereby declare that I am a duly qualified Medical Practitioner [or Magistrate], and that to my Knowledge _____, residing at _____ in the County of _____, was in business as a Chemist and Druggist, in the keeping of open Shop for the compounding of the Prescriptions of duly qualified Medical Practitioners, before the _____ Day of _____, 186 .

(Signed)

Repealed by 32 and 33 Vict. c. 117.

SCHEDULE (E).

Declarations to be signed by and on behalf of any Assistant claiming to be registered under the Pharmacy Act, 1868.

To the Registrar of the Pharmaceutical Society of Great Britain.

I hereby declare that the undersigned , residing at , in the County of , had for Three years immediately before the passing of the Pharmacy Act, 1868, been employed in dispensing and compounding Prescriptions, as an Assistant to a Pharmaceutical Chemist or Chemist and Druggist, and attained the age of Twenty-one Years.

As witness my Hand this day of , 186 .

A. B., duly qualified Medical Practitioner.

C. D., Pharmaceutical Chemist.

E. F., Chemist and Druggist.

G. H., Magistrate.

(To be signed by one of the Four Parties named.)

I hereby declare that I was an Assistant to , of , in the County of , in the Year , and was for Three Years immediately before the passing of this Act actually engaged in dispensing and compounding Prescriptions, and that I had attained the full Age of Twenty-one Years at the Time of the passing of the Pharmacy Act, 1868.

N. O., Assistant.

SCHEDULE (F).

Sect. 17.

Date.	Name (and address (a)) of Purchaser.	Name and Quantity of Poison sold.	Purpose for which it is required.	Signature of Purchaser.	Signature of Person introducing Purchaser.

(a) The words in brackets are added by 32 and 33 Vict. c. 117, s. 5.

THE PHARMACY ACT, 1869. (a)

(32 & 33 VICT. c. 117.)

An Act to amend the "Pharmacy Act," 1868.

Repealed by 56 & 57 Vict. c. 14.

[11th August 1869.]

WHEREAS it is expedient to amend the provisions of the Pharmacy Act, 1868, in regard to duly qualified medical practitioners and veterinary surgeons, and in other respects :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. *Reserving Rights of Certain Persons.*—Nothing contained in the first fifteen sections of the recited Act shall affect any person who has been registered as a legally qualified medical practitioner before the passing of this Act ; and the said clauses shall not apply to any person who may hereafter be registered as a legally qualified practitioner, and who, in order to obtain his diploma for such registration, shall have passed an examination in pharmacy ; nor shall the said clauses prevent any person who is a member of the Royal College of Veterinary Surgeons of Great Britain, or holds a certificate in veterinary surgery from the Highland and Agricultural Society of Scotland, from dispensing medicines for animals under his care.

Repealed by 46 & 47 Vict. c. 39.

II. *Period within which certificates under Section 4 of recited Act to be produced to Registrar.*—The time within which certificates may be produced to the Registrar under section 4 of the said Act, by persons employed as assistants before the passing of the said Act, shall be extended to the thirty-first day of December one thousand eight hundred and sixty-nine, and the certificate given under the same section according to Schedule (A) of this Act shall be sufficient.

(a) Short Titles Act, 59 & 60 Vict. c. 14.

III. *Excepting Medicine supplied by a legally qualified Medical man.*—Nothing contained in section 17 of the said recited Act shall apply to any medicine supplied by a legally qualified medical practitioner to his patient or dispensed by any person registered under the said Act,² provided such medicine be distinctly labelled with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose.

Repealed by 46 & 47 Vict. c. 39.

IV. *Section 23 and Schedule (E) repealed. Schedule (F) amended.*—Section 23 and Schedule (E) of the said recited Act are hereby repealed.

V. Schedule (F) of the said recited Act is hereby altered by substituting for the second column headed "Name of Purchaser" a column headed "Name and Address of Purchaser."

PHARMACY ACTS AMENDMENT ACT, 1898.

(61 & 62 Vict. c. 25.)

An Act to amend the "Pharmacy Acts," 1852 and 1868.

[25th July 1898.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. *Interpretation.*—In this Act the term "chemist and druggist" shall have the same meaning as in the Pharmacy Act, 1868, and "the Society" shall mean the Pharmaceutical Society of Great Britain.

II. "*Apprentices or Students*" eligible to be elected "*Student-associates*," 15 & 16 Vict. c. 56.—Every person who at the time of the passing of this Act shall have been duly registered

as an "apprentice or student," and who, under the provisions set forth in section ten of the Pharmacy Act, 1852, has been admitted to and at that time remains in the Society as a "student," shall be registered as a "student-associate" of the Society; and every person who at the time of the passing of this Act shall have been duly registered, or who thereafter shall become registered as an "apprentice or student," shall be eligible to be elected a "student-associate" of the Society according to the Bye-laws thereof.

III. *Registered Chemists and Druggists eligible to be elected "Members."*—Every person who at the time of the passing of the Act shall have been registered as a chemist and druggist, or who shall hereafter become registered as a chemist and druggist, shall be eligible to be elected a "member" of the Society according to the Bye-laws thereof.

IV. *Retirement of Members of the Council by rotation.*—In lieu of the provisions contained in the Royal Charter of Incorporation of the Society, whereby it is provided that two-thirds of the members of the Council shall in every year go out of office, the following provisions shall, after the passing of this Act, have effect:—

1. On the ordinary day of election of members of the Council in every year seven members of the Council shall go out of office, and the vacancies shall be filled by election, the retiring members being eligible for re-election:
2. The seven members who go out shall be the members of the Council who have been longest in office without re-election:
3. If and whenever the number of the members of the Council who have been longest in office without re-election shall exceed seven, the members of the Council to retire shall be determined from these by lot.

V. *Voting Papers for Election of Officers.*—At all meetings of the Society at which votes shall be given for the election of officers, all or any of the votes may be given either personally or by voting papers, in a form to be defined in the Bye-laws of

the said Society, or in a form to the like effect, such voting papers being received by the Secretary, under cover, not later than twelve o'clock noon on the day on which the election takes place.

VI. *Extent of Act.*—This Act shall not extend to Ireland.

VII. *Short title of Act.*—This Act may be cited as the Pharmacy Acts Amendment Act, 1898.

Repealed by 8 Edw. 7, c. 49 (S. L. R. Act, 1908).

VIII. *Repeal.*—The enactments mentioned in the schedule to this Act to the extent specified in the third column of that schedule are hereby repealed.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
15 & 16 Vict. c. 56	Pharmacy Act, 1852	In Section ten, the words “and every such person “duly registered as an “assistant shall be eli- “gible for admission as “an associate of the said “Society.”
31 & 32 Vict. c. 121	Pharmacy Act, 1868	Sections eighteen, nineteen, twenty, and twenty-one.

POISONS AND PHARMACY ACT, 1908.

(8 EDW. 7, c. 55.)

An Act to regulate the Sale of certain Poisonous Substances and to amend the Pharmacy Acts.

[21st December 1908.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and

Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. *Amendment of 31 & 32 Vict. c. 121, Schedule A.*—(1) Schedule A to the Pharmacy Act, 1868 (which specifies the articles to be deemed poisons within the meaning of that Act), is hereby repealed, and the Schedule to this Act shall be substituted therefor.

(2) The Schedule to this Act may be amended by adding thereto or removing therefrom any article, or by transferring any article from one part of the Schedule to the other in the manner provided by section two of the Pharmacy Act, 1868, for adding to the list of articles deemed to be poisons within the meaning of that Act.

2. *Regulation of Sale of certain Poisonous Substances for Agricultural and Horticultural Purposes.*—(1) So much of the Pharmacy Act, 1868, as makes it an offence for any person to sell or keep open shop for the sale of poisons, unless he is a duly registered pharmaceutical chemist or chemist and druggist and conforms to regulations made under section one of that Act, shall not apply in the case of poisonous substances to be used exclusively in agriculture or horticulture for the destruction of insects, fungi, or bacteria, or as sheep dips or weed killers which are poisonous by reason of their containing arsenic, tobacco, or the alkaloids of tobacco, if the person so selling or keeping open shop is duly licensed for the purpose under this section by a local authority, and conforms to any regulations as to the keeping, transporting, and selling of poisons made under this section, but nothing in this section shall exempt any person so licensed from the requirements of any other provision of the Pharmacy Act, 1868, or of the Arsenic Act, 1851, relating to poisons :

Provided that His Majesty may by Order in Council amend this provision by adding thereto or removing therefrom any poisonous substance, and, upon any such Order being made, this provision shall have effect as if the added poisonous substances were included therein and the removed poisonous substances were excluded therefrom.

(2) Before granting any licence under this section the local

authority shall take into consideration whether in the neighbourhood where the applicant for the licence carries on or intends to carry on business the reasonable requirements of the public with respect to the purchase of such poisonous substances as aforesaid are satisfied.

(3) His Majesty may, by Order in Council, make regulations as to—

- (a) the granting of licences under this section ; and
- (b) the duration, renewal, revocation, suspension, extent, and production of such licences ; and
- (c) the keeping, inspection, and copying of registers of licences ; and
- (d) the fees to be charged for licences and for inspection and copying of registers ; and
- (e) the keeping, transporting, and selling of the poisonous substances to which this section applies ;

and generally for the purposes of carrying this section into effect.

(4) The local authority for the purposes of this section shall, as respects the area of any municipal borough in England having a population of more than ten thousand according to the last published census for the time being, be the council of that borough, and, as respects the area of any royal, parliamentary, or police borough in Scotland, be the town council, and, as respects any other place, be the council of the county.

(5) An Order in Council under this section shall be laid afore both Houses of Parliament as soon as may be after it is made.

3. *Amendment of 31 & 32 Vict. c. 121, ss. 15 and 16.*—(1) Any person who, being a duly registered pharmaceutical chemist or chemist and druggist, carries on the business of pharmaceutical chemist or chemist and druggist shall, unless in every premises where the business is carried on the business is *bonâ fide* conducted by himself or some other duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and unless the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises, be guilty of an offence under section fifteen of the Pharmacy Act, 1868.

(2) The provisions of section sixteen of the Pharmacy Act, 1868, which enable the executor, administrator, or trustee of the estate of a deceased pharmaceutical chemist or chemist and druggist to continue his business so long as such business is *bonâ fide* conducted by a duly qualified assistant, shall be construed as enabling such executor, administrator, or trustee to carry on the business if and so long only as, in every premises where the business is carried on, the business is *bonâ fide* conducted by a duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises.

(3) A registered chemist or druggist may, notwithstanding anything in section fifteen of the Pharmacy Act, 1868, take, use, or exhibit the name or title of pharmacist.

(4) A body corporate, and in Scotland a firm or partnership, may carry on the business of a pharmaceutical chemist or chemist and druggist—

(a) if the business of the body corporate, firm, or partnership, so far as it relates to the keeping, retailing, and dispensing of poisons, is under the control and management of a superintendent who is a duly registered pharmaceutical chemist or chemist and druggist, whose name has been forwarded to the registrar appointed under the Pharmacy Act, 1852, to be entered by him in a register to be kept for that purpose, and who does not act at the same time in a similar capacity for any other body corporate, firm, or partnership ; and

(b) if in every premises where such business as aforesaid is carried on, and is not personally conducted by the superintendent, such business is *bonâ fide* conducted under the direction of the superintendent by a manager or assistant who is a duly registered pharmaceutical chemist or chemist and druggist, and whose certificate of qualification is conspicuously exhibited in the shop or other place in which he so conducts the business.

A body corporate, and in Scotland a firm or partnership, may use the description of chemist and druggist, or of chemist or of druggist, or of dispensing chemist or druggist, if the foregoing requirements as to the carrying on of the business are observed, and if the superintendent is a member of the board of directors or other governing body of the body corporate, or of the firm or partnership, as the case may be.

Subject as aforesaid, section twelve of the Pharmacy Act, 1852, and sections one and fifteen of the Pharmacy Act, 1868, shall apply to a body corporate, and in Scotland to a firm or partnership, in like manner as they apply to an individual.

4. *Extension of powers of Pharmaceutical Society to make Bye-laws.*—The power of making Bye-laws conferred by section two of the Pharmacy Act, 1852, on the council of the Pharmaceutical Society shall be deemed to include the power of making Bye-laws for all or any of the following purposes (that is to say) :—

- (a) Requiring persons desirous of presenting themselves for examination by the said society to produce evidence satisfactory to the council of the society that they have received a sufficient preliminary practical training in the subjects of the examination ;
- (b) Providing for the registration, upon payment of the prescribed fee, as pharmaceutical chemists or chemists and druggists under the Pharmacy Acts, 1852 and 1868, without examination, of any persons holding colonial diplomas or of qualified military dispensers or certified assistants to apothecaries under the Apothecaries Act, 1815, who produce evidence satisfactory to the council of the society that they are persons of sufficient skill and knowledge to be so registered ;
- (c) Providing for periods of time and courses of study in connexion with the qualifying examination, and dividing such examination into two parts.

5. *Restrictions on Sale of certain Poisonous Substances.*—(1) It shall not be lawful to sell any substance to which this section applies by retail, unless the box, bottle, vessel, wrapper, or

cover in which the substance is contained is distinctly labelled with the name of the substance and the word "Poisonous," and with the name and address of the seller of the substance, and unless such other regulations as may be prescribed under this section by Order in Council are complied with; and, if any person sells any such substance otherwise than in accordance with the provisions of this section, or of any Order in Council made thereunder, he shall, on conviction under the Summary Jurisdiction Acts, be liable for each offence to a fine not exceeding five pounds.

(2) The substances to which this section applies are sulphuric acid, nitric acid, hydrochloric acid, soluble salts of oxalic acid, and such other substances as may for the time being be prescribed by Order in Council under this section.

6. *Application to Ireland.*—(1) The provisions of section two and section five of this Act shall apply to Ireland, with the following modifications :—

- (a) For the reference to the Pharmacy Act, 1868, there shall be substituted a reference to the Pharmacy Act (Ireland), 1875, and the Pharmacy Act (Ireland) (1875) Amendment Act, 1890, and the reference to regulations made under section one of the first-mentioned Act shall not apply;
- (b) For references to Orders in Council by His Majesty, or to Orders in Council, there shall be substituted references to Orders in Council by the Lord-Lieutenant;
- (c) The reference to a duly registered chemist and druggist shall include a reference to a registered druggist.

(2) Save as provided by this section, the foregoing provisions of this Act shall not apply to Ireland.

7. *Continuation of Business on death of Chemist and Druggist or registered Druggist in Ireland.*—Upon the death of any person registered under the Pharmacy Act (Ireland) (1875) Amendment Act, 1890, as a chemist and druggist or registered druggist and actually in business at the time of his death, it shall be lawful for any executor, administrator, or trustee of his estate to continue such business if and so long only as such business is *bonâ fide* conducted by an assistant being a duly registered

pharmaceutical chemist or licentiate apothecary, or duly registered chemist and druggist, or duly registered druggist.

8. *Short Title, Commencement, and Extent.*—This Act may be cited as the Poisons and Pharmacy Act, 1908, and shall come into operation on the first day of April nineteen hundred and nine.

SCHEDULE.*

PART I.

Arsenic, and its medicinal preparations.

Aconite, aconitine, and their preparations.

Alkaloids—all poisonous vegetable alkaloids not specifically named in this schedule, and their salts, and all poisonous derivatives of vegetable alkaloids.

Atropine, and its salts, and their preparations.

Belladonna, and all preparations or admixtures (except belladonna plaisters) containing 0·1 or more per cent. of belladonna alkaloids.

Cantharides, and its poisonous derivatives.

Coca, any preparation or admixture of, containing 1 or more per cent. of coca alkaloids.

Corrosive sublimate.

Cyanide of potassium, and all poisonous cyanides and their preparations.

Emetic tartar, and all preparations or admixtures containing 1 or more per cent. of emetic tartar.

Ergot of rye, and preparations of ergots.

Nux vomica, and all preparations or admixtures containing 0·2 or more per cent. of strychnine.

Opium, and all preparations or admixtures containing 1 or more per cent. of morphine.

Picrotoxin.

Prussic acid, and all preparations or admixtures containing 0·1 or more per cent. of prussic acid.

Savin, and its oil, and all preparations or admixtures containing savin or its oil.

PART II.

Almonds, essential oil of (unless deprived of prussic acid).

Antimonial wine.

* This schedule may be amended from time to time. See p. 233.

Cantharides, tincture and all vesicating liquid preparations or admixtures of.

Carbolic acid, and liquid preparations of carbolic acid, and its homologues containing more than 3 per cent. of those substances, except preparations for use as sheep wash or for any other purpose in connection with agriculture or horticulture, contained in a closed vessel distinctly labelled with the word "Poisonous," the name and address of the seller, and a notice of the special purposes for which the preparations are intended.

Chloral hydrate.

Chloroform, and all preparations or admixtures containing more than 20 per cent. of chloroform.

Coca, any preparation or admixture of, containing more than 0·1 per cent. but less than 1 per cent. of coca alkaloids.

Digitalis.

Mercuric iodide.

Mercuric sulphocyanide.

Oxalic acid.

Poppies, all preparations of, excepting red poppy petals and syrup of red poppies (*papaver rhæas*).

Precipitate, red, and all oxides of mercury.

Precipitate, white.

Strophanthus.

Sulphonal.

All preparations or admixtures which are not included in Part I. of this schedule, and contain a poison within the meaning of the Pharmacy Acts, except preparations or admixtures the exclusion of which from this schedule is indicated by the words therein relating to carbolic acid, chloroform, and coca, and except such substances as come within the provisions of section five of this Act.

THE ARSENIC ACT, 1851.

(14 VICT. C. 13.)

An Act to regulate the Sale of Arsenic.

[5th June 1851.]

WHEREAS the unrestricted Sale of Arsenic facilitates the Commission of Crime: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords

Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. *On every Sale of Arsenic Particulars of Sale to be entered in a Book by the Seller in Form set forth in Schedule to this Act.*—Every Person who shall sell any Arsenic shall forthwith, and before the Delivery of such Arsenic to the Purchaser, enter or cause to be entered in a fair and regular Manner, in a Book or Books to be kept by such Person for that Purpose, in the Form set forth in the Schedule to this Act, or to the like Effect, a Statement of such Sale, with the Quantity of Arsenic so sold, and the Purpose for which such Arsenic is required or stated to be required, and the Day of the Month and Year of the Sale, and the Name, Place of Abode, and Condition or Occupation of the Purchaser, into all which Circumstances the Person selling such Arsenic is hereby required and authorised to inquire of the Purchaser before the Delivery to such Purchaser of the Arsenic sold, and such Entries shall in every Case be signed by the Person making the same, and shall also be signed by the Purchaser, unless such Purchaser profess to be unable to write (in which Case the Person making the Entries hereby required shall add to the Particulars to be entered in relation to such Sale the Words “cannot write”), and, where a Witness is hereby required to the Sale, shall also be signed by such Witness, together with his Place of Abode.

II. *Restrictions as to Sale of Arsenic.*—No Person shall sell Arsenic to any person who is unknown to the Person selling such Arsenic, unless the sale be made in the Presence of a Witness who is known to the Person selling the Arsenic, and to whom the Purchaser is known, and who signs his Name, together with his Place of Abode, to such Entries, before the Delivery of the Arsenic to the Purchaser, and no Person shall sell Arsenic to any Person other than a Person of full Age.

III. *Provision for colouring Arsenic.*—No Person shall sell any Arsenic unless the same be before the Sale thereof mixed with Soot or Indigo in the Proportion of One Ounce of Soot or Half an Ounce of Indigo at the least to One Pound of the Arsenic, and so in proportion for any greater or less Quantity: Provided always, that where such Arsenic is stated by the

Purchaser to be required, not for Use in Agriculture, but for some other Purpose for which such Admixture would, according to the Representation of the Purchaser, render it unfit, such Arsenic may be sold without such Admixture in a Quantity of not less than Ten Pounds at any One Time.

IV. *Penalty for offending against this Act.*—If any Person shall sell any Arsenic, save as authorised by this Act, or on any Sale of Arsenic shall deliver the same without having made and signed the Entries hereby required on such Sale, or without having obtained such Signature or Signatures to such Entries as required by this Act, or if any Person purchasing any Arsenic shall give false Information to the Person selling the same in relation to the Particulars which such last-mentioned Person is hereby authorised to inquire into of such Purchaser, or if any Person shall sign his Name as aforesaid as a Witness to a Sale of Arsenic to a Person unknown to the Person so signing as Witness, every Person so offending shall for every such Offence, upon a summary Conviction for the same before Two Justices of the Peace in *England* or *Ireland*, or before Two Justices of the Peace or the Sheriff in *Scotland*, be liable to a Penalty not exceeding Twenty Pounds.

V. *Act not to prevent Sale of Arsenic in Medicine under a Medical Prescription.*—Provided, That this Act shall not extend to the Sale of Arsenic when the same forms Part of the Ingredients of any Medicine required to be made up or compounded according to the Prescription of a legally qualified Medical Practitioner, or a Member of the Medical Profession, or to the Sale of Arsenic by Wholesale to Retail Dealers, upon Orders in Writing in the ordinary Course of Wholesale Dealing.

VI. *"Arsenic" to include Arsenious Compounds.*—In the Construction of this Act the Word "Arsenic" shall include Arsenious Acid and the Arsenites, Arsenic Acid and the Arseniates, and all other colourless poisonous Preparations of Arsenic.

THE SCHEDULE.

Day of sale.	Name and surname of purchaser.	Purchaser's place of abode.		Condition or occupation.	Quantity of arsenic sold.	Purpose for which required.
1 September 1851	John Thomas	Hendon	Elm Farm	Farm labourer	5 lbs.	To steep wheat

(Purchaser's signature.)

JOHN THOMAS.

Witness,

JAMES STONE,

Grove Farm, Hendon.

(Seller's signature.)

GEORGE WOOD.

Or, if purchaser cannot write, seller to put here the words, "cannot write."

THE POISONED GRAIN PROHIBITION ACT, 1863.

(26 & 27 VICT. c. 113).

An Act to prohibit the Sale and Use of poisoned Grain or Seed.

[28th July 1863.]

WHEREAS it is expedient to prohibit the Sale and Use of poisoned Grain or Seed: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. *Short Title of Act.*—This Act may be cited for all Purposes as "The Poisoned Grain Prohibition Act, 1863."

2. *Penalty for selling poisoned Grain, Seed, or Meal.*—Every Person who shall offer or expose for Sale or sell any Grain, Seed, or Meal which has been so steeped or dipped in Poison, or with which any Poison or any Ingredient or Preparation has been so mixed, as thereby to render the same poisonous, and calculated to destroy Life, shall in either Case for every such Offence, upon summary Conviction, as herein-after provided, forfeit any Sum not exceeding Ten Pounds.

3. *Penalty for sowing, &c. poisoned Grain, Seed, or Meal.*—Every Person who shall knowingly and wilfully sow, cast, set, lay, put, or place, or cause to be sown, cast, set, laid, put, or placed, into, in, or upon any Ground or other exposed Place or Situation, any such Grain, Seed, or Meal which has been so steeped or dipped in Poison, or with which Poison or any Ingredient or Preparation has been so mixed as thereby to render such Grain, Seed, or Meal poisonous, and calculated to destroy Life, shall, upon a summary Conviction thereof as herein-after provided, forfeit any Sum not exceeding Ten Pounds.

4. *Solutions or Infusions, &c. allowed for Use in Agriculture.*—Nothing in this Act shall prohibit the offering or exposing for Sale or selling or the Use of any Solution or Infusion, or any Material or Ingredient for dressing, protecting, or preparing any Grain or Seed for *bonâ fide* Use in Agriculture only, or the sowing of such last-mentioned Grain or Seed so prepared.

5. *Recovery of Penalties.*—All Penalties imposed by this Act may be recovered in *England* and *Ireland* before Two Justices of the Peace, and in *Scotland* before Two Justices of the Peace or the Sheriff; and for that Purpose in *England* and *Scotland* the Provisions of the Act of the Eleventh and Twelfth Years of Her present Majesty, Chapter Forty-three, and in *Ireland* the “Petty Sessions (*Ireland*) Act, 1851,” shall extend and apply to this Act, and to all Proceedings in relation thereto; and it shall not in any such Proceedings be necessary to allege or prove the Ground or other Place where an Offence is committed to be the Property of or occupied by any Person :

Informer (not a Constable) entitled to Moiety of Penalty.—Provided always, that the convicting Justices or Sheriff may, if they or he shall think fit, award to the Informer or Prosecutor (not being a Police Constable or Peace Officer) in any such Proceedings any Portion not exceeding One Moiety of any Penalty recovered under the aforesaid Enactments :

Indemnity to Witnesses, &c.—Provided also, that every Informer or Prosecutor, and every Person who shall give Evidence against any other Person proceeded against under this Act, shall be freed and discharged from any such Penalty which he may have incurred for or by reason of his having

participated or aided in the Commission of the Offence with respect to which he shall so inform or prosecute or give Evidence, provided the Information against such other Person has been laid, or such Evidence has been given, before the laying of any Information (if any) against such Informer, Prosecutor, or Witness for the Recovery of any Penalty he may have so incurred.

THE POISONED FLESH PROHIBITION ACT, 1864.

(27 & 28 VICT. c. 115.)

An Act to prohibit the placing of poisoned Flesh and poisonous Matters in Plantations, Fields, and open Places, and to extend "The Poisoned Grain Prohibition Act, 1863."

[29th July 1864.]

WHEREAS it is expedient to extend the Provisions of an Act passed in the Session of Parliament held in the Twenty-sixth and Twenty-seventh Years of the Reign of Her present Majesty, intituled *An Act to prohibit the Sale and Use of Poisoned Grain or Seed*: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

1. *Short Title.*—This Act may be cited for all Purposes as "The Poisoned Flesh Prohibition Act, 1864."

2. *Penalty for placing Poisoned Flesh in Fields, &c.*—Every Person who shall knowingly and wilfully set, lay, put, or place, or cause to be set, laid, put, or placed, in or upon any Land any Flesh or Meat which has been mixed with or steeped in or impregnated with Poison or any poisonous Ingredient so as to render such Flesh or Meat poisonous and calculated to destroy Life, shall, upon a summary Conviction thereof, forfeit any Sum not exceeding Ten Pounds, to be recovered in the Manner provided by The Poisoned Grain Prohibition Act, 1863: Provided always, that nothing herein contained shall prevent

Owners or Occupiers of Land in *Ireland* from laying or causing to be laid any poisonous Matter as herein-before described, after a Notice has been posted in a conspicuous Place, and Notice in Writing has been given to the nearest Constabulary Station.

3. *Not to apply to Occupier placing Poisoned Preparations for Destruction of Vermin.*—Nothing in this Act shall make it unlawful for the Occupier of any Dwelling House or other Building, or the Owner of any Rick or Stack of Wheat, Barley, Oats, Beans, Peas, Tares, Seeds, or of any cultivated Vegetable Produce, to put or place or cause to be put or placed in any such Dwelling House or other Building, or in any enclosed Garden attached to such Dwelling House, or in the Drains connected with any such Dwelling House, provided that such Drains are so protected with Gratings or otherwise as to prevent any Dog from entering the same, or within such Rick or Stack, any Poison or poisonous Ingredient or Preparation for the Destruction of Rats, Mice, or other small Vermin.

4. *As to Application of Act.*—This Act shall not apply to any Grain, Seed, or Meal within the Provisions of The Poisoned Grain Prohibition Act, 1863, and the Provisions of the Fifth Section of the said Poisoned Grain Prohibition Act, 1863, shall apply to any Proceedings instituted under this Act, and shall come into operation on the First *October*, One thousand eight hundred and sixty-four.

REGULATIONS PRESCRIBED BY THE PHARMACEUTICAL SOCIETY BY VIRTUE OF THE PROVISIONS OF THE PHARMACY ACT, 1868, s. 1.

Extracts from the *London Gazette*.

AT THE COUNCIL CHAMBER, WHITEHALL, THE 31ST DAY OF JANUARY, 1899.

By a Committee of the Lords of Her Majesty's Most Honourable Privy Council. Present: Lord President, Marquess of Lansdowne, Sir John Gorst.

WHEREAS by section 1 of "The Pharmacy Act, 1868," it is enacted that it shall be unlawful for any person to sell or keep

open shop for retailing, dispensing, or compounding Poisons, or to assume or use the title "Chemist and Druggist," or "Chemist or Druggist," or "Pharmacist," or "Dispensing Chemist or Druggist," in any part of "Great Britain," unless such person shall be a Pharmaceutical Chemist, or a Chemist and Druggist within the meaning of that Act, and be registered under that Act, and conform to such Regulations as to the keeping, dispensing, and selling of such Poisons as may from time to time be prescribed by the Pharmaceutical Society with the consent of the Privy Council :

And whereas the Pharmaceutical Society of Great Britain did, on the 11th day of January, 1899, adopt the following Regulations for the keeping, dispensing, and selling of Poisons, within the meaning of "The Pharmacy Act, 1868," in accordance with the provisions set forth in section 1 of that Act :—

1. That in the keeping of poisons each bottle, vessel, box, or package containing a poison be labelled with the name of the article, and also with some distinctive mark indicating that it contains poison.

2. Also that in the keeping of poisons, each poison be kept on one or other of the following systems, viz. :—

"(a) In a bottle or vessel tied over, capped, locked, or otherwise secured in a manner different from that in which bottles or vessels containing ordinary articles are secured in the same warehouse, shop, or dispensary : or

"(b) In a bottle or vessel rendered distinguishable by touch from the bottles or vessels in which ordinary articles are kept in the same warehouse, shop, or dispensary : or

"(c) In a bottle, vessel, box, or package kept in a room or cupboard set apart for dangerous articles."

3. That in the dispensing and selling of poisons, all linaments, embrocations, and lotions containing poisons be sent out in bottles rendered distinguishable by touch from ordinary medicine bottles, and that there also be affixed to each such bottle (in addition to the

name of the article, and to any particular instructions for its use) a label giving notice that the contents of the bottle are not to be taken internally.

And whereas the said Society has submitted the said Regulations for the consent of the Privy Council:

Now, therefore, the Lords of the Council are hereby pleased to signify their consent to the said Regulations.

A. W. FITZ-ROY.

Extract from the *London Gazette*, July 4th, 1902.

AT THE COUNCIL CHAMBER, WHITEHALL, THE 5TH DAY OF
JUNE, 1902.

By a Committee of the Lords of His Majesty's Most Honourable Privy Council. Present: Lord President, Lord Balfour of Burleigh, Sir John Gorst.

WHEREAS, by section 1 of "The Pharmacy Act, 1868," it is enacted that it shall be unlawful for any person to sell or keep open shop for retailing, dispensing, or compounding Poisons, or to assume or use the title of "Chemist and Druggist," or "Chemist," or "Druggist," or "Pharmacist," or "Dispensing Chemist or Druggist," in any part of "Great Britain" unless such person shall be a Pharmaceutical Chemist, or Chemist and Druggist, within the meaning of that Act, and be registered under that Act, and to conform to such Regulations as to the keeping, dispensing, and selling of such Poisons as may from time to time be prescribed by the Pharmaceutical Society, with the consent of the Privy Council:

And whereas the Pharmaceutical Society of Great Britain did, on the 11th day of January, 1899, adopt certain Regulations for the keeping, dispensing, and selling of Poisons within the meaning of "The Pharmacy Act, 1868," in accordance with the provisions set forth in section 1 of that Act:

And whereas the said Regulations received the consent of the Lords of the Council on the 31st day of January, 1899:

And whereas the Pharmaceutical Society did, on the 28th day of May, 1902, resolve that clause 3 of the Regulations be amended by the deletion of the word "and" preceding the word "lotions," and that the words "and liquid disinfectants" be added after the word "lotions."

And whereas the said Society has submitted the said resolution for the consent of the Privy Council :

Now, therefore, the Lords of the Council are hereby pleased to signify their consent to the said amendment, and to consent to the said Regulations so amended (copy whereof is hereby annexed).

A. W. FITZ-ROY.

AGRICULTURAL AND HORTICULTURAL POISONS.

POISONS AND PHARMACY ACT, 1908, S. 2.

ORDER IN COUNCIL.

AT THE COURT AT SAINT JAMES'S, THE 2ND DAY OF APRIL, 1909.

Present—His Royal Highness the Prince of Wales, Lord President, Lord Steward, Lord Haversham, Lord Pentland.

WHEREAS His Majesty was pleased, by His Commission dated the second day of March, one thousand nine hundred and nine, to nominate and appoint His Royal Highness the Prince of Wales, in His Majesty's absence from His Realm in foreign parts, to hold, on His Majesty's behalf, His Privy Council, and to signify thereat His approval of any matter or thing whereunto His Royal Highness should be so authorised by writing under His Majesty's Sign Manual, and to do further on His Majesty's behalf any matter or thing for the purposes of the said Commission whereunto His Royal Highness should be authorised in manner aforesaid.

And whereas by section 2 of The Poisons and Pharmacy Act, 1908, it is amongst other things enacted that "so much of the

Pharmacy Act, 1868, as makes it an offence for any person to sell or keep open shop for the sale of poisons, unless he is a duly registered pharmaceutical chemist or chemist and druggist, and conforms to regulations made under section one of that Act, shall not apply in the case of poisonous substances to be used exclusively in agriculture or horticulture for the destruction of insects, fungi, or bacteria, or as sheep dips or weed killers which are poisonous by reason of their containing arsenic, tobacco, or the alkaloids of tobacco, if the person so selling or keeping open shop is duly licensed for the purpose under this section by a local authority, and conforms to any Regulations as to the keeping, transporting, and selling of poisons made under this section, but nothing in this section shall exempt any person so licensed from the requirements of any other provision of the Pharmacy Act, 1868, or of the Arsenic Act, 1851, relating to poisons ;" and that His Majesty may by Order in Council make Regulations as to :—

- (a) the granting of licences under this section ; and
- (b) the duration, renewal, revocation, suspension, extent, and production of such licences ; and
- (c) the keeping, inspection, and copying of registers of licences ; and
- (d) the fees to be charged for licences and for inspection and copying of registers ; and
- (e) the keeping, transporting, and selling of the poisonous substances to which this section applies ;

and generally for the purposes of carrying this section into effect.

And whereas it is expedient that Regulations be made in pursuance of the said Act.

Now, therefore, His Royal Highness the Prince of Wales, being authorized thereto by writing under His Majesty's Sign Manual, by and with the advice of His Majesty's Privy Council, on behalf of His Majesty, doth hereby make the Regulations which are hereunto annexed, and doth hereby order that those Regulations do continue in force until revoked or varied by any Regulations which may hereafter be made under the said recited enactment.

A. W. FITZ-ROY

REGULATIONS REFERRED TO IN THE FOREGOING ORDER IN
COUNCIL.

POISONS AND PHARMACY ACT, 1908.

1. A licence shall not be granted to any person unless the local authority are satisfied that he is fit to be entrusted with the sale of the poisonous substances.

2. In granting licences for the sale of poisonous substances for use exclusively in horticulture, preference shall be given to nurserymen, florists, seedsmen, and other persons whose business is specially connected with horticulture.

3. Applications for licences shall be in the form set forth in Schedule A to these regulations.

4. Before sending an application for a licence to the local authority the applicant shall publish notice of his intention to apply in two newspapers circulating in the district of the local authority, and shall also send notice by registered post to the Chief Officer of Police of the Police area within which his premises are situate.

5. A licence shall not be granted until after the expiration of at least fourteen days from the receipt of the application by the local authority, and the local authority before granting a licence shall take into consideration whether in the neighbourhood where the applicant for the licence carries on or intends to carry on business the reasonable requirements of the public with respect to the purchase of poisonous substances are satisfied, and also any objections they may have received from the Chief Officer of Police or from any existing vendors of the substances to which the application relates.

6. A licence shall be in the form set forth in Schedule B to these regulations.

7. A licence shall expire on such day in the year as the local authority fix, but may on application being made in the form set forth in Schedule C to these regulations, be renewed from time to time for one year at a time, subject to the same provisions as in the case of the grant of a licence, except that it shall not be necessary to publish or give to the Chief Officer of

Police notice of the application. The renewal of a licence shall be in the form set forth in Schedule D to these regulations.

8. A licence may be revoked or suspended for such term as the local authority think fit, if the local authority are satisfied that the licensee has failed to comply with the requirements of these regulations or of the Poisons Acts, or that the licensee is not a fit person to be entrusted with the sale of poisons.

9. A licensee shall, on being required to do so by any officer of the local authority or any police officer, produce his licence, and any renewal thereof.

10. The fees charged in respect of the grant and renewal of a licence shall be such as the local authority may determine, not exceeding in the case of the grant of a licence, 10s. 6d., and in the case of the renewal of a licence, 1s. 6d.

11. A licence shall not authorise the licensee to sell or keep open shop for the sale of poisonous substances except from or on premises (to be specified in the licence) within the area of the local authority which granted it, and for the purpose of these regulations, a municipal borough the council of which is a local authority for those purposes, and in Scotland a police burgh, shall not be treated as forming part of any county.

12. Every local authority shall keep a register of the licences granted by them for the time being in force, and any person shall, at all reasonable times, upon payment of such reasonable fees as may be fixed by the local authority, be entitled to inspect and to make copies of, or take extracts from, the register.

13. All poisonous substances shall be kept in a separate drawer or closed receptacle apart from any other goods, and poisonous substances shall not be sold upon the same premises as articles of food for human consumption unless the local authority are satisfied that convenient arrangements for their sale cannot otherwise be made, and in that case they must be sold at a separate counter. For the purpose of this regulation a part of a counter which is shown to the satisfaction of the local authority to be adequately separated from the rest of the counter shall be treated as a separate counter.

14. A poisonous substance shall not be sold except in an

enclosed vessel or receptacle as received from the manufacturer, distinctly labelled with the name of the substance and the word "Poison," and with the name and address of the seller, and with a notice of the special purpose for which it has been prepared.

15. Liquid preparations shall be sold only in bottles, tins, drums, or casks of sufficient strength to bear the ordinary risk of transit without leakage. Each bottle, tin, drum, or cask shall have the word "Poisonous" indelibly printed, marked, or branded in easily legible characters in a conspicuous position apart from the label, and the label must bear the word "Poison." When sold in bottles the bottles shall be of a distinctive character so as to be easily distinguishable by touch from ordinary bottles.

16. Solid preparations shall be securely packed in such a manner as to avoid, so far as possible, the risk of breaking or leakage from transport, and the package shall have indelibly printed, marked, or branded in easily legible characters in a conspicuous position notice that it must not be used for any other purpose.

17. All premises from or on which a licensee is authorised to sell or keep open shop for the sale of poisonous substances shall at all reasonable times be open to inspection by officers appointed by a local authority.

18. For the purposes of these regulations the expression "poisonous substances" means the poisonous substances to which section 2 of the Poisons and Pharmacy Act, 1908, applies for the time being, and the expressions "chief officer of police" and "police area" have in England and Scotland the same meanings as in the Police Act, 1890, and the Police (Scotland) Act, 1890, respectively.

SCHEDULE A.

Form of Application for Licence.

THE POISONS AND PHARMACY ACT, 1908.

I, _____ of _____, carrying on the trade of _____,
at _____, hereby apply for a licence thereat to sell and keep

open shop for the sale of [* being] poisonous substances to which section 2 of the Poisons and Pharmacy Act, 1908, applies for use exclusively in connexion with †

I undertake to comply with the provisions of the Arsenic Act, 1851, the Pharmacy Act, 1868, and the regulations made by Order in Council under the Poisons and Pharmacy Act, 1908.

(Signed)

Date

SCHEDULE B.

Form of Licence.

THE POISONS AND PHARMACY ACT, 1908.

 , of , carrying on the trade of ,
at , is hereby licensed thereat to sell and keep open shop
for the sale of [† being] poisonous substances to which
section 2 of the Poisons and Pharmacy Act, 1908, applies for use
exclusively in connexion with † , subject to the pro-
visions of the Arsenic Act, 1851, the Pharmacy Act, 1868, and
the regulations made by Order in Council under the Poisons and
Pharmacy Act, 1908, set out on the back of this licence, § and to such
other provisions of those Acts and regulations as may be applicable
to the case.

This licence is in force until the day of ,
19 .

(Signed)

Clerk to the Council of .

Date

* Here insert the substances in respect of which a licence is applied for. If the application is for a licence to sell all the substances to which section 2 of the Act applies the words in square brackets will be omitted.

† Here insert either "agriculture" or "horticulture," or "agriculture and horticulture."

‡ Here insert the substances for the sale of which the licence is granted. If the licence is to authorise the sale of all the substances to which section 2 of the Act applies the words in square brackets will be omitted.

§ The following provisions are to be set out at the back of the licence:—

Sections I., II., III., and IV. of the Arsenic Act, 1851.

Section 17 of the Pharmacy Act, 1868.

Note.—Regulations Nos. 13–18 are also to be set out at the back of the licence.

SCHEDULE C.

Form of Application for Renewal of Licence.

THE POISONS AND PHARMACY ACT, 1908.

I, _____ of _____ carrying on the trade of _____
 hereby apply for a renewal of the licence under the above Act
 granted me on the _____ day of _____, 19 ____.

(Signed) _____

Date _____

SCHEDULE D.

Form of Renewal of Licence.

THE POISONS AND PHARMACY ACT, 1908.

The licence granted to _____ of _____ carrying on
 the trade of _____, and dated the _____ day of _____,
 19 __, is hereby renewed for one year from the date hereof.

(Signed) _____

Clerk to the Council of _____

Date _____

THE ROYAL CHARTER OF INCORPORATION.

GRANTED TO THE PHARMACEUTICAL SOCIETY OF GREAT BRITAIN,
 FEBRUARY 18TH, 1843.

Victoria, by the grace of God of the United Kingdom of
 Great Britain and Ireland Queen Defender of the Faith to all
 to whom these Presents shall come greeting.

Petitioners.

Whereas it hath been represented to Us on the Petition
 of William Allen, Charles James Payne, Richard Hotham 5
 Pigeon, and others That they and divers other persons Our
 Loving Subjects have associated together and have formed
 themselves into an Association called The Pharmaceutical
 Society of Great Britain for the purpose of advancing Chemistry
 and Pharmacy and promoting a uniform system of Education 10
 of those who should practise the same and also for the protection
 of those who carry on the business of Chemists and Druggists

Title.

Object.

and that it is intended also to provide a Fund for the relief of the distressed Members and Associates of the Society and of
 15 their Widows and Orphans and that it would be of great advantage if the said Society were incorporated and they have
 besought us to grant to them and to those who shall hereafter become Members of the same Society our Royal Charter of
 Incorporation for the purposes aforesaid Now know ye that we
 20 being desirous of encouraging and promoting so laudable and benevolent a design of Our especial Grace certain knowledge and mere motion have willed granted and declared And do by these presents for us our heirs and successors will grant and declare that the said William Allen Charles James Payne
 25 Richard Hotham Pigeon and such other of our loving subjects as have formed themselves into and are now Members of the said Institution or Society or who shall at any time hereafter become Members thereof according to such Regulations or Bye-Laws as shall hereafter be framed or Enacted shall by virtue of
 30 these presents be the Members of and form one Body Politic and Corporate for the purposes aforesaid by the name of "The Pharmaceutical Society of Great Britain" by which name they shall have perpetual succession and a Common Seal with full power and authority to alter vary break or renew the same at
 35 their discretion and by the same name to sue and be sued implead and be impleaded answer and be answered unto in every Court of Us Our heirs and successors and be for ever able and capable in the Law to purchase receive possess and enjoy to them and their successors any Goods and Chattels whatsoever
 40 and also be able and capable in the Law notwithstanding the Statutes of Mortmain, to take purchase possess hold and enjoy to them and their successors a House and any messuages lands tenements or hereditaments whatsoever the yearly value of which shall not exceed in the whole at any one time, the *sum*
 45 *of two thousand pounds* * computing the same respectively at the rack rent which might be had or gotten for the same at the date of these presents in respect of any lands tenements or hereditaments now held by or in trust for the said Society and

Benevolent
Fund.

Members
according to
Bye-Laws.

Common
seal.

Power to
buy and
hold lands,
etc.

* Extended by Supplemental Charter of March 27th, 1901, to twelve thousand pounds.

Power to
sell.

as to any lands tenements or hereditaments hereafter to be purchased by the said Society at the rack rent which might 50 be had or gotten for the same at the time of the purchase or acquisition thereof and also to sell any Lands tenements and hereditaments and to purchase again other lands tenements and hereditaments not exceeding in the whole at any one time the annual value aforesaid to be estimated as aforesaid and to 55 act in all the concerns of the said Body Politic or Corporate for the purposes aforesaid as fully and effectually to all intents effects constructions and purposes whatsoever as any other of Our Liege Subjects or any other Body Politic or Corporate in Our United Kingdom of Great Britain and Ireland] not being 60 under any disability might do in their respective concerns And We do hereby grant Our especial licence and authority unto all and every person and persons Bodies Politic and Corporate otherwise competent to grant sell alien and convey in mortmain unto and to the use of the said Institution or Society and their 65 successors any Messuages lands tenements or hereditaments the whole thereof to be held by the said Society at any one time not exceeding such annual value as aforesaid.

Members.

And Our Will and pleasure is And We further grant and declare that The Pharmaceutical Society of Great Britain 70 shall consist of persons to be called Members thereof and that such Members shall be Chemists and Druggists who are or have been established on their own account or who shall have been examined in such manner as the Council of the said Society shall deem proper or shall have been certified to be duly 75 qualified for admission as Members or else shall be persons

Superinten-
dents.
Subscrip-
tions.

elected as Superintendents by the Council of the said Society and all of which Members shall subscribe to the Funds of the said Society in a such manner as shall be provided by the regulations thereof And there shall also be admitted to all the privileges 80 and benefits of the said Society, excepting the right of being present at the General Meetings thereof or of holding any

Associates.

Office in the same Persons to be called Associates of the said Society and such Associates shall be Assistants to Chemists and

Apprentices
or Students.

Druggists also Apprentices or Students in Pharmacy and 85 Chemistry And such Associates Apprentices and Students shall

first be duly examined in such manner as the Council of the said Society shall deem proper and shall be certified to be duly qualified for admission thereto as Associates Apprentices or
 90 Students respectively and shall subscribe to the funds of Sub-
 the said Society in such manner as shall be provided by the scriptions.
 regulations thereof.

And We further Will and declare that there shall be
 general meetings of the Members of the said Society hereby General
 95 incorporated to be held from time to time as hereafter Meetings.
 mentioned And that there shall always be a Council to direct Council.
 and manage the affairs of the said Society And That the
 said General Meetings and the Council shall have the entire Council and
 direction and management of the same Society in the manner General
 100 and subject to the regulations hereinafter mentioned. And Meetings to
 Our Will and pleasure is, That at all General Meetings and have direc-
 Meetings of the Council the Majority of the Members present tion.
 having a right to vote thereat respectively shall decide upon Majority to
 the matters propounded to such Meetings the person presiding decide.
 105 therein having in case of an equality of Numbers a second or Chairman's
 casting vote. casting vote.

And We do hereby also will grant and declare that the said Number of
 Council shall consist of a President a Vice-President a Treasurer Council,
 and Eighteen other Members And that the said William Allen President,
 110 shall be the First President Charles James Payne the first Vice-Presi-
 Vice-President and Richard Hotham Pigeon the first Treasurer d, and
 And that the other persons now being Members of the Council Treasurer.
 of the said Society with the President Vice-President and
 Treasurer shall be the first Members of the Council of the said
 115 Body Politic and Corporate and shall continue such until the
 first General Meeting for the Election of Officers shall be held
 in pursuance of these presents.

And We do hereby further will grant and declare that it Annual
 shall be lawful for the Members of the said Society hereby General
 120 incorporated to hold General Meetings once in the year and Meetings.
 also such Special General Meetings as the Council may from Special
 time to time think proper And that the annual general General
 meetings shall be held on the Third Tuesday in the month Meetings.
 of May in each year or such other day as near thereto as
 G. P.

Requisition
for Special
General
Meetings.
Council to
convene
General
Meetings.

shall be determined by the Council. And further that upon 125
the requisition in writing of Thirty Members of the said Society
entitled to vote at any Meeting requiring the said Council to
convene a Special General Meeting of the said Society for
the purpose specified in the requisition such meeting shall
accordingly be convened by the said Council within such 130
reasonable time as the Council shall think fit they first giving
due notice thereof and of the purposes for which the same is
convened.

Date of
Annual
General
Meetings.

And We do further will grant and declare that the Members
of the said Society shall and may on the third Tuesday in the 135
month of May One thousand eight hundred and forty-three and
also on the third Tuesday in the month of May in every succeed-
ing year or as near the same as conveniently may be assemble at
the then last or other usual place of meeting of the said Society
and proceed by method of Ballot to nominate and appoint the 140
Members of the Council, in manner hereinafter provided, and
five Auditors of the Accounts of the said Society.

Election of
Council and
Auditors.
Election by
Ballot.

Twenty-one
Members of
Council.

And We do further will and declare that at the election of
the Council to be held in the year One thousand eight hundred
and forty-three there shall be elected Twenty-One Members of 145
the Council and at the election to be held in the year One
thousand eight hundred and forty-four two-thirds of the then
Members of the Council shall go out of Office such Members to
be determined by Lot And that in the election of the Council,
in the year One thousand eight hundred and forty-five the 150
remaining one-third of the Members of the Council elected in
One thousand eight hundred and forty-three and also one-half
of the Members elected in One thousand eight hundred and
forty-four (such one-half to be determined by Lot as aforesaid)
shall go out of Office and that in every succeeding year two- 155
thirds of the Members of the Council being such as shall have
been longest in Office computing from the last Election
respectively shall go out of Office.

Two-thirds
of Council to
go out.

Members
eligible for
re-election.

And We do further will and declare, that the Members who
shall at any time go out of Office shall nevertheless be re-eligible 160
as Members of the Council.

Vacancies in
Council or

And We do further will and declare that in case of the

death resignation or removal of any Member of the Council or Auditor it shall be lawful for the Council themselves to elect Auditors to be filled up by Council.
 165 and appoint some other person being a Member of the said Society to supply the place of such member of the Council or Auditor and the person so appointed shall be taken in all respects as regards the duration of Office to represent the person in whose stead he has been appointed.

170 And We do further will and declare that it shall be lawful for any Meeting of the Council at which not less than Twelve Members shall be present and with the consent of three-fourths of the Members so present but not otherwise to remove any Member from the said Society and he shall
 175 thereupon cease to be a Member of the said Body Corporate And We do further will and declare, that the Council hereby directed to be appointed And the Council of the said Society for the time being or any seven or more of them all the Removal of Members.
 180 the Meetings thereof shall and may at their first meeting after the election of the Council elect and appoint from among their number a President a Vice-President and a Treasurer and also Quorum of the Council.
 185 appoint a proper person to be the Secretary thereof. President, Vice-President, Treasurer, and Secretary.

And We do further will and declare that the said Council
 185 shall and may once in every month hold Meetings and also such further Meetings as the President or any five Members thereof shall by writing under his or their hands direct the Secretary to give notice of but no business shall be done at any such Meeting unless there be such number of Members present as
 190 shall be determined from time to time by the Bye-laws of the Society to form a Quorum. Council to meet monthly.

And We further will and declare, that at all General Meetings of the said Society the President or in his absence the Vice-President or in his absence such Member of the
 195 Council as shall be elected by the Members present at the Meeting shall preside or if there be no such Member of the Council present then such other Member of the Society as shall be elected by the Members present to preside And at all Meetings of the Council the President or in his absence
 200 the Vice-President or in his absence such Member of the Chairmanship of Meetings.

Council as shall be elected for that purpose by the other Members present shall preside.

Appoint-
ment of
Examiners.

And We do also grant will and declare that it shall be lawful for the Council of the said Society for the time being by themselves or such competent persons as they 205

Grant cer-
tificates.

shall think fit to appoint to examine and to decide upon the admission or rejection of Members Associates Apprentices and Students of the said Society hereby incorporated and to grant such Certificates or Diplomas as they shall think proper to the persons whom they shall deem qualified to be such 210

Honorary
and Corre-
sponding
Members.

Members Associates Apprentices or Students as aforesaid and to elect Honorary and Corresponding Members of the said Society who shall have all the privileges thereof except the right of being present at General Meetings and to appoint and

Officers of
the Society.

Council to
have sole
control of
property.

remove and re-appoint all the Subordinate Officers of the said 215 Society And the said Council shall have the sole control and management of the real and personal property of the said Society Subject to the Bye-laws thereof And shall make provision thereout or out of such part thereof as they shall think

Benevolent
Fund.

proper for the relief of the distressed Members or Associates of 220 the said Society and their widows and orphans subject to the regulations and Bye-laws of the said Society.

Council to
sell mes-
suages,
lands, etc.,
only on
authority of
General
Meetings.

And We do further will grant and declare that the whole property of the said Body Politic and Corporate shall be subject to the management direction and control of the Council of 225 the said Society And that they shall have full power and authority to sell alienate charge or otherwise to dispose of the same as they shall think proper But that no sale or Mortgage of any Messuage Lands tenements or hereditaments belonging to the said Body Corporate shall be made except 230 with the approbation and concurrence of a General Meeting of the Members of the said Society specially convened for such purpose.

Council to
make Bye-
laws.

To regulate
the appoint-
ment of
officers.

And We do further will and declare that it shall be lawful for the said Council to the best of their judgment 235 and discretion to make and establish such Bye-laws as they shall deem proper and necessary for regulating the affairs of the said Society and also the number and description of

- its Officers and also the times place and manner of examining
 240 Candidates for Admission and also of removing and electing the
 Members Associates Apprentices and Students of the said
 Society and all subordinate Servants Officers and Attendants as
 shall be deemed necessary or useful for the said Society and
 also for filling up from time to time any vacancies which may
 245 happen by death resignation removal or otherwise of the
 President Vice-President Treasurer Members of Council
 Auditors, Secretary or any of the Officers or Appointments
 constituted or established for the execution of the business and
 concerns of the said Society and for regulating and ascertaining
 250 the qualifications of persons to become Members Associates or
 Apprentices of the said Society respectively and for granting
 Diplomas and Certificates to Members Associates Apprentices
 and Students and also the sum and sums of money to be paid by
 them respectively or any of them whether upon admission or
 255 otherwise towards carrying on the purposes of the said Society
 and also the number qualifications and privileges of such persons
 as they may from time to time deem it proper to admit as
 Honorary or Corresponding Members and the amount and mode
 of relief to be afforded to the distressed Members and Associates
 260 of the said Society and their widows and orphans respectively
 and such Bye-laws from time to time to vary alter or revoke
 and make such new and other Bye-laws as they shall think
 most useful and expedient so that the same be not repugnant to
 these presents or to the Laws of this Our Realm. Provided
 265 that no Bye-law hereafter to be made or alteration or repeal of
 any Bye-law which shall hereafter have been established by the
 said Council hereby directed to be appointed shall be considered
 to have passed, and be binding on the said Society until such
 Bye-laws or alteration or repeal of any Bye-laws shall have
 270 been confirmed by three Meetings of the said Council. In
 Witness whereof we have caused these Our Letters to be made
 Patent. Witness Ourselves at Our Palace at Westminster the
 Eighteenth day of February, in the Sixth year of our Reign,

By Writ of Privy Seal.

EDMUNDS.

Arrange-
ment of
examina-
tions.

Removal
and election
of Members.

Appoint-
ment of
servants.

Filling up
vacancies.

Regulating
qualifica-
tions.

Granting
Certificates.

Fixing sums
to be paid.

Qualifica-
tions of
Honorary
and Corre-
sponding
members.

Amount of
relief.

To alter and
vary Bye-
laws.

SUPPLEMENTAL CHARTER.

GRANTED TO THE SOCIETY MARCH 27TH, 1901.

EDWARD VII., by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to all to whom these Presents shall come, greeting.

Petitioners,

Whereas it hath been represented to us, on the petition of the Pharmaceutical Society of Great Britain, that in the 5
15th and 16th and 31st and 32nd years of the reign of Her late Majesty Queen Victoria, Acts known shortly as the Pharmacy Acts, 1852 and 1868, were passed, whereby the Society is required to perform and discharge large and important public duties : that by reason of the said duties the powers 10
conferred upon the Society by the Royal Charter of Incorporation granted by Her said late Majesty as to the purchase and acquisition of messuages, lands, tenements and hereditaments have become inadequate, and that it is desirable that the same should be extended : that a Benevolent Fund has been formed 15
for the relief of distressed Members of the Society, past and present, and of Chemists and Druggists and their widows and orphans : that by means of generous donations, pecuniary bequests, subscriptions and grants, the said Fund now amounts to a considerable sum of money : that in order to insure the 20
proper investment of the said Fund it is further desirable that the said powers should be extended, that the Society may be thereby enabled from time to time to make purchases of freehold lands, and hereditaments, or of freehold ground rents, such purchases affording from their permanent and 25
possibly improving nature investments both prudent and advantageous : and they have besought us to grant them and their successors our Royal Supplementary Charter conferring upon them such further powers as are hereinafter contained. 30

Benevolent Fund.

And whereas we have taken the said Petition into our Royal consideration and we are minded to accede thereto.

Extension of the power to

Now know ye that we by virtue of our Royal Prerogative in that behalf and of other powers thereunto us enabling of our

35 Special Grace, certain knowledge and mere motion have willed, granted, and declared, and do by these presents for us, our heirs ^{buy and hold lands, etc.} and successors, will grant and declare that the said Pharmaceutical Society of Great Britain without prejudice and in addition to any former powers already conferred upon them
 40 whether by Charter or otherwise, and to any purchases or acquisitions heretofore made thereunder shall be able and capable in the law, notwithstanding the statutes of Mortmain, at any time hereafter to take, purchase, possess, hold and enjoy to them and their successors any messuages, lands, tenements and
 45 hereditaments whatsoever, the yearly value of which shall not exceed in the whole at any one time the sum of Ten thousand pounds, computing the same at the rack rent which might be had or gotten for the same at the time of the purchase or acquisition thereof: and also to sell any lands, tenements and
 50 hereditaments, and to purchase again other lands, tenements and hereditaments not exceeding in the whole at any one time the annual value aforesaid to be estimated as aforesaid.

And we do hereby grant our special licence and authority unto all and every person and persons, bodies, politic and corporate,
 55 otherwise competent to grant, sell, alien, and convey in Mortmain unto and to the use of the said Institution or Society, and their successors any messuages, lands, tenements or hereditaments, the whole thereof to be held by the said Society at any one time, not exceeding such annual value as aforesaid. ^{Authority for conveyance of land etc., to Society.}

60 In witness thereof we have caused these our letters to be made Patent. Witness ourself at Westminster the 27th day of March in the first year of our Reign.

By Warrant under the King's Sign Manual,

(Sg.) MUIR MACKENZIE.

BYE-LAWS OF THE PHARMACEUTICAL SOCIETY OF GREAT BRITAIN.

CONFIRMED AT A GENERAL MEETING OF THE SOCIETY,
AUGUST 7TH, 1907.

CONFIRMED AND APPROVED BY THE PRIVY COUNCIL,
NOVEMBER 20TH, 1907.

PRELIMINARY.

ALL the Bye-laws heretofore passed are hereby repealed, and the following shall be the Bye-laws of the Society. In the following Bye-laws: Words importing the singular number shall include the plural number, words importing the plural number shall include the singular number, and words importing the masculine shall include the feminine, unless there be something in the subject or context repugnant to such construction. "The Society" shall mean and intend the Pharmaceutical Society of Great Britain. "The Charter" shall mean and intend the Royal Charter of Incorporation of the Society. "The Statute, 1852," shall mean and intend the Statute 15 & 16 Vict. c. 56, intituled "An Act for regulating the qualifications of pharmaceutical chemists." "The Act, 1868," shall mean and intend the Statute 31 & 32 Vict. c. 121, intituled "An Act to regulate the sale of poisons and alter and amend the Pharmacy Act, 1852." "The Council" shall mean and intend the Council of the Society. "The Secretary" shall mean and intend the Secretary of the Society, and "The Registrar" shall mean and intend the Registrar appointed under the provisions of the Statute 15 and 16 Vict. c. 56, and of the Statute 31 and 32 Vict. c. 121.

SECTION I.

Qualifications, Elections, and Subscriptions.

1. Persons who have become Members or Student-Associates may continue to be such Members or Student-Associates and

shall be subject to the Bye-laws of the Society in force for the time being.

2. Persons qualified to be elected Members, or Student-Associates, and desirous of being so elected, shall be proposed and seconded by Members of the Council at a meeting of the Council, and the qualification of each applicant for election shall be stated in writing and submitted to the Council. The Council may accept or reject as it shall think fit any proposal for election submitted to it.

3. Persons registered as Pharmaceutical Chemists or as Chemists and Druggists, and desirous of becoming Members, shall make application to the Council in that behalf, and therewith pay the subscription for the current year, and no person other than Pharmaceutical Chemists or Chemists and Druggists shall be elected Members, except as Honorary Members or as Corresponding Members.

4. Persons registered as "Apprentices or Students" shall be eligible for election as Student-Associates, and, if desirous of being elected accordingly, shall make application to the Council in that behalf, and therewith pay the subscription for the current year.

5. All persons on applying for election as Members, or Student-Associates, shall leave with the Registrar a signed declaration, stating their full names and addresses, and their willingness to comply with the Bye-laws and Regulations of the Society.

6. All subscriptions for the current year shall be payable on application for election, and all annual subscriptions shall become due on the first day of January in every year; and if any person shall not have paid his annual subscription before the first day of April in any year, his name shall be omitted from the Register of Members or of Student-Associates. It shall be competent to the Council to restore any person whose name has been so omitted to his former status in the Society on payment of his subscription for the then current year.

7. All Members, except Life Members, Honorary Members and Corresponding Members, shall pay an annual subscription of one guinea.

8. All Members, and all persons qualified for election as Members, shall have the option of becoming Life Members exempt from further subscriptions on payment of a life composition of ten guineas.

9. All persons who have become Life Members pursuant to Bye-laws which have heretofore from time to time been in force, shall be exempt from further subscriptions.

10. All Student-Associates shall pay an annual subscription of half a guinea.

SECTION II.

Honorary and Corresponding Members.

1. The Council shall at its discretion elect as Honorary Members, or as Corresponding Members, such scientific workers as have distinguished themselves in any of the branches of knowledge embraced in the educational objects of the Society.

2. The Council shall from time to time determine the number of persons to be Honorary Members, and the number of persons to be Corresponding Members. The Secretary shall keep special books in which shall be entered the names of persons suggested for election as Honorary or as Corresponding Members. The Council at its Meeting in April of every year may select names from the books so kept, not exceeding in number the vacancies in the lists of Honorary Members or of Corresponding Members respectively, and the names of the persons so selected shall be exhibited in the Library of the Society until the Meeting of the Council in the ensuing month, when the Council shall proceed to the election.

SECTION III.

Common Seal.

1. The Common Seal of the Society shall consist of the armorial bearings, crest, and motto, registered in His Majesty's College of Arms.

2. The said Seal shall be deposited at the House of the Society, in a box secured by a lock having two keys, one of

which shall be in the custody of the President, and the other in that of the Vice-President.

3. The Common Seal may be set or affixed to any deed, instrument, or writing, in pursuance of an order or minute of the Council, entered in their minute book, and in the presence of the President, or Vice-President, or two Members of the Council, and not otherwise. The affixing of the Common Seal shall be recorded in a Seal Register, and be certified by the persons present.

SECTION IV.

Bye-laws and Regulations.

The making, altering, or abrogating of any Bye-law or any Regulation, to be prescribed by the Society, in accordance with any statute, shall be in the following manner :—

1. A form for any proposed Bye-law or Regulation, or for altering or abrogating any Bye-law or Regulation, being delivered at a Council Meeting by a Member of the Council to the Chairman, or brought up on the Report of a Committee, shall thereupon be read, and, if seconded and approved, shall be referred to two subsequent ordinary or special Meetings of the Council for Confirmation, and then to a special General Meeting of the Members of the Society, and afterwards to the Privy Council, according to the provisions of the Statute, 1852, and the Act, 1868.

2. A copy of the Bye-laws shall be given free to every Member and Student-Associate on his election, and shall at any time afterwards be delivered to any Member or Student-Associate on his applying for the same and paying one shilling.

SECTION V.

Election of Council and Auditors.

1. Seven Members of the Council shall go out of office in every year, and the vacancies shall be filled by election, the retiring Members not being ineligible for re-election if duly nominated for that purpose. The seven Members who so go

out shall be the Members of the Council who have been longest in office without re-election.

2. The retiring Members of the Council shall be ascertained by, and recorded on the minutes of, the Council at the monthly meeting held in February of every year.

3. All Members except Honorary and Corresponding Members are entitled to vote for the election of the Council and Auditors. Any Life Member or any Member who has paid his subscription for the current year desirous of nominating any other Life Member or Member who has paid his subscription for the current year for election as a Member of the Council or as an Auditor, shall, on or before the 18th day of March in every year, give a notice signed by him to the Secretary, with the name and address of the nominee. The Secretary shall on or before the 20th day of March then instant address and send by post to each nominee a notice of his having been nominated, and inquiring whether he will accept office if elected, and in default of a written reply from such nominee being received on or before the 31st day of March then instant, declaring his readiness to accept office if elected, such nominee shall not be deemed eligible or willing to be elected.

4. The Council shall at its monthly meeting, held in April of every year, prepare a list of all Members nominated for election and willing to be elected Members of the Council and Auditors for the ensuing year; and in default of the nomination of a sufficient number of Members willing to accept office, the Council shall nominate as many as may be required to form a complete list of Members willing to fill all the vacancies in the Council, and a complete list of five Auditors. No nominations shall be received or made after the 18th day of March, except such as may be made by the Council, in the manner and under the circumstances aforesaid, at the monthly meeting in April.

5. The Secretary shall issue to every Member qualified to vote, not less than ten days prior to the meeting at which Members of the Council and Auditors are to be elected, a Voting Paper for such elections. The names and addresses of the Members willing to serve if elected shall appear in such Voting Papers.

6. At all elections of Members of the Council and Auditors, votes shall be given by ballot, either by personal delivery of the said Voting Papers at the Annual General Meeting, or by the said Voting Papers being transmitted, under cover, by the Member, to the Secretary, so that the same shall be received by him not later than twelve o'clock noon on the day of the Annual General Meeting, and the Voting Papers shall be as near as conveniently may be in the following form:—

PHARMACEUTICAL SOCIETY OF GREAT BRITAIN,

BLOOMSBURY SQUARE, LONDON.

VOTING PAPER.

For the election of Seven Members of the Council.

1*	.....	6	.....
2	.....	7	.....
3	.....	8	.....
4*	.....	9	.....
5	.....	10	.....

INSTRUCTIONS FOR VOTING.

Every Member voting must erase the names of all the Members for whom he does not intend to vote. If more than seven names be left, the Voting Paper will be void.

The Voting Paper must be transmitted, under cover, by the Member, to the Secretary, so that the same shall be received by him not later than twelve o'clock noon on the day of the Annual General Meeting, or delivered by the Member personally at the Annual General Meeting.

The Member transmitting his Voting Paper under cover must write his name and address on the outside of the cover, or the Voting Paper will be void.

The following are the Members who remain on the Council:—

.....

* The names to which Asterisks are prefixed are those of retiring Members of the present Council.

PHARMACEUTICAL SOCIETY OF GREAT BRITAIN,

BLOOMSBURY SQUARE, LONDON.

VOTING PAPER.

For the election of Five Auditors.

- 1
- 2
- 3
- 4
- 5
- 6
- 7

INSTRUCTIONS FOR VOTING.

Every Member voting must erase the names of all the Members for whom he does not intend to vote. If more than five names be left, the Voting Paper will be void.

The Voting Paper must be transmitted, under cover, by the Member to the Secretary, so that the same shall be received by him not later than twelve o'clock noon on the day of the Annual General Meeting, or delivered by the Member personally at the Annual General Meeting.

The Member transmitting his Voting Paper under cover must write his name and address on the outside of the cover, or the Voting Paper will be void.

Form of Address, etc., on Cover.

VOTING PAPER.

Member's Signature

Member's Address

To the Secretary of the Pharmaceutical Society, Bloomsbury Square, London.

The Voting Paper must be returned to the Secretary, so that the same may be received by him on or before the day of May, 19 , or be delivered by the Member personally at the Annual General Meeting.

7. Before the votes are examined, the Members constituting the Annual General Meeting shall appoint five or more members of the Society to act as Scrutineers of whom five shall form a quorum.

8. The Voting Papers to be delivered personally shall be received at the Annual General Meeting, and the Voting Papers duly transmitted under cover to the Secretary shall be opened by or in the presence of the Scrutineers.

9. The Scrutineers shall ascertain the number of votes given for each Member nominated for election, and shall make to the Chairman of the meeting a return, signed by them, or five of them, of the names of the Members nominated for election, and the said return shall disclose the number of votes given for each Member named therein.

10. The Chairman of the Meeting shall declare the result of every election ; and, in cases where there shall have been a poll, shall declare the election to have fallen on the Members who, according to the return of the Scrutineers contemplated by the last-preceding Bye-law, shall appear to have a majority, and, in the case of an equality of votes, the Chairman of the Meeting shall have a second or casting vote.

11. The Chairman, at any Meeting for the election of Members of the Council or Auditors, shall have the power of adjourning such Meeting from time to time, with a view to the reception of the Report of the Scrutineers, but no such adjournment shall extend beyond a period of four days.

SECTION VI.

Council.

1. The Council shall meet on or about the first Wednesday in every month at eleven o'clock in the forenoon, or at such other day or hour as may from time to time be decided by the Council. Seven Members shall constitute a quorum, and without that number being present no business shall be transacted. Before other business is entered on, the minutes of the preceding monthly and of any subsequent meeting shall be confirmed.

2. The Council may, from time to time, frame and adopt Standing Orders for the regulation of its procedure, but the Chairman may, notwithstanding the Standing Orders, require any ordinary motion or proposition to be in writing and signed by the proposer and seconder. Any member of the Council desirous of bringing any special motion or proposition before the Council shall give written notice to the Secretary of the terms of the motion, at least six clear days before the ordinary meeting of the Council, and in default of such notice the motion may be postponed or adjourned by the Chairman until the next ordinary meeting. A ballot may be demanded by any member of Council on any motion put from the chair.

3. All resolutions carried at the Meetings of the Council, except such as relate to the making, altering, or abrogating of Bye-laws, shall be acted upon without confirmation.

4. The Council may from time to time in its discretion appoint such Committees as shall appear expedient, and may from time to time modify or dissolve any Committee. The President and Vice-President shall be *ex officio* Members of all Committees, and the President shall preside at all Meetings of the Council, or in his absence the Vice-President. If the President and Vice-President are both absent, a Chairman shall be chosen by the Members present.

SECTION VII.

Examiners—Examinations—Fees.

1. The Council shall, at its meeting, in November, in every year, appoint such competent persons as it shall think fit, to be Examiners for the year to commence on the then following first day of January, to conduct all such examinations as are provided for or contemplated by the Charter, or by the Statute, 1852, or by the Act, 1868, and the persons so appointed shall, for the time being, constitute and be called the Board of Examiners for England and Wales.

2. The Council shall, at its meeting, in November, in every year, appoint such competent persons in Scotland as it shall think fit to be Examiners for the year to commence on the then

following first day of January, to conduct all such examinations as are provided for or contemplated by the Charter, or by the Statute, 1852, or by the Act, 1868, and the persons so appointed shall, for the time being, constitute and be called the Board of Examiners for Scotland.

3. The President and Vice-President shall, *ex officio*, be members of the Boards of Examiners, and either of them present at any meeting of either of such Boards shall preside thereat.

4. The Council shall not appoint any person to be an Examiner who has attained the age of sixty-five years.

5. No person shall be appointed an Examiner who at the time of appointment is, or who during one year prior to such time has been a Member of the Council; and the election of any Examiner to be a Member of the Council shall vacate his appointment as an Examiner.

6. The Board of Examiners for England and Wales shall consist of not less than eight persons, exclusive of the President and Vice-President; six to constitute a quorum. The Board of Examiners for Scotland shall consist of not less than four persons, exclusive of the President and Vice-President; four to constitute a quorum.

7. The Council shall from time to time supply any vacancy in the office of Examiner, and may remove any member of the Boards of Examiners, and substitute another person in his place, and may also from time to time appoint a Special Examiner, or Special Examiners, to conduct any examination or part of an examination, or to assist the Boards of Examiners.

8. The Secretary shall from time to time submit to the Privy Council for approval, in accordance with the Act, 1868, all appointments of Examiners made by the Council, and shall also give notice to the officer appointed by the Privy Council of all examinations to be held for the purposes of the Act, 1868, stating the times and places at which such examinations will be held, at least three days *prior* to the holding of the same.

9. The Board of Examiners for England and Wales and the Board of Examiners for Scotland shall meet as often as may be required for the purpose of conducting examinations at such

times as the Council from time to time shall direct; and shall report the result of every examination to the Council at the monthly meeting immediately following the same.

10. The Boards of Examiners shall conduct all Examinations according to the Bye-laws in force in that behalf, and according to such regulations as shall be made from time to time by the Council. All altered or new regulations shall be published in *The Pharmaceutical Journal* immediately after their adoption.

11. Persons desiring to obtain Certificates of competent skill and qualification to be registered as Chemists and Druggists under the Act, 1868, shall deliver to the Registrar a Certificate of having passed an Examination in Preliminary Knowledge previously approved for the purpose by such regulations as are specified by the last preceding Bye-law, and shall pay to him a fee of Two Guineas, whereupon they shall be registered as "Apprentices or Students," and their names shall be reported to the Council at the next ensuing meeting.

12. Persons desiring to present themselves to the Examiners for examination in accordance with the Charter and Statute, 1852, or the Act, 1868, and having been registered as "Apprentices or Students," shall be examined in the translation and dispensing of Prescriptions, in Botany, in Materia Medica, in Pharmaceutical and General Chemistry, Physics, and Posology, and in their knowledge of the Law relating to the Sale of Poisons, which Examination shall be called the Minor Examination.

13. Persons desiring certificates of competent skill and qualification to exercise the business, or calling, of Pharmaceutical Chemists shall produce to the Registrar evidence of having been previously registered as Chemists and Druggists, and shall be examined in more extended knowledge of Botany, Materia Medica, Chemistry, and Physics, or such of them as the Council may from time to time determine, which Examination shall be called the Major Examination.

14. Persons who shall tender themselves to the Examiners for Examination under the provisions of the Act, 1868, excepting only those specified in the next following Bye-law, shall be examined in the Minor Examination.

15. Persons entitled to be registered as Chemists and Druggists on passing a modified Examination, who shall tender themselves to the Examiners for Examination under the provisions of the Act, 1868, shall be required to pass the Modified Examination, which the Council, with the consent of the Privy Council, have declared to be in their case sufficient evidence of skill and competency to conduct the business of a Chemist and Druggist, as the same is set out in the Schedule hereto, or such other modified Examination as may in like manner be declared such sufficient evidence.

16. The Examiners may grant or refuse to such persons as have tendered themselves for the Minor Examination and the Major Examination respectively, Certificates of competent skill and knowledge and qualification; and lists of such persons shall be delivered by the Examiners to the Registrar immediately after each Examination.

17. All persons desiring registration as Chemists and Druggists shall pay a fee of Ten Guineas, and shall pass the Minor Examination or the Modified Examination, whereupon they shall be registered accordingly.

18. Persons desiring registration as Pharmaceutical Chemists under the Statute, 1852, shall pay a fee of Three Guineas and pass the Major Examination, whereupon they shall be registered accordingly.

19. Persons intending to present themselves for an Examination shall give to the Registrar notice in writing of their intention in that behalf on or before the fifteenth day of the month immediately preceding that in which the Examination is to take place.

20. All notices of intention to attend for examination shall be to attend on the next occasion of the Examination being held, and all fees in respect of examination and registration shall be payable on the giving of notice of intention to attend for examination, and in no case shall any fee paid in accordance with the Bye-laws be remitted or returned.

21. All persons shall, at the time of giving notice of intention to present themselves for the Minor Examination, satisfy the Registrar that they have attained the full age of twenty-one

years, and have been registered as "Apprentices or Students," and that they have for three years been practically engaged in the translation and dispensing of prescriptions.

22. Persons who have attended the Examination for which they entered, and failed to pass, shall not be entitled to attend on any future occasion unless and until they shall have given to the Registrar renewed notice of intention to attend an examination, and shall have paid fees as follows:—

- (a) *In respect of a Major Examination, Two Guineas;*
- (b) *In respect of a Minor Examination, or a Modified Examination, Three Guineas.*

23. Persons who have given notice of intention to attend an Examination, and have failed duly to attend at the time appointed for the same, shall not be entitled to attend on a future occasion unless and until they have given renewed notice of intention to attend an Examination, and shall in each case have paid a fee of One Guinea—or if the persons shall have produced to the Registrar medical certificates or other satisfactory evidence that the said failure to attend was occasioned by unavoidable and proper causes—One Shilling.

SECTION VIII.

Registrar and Registrations.

1. The Registrar shall receive and, for at least five years, preserve the lists issued by the Examiners, signifying that examinations have been passed.

2. The Registrar shall from time to time make out and maintain Registers of all persons being respectively Members or Student-Associates of the Society, also a Register of all persons entitled to be registered under the Statute, 1852, and also a Register in accordance with the provisions of the Act, 1868, of all persons who shall be entitled to be registered under that Act.

3. The names of persons registered as Student-Associates shall, upon their Registration as Chemists and Druggists, be removed from the Register of Student-Associates.

4. Persons who have not been examined under the said Statute, 1852, who have been registered as Pharmaceutical Chemists by reason of their election as Members of the Society, and who have not paid life subscriptions, shall pay the annual subscription required from Members; and the names of all such Members as last mentioned who fail to pay their annual subscriptions before the first day of April in any year shall be omitted from the Register of Pharmaceutical Chemists.

5. The Registrar shall comply with such Orders or Regulations for regulating the Registers to be kept by him as may from time to time be made by the Council.

6. All the said Registers shall be revised annually and laid before the Annual General Meeting of the Society.

SECTION IX.

Treasurer.

1. It shall be the duty of the Treasurer to take charge of all moneys, to pay such accounts as the Council may order by the signature of six Members of the Council in Council assembled, and to render his account at each monthly meeting.

SECTION X.

Secretary.

1. The Secretary shall have authority over the clerks and servants of the establishment, whose wages he shall pay. He shall be in attendance at his office during the hours to be from time to time specified by the Council, and be present at meetings of the Council and Committees, General and Special Meetings, and also at the Evening Meetings. It shall be his duty to superintend the affairs of the Society under the direction of the Council and Committees. He shall keep the books of the Society in a neat and orderly manner, shall conduct the correspondence, and issue all summonses, notices and advertisements, take the minutes of all Meetings for business, and read them, and make a report of all matters that come under his cognisance for the information of the Council and Committees. He shall

consult and act on the instructions of the President or Vice-President on any business requiring attention, between the various meetings, and be responsible for the safe custody of all the documents and property belonging to the Society which shall be under his control. He shall find security in the sum of £500, and shall receive all subscriptions, fees, and donations, and give a printed receipt for the same, and no other, checking each receipt. He shall promptly pay to the Society's bankers on behalf of the Treasurer the amount of moneys so received by him. He shall receive such a sum in advance for current expenses as the Council may order, and account for the same to the Committee for Finance.

SECTION XI.

Auditors.

1. The Auditors shall meet at least two months previous to the Annual General Meeting. It shall be their duty to inspect the Accounts of the Society, and the Financial Statement prepared for them by the Committee for Finance, which, when approved, must be certified and signed by the Auditors present at the Audit, and presented to the Council not later than at its ordinary meeting in May.

SECTION XII.

Summonses for Meetings.

1. All Summonses, Notices, or Advertisements shall be issued by the Secretary, and Summonses if left at the place of business or residence or transmitted by post, addressed to the place of business or residence of the person summoned, shall be considered as received.

2. Summonses, Notices, or Advertisements convening Annual or Special General Meetings shall be given not less than ten clear days before the day thereby appointed for the Meeting. All other Summonses, Notices, or Advertisements shall be given not less than three clear days before the day thereby appointed for the Meeting, and in all the said cases there shall appear

notice of the general nature of the business to be discussed at the Meeting.

SECTION XIII.

Filling up Vacancies by Death, Resignation, or Removal.

1. In the event of any vacancy occurring in the office of President, Vice-President, or Treasurer, the Secretary shall report the same, and the cause thereof, in the summons for the next meeting of the Council, which meeting shall thereupon find and declare such vacancy, and immediately proceed to elect one of its number to fill such vacant office.

2. In the event of any casual vacancy occurring in the Council or in the Auditors, or in the several Committees, the Secretary shall report the vacancy in the summons for the next meeting of the Council, and at such meeting some member of the Council, or of the Society, as the case may require, shall be appointed to fill the vacancy, but any person so appointed shall retain his office so long only as the member causing the vacancy would have held the same if the vacancy had not occurred.

3. In the event of a vacancy occurring in the office of Registrar or Secretary, the President or Vice-President shall appoint some person, *pro tempore*, to fulfil the duty of the office, and in the summons for the next meeting of the Council the vacancy shall be declared ; and some person or persons being proposed and seconded at such meeting the election shall take place, but shall not be final, unless confirmed at the next meeting of the Council.

SECTION XIV.

Removal of Officers and Members.

1. Every Member of Council who shall commit any act or acts which appear to the Council derogatory to the honour of his office shall give an explanation of the same to the Council, on being required to do so ; and in default thereof, or if such explanation be unsatisfactory to the Members present, he shall be liable to the censure of the Council ; or, if it be deemed expedient, a notice may be given by any Member of the Council

for a motion of removal from the Society of the Member so offending, which notice shall be inserted in the summons for the ensuing meetings of the Council until disposed of.

2. If any report be made to the Council by a Member of the Society in writing, with his name attached, that another Member or a Student-Associate has been guilty of any act or conduct which is contrary to, or subversive of, the interests of the Society, or a violation of its laws and regulations, and if the Council be of opinion that the alleged act or conduct is of such character, the Secretary shall be instructed to write to the Member or Student-Associate so accused for an explanation, and in default of explanation, or if the same be unsatisfactory, any Member of the Council shall, if he think it expedient, give notice of a motion for the removal of such Member or Student-Associate from the Society. This notice must be inserted in the summons for the ensuing meetings of the Council until disposed of ; and be taken into consideration at the first meeting thereof at which twelve Members are present. No Motion for the removal of a Member from the Society shall be carried except with the consent of three-fourths of the Members of the Council present.

3. Any Member or Student-Associate desiring to retire from the Society shall send notice thereof to the Secretary in writing, together with the Certificate of Membership, if any, held by him. No Member shall be released from his obligation to pay his annual subscription until such time as the Certificate of Membership, if any, shall have been returned.

SECTION XV.

Funds and Property.

1. The whole property of or under the control of the Society shall be subject to the management, direction, and control of the Council, and may, under the direction of the Council, be invested in or upon mortgage of property or Securities for the time being, from time to time recognised by lawful authority as proper for investment by Trustees.

2. The property and funds of the Society, other than moneys

from time to time in the hands of the Treasurer or Secretary, shall not be disposed of, or otherwise dealt with, except in pursuance of an order of the Council, signed by six Members, at the least, in Council assembled.

SECTION XVI.

Benevolent Fund.

1. The Benevolent Fund shall consist of donations and subscriptions, and such grants as may from time to time be made by the Council from the General Fund towards the particular objects of such Fund, in addition to the sum already invested in respect of the same Fund.

2. Donations in aid of the Benevolent Fund shall be invested; and no part of the invested capital of such Fund shall be distributed among the recipients of relief.

3. The interest accruing from the invested portion of the Benevolent Fund, together with the annual subscriptions and grants made from the General Fund in aid thereof, shall be applicable, in the discretion of the Council, towards the relief of persons eligible to receive the same according to the provisions of the Act, 1868, and any unapplied portion of the same in any year may be invested and thenceforward form part of the invested Fund.

SECTION XVII.

Annual and Special General Meetings.

1. The Council shall prepare a Report of its proceedings during the past year, which, together with the Report of the Auditors, shall be presented at the Annual General Meeting, and inserted in the *Pharmaceutical Journal*.

2. The Council shall meet previous to the Annual General Meeting, and arrange the order of business to be transacted thereat; and the proceedings of the Annual General Meeting shall be considered perfect in themselves without the necessity of reading or confirming the minutes of the preceding Annual General Meeting.

3. No business shall be brought forward at any Special

General Meeting but that for which it is convened, and of which due notice has been given to the Members, pursuant to the preceding Bye-law, No. 2, under sec. 12.

SECTION XVIII.

Diplomas and Certificates.

1. Every Member shall, whilst a Member, be entitled to possess and use a Certificate of Membership.

2. Persons registered as Pharmaceutical Chemists under Section 10 of the Statute, 1852, shall, whilst so registered, be entitled to possess and use a Diploma stamped with the Seal of the Society.

3. Persons examined in the Minor or in the Major Examination pursuant to the Bye-laws may, after having passed their examination and been registered, receive appropriate Certificates.

4. Diplomas and Certificates shall be in such form as shall from time to time be determined upon by the Council.

5. Every person ceasing to be a Member, and every person required so to do by Resolution of the Council, shall forthwith deliver up to the Registrar any Diploma or Certificate held by virtue of Membership.

6. All persons pirating or imitating or improperly using, or inciting any person to pirate, imitate or improperly use, any Diploma, or any or either of the Certificates, or the Common Seal of the Society, or falsely holding themselves forth to the public by means of advertisements, handbills, labels, circulars, or otherwise, as Members, or registered under the Statute, 1852, or Act, 1868, or as Student-Associates, will be subject to legal proceedings, and the Council may from time to time order the same in its discretion.

SECTION XIX.

Journal and Transactions.

1. The *Pharmaceutical Journal* shall be edited, printed, and published in such manner as the Council shall from time to time direct.

2. The Transactions of the Society required to be published, shall be inserted in the said Journal, and all notices or advertisements shall be considered duly made or given if inserted therein.

SECTION XX.

Meetings for the Reading of Papers.

1. Meetings of the Society may be held for the reading of papers and discussion of subjects relating to the scientific objects of the Society.

2. Notice of such Meetings shall be given in the *Pharmaceutical Journal*.

3. All communications intended to be made at such Meetings shall be submitted to the President, or, in his absence, to the Vice-President, or to the Chairman of the Meeting, for his sanction, and without such sanction no subject shall be introduced.

SCHEDULE.

THE MODIFIED EXAMINATION FOR ASSISTANTS UNDER THE PHARMACY ACT, 1868.

Candidates will be examined in the following subjects:—

PRESCRIPTIONS.

Candidates will be required to read Autograph Prescriptions, translate them into English, render a correct Translation of the Directions for Use, and detect Unusual Doses.

PRACTICAL DISPENSING.

To weigh, measure, and compound Medicines, write the Directions in suitable language, finish and properly direct each Package.

MATERIA MEDICA AND QUALITY OF SPECIMENS.

To recognise the Pharmacopœia Chemicals in frequent demand, and specimens of Roots, Barks, Leaves, Fruits, Resins, and Gums in ordinary use; the following Plants, either in a fresh or dried state, or from plates; Belladonna, Stramonium, Hyoscyamus, Conium,

Aconitum, Digitalis, and Sabina: also to estimate the quality of each specimen submitted, and its freedom from adulteration.

PHARMACY.

To recognise the Preparations of the Pharmacopœia which are not of a definite Chemical Nature, such as Extracts, Tinctures, and Powders, and give the proportions of the more active ingredients.

Candidates will also be examined in their knowledge of the law relating to the sale of Poisons.

APPENDIX C

RESOLUTIONS PASSED IN PURSUANCE OF SECTION 2 OF THE
PHARMACY ACT, 1868, DECLARING THAT CERTAIN ARTICLES
SHALL BE DEEMED TO BE POISONS.

The following resolutions affected the repealed schedule but they are now obsolete. (See Poisons and Pharmacy Act, 1908, s. 1.)

Extract from the *London Gazette*, December 21st, 1869.

No. 17, *Bloomsbury Square*, W.C., December 20th, 1869.

THE PHARMACY ACT, 1868.—POISONS.

WHEREAS by Section 2 of "The Pharmacy Act, 1868," it is enacted that the Council of the Pharmaceutical Society of Great Britain may from time to time, by resolution, declare that any article in such resolution named ought to be deemed a poison within the meaning of that Act, and thereupon the said Society shall submit the same for the approval of the Privy Council; and that, if such approval shall be given, then such resolution and approval shall be advertised in the *London Gazette*; and that, on the expiration of one month from such advertisement, the article named in such resolution shall be deemed to be a poison within the meaning of the said Act.

Notice is hereby given, that the Council of the Pharmaceutical Society of Great Britain did, on the first day of December, 1869, resolve and declare in the words following:—

By virtue and in exercise of the powers vested in the Council of the Pharmaceutical Society of Great Britain, the said Council do hereby resolve and declare that each of the following articles, viz.:—

Preparations of prussic acid,
Preparations of cyanide of potassium and of all metallic
cyanides,
Preparations of atropine,
Preparations of strychnine,
Preparations of corrosive sublimate,
Preparations of morphine,
Red oxide of mercury (commonly known as red precipitate
of mercury),
Ammoniated mercury (commonly known as white pre-
cipitate of mercury),
Every compound containing any poison within the mean-
ing of "The Pharmacy Act, 1868," when prepared or
sold for the destruction of vermin,
The tincture and all vesicating liquid preparations of
cantharides,
—ought to be deemed a poison within the meaning of "The
Pharmacy Act, 1868"; and also that of the same, each of the
following articles; viz.:—

Preparations of prussic acid,
Preparations of cyanide of potassium and of all metallic
cyanides,
Preparations of strychnine,
Preparations of atropine,
—ought to be deemed a poison in the first part of the Schedule
A to the said "Pharmacy Act, 1868."

And notice is hereby also given, that the said Society have
submitted the said resolution for the approval of the Lords of
Her Majesty's Council, and that such approval has been given.

By Order,

ELIAS BREMBRIDGE,
*Secretary and Registrar of the Pharmaceutical
Society of Great Britain.*

Extract from the *London Gazette*, December 14th, 1877.

AT THE COUNCIL CHAMBER, WHITEHALL, THE 13TH DAY OF DECEMBER, 1877.

By a Committee of the Lords of Her Majesty's Most Honourable Privy Council. Present: Lord President, Viscount Sandon, Mr. Sclater-Booth.

WHEREAS by "The Pharmacy Act, 1868," section 2, it is enacted, etc. (see p. 285).

And whereas the Council of the Pharmaceutical Society of Great Britain did, on the 7th day of November, 1877, resolve and declare in the words following:

"That by virtue and in exercise of the powers vested in
"the Council of the Pharmaceutical Society of Great
"Britain, the said Council does hereby resolve
"and declare that *Chloral Hydrate, and its pre-*
"*parations* ought to be deemed poisons within the
"meaning of the 'Pharmacy Act, 1868,' and ought
"to be deemed poisons in the Second Part of the
"Schedule A of the said 'Pharmacy Act, 1868.'"

And whereas the said Society have submitted the said Resolution for the approval of the Privy Council, and the Lords of the Privy Council are of opinion that the said Resolution should be approved:

Now, therefore, their Lordships are hereby pleased to signify their approval of the said Resolution.

C. L. PEEL.

Extract from the *London Gazette*, July 28th, 1882.

AT THE COUNCIL CHAMBER, WHITEHALL, THE 28th DAY OF JULY, 1882.

By a Committee of the Lords of Her Majesty's Most Honourable Privy Council. Present: Lord Privy Seal, Lord Richard Grosvenor, Mr. Mundella.

Whereas by "The Pharmacy Act, 1868," s. 2, it is enacted, etc. (see p. 285).

And whereas the Council of the Pharmaceutical Society of Great Britain did, on the 1st day of February, 1882, resolve and declare, by virtue and in exercise of the powers vested in the council of the Pharmaceutical Society of Great Britain, that, amongst other articles, "Nux vomica and its preparations ought to be deemed a poison within the meaning of the Pharmacy Act, 1868, and ought to be deemed a poison in the second part of the Schedule A of the said Pharmacy Act, 1868."

And whereas the said Society have submitted the said Resolution for the approval of the Privy Council, and the Lords of the Privy Council are of opinion that the said resolution, so far as regards Nux vomica and its preparations, should be approved:

Now, therefore, their Lordships are hereby pleased to signify their approval of the said Resolution, in so far as regards Nux vomica and its preparations.

C. L. PEEL.

Extract from the *London Gazette*, July 31st, 1900.

AT THE COUNCIL CHAMBER, WHITEHALL, THE 26th DAY OF
JULY, 1900.

By the Lords of Her Majesty's Most Honourable Privy Council. Present: Lord President, Secretary Sir M. W. Ridley, Sir John Gorst.

Whereas by the Pharmacy Act, 1868, s. 2, it is enacted, etc. (see p. 285).

And whereas the Council of the Pharmaceutical Society of Great Britain did on the 4th day of July, 1900, resolve and declare, by virtue and in exercise of the powers vested in the Council of the Pharmaceutical Society of Great Britain, that liquid preparations of Carbolic Acid and its homologues containing more than three per cent. of those substances, except any preparation prepared for use as sheep-wash, or for any other purpose in connection with agriculture or horticulture, and contained in a closed vessel, distinctly labelled with the word "Poisonous," the name and address of the seller, and a notice

of the agricultural or horticultural purpose for which the preparation has been prepared, ought to be deemed poisons within the meaning of the Pharmacy Act, 1868, and ought to be deemed poisons in the second part of the Schedule A of the said Pharmacy Act, 1868 :

And whereas the said Society have submitted the said Resolution for the approval of the Privy Council, and the Lords of the Privy Council are of opinion that the said Resolution should be approved :

Now, therefore, their Lordships are hereby pleased to signify their approval of the said Resolution.

A. W. FITZ-ROY.

Extract from the *London Gazette*, July 18th, 1905.

AT THE COUNCIL CHAMBER, WHITEHALL, THE 11TH DAY OF
JULY, 1905.

By the Lords of His Majesty's Most Honourable Privy Council. Present: Lord President, Mr. Secretary Akers-Douglas, Mr. Gerald Balfour.

WHEREAS by the Pharmacy Act, 1868, s. 2, it is enacted, etc. (see p. 285).

And whereas the Council of the Pharmaceutical Society of Great Britain did, on the 5th day of April, 1905, resolve and declare, by virtue and in exercise of the powers vested in the Council of the Pharmaceutical Society of Great Britain, that each of the following articles, namely :

Cocaine and its salts,
Picrotoxin,
Preparations of cocaine,
Digitalis and its preparations,
Mercuric iodide,
Mercuric sulphocyanide,
Strophanthus and its preparations,
ought to be deemed a poison within the meaning of the
G.P. U

Pharmacy Act, 1868; and also that of the same, each of the following articles, namely :

Cocaine and its salts,

Picrotoxin,

ought to be deemed a poison in the first part of the Schedule A to the said Pharmacy Act, 1868.

And whereas the said Society have submitted the said Resolution for the approval of the Privy Council, and the Lords of the Privy Council are of opinion that the said Resolution should be approved :

Now, therefore, their Lordships are hereby pleased to signify their approval of the said Resolution.

A. W. FITZ-ROY.

APPENDIX D

QUEEN'S BENCH DIVISION.

BERRY v. HENDERSON.*

February 14, 1870.

The appellant, a person registered under the Act, was charged with contravening the enacting part of the section. It appeared at the hearing that J., a person unknown to the appellant, and not introduced by any person known to him, came into the appellant's shop, and asked to have a prescription made up, which was written, in pencil, in the usual style of medical prescriptions, and had "Mrs. Newton" at the bottom, as the person for whose use it was intended, and the initials "R.M.L.," which were the initials of a legally qualified medical practitioner. The appellant dispensed the prescription by putting two drachms of prussic acid into a two-oz. bottle, and filling it up with rose water, according to the meaning of the prescription; and the appellant copied the prescription into a book, in which he entered all the prescriptions he made up, with the name "Mrs. Newton." J. took the bottle and paid the appellant's demand. The bottle was labelled with the name and address of the appellant distinctly written. The prescription was one that might be ordered for a lotion. There was no evidence whether there was or was not such a person as Mrs. Newton; but the appellant bonâ fide and reasonably believed that a medical man had prescribed the lotion for a

* Reprinted from L. R., 5 Q. B. 296. Also reported, 39 L. J., M. C. 77; 22 L. T. 331. *Pharmaceutical Journal*, March, 1870, p. 559; *Chemist and Druggist*, March, 1870, p. 87.

Mrs. Newton, and that she was the person for whose use he was selling it—

Held, that the medicine or lotion was a medicine within the meaning of the exception in section 17, "of medicine dispensed by a registered person"; that the case was therefore taken out of the enacting part of the section as to poisons; that the appellant had complied with the proviso; and was, therefore, not liable to be convicted.

Semble, that there cannot be two separate convictions under different parts of the enactment for one and the same act.

Case stated by Justices of Sussex under 20 & 21 Vict. c. 43.

An information was preferred under section 17 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), by the respondent, an inspector of police, against the appellant, a pharmaceutical chemist, duly registered under the Act, charging that the appellant, on the 11th of August, 1869, at Worthing, did unlawfully sell a certain poison of those which are in the first part of the Schedule A to the Pharmacy Act, 1868, to wit, prussic acid, to a certain person unknown to the seller, and not introduced by some person known to the seller, to wit, to one Ansell Johnson.

The following facts were proved or admitted.

On the 11th of August, 1869, one Ansell Johnson, being a person unknown to the appellant, and not introduced to the appellant by any person known to him, came into the shop of the appellant, the appellant and his assistant being there, and asked to have made up a prescription, which was written in pencil, and is as follows: "R. acid hydrocyan. Scheele's ʒij, aq, rosae, ʒij, m ft lotio ter die applic.—R. M. L. Mrs. Newton, Augt. 11th, 1869." The meaning of the name "Mrs. Newton" in the prescription was, that the prescription was for the use of Mrs. Newton. There is a legal qualified medical practitioner having the initials "R. M. L."

The appellant's assistant dispensed the prescription by putting two drachms of hydrocyanic acid into a two-ounce bottle, and filling up the bottle with rose water, according to the meaning of the prescription. The appellant made an

entry in his prescription book, "Newton, Mrs." and then copied the prescription verbatim. He also indexed the entry by inserting the name "Newton," and the page, in the index to the book. The prescription book is a book in which the appellant enters all the prescriptions he makes up.

Johnson paid the appellant's claim, and took the bottle and its contents away.

The bottle was labelled as follows: "Caution. For external use. The lotion to be used three times a day. Mrs. Newton. H. Berry, Dispensing Chemist, member of the Pharmaceutical Society, 58, Montague Street, Worthing."

Hydrocyanic acid (Scheele's) is prussic acid. The prescription is one that might be ordered for a lotion. Rose water, by itself, is not a medicine.

No evidence was given that there was or was not any such person as Mrs. Newton. Ansell Johnson, a witness for the prosecution, refused to answer the two questions: "Did he buy it for Mrs. Newton? Did he buy it for himself?" on the ground that by answering he might tend to criminate himself on a charge of attempting to commit suicide, on which he at the time stood remanded.

The Pharmacy Act, 1869 (32 & 33 Vict. c. 117), received the royal assent on the day of the alleged offence.

The following points were raised on behalf of the appellant: That the appellant had not sold prussic acid pure and simple, but a mixture of compound prussic acid and rose water. That that mixture was a medicine, and the prussic acid sold formed an ingredient of that medicine, and was therefore within the exception contained in section 17 of the Pharmacy Act, 1868. That the name "Mrs. Newton" indicated the name of the person to whom the medicine was sold or delivered.

The following points were raised on behalf of the respondent: That the thing sold was not a medicine, but a poison partially diluted. That the name "Mrs. Newton" entered by the appellant was not the name of the person to whom the article was sold or delivered, but only the name of a person for whose use it was alleged to be required. That the book in which the entry was made was not a book kept for that purpose, inasmuch

as it was kept for the purpose of copying therein prescriptions of all sorts.

The justices convicted the appellant of the said offence in a penalty of 10s. and £1 1s. costs.

The questions of law are:—(1) Whether a mixture of prussic acid and rose water is a poison within the meaning of section 17 and of Schedule A, Part I. of the Pharmacy Act, 1868. (2) Whether a mixture of prussic acid and rose water is a medicine within the meaning of section 17. (3) Whether according to the facts stated, the appellant complied with the requirements of the proviso at the end of section 17. (4) Whether, according to the facts stated, the appellant had committed the offence with which he was charged.

There was another case stated, upon a second conviction of the appellant, on the same facts, for unlawfully selling poison without labelling the bottle "Poison."

Quain, Q.C. (with him *Bullock*), for the appellant. There are two convictions against the appellant on one and the same state of facts, for contravening different parts of the same enactment, 31 & 32 Vict. c. 121, s. 17, and one of the questions which will arise, if the convictions are upheld on the merits, is whether there can be two convictions for one and the same act. The first conviction is for selling poison to a person unknown to the seller, and not introduced by a person known to him, and the other is for selling poison without having labelled the bottle "Poison." But the question on the merits is the same, viz. whether this was a "medicine" dispensed by a registered person; and whether, if it was, the appellant brought himself within the proviso by what he had done. First, it is a medicine, though for external use, being, as it is found in the case, proper for a lotion. Secondly, it is dispensed, that is, it is made up and sold across the counter with directions for use, by a person registered under the Act. Thirdly, was the bottle labelled "in manner aforesaid"? This means only "distinctly," with the name of the seller, as is shown by 32 & 33 Vict. c. 117, s. 3, which came into operation the very day this offence is alleged to have been committed; and it might well be contended that the conviction ought to be under that section. Then, has

the appellant complied with the last part of the proviso? He has entered the ingredients in his book in which he enters all the prescriptions dispensed, and it was quite unnecessary that he should keep a book for the special purpose of entering those prescriptions only which contain poison. Lastly, he has entered the name of Mrs. Newton, as the person to whom he sold it. The words are "sold or delivered," therefore it is sufficient to enter the name of the person for whom the prescription is prepared and sold, although delivered to a third person. As often as not, a prescription would be sent by a servant to be made up for the master or mistress; and the chemist has complied with the proviso if he enters the name of the person which appears on the prescription as the patient. It is impossible for him to ascertain whether or not there is such a person as the person named in the prescription, he must give credit to the initials which he finds to the prescription. There is no doubt that the appellant acted in good faith; and it is not found in the case that he acted criminally, nor even negligently.

Lumley Smith, for the respondent. It is most important that the present state of the law should be declared; it may, therefore, be conceded that the Act of 1869 (32 & 33 Vict. c. 117) had come into force, or, at all events, that section 3 of that Act shows that "distinctly" is all that is to be understood by "in manner aforesaid" in section 17 of the other Act. The appellant sold prussic acid, and therefore was selling poison, unless he can bring himself within the latter part of the section. What he sold was merely diluted poison, and not a medicine; rose water, it is found in the case, has no medicinal virtue whatever. No doubt there is a difficulty in saying a lotion is not a medicine, but then it must be something more than mere diluted prussic acid. Again, the appellant does not show that this was a prescription written by a medical man, all that is found is that there is a medical practitioner with the initials "R.M.L." Nor is it shown that there was such a person as Mrs. Newton.

(LUSH, J. : Must we not take it that the appellant *bonâ fide* believed that this was a prescription for a lotion for Mrs. Newton?)

Bonâ fide belief can scarcely apply to a case of this sort ; the chemist is liable to the penalties of this section, if the poison is sold by his apprentice or servant. The object of the section is to prevent and absolutely forbid the sale of poisons except with certain precautions. What was sold was a poison, and it lies on the appellant not only to show that it was part of the ingredients of medicine, but of medicine for Mrs. Newton, and that the prescription was really written by a qualified person.

(LUSH, J. : It would impose a great difficulty in the way of chemists, if in such a case as this the chemist is bound to show that a prescription which he has dispensed was really written by the physician whose initials it bears.)

To hold otherwise would open the door to the very dangers which the Act was intended to prevent. The chemist can always refuse to dispense any medicine containing a dangerous quantity of poison, unless the person asking for it is known to him or is introduced by a person known to him. Otherwise, a person wishing to commit suicide, or to use a poison for some other improper purpose, need only forge a false prescription and be supplied with it at once. In the next place, the name of Mrs. Newton entered in the book, was not the name of the person to whom it was sold or delivered. The object of the Act was to preserve evidence against the person who actually received the poisonous articles.

(HANNEN, J. : Is that so ? The section says the name of the person to whom it was *sold* or delivered.)

Supposing this to have been the sale of poison simply, the signature of the person receiving it would have had to be entered ; so the person to whom the medicine is sold or delivered must mean the person actually receiving it.

(*Quain*, contra. The signature required is the name of the purchaser.)

That must mean the person acting as purchaser, whether for himself or another ; how can any one sign who is not present ? In this case, therefore, the name of Johnson ought to have been entered in the book. Then, moreover, the book is the appellant's general prescription book, and not a book kept for the

purpose of entering the sale of poisonous articles. There is no doubt that a separate book must be kept for the poisons pure and simple. With respect to the second case, precisely the same point arises, for the appellant was bound to label the bottle "poison," unless he brings himself within the exception.

(LUSH, J. : The language of the section does not suggest to my mind that it was the intention to make a person liable to a double penalty for one act.)

The point is of little consequence, for the two convictions must stand or fall together.

Quain, Q.C., in reply.

LUSH, J. : The difficulty is that there is no finding upon the case, that the appellant could reasonably have believed that this was a prescription given to Mrs. Newton by a medical man whose initials it purported to bear. It appears to have come to him in a very loose shape,—a prescription directing the composition of very poisonous ingredients, written in pencil, bearing initials which are not found to have been or to have appeared like the initials of the medical man whose name they were intended to represent. Supposing the appellant acted upon this prescription without the least inquiry, and handed the poisonous medicine over the counter, when he ought as a reasonable, prudent man to have made inquiries, I can conceive that the conviction might be sustained, and the appellant not to have brought himself within the proviso. On the other hand, I can hardly think the proviso meant to cast upon every chemist the duty, at his peril, of ascertaining that the prescription presented is genuine. But it is obvious, I think, that every one who is entrusted with the sale of these poisonous things is to take all reasonable care.

HANNEN, J. : There is the same difficulty about the person to whom the appellant sold the medicine ; there is no finding that there was such a person as Mrs. Newton, nor that the appellant believed that there was such a person.

LUSH, J. : It is impossible for us to answer the question submitted to us one way or the other, without drawing inferences of fact, which, if it was intended the Court should draw, we must decline.

L. Smith intimated that the object of the prosecution was to obtain an enunciation of the law, and that the conviction of the appellant was of no importance.

LUSH, J. : We need not, then, hear Mr. Quain further. I should not be disposed to draw any inferences of fact ; but assuming, under the circumstances, that we are to take the case as if the justices had found as a fact that the appellant did reasonably believe, when he was dispensing this prescription, that he was making up a prescription which had been actually given by a medical man to Mrs. Newton for a lotion, as it purported to be,—upon that hypothesis, I am of opinion that the appellant has brought himself within the proviso in section 17. The first part of the section, the enacting part, applies to the sale of poisons, and amongst the poisons enumerated is prussic acid. I observe that the schedule seems to treat all the poisons as sold in their simple state, or in some form of preparation alone, and it does not appear to contemplate any of them being mixed up with any other ingredients,—it applies to them pure and simple. But, taking the general sweeping words of the enactment alone, they would have prohibited any medical man, perhaps, from dispensing a prescription that contained a poison. In order to obviate that the proviso is inserted, which says that none of the provisions of the section shall “apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered under this Act.” The first question is, was this mixture a medicine ? This was scarcely disputed by the counsel for the respondent. The word “medicine” is comprehensive enough to include everything which is to be applied for the purpose of healing, whether externally or internally. According to the prescription, this mixture was intended to be used as a lotion, and the case states that it might properly be used as a lotion. The proviso seems to put upon the same footing a legally qualified practitioner supplying the thing to his patient, and a registered chemist dispensing such a thing. If a duly qualified medical man had directly supplied or delivered to his patient this compound of prussic acid and rose water, as a lotion, he

would have been protected under the proviso; and we must apply the same rule to a registered chemist making up that compound from a prescription, which is what I understand to be involved in the word "dispensing,"—the making up something that is prescribed, and selling it with directions how it is to be used. Then, did this prussic acid form part of the ingredients of a medicine dispensed by a registered person? It did strike me at first, on reading the clause, that it applied only to cases where the poisonous article is one of several ingredients, so that perhaps its poisonous qualities are modified in a more or less degree by the other ingredients; but then I think, by giving that interpretation, we should make it very difficult to apply the Act. We cannot enter into the consideration whether the other ingredients of the mixture are fewer or more in number, or in what proportion they may be mixed. It is sufficient that this is a compound, and is a medicine which might have been prescribed by a medical man as a lotion. Then, has the appellant complied with the remaining part of the section, which requires that "the medicine be labelled in the manner aforesaid,"—by which I understand "distinctly and legibly,"—"with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it was sold or delivered, in a book to be kept by the seller for that purpose." It is found in the case that the ingredients were entered in what the appellant calls his prescription book, which, I think, satisfies the requirements of the Act, as "a book kept for the purpose," a book in which he enters all prescriptions which he makes up. Then he has entered "Mrs. Newton," as the person to whom it was sold. The statute, by saying the "name of the person to whom it is sold or delivered," has, I think, meant to give the option of putting down the name of the person to whom the medicine is actually delivered over the counter, or the name of the person for whose use it was intended, and whose agent the person actually receiving it across the counter is. Taking it to be found that the appellant reasonably believed that this lotion was duly prescribed for Mrs. Newton, Mrs. Newton must be taken to be the person to whom he sold it, and therefore he

complied with the provisions of the Act. For these reasons I think that the conviction was wrong.

HANNEN, J. : I am of the same opinion. I think we are able to pronounce our judgment at once, upon the assumption which has been agreed to, that it is to be taken that the justices have found that the appellant acted *bonâ fide*, believing Mrs. Newton was the person to whom the medicine was sold. Without that admission, I should have thought it necessary that there should be further inquiry; but by holding the appellant to have complied with the requirements of the proviso, upon the above assumption, I think we shall be putting a construction upon the Act, which will not lead to the dangerous consequences which Mr. Lumley Smith has suggested; for it will only be where the chemist establishes that he has entered the name of the person to whom he delivered the medicine, or of the person to whom it shall be found as a fact that he has reasonably believed he had sold it, that he will succeed in bringing himself within the terms of this proviso.

Judgment for Appellant.

KING'S BENCH DIVISION.

December 19, 1905.

BROWN *v.* LEGGETT.*

Pharmacy Acts—Poison—Vermin-killer containing “poisonous vegetable alkaloid”—Sale to person unknown to seller—Resolution of council of Pharmaceutical Society—Order of Privy Council—Pharmacy Act, 1868 (31 & 32 Vict. c. 121), ss. 2, 17, Sched. A.

A chemist sold to a person unknown to him, and not introduced by any person known to him, a vermin-killer which was labelled

* Reprinted from 70 J. P. 109. Also reported, [1906] 1 K. B. 330; 75 L. J., K. B. 193; 94 L. T. 200; 22 T. L. R. 180; 54 W. R. 362; *Pharmaceutical Journal*, December 23rd, 1905, p. 871; *Chemist and Druggist*, December 23rd, 1905, p. 991; *British and Colonial Druggist*, December 22nd, 1905, p. 548.

"poison" and contained 1 per cent. of certain poisonous vegetable alkaloids. By s. 2 of the Pharmacy Act, 1868, several articles named were to be deemed poisons within the Act, and it was enacted that the Pharmaceutical Society might by resolution declare that any article ought to be deemed a poison within the Act, and upon the resolution being approved by the Privy Council such article should, after advertisement, be deemed a poison. Part I. of Sched. (A) specified as poisons "all poisonous vegetable alkaloids and their salts," and s. 17 of the Act prohibited the sale of any poison included in the first part of Sched. (A), or which might hereafter be added thereto under s. 2, to any person unknown to the seller unless introduced by some person known to the seller. A resolution of the Pharmaceutical Society in 1869, duly approved and advertised, declared that (inter alia) "every compound containing poison within the meaning of the Pharmacy Act, 1869, when prepared or sold for the destruction of vermin," ought to be deemed a poison within the meaning of the Act and at the same time declared that certain other articles ought to be deemed poisons in the first part of Sched. (A) to the Act.

The chemist was charged with unlawfully selling a poison to some person unknown to him, and not introduced to him by some person known to him, contrary to the Pharmacy Act, 1868.

Held, that the resolution of the Pharmaceutical Society in 1869 placed the article in Part II. of Sched. (A) of the Act, and that therefore the appellant was not guilty of the offence charged against him.

Case stated by the stipendiary magistrate for the city of Leeds.

At a court of summary jurisdiction sitting at Leeds on the 21st day of January, 1905, an information was preferred by one Clifford Dunn, solicitor, acting for and on behalf of William James Leggett, of 95, Boaler Street, Liverpool, duly authorised in that behalf (hereinafter called the respondent), alleging that Edward Oliver Brown, of the said city, on the 27th day of July, in the year 1904, in the said city, did unlawfully sell a certain poisonous vegetable alkaloid, being a poison named in the first

part of Schedule (A) to the "Pharmacy Act, 1868," to wit, veratrine, to Margaret McCann, who was then a person unknown to him, the said Margaret McCann not being then introduced to him by some person known to him, contrary to the form of the statute in such case made and provided.

The said information was heard by me on the 24th day of February, the 13th day of April and the second day of May, 1905, and I did thereupon on the last-mentioned date convict the appellant and direct that he should pay a penalty of twenty shillings and a further sum of twenty-one shillings for costs, to be levied by distress, and that in default of sufficient distress he should be imprisoned for the space of seven days, subject to the opinion of the Court on this case.

Upon the hearing of the said information the following facts were admitted or proved in evidence before me.

The appellant is a registered chemist and druggist, carrying on business at a shop situate in Otley Road, Headingley, in Leeds aforesaid, and is duly qualified.

On the 27th day of July, 1904, the appellant, at his said shop, sold and supplied to one Margaret McCann, a packet containing 228 grains of a substance known as "Rankin's Ointment," to which was affixed a label distinctly and legibly printed in the words following:—

Rankin's Ointment for destroying vermin on the head.

Trade 15658 Mark.

Tins 6*d.* and 1*s.*

Poison.

Not to be applied where the skin is broken.

Price 6*d.*

Rankin's Ointment is a compound prepared and sold for the destruction of vermin.

Margaret McCann was then a person unknown to the appellant and was not then introduced to him by any person known to him.

The packet of Rankin's Ointment contained two and two-fifths grains (equivalent to rather more than one per cent. of the whole contents of the packet) of certain poisonous vegetable alkaloids. There was no evidence as to the ingredients used in

the actual preparation of the ointment, but, on analysis, these poisonous vegetable alkaloids were found to consist to a very large extent (approximately ninety per cent.) of pure alkaloid veratrine, which is a poisonous vegetable alkaloid.

The quantity of pure alkaloid veratrine present would (if the ointment in the packet were taken internally by an adult human being) cause purging and vomiting, and possibly a fatal result.

Section 17 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), provides as follows:—

“It shall be unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained be distinctly labelled with the name of the article and the word Poison, and with the name and address of the seller of the poison; and it shall be unlawful to sell any poison of those which are in the first part of Schedule (A) to this Act, or may hereafter be added thereto under section 2 of this Act, to any person unknown to the seller, unless introduced by some person known to the seller; and on every sale of any such article the seller shall, before delivery, make or cause to be made an entry in a book to be kept for that purpose, stating, in the form set forth in Schedule (F) to this Act, the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser and of the person, if any, who introduced him shall be affixed; and any person selling poison otherwise than is herein provided shall, upon a summary conviction before two justices of the peace in England or the sheriff in Scotland, be liable to a penalty not exceeding five pounds for the first offence, and to a penalty not exceeding ten pounds for the second or any subsequent offence. . . .”

Part I. of the schedule comprises (*inter alia*) “all poisonous vegetable alkaloids, and their salts.”

Section 2 of the Pharmacy Act, 1868, provides as follows:—

“The several articles named or described in the Schedule (A) shall be deemed to be poisons within the meaning of this Act,

and the council of the Pharmaceutical Society of Great Britain (hereinafter referred to as the Pharmaceutical Society) may from time to time, by resolution, declare that any article in such resolution named ought to be deemed a poison within the meaning of this Act; and thereupon the said society shall submit the same for the approval of the Privy Council, and if such approval shall be given, then such resolution and approval shall be advertised in the *London Gazette*, and on the expiration of one month from such advertisement the article named in such resolution shall be deemed to be a poison within the meaning of this Act."

In pursuance of section 2 of the Pharmacy Act, 1868, the council of the Pharmaceutical Society on the 1st day of December, 1869, declared by resolution that certain articles named in the resolution ought to be deemed poisons within the meaning of the Pharmacy Act.

The said resolution received the approval of the Privy Council, and the said resolution and approval were advertised in the *London Gazette* of December 21st, 1869.

The following is a copy of the resolution :

"By virtue and in exercise of the powers vested in the council of the Pharmaceutical Society of Great Britain, the said council do hereby resolve and declare that each of the following articles, namely—

"Preparations of prussic acid ;

"Preparations of cyanide of potassium and of all metallic cyanides ;

"Preparations of strychnine ;

"Preparations of atropine ;

"Preparations of corrosive sublimate ;

"Preparations of morphine ;

"Red oxide of mercury (commonly known as red precipitate of mercury) ;

"Ammoniated mercury (commonly known as white precipitate of mercury) ;

"Every compound containing any poison within the meaning of the Pharmacy Act, 1868, when prepared or sold for the destruction of vermin ;

"The tincture and all vesicating liquid preparations of cantharides,

"ought to be deemed a poison within the meaning of the Pharmacy Act, 1868.

"And also that each of the following articles, viz.—

"Preparations of prussic acid ;

"Preparations of cyanide of potassium and of all metallic cyanides ;

"Preparations of strychnine ;

"Preparations of atropine,

"ought to be deemed a poison in the first part of the Schedule (A) to the said 'Pharmacy Act, 1868.'"

It was contended on behalf of the respondent that as the ointment contained a dangerous quantity of "poisonous vegetable alkaloids," which are expressly included in Part I. of the schedule, and as the penal sections of the Pharmacy Act are not confined to the sale of the scheduled poisons in their simple state, or of the preparations of such poisons, but extend to the sale of a mixture or compound containing a scheduled poison (*Pharmaceutical Society v. Piper & Co.*, [1893] 1 Q. B. 686 ; *Pharmaceutical Society v. Armson*, [1894] 2 Q. B. 720 ; 59 J. P. 52), the defendant had been proved to be guilty of the offence charged in the information.

It was contended on behalf of the appellant that compounds containing poisonous vegetable alkaloids are not within Part I. of the Schedule (A) to the Pharmacy Act, 1868 ; that the words "poisonous vegetable alkaloids and their salts" in Part I. of the said schedule do not include compounds containing a poisonous vegetable alkaloid ; that the cases of *Pharmaceutical Society v. Piper*, [1893] 1 Q. B. 686, and *Pharmaceutical Society v. Armson*, [1894] 2 Q. B. 720, do not support the contention that a compound containing a poisonous vegetable alkaloid is to be regarded for the purpose of section 17 of the Pharmacy Act, 1868, as the alkaloid itself, and only to be sold under the restrictions imposed upon the sale of articles included in Part I. of the schedule.

It was further contended on behalf of the appellant that, inasmuch as the resolution of 1869 did not place vermin-killers

within Part I. of the schedule, it must be taken that "every compound containing any poison within the meaning of the Pharmacy Act, 1868, when prepared or sold for the destruction of vermin" is comprised within Part II. of the schedule, and that all the requirements of the Pharmacy Act had been duly complied with. It was pointed out that certain substances containing poisons within Part I. had been placed by the legislature in Part II. of the original schedule, and I was also referred to the Sale of Poisons (Ireland) Act, 1870.

It was contended for the respondent, in reply, that if a mixture be sold containing poison in such a form that it retains its dangerous qualities, there is none the less the sale of a poison because it has been mixed with other articles so as to constitute a compound; and, further, that vermin-killers containing poisons within Part I. of the schedule were not intended to be withdrawn by the resolution from Part I., even if the Act conferred power on the Council of the Pharmaceutical Society so to withdraw them. It was argued that it is quite consistent with the terms of the resolution to hold that vermin-killers containing poisons in Part I. fall within Part I., while vermin-killers containing poisons in Part II. fall within Part II. It was also pointed out that at the date of the resolution none of the cases as to the sale of mixtures or compounds had been decided, and that this probably explains the specific mention of vermin-killers; and, further, that as the Court cannot enter into questions arising as to the proportion of the poisonous ingredient (unless indeed the principle *De minimis non curat lex* applies), one result of upholding the appellant's contention would be that strychnine and other deadly poisons, in the form of vermin-killers, could be obtained by all persons indiscriminately and in any quantity without record or inquiries of any kind.

I also referred to the report of the proceeding before the Departmental Committee appointed in 1902 to consider Schedule (A) (Appendix 1, etc.), but it was not received in evidence.

I was of opinion that vermin-killers containing, in dangerous quantities, poisons within Part I. of the schedule fall within that Part of the schedule.

I accordingly convicted the appellant, as hereinbefore mentioned, and the question upon which the opinion of this Court is desired is whether, upon the facts stated, I came to a correct decision in point of law ; and, if not, what should be done in the premises.

CHARLES M. ATKINSON.

The judgment of the learned magistrate, which formed part of the case, was as follows :—

“The questions raised in these cases are of great practical importance, inasmuch as they affect directly the business of every chemist and druggist in Great Britain. The sale of poisons is regulated by the Pharmacy Act, 1868, which by its second section provides that the several articles named in Schedule (A) thereto shall be deemed poisons within the meaning of the Act. The statute, moreover, confers powers on the Council of the Pharmaceutical Society (with the sanction of the Privy Council) to extend the category from time to time by making such additions to the schedule as their experience may suggest. In order to safeguard the public, so far as may be, the Act requires that no one shall sell or dispense any scheduled article unless he be registered and duly qualified ; that is to say, unless he be a person possessing a technical knowledge of the potency and baneful properties of these various poisons ; and it is further enacted that when any such poison is sold by retail it shall be labelled with the name of the article, the word ‘Poison,’ and the name and address of the seller. Now, this schedule is divided into two parts, and while these general regulations are applicable to all poisons comprised in the schedule, whether in Part I. or Part II., there are certain supplemental regulations of a stringent character as to the sale of those deadly poisons which are included in Part I. The object of these supplemental regulations is to minimise the risk of accident, to prevent the use of such dangerous poisons for a felonious or other improper purpose, and to afford facilities for tracing the origin of an accident or discovering the author of a crime. Thus it is provided that no poison in Part I. shall be sold to any person unknown to the chemist, unless on the introduction of some

person already known to him. And it is further enacted that on every such sale, before delivery of an article named in Part I., the chemist shall enter in a register (i) the date of the sale, (ii) the name and address of the purchaser, (iii) the name and quantity of the article sold, and (iv) the purpose for which it is stated to be required. This entry must also be signed by the purchaser, and by the introducer, if there be one. To complete this abridgment of the law it should be stated that these provisions do not apply to medicine administered to his patient by a qualified apothecary, nor to poisons contained in medicine dispensed by a registered chemist, if the medicine be labelled and a record of the ingredients be kept in manner provided by the Act. I should add, too, that it has been established by a series of decisions, culminating in a judgment of the Court of Appeal, that the statute applies in the case of a mixture or compound where a scheduled poison constitutes one factor in the composition of the article sold, unless indeed it be present in such an infinitesimally small quantity as to come within the principle *De minimis non curat lex*. To deal now with the specific cases before this Court. On July 27, 1904, one Margaret McCann purchased from the defendant, a registered chemist, some Rankin's Ointment in a packet labelled 'Rankin's Ointment for destroying vermin on the head. Trade mark 15658. Tins 6d. and 1s. Poison. Not to be applied where the skin is broken. Price 6d. Rankin & Co., Kilmarnock.' It is not denied that the ointment contains scheduled poisons; indeed the Pharmaceutical Society have, I believe, recovered penalties from an unqualified person for selling it. The packet in question contained two and two-fifths grains (equivalent to rather more than one per cent.) of poisonous vegetable alkaloids, for the most part an alkaloid known as 'veratrine,' and if the contents had been taken internally by a human being, purging and vomiting, and possibly death, would have ensued. Now, the woman McCann was wholly unknown to the defendant, and the packet was sold to her across the counter without inquiry or introduction. In these circumstances, says the informant, an offence was committed, because all poisonous vegetable alkaloids are expressly included in Part I. of the schedule. No, argues

the defendant ; inasmuch as the ointment was sold as a vermin-killer, it fell within Part II., not Part I., of the schedule. This contention is founded on the fact that in the year 1869, by a resolution of the Council, some ten additions were made to the original schedule, including (*inter alia*) : 'Every compound containing any poison within the meaning of the Pharmacy Act, 1868, when prepared or sold for the destruction of vermin.' Of these added substances four only were expressly declared to fall within Part I., and it was argued, accordingly, that the residue, which comprised every compound sold for the destruction of vermin, must necessarily fall within Part II. All 'vermin-killers,' whatever may be their constituent poisons (says Mr. *Glyn-Jones* for the defendant) are thus deemed to be included in Part II. I am, however, of opinion that the Council did not intend, or indeed possess the power, if they had so intended, to withdraw from Part I. veratrine or any other article originally comprised within it. At the date of the resolution the Courts had not yet decided that compounds containing a scheduled poison were subject to the Act, and this addition was, I think, simply to ensure that vermin-killers containing such admixture should be subject to the Act. No doubt the expressed inclusion of the four specific poisons in Part I. would *primâ facie* indicate that the residue were excluded therefrom, and I have throughout regarded the contention based on this circumstance as one entitled to great weight. But I confess that I have struggled against it, for if it were allowed to prevail, the most dangerous substances containing strychnine or other virulent poisons might, in the form of vermin-killers, be obtained casually over the counter by any stranger, for his own purposes, without record or inquiry of any sort. Now, although the resolution of 1869 is clumsily framed, it is not, I think, inconsistent with its terms to hold that 'vermin-killers' containing Poisons in Part I. fall within Part I., while the vermin-killers containing poisons in Part II. fall within Part II. It would be as unreasonable to place all vermin-killers in Part I. as it would be *dangerous* to relegate them all to Part II. ; but if the resolution be construed as in my judgment it should be, the result conforms to the statutory

principles upon which this legislation is based. Of course, it would be easy to suggest a case of hardship or vexation where a poison within Part I. is present in very small quantity ; but (unless the point is reached where the maxim *De minimis* applies) the Courts are not competent to enter into questions as to the proportions of poisonous ingredients. And, on the other hand, one could hardly exaggerate the danger of authorising a random and indiscriminate sale of strychnine or other deadly poisons in the form of a vermin-killer. This view was, I find, recently adopted by my learned colleague, the stipendiary magistrate of Bradford, and also, I observe, by the strong Departmental Committee appointed to consider the schedule some three years ago (see Appendix I. of the Blue Book, which purports to contain a *resumé* of the existing law). Indeed, a member of that committee referred to the punctilious observance by chemists of the statutory precautions on the sale of vermin-killers as affording an important safeguard to the public (see p. 113 of the minority report)."

Sir E. Clarke, K.C. (*H. D. Bonsey* and *W. S. Glyn-Jones* with him), for the appellant.—The resolution of the Pharmaceutical Society in 1869 has been approved by an Order of the Privy Council, and its effect is to place this vermin-killer in Part II. of the Schedule (A) of the Act. Though poisonous vegetable alkaloids are themselves within Part I. of the schedule, yet those words do not include a compound merely because it contains a poisonous vegetable alkaloid. The resolution of 1869 places the vermin-killer in Part II. of the schedule, and therefore the provisions as to the sale of such vermin-killer are not subject to the provisions of section 17 of the Act.

D. M. Kerly, for the respondent.—The Pharmaceutical Society cannot alter the regulations of the Pharmacy Act by declaring that a compound containing a poisonous vegetable alkaloid is not a poison within Part I. of the schedule, because the Act of Parliament distinctly states that poisonous vegetable alkaloids are within Part I. of the schedule. The penal sections of the Act are not confined to the sale of the poisons in Part I. of the schedule in the simple state, but are extended

to any mixture or compound which contains such poison. There is nothing in the Act which authorises the Pharmaceutical Society to transfer a poison from Part I. of Schedule (A) to Part II.; there is only power given them to add other articles to those already declared to be poisons by the statute. If their resolution purported to do that it could be of no effect. [He quoted *Pharmaceutical Society v. Armson*, [1894] 2 Q. B. 721; 59 J. P. 52; *Pharmaceutical Society v. Piper & Co.* [1893] 1 Q. B. 686; 57 J. P. 502.]

Sir E. Clarke, K.C., in reply.

ALVERSTONE, L.C.J.—This is an interesting case, but the argument has involved wider considerations than we think are really necessary or material for the purpose of our decision. For myself I do not question the correctness or the truth of Mr. *Kerly's* argument. If he is right in saying we must regard this stuff as containing an ingredient or poison named in the first part of Schedule (A), I think it would be an offence under section 17 to sell that without knowing the vendee, or the vendee being introduced by some person known to the seller. In my judgment the fact that the poison named in the first part of the schedule is mixed with another ingredient does not make it the less the sale of a poison. As I put it to *Sir Edward Clarke* in the course of his short reply, he would not contend that if a seller had mixed prussic acid and flour together and sold it as a vermin-killer, he could have sold that without infringing the Act if he did not know the person to whom it was sold, or the vendee was not introduced by some person known to the seller. Therefore, as I have said, the major proposition on which we heard a very lengthened and forcible argument from Mr. *Kerly* early in this case seems to me not to touch the real point we have to decide. In my opinion this case depends on whether this order of the Pharmaceutical Society was *ultra vires*, and therefore, as I have said, I should hesitate to declare an order to be *ultra vires* unless it appeared to me, notwithstanding it was thirty-five years old, to contravene the clear language of the statute. In my opinion, having regard to the argument I have heard that cannot be contended in this case, the schedule, so far as this subject is concerned, cannot be

said to enumerate veratrine, or to name veratrine. The part of the schedule which it is said to come under are the words "strychnine and all poisonous vegetable alkaloids and their salts." I think the general idea of this Act was that that being the case, the Pharmaceutical Society should have power to say which things ought to be deemed to be poisons within the one part of the schedule or the other. I was at first a little troubled by the question which arose on the threshold of the case, as to whether the Pharmaceutical Society had any power to do more than to say things were poisons under the Act; but I think when you observe that the Act specifies the two parts of the schedule, and says that the several articles named or described shall be deemed to be poisons, and the council may from time to time, by resolution, declare that any article named in such resolution ought to be deemed a poison within the meaning of this Act, that involves the power to put the article which they deem to be a poison in the one part of the schedule or the other, otherwise you cannot carry out the Act. I think, therefore, there is a necessary implication of a power given to the Pharmaceutical Society to say into which part of the schedule the particular thing which is deemed to be a poison is brought. That being so, it is properly conceded by Mr. *Kerly* that unless he can make out that it is named in the first part of the schedule, that order of the Pharmaceutical Society is not invalid. But he contends that in so far as it must either be read as not including the compound of an article specially named in the first part, or in so far as it did include a compound of an article named in the first part, it would be *ultra vires*. In my opinion, quite apart from the statute, I should come to the conclusion that the society had the power to make the order of 1869. The order follows the actual language of section 2, and therefore it cannot be suggested that it does not purport to be made under it. They did declare that certain things ought to be deemed poisons, some in the first part, and others in the second part, and in the second part they have included two classes of articles which touch this question. "Every compound containing any poison within the meaning of the Pharmacy Act, 1868, when prepared or sold for the

destruction of vermin," and preparations of prussic acid, preparations of strychnine, and so on. As to these last two, which come within the four articles named, they put them into Part I., and as to the other they put them into Part II. In my judgment it was not *ultra vires* to declare that an article or a preparation which contained some of the poisonous matter, but was not, if I may use the expression, a mere mixture of poisonous matter with something else, was to go into the second schedule. I think it is quite possible to look at the legislation of 1870 as regards Ireland. There is no reason why, in such a matter as the sale of poisons, there should be a different restriction, or different power, with regard to one part of the United Kingdom and another; and when you find, in 1869, the Pharmaceutical Society had made this order, in which order they had purported, as I have already pointed out, to put into the second schedule every compound when containing any poison when prepared or sold for the destruction of vermin, and that Schedule II. of the Act of 1870 puts into the second schedule in terms these words, I think it is tantamount to a legislative recognition of the power of the Pharmaceutical Society to make that order, because it is in the area covered. No doubt it does not apply to Scotland. In England the Pharmacy Act was supplemented by the Pharmaceutical Society's order of 1869, and the law in Ireland was the statute which embodied, so far as it had then gone, the wisdom of the Pharmaceutical Society. With regard to the other orders, all I desire to say is that I do not express any doubt upon the suggestion made by Sir *Edward Clarke*, that it may turn out that in some of the later orders they have done exactly the same thing, but I do not think any judge of the High Court ought to be deemed to have a knowledge, or to know that an article does come within the first part of the schedule unless it is either admitted or the fact is found for them. I am not saying that there are not other instances. If there were other instances it would show from time to time, as contended by counsel, that this power did not rest with the Pharmaceutical Society. The only other word I desire to add is this. We know now from the statement made that "*veratrine*" is a poisonous vegetable alkaloid, and that there is some

portion of this poisonous vegetable alkaloid in this vermin-killer. Of course that, with the knowledge we now possess, involves the knowledge of the very fact which the Pharmaceutical Society would know about, and it would show that it was good sense and wise legislation to make an authority of that kind to declare for the benefit of the public what ought to be deemed to be poisonous within one branch or the other. Of course it must not be supposed that I am suggesting that a sale of a mixture of a named poison with something else would not be a sale under section 17. I have said at the beginning of my judgment, and I desire to repeat it, that I do not in any way wish to throw the slightest doubt on that part which is, I think, concluded by the language of the section itself, and by the judgments in the Court of Appeal in *Pharmaceutical Society v. Armson*, *supra*. I come to the conclusion that this order was a perfectly valid order, and that, therefore, the sale of this article was justified by the Act and the order, and was not a sale of a poison named in Part I. of Schedule (A). It was a poison, and therefore required to be labelled poison, and to have the name of the seller upon the box, but it was not a poison in the first part of Schedule (A), which requires it to be sold only to a person known to the vendor. I think for these reasons that the appeal must be allowed.

LAWRANCE, J.—I agree.

RIDLEY, J.—I agree, and have very little to add. I think the cases quoted show that an unqualified person may be convicted of selling poison contrary to the Act, although the poison is mixed with other substances, and whether that poison be within the first or the second part of Schedule (A). But clearly the question within which part of the schedule each particular poison, or preparation of poison, may fall is quite independent of these cases. If the Pharmaceutical Society had power to pass the resolution of 1869, I think, on the arguments addressed to us, this ointment falls properly within the words "compound containing any poison within the meaning of the Pharmacy Act, 1869, when prepared or sold for the destruction of vermin," and is not within the first part. I agree with my lord that we must

hold this Society had power to make the order. For these reasons I agree with my lord.

Appeal allowed.

Solicitors for the appellants : Neve, Beck, and Kirby.

Solicitors for the respondent : Markby, Stewart & Co.

QUEEN'S BENCH DIVISION.

July 12, 1894.

PHARMACEUTICAL SOCIETY *v.* ARMSON.*

Pharmacy Acts—Poison—Compound including poison—Penalty—
31 & 32 Vict. c. 121, ss. 1, 15.

A., a grocer, sold a compound containing poison, to wit, morphine, with directions as to proper doses. There was evidence that the compound, if taken at one time, might injure a child, though not adult, if in health. In an action for a penalty under 31 & 32 Vict. c. 121,

Held (affirming the Queen's Bench Division, 58 J. P. 654), that whether a compound, in its entirety, is a poison depends upon the quantity of such poison, and if there is some evidence, the Court will not interfere with the finding of a county court judge as to the compound being poisonous.

This was an appeal from the decision of the Queen's Bench Division (*Charles and Bruce, JJ.*), reported at 58 J. P. 654. An action was brought in a county court by the Pharmaceutical Society to recover a penalty incurred by the defendant for keeping open a shop for retailing, dispensing, or compounding poisons contrary to the provisions of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121). The learned county court judge held, on the evidence (58 J. P. 655), that the compound was itself a poison within the Pharmacy Act, 1868, and gave judgment for

* Reprinted from 59 J. P. 52. Also reported, [1894] 2 Q. B. 720; 64 L. J. Q. B. 32; 71 L. T. 315; 42 W. R. 662; *Pharmaceutical Journal*, July 21st, 1894, p. 46; *Chemist and Druggist*, July 14th, 1894, p. 48; *British and Colonial Druggist*, July 13th, 1894, p. 45.

the plaintiffs for the amount of the penalty. On appeal, the Queen's Bench Division affirmed the decision of the county court judge, and dismissed the appeal. The defendant, by leave, appealed to this court. The facts fully appear at 58 J. P. 655.

Moulton, Q.C., and *Bonsey*, for the defendant, contended that the mere existence of a very small quantity of poison in a compound did not constitute it a poison within the Act, and cited *Pharmaceutical Society v. Piper*, 57 J. P. 250, and *Pharmaceutical Society v. Delve*, 58 J. P. 152.

Crump, Q.C., and *Grey*, for the plaintiffs.

LORD ESHER, M.R.—We cannot depart from the finding of the county court judge. An article was sold by the defendant, one of the poisons named in the schedule to the Act. A Divisional Court has held that the defendant was liable to a penalty because he had sold the poison, not being a person entitled under the Act to sell poisons. Two points have been taken. It was said the defendant did not sell the poison mentioned in the schedule because he had sold it mixed with other ingredients, but that does not make it any less a poison. If poison was put into a medicine, and the medicine was sold, the person who sold the medicine sold the poison in it. There is nothing in the Act which says that though you may not sell poison by itself you may sell it mixed with other things. Another point raised was that, in the trade, all kinds of proprietary medicines are known as patent medicines, and that, therefore, the exemption of patent medicines covered this case. I doubt very much whether, in the ordinary language of the trade, the phrase "patent medicines" has this extended signification, but, in any case, it is immaterial. We have, in this case, to construe the Act which contains the phrase. Seeing that the Act speaks merely of patent medicines, we must say that it does not include all kinds of proprietary medicines, but merely refers to those medicines in respect of which letters patent have been granted under the Great Seal. We have been asked to overrule the cases of *Berry v. Henderson*, L. R. 5 Q. B. 296; *Pharmaceutical Society v. Piper*, *supra*, and *Pharmaceutical Society v. Delve*, *supra*; but, in my opinion,

these cases have all been rightly decided. The appeal must, therefore, be dismissed.

KAY, L.J.—The Pharmaceutical Society in this case have brought an action against the defendant, who is not a chemist—not one of the persons authorised to sell poisons under the 31 & 32 Vict. c. 121—and the society have brought the action for the penalty which is imposed by the 15th section of that Act. The facts of the case so far as material are these. The thing sold is called balsam of aniseed. What it is compounded of we are not told, but we are told that each bottle contains one-tenth of a grain of morphine, and from what the county court judge said, in his finding on the facts which is conclusive upon us, it is clear that this is not a case in which the maxim *de minimis* applies at all. I can quite understand that although a case might otherwise be within the Act if the proportion of one of the poisons mentioned in the schedule were so exceedingly small as to be perfectly innocuous, or comparatively innocuous, if the whole bottle were taken, then the maxim *de minimis non curat lex* might possibly apply in an action of this kind, but this is not such a case. Now the first argument was, this is not a sale of morphine because it is only a sale of a composition which contains morphine. The argument stated in that way seems almost to answer itself, and on looking at the Act of Parliament which we have to construe, I think it is plain that an argument of that kind cannot be maintained. The Act of Parliament provides that it shall be unlawful for any person to sell poison or to keep open a shop for the retailing, dispensing, or compounding of poisons unless he be a pharmaceutical chemist or a chemist and druggist within the meaning of the Act, and registered under the Act, and conforms to the regulations in the Act. Then section 2 says: “The several articles named or described in the schedule (A) shall be deemed to be poisons within the meaning of the Act. In the schedule to this Act are named amongst other things ‘opium and all preparations of opium or poppies.’” Therefore, anybody who sells opium or any preparation of opium or poppies is selling that which by this Act no one can sell without incurring a penalty, except a pharmaceutical chemist, or a chemist and druggist within the

meaning of the Act. The argument that, because this is compounded with something else, therefore it may be sold, really may be reduced to complete absurdity by supposing the composition was made up of two or more of the articles comprised in this schedule. Even without taking so extreme a case as that, can it possibly be the meaning of this Act that any of these prohibited poisons may be sold provided it is mixed up with other ingredients? Such a conclusion would destroy the object of the Act. It seems to me quite impossible to accept that proposition. If the mixture contains the poison in a considerable quantity—such a quantity as to be deleterious if the whole were taken—then it seems to me that it would be infringing not only the letter, but the spirit, of this Act of Parliament, if a person may sell that who is not a qualified person within the meaning of the Act. The other argument was that this article was excepted by section 16, because it was a patent medicine. It was said that in ordinary parlance all proprietary medicines are classed under the head “patent medicines.” Is that the meaning in this Act of Parliament? In order to construe this Act of Parliament it is material to see how the legislature has dealt with medicines in other Acts of Parliament, and when we look through other Acts of Parliament we find a most clear distinction always maintained. Although proprietary and patent medicines are classed together for certain purposes, the language of various Acts of Parliament which imposes a stamp duty on medicines mentioned in the schedules, shows them to be dealt with as a separate class. On this point, I accept what Collins, J., said in the *Piper case* (1893), *supra*. The reasons for the exemption seem to me very clear indeed. Where the medicine is, properly speaking, a patent medicine—that is to say, where the exclusive right to make or sell it has been granted to somebody by letters patent under the Great Seal—the condition of the patent always is that a specification should be lodged in the patent, describing the whole of the ingredients and the process of manufacture. Therefore, when people buy a patent medicine, they have the means of ascertaining what ingredients are contained in it, and that is one reason, no doubt, for the exemption. Another is

this : if a patent of that kind had been granted, it would have been rather hard to take away from the patentee that which he had been exercising as a right under the authority of the Great Seal, and prevent him from further making or selling if he were not an authorised person under the Act. For these reasons, I think it is plain that, in section 16, the words "patent medicine" mean that which they express *primâ facie* as medicine, the maker or owner of which has obtained letters patent for it ; the term does not extend, and is not intended to extend, to mere proprietary medicines, or to include a medicine like this, for which the owner or maker has not obtained any patent whatever. On these grounds, I think the decision of the Court perfectly right, and that this appeal fails.

A. L. SMITH, L.J.—This is a proceeding by the Pharmaceutical Society of Great Britain against a grocer under section 15 of the Pharmacy Act, 1868, for having sold poison, not being a chemist or a person entitled under that Act to sell poisons. The first question which arises is, whether or not he has sold poison within the meaning of the Act. I understand this case is brought for the purpose of overruling, if possible, three cases which have been decided heretofore : the case of *Berry v. Henderson*, *supra*, which was decided by Lush and Hannen, JJ. ; the case of *Pharmaceutical Society v. Piper*, *supra*, which was decided by Collins and Lawrance, JJ. ; and also the last case which was decided, *Pharmaceutical Society v. Delve*, *supra*. Without going into the authorities which have been cited, speaking for myself, I must say I cannot see much difficulty in construing this Act. The general object of the Act was to have poisons dispensed only by duly qualified persons. The articles which only a chemist is allowed to sell are, consequently, catalogued in the schedule. First, there is Part I., in which are the more virulent poisons, beginning with arsenic and prussic acid, and then, in Part II., those which are not so virulent, including opium and all preparations of opium or poppies. It is found as a fact, that in this Powell's Balsam of Aniseed, which the defendant has sold, there is one of the poisons mentioned in the schedule. It is not a matter *de minimis*—if it were, I should hold it as being equivalent to no poison at all—for there is a scheduled

poison in the contents of this bottle, which, if taken by a child or an infant in any quantity, would certainly do damage to the taker. Now, I ask myself, has or has not this defendant sold a poison which is mentioned in the Act? I can only answer that question by saying that he certainly has. But it is said: "Oh! he did not sell the poison *per se*, for he sold it together with something else." Supposing a man filled up a bottle half with chloroform, which is one of the prohibited poisons, and the other half with water, and sold it, does he not sell chloroform? Of course he does; he sells chloroform, and he also sells water, and the prohibition is that he is not to sell chloroform unless he be a chemist. It seems to me there is a direct prohibition in this Act against others than legalised persons selling poisons. The present defendant has sold a poison, and is within the meshes of this statute. But then it is said he is out of the meshes by reason of section 16 of the Act, which provides that none of the prior sections shall extend to the case of making or dealing in patent medicines, and it is said that Powell's Balsam of Aniseed is a patent medicine within the meaning of the Act. The first thing one asks is, Where is the patent? And the only answer is, There is no patent. How then can it be a patent medicine? It is said it is a proprietary medicine, and that we ought to read section 16, which exempts patent medicines and patent medicines only, as exempting patent medicines and proprietary medicines. I certainly should not read the section in that way myself. The exemption must be read in the manner which the Queen's English dictates; and when the legislation which has taken place before and since this Act of 1868 is looked at, it is abundantly clear that the exemption was of patent medicines only, and not of proprietary medicines. Looking at the statute of 25 Geo. 3, c. 79, s. 4, and the next Act of 52 Geo. 3, c. 150, s. 2, both prior to this Act of 1868, there is a marked distinction between a patented medicine and a proprietary medicine—that is, a medicine which is compounded of secret nostrums. When we come to the Act of 1868, the sole exemption made relates to patent medicines, and, a few years afterwards, another Act relating to the sale of food and drugs was passed, in which an exemption is made, where the food or

drug is a proprietary medicine or one which is the subject of a patent in force. This clearly shows that there is a well-recognised distinction between a proprietary medicine and a patent medicine. A doubt was raised whether there was such a thing as a patent medicine ; but an answer was speedily given—a specification was handed up in which it was shown that a patent was taken out for a medicine as late as 1892. In my judgment, this case has been brought within the Act. The defendant cannot get out of it as being within the exemption in section 16, and this appeal must be dismissed.

Appeal dismissed.

QUEEN'S BENCH DIVISION.

October 31, 1893.

PHARMACEUTICAL SOCIETY v. DELVE.*

Pharmacy Act—Medicine containing poison—Morphine—Penalty—
31 & 32 Vict. c. 121, s. 15.

In an action for a penalty under 31 & 32 Vict. c. 121, s. 15, for selling poison without being duly registered, the plaintiff is bound to prove the relative quantity of the poison.

This was an appeal from a judgment of the County Court of Manchester.

The plaintiff sued the defendant for amount of penalty incurred by the defendant on November 19, 1892, in keeping open shop for the retailing, dispensing, or compounding of poison, to wit, a preparation of morphine, called "Licoricine," contrary to the provisions of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 15.

At the trial the plaintiff proved the purchase at the defendant's store of a bottle of licoricine. An analyst stated

* Reprinted from 58 J. P. 152. Also reported, [1894] 1 Q. B. 71; 63 L. J., Q. B. 360; 70 L. T. 139; 42 W. R. 192; *Pharmaceutical Journal*, November 4th, 1893, p. 378; *Chemist and Druggist*, November 4th, 1893, p. 664; *British and Colonial Druggist*, November 3rd, 1893, p. 456.

that he had analysed the contents, and found morphine, but did not estimate the actual quantity, as he was not instructed to take quantity. He was not prepared to say that if an adult took the whole of the contents of the bottle, it would do him any harm.

The plaintiff contended that if there was any morphine whatever in the mixture, the defendant would be liable.

The Pharmacy Act, 1868 (31 & 32 Vict. c. 121, s. 1), enacts that it shall be unlawful for any person to sell or keep open a shop for retailing, dispensing, or compounding poisons unless he is a pharmaceutical chemist, or a chemist and druggist, and is registered.

The definition of poisons in Schedule A includes opium and all preparations of opium.

A penalty of £5 is imposed for every offence recoverable, as provided by the Pharmacy Act, 1852 (15 & 16 Vict. c. 56, s. 12), by plaint under the provisions of any Act in force for the more easy recovery of small debts and demands.

And by an Order of Council published December 21, 1869, preparations of morphine are to be deemed a poison within the meaning of the Pharmacy Act, 1868.

The learned judge of the county court held that, as there was no sufficient evidence as to the quantity of morphine, he would not be justified in holding the defendant to be guilty, and gave judgment for the defendant, with leave to appeal.

Finlay, Q.C., and *T. R. Grey*, for the plaintiff, contended that there was evidence that some morphine was contained in the medicine, and, if so, then that was a sufficient ground for holding that the penalty had been incurred. This appeared to follow from the case of *Pharmaceutical Society v. Piper*, [1893] 1 Q. B. 686.

Bonsey, for the defendant, was not called upon.

CHARLES, J.—In my opinion, the county court judge was right. The action was brought to recover a penalty for selling poison without being duly registered under 31 & 32 Vict. c. 121. It was proved that the defendant sold medicine containing a small quantity of morphine. But as the analyst had no instructions to ascertain the quantity, no evidence was given as

to the quantity. The county court judge held that, as there was no evidence as to quantity, he found the defendant not liable. I think he was right in so deciding.

WRIGHT, J., concurred.

Judgment for defendant.

QUEEN'S BENCH DIVISION.

(CAVE AND WILLS, JJ.)

June 13, 1896.

PHARMACEUTICAL SOCIETY v. FOX.*

Pharmacy Acts—Sale of Poisons—Exemptions—Patent Medicines.

A medicine for which the patent has lapsed is not within the exemption of section 16 of the Pharmacy Act, 1868.

This was an appeal from the decision of the judge of the Westminster County Court ordering that the plaintiff should recover a penalty of £5 against the defendant, under the Pharmacy Act, 1868, for selling poisons without having a licence. The offence was created by section 15 of the Pharmacy Act, and section 16 provided for an exemption in favour of patent medicines. The sale in respect of which the penalty was claimed, was of a medicine called "Kay's Compound Essence of Linseed," which was patented in 1873. In 1876 the patent lapsed in consequence of the fees not having been paid. The question was, whether this medicine came within the exemption in favour of patent medicines.

Mr. Bonsey, for the defendant, said that the object of the Act was to protect the public, and that the legislature had ordered that in the case of patent medicines the public were sufficiently safeguarded, because the specifications of patent medicines were inspected before a patent was granted; he

* Reprinted from 12 T. L. R. 471. Also reported, *Pharmaceutical Journal*, June 20th, 1896, p. 495; *Chemist and Druggist*, June 20th, 1896, p. 860; *British and Colonial Druggist*, June 19th, 1896, p. 640.

contended that the lapse of the patent did not take the medicine out of the exemption in the Act. He referred to *Pharmaceutical Society v. Piper*, [1893] 1 Q. B. 686, and to *Pharmaceutical Society v. Armson*, [1894] 2 Q. B. 720.

Mr. *T. Grey* for the Pharmaceutical Society was not called upon.

Mr. Justice CAVE said that the learned judge was right. The language of the Act was unmistakable. This medicine could not be said to be a patent medicine. The argument addressed to the Court was one which might be addressed to the legislature, but was not one which the Court could accept.

Mr. Justice WILLS concurred. He said, "A patent medicine means a medicine for which there is a patent, not one for which there has been a patent."

QUEEN'S BENCH DIVISION.

(CAVE AND WRIGHT, JJ.)

May 25, 1894.

PHARMACEUTICAL SOCIETY *v.* HORNSEY.*

Pharmacy Acts—Sale of Poisons—"Retailing Poisons," what is—
Pharmacy Act, 1868, ss. 1 and 15.

This was an appeal by the plaintiffs from a County Court judge, who gave judgment for the defendant in the action. The defendant Hornsey kept a shop for repairing clocks and watches, but he retailed within the shop a substance containing corrosive sublimate, which the judge found to be a deadly poison; but the learned judge held that, as the defendant did not show upon the external part of the shop that he sold poison within the shop, he did not "keep an open shop for retailing . . . poisons" within the Pharmacy Act, 1868. The learned judge, therefore, gave judgment for the defendant in an action

* Reprinted from 10 T. L. R. 492. Also reported, *Pharmaceutical Journal*, June 2nd, 1894, p. 1018; *Chemist and Druggist*, June 2nd, 1894, p. 762; *British and Colonial Druggist*, June 1st, 1894, p. 558.

brought against him by the plaintiffs, the Pharmaceutical Society, for penalties under sections 1 and 15 of the Act for "keeping an open shop for the retailing poisons." The defendant was not a registered chemist or druggist. The plaintiffs appealed.

Mr. *Crump*, Q.C., and Mr. *T. R. Grey* appeared for the appellants; Mr. *Foote* for the respondent.

Mr. Justice CAVE said: The case is reasonably clear. The defendant kept a shop and in the shop retailed poison. He used the shop for retailing poison, and any one was at liberty to go into the shop to ask for it and would have been served. I cannot understand what a retailing of poison is if that is not. The plaintiffs have, however, sued for two penalties, but I think only one is recoverable.*

Mr. *Crump*, Q.C.: That appears to be so, my Lord.

Mr. Justice WRIGHT concurred.

Appeal allowed. Judgment for the plaintiffs for one penalty of £5 and costs in the Court below.

COURT OF APPEAL.

March 16, 1880.

THE PHARMACEUTICAL SOCIETY OF GREAT BRITAIN v. THE LONDON AND PROVINCIAL SUPPLY ASSOCIATION, LIMITED.†

Pharmacy Act, 1868 (31 & 32 Vict. c. 121), ss. 1, 15—Corporation acting as Chemist and Druggist—Liability to Penalties—"Person."

In sections 1, 15 of the Pharmacy Act, 1868—which prohibit under a penalty any person, not being a duly registered pharmaceutical chemist, from keeping open shop for the sale

* The penalties were for two sales—one on December 23rd, 1893, and the other January 5th, 1894.

† Reprinted from 5 Q. B. D. 310. Also reported, 49 L. J., Q. B. 338; 42 L. T. 569; 44 J. P. 408; 28 W. R. 608. *Pharmaceutical Journal*, February 28th, 1880, p. 682; *Chemist and Druggist*, March 15th and April 15th, 1880, pp. 120, 168.

of poisons or using the name of chemist or druggist—the word “person” does not include a corporation, and the penalty cannot be recovered from an incorporated company for keeping a chemist’s shop as described in the Act.

Judgment of the Queen’s Bench Division (4 Q. B. D. 313) reversed.

Appeal of the defendants from the judgment of COCKBURN, C.J., and MELLOR, J., overruling a decision of the judge of the County Court of Bloomsbury, in an action for a penalty under the Pharmacy Act, 1868 (31 & 32 Vict. c. 121).

The facts of the case are fully set forth in the judgment delivered by COCKBURN, C.J. (4 Q. B. D. 315); and it is here necessary to make only the following short statement of them.

The defendants were a limited company, registered under the Companies Acts, 1862–1867. Amongst other kinds of business carried on by them, they kept an open shop for retailing, dispensing, and compounding poisons, within the meaning of the Pharmacy Act, 1868. The shop was under the management of a shareholder and two assistants: these three were duly qualified under that statute, but the managing director was not so qualified.

February 23.—*A. Wills*, Q.C., and *Finlay*, for the defendants. The defendants are not liable to be sued for the penalty imposed by the Pharmacy Act, 1868, section 15; they are registered under the Companies Acts, 1862, 1867, and are a body corporate; therefore they are not a “person” within the meaning of the Pharmacy Act, 1868, sections 1, 15.

First, it is contended for the defendants that in modern legislation wherever it is intended to apply the provisions of a statute to corporations, either they are included in the enacting clauses by express terms, or a section is inserted declaring that they shall be comprehended in some word used in the statute. It is true that the word “person” may of itself include a corporation, but at the present day this construction is not to be adopted without good reason. As an indication of the intention of the legislature it may be mentioned that in the Act for shortening the language used in Acts of Parliament (13 & 14 Vict. c. 21, s. 4) it is not provided that “person” shall

include a corporation. 7 & 8 Geo. 4, c. 28, s. 14, which declares that statutes as to criminal matters shall extend to corporations, is not in point for the present case, which is a civil proceeding ; but it shows that in the opinion of the legislature express enactment is as a rule necessary to bring corporations within the provisions of a statute. A similar view of the law was adopted by Lord COLERIDGE, C.J., in *Guardians of St. Leonard's Shore-ditch v. Franklin* (3 C. P. D. 377). It was held in *Harrison's Case* (1 Leach C. C. 180) that the word "person" in a statute as to forgery did not extend to corporations : this is a decision which goes very far in favour of the defendants, for corporations were clearly within the mischief which it was intended to remedy. In many statutes passed in 1868, and also before and after that year, an interpretation clause has been inserted declaring that the word "person" shall include a "corporation." The plaintiffs may rely upon 2 Ins. 722 ; but the passage alleged to be in point is not a decision, it is a mere dictum as to the construction of a particular statute.

Secondly, it is submitted that upon a review of the provisions of the Pharmacy Act, 1868, it is clear that the word "person" as used therein, cannot apply to corporations ; and in order to ascertain the meaning of the language used in a statute, it is always advisable to look at the context : *Walker v. Richardson* (2 M. & W. 882). Some of the sections of the Pharmacy Act, 1868, relate to examination, registration, and death of persons ; these are obviously inapplicable to corporations.

Thirdly, even if the statute comprehends corporations, the defendants are protected, inasmuch as those who managed the shop were duly qualified : *Raynard v. Chase* (1 Burr 2).

February 25.—*Sir J. Holker*, A.G., and *Lumley Smith*, for the plaintiffs. In a statute the word "person" *primâ facie* includes a corporation, and the intention of the legislature in passing the Pharmacy Act, 1868, would be defeated, if that word were to be restricted to individuals. The object of the statute was to regulate the sale of poisons, and the mischief intended to be remedied was the facility with which poisons might be obtained ; it was wished to fix upon some one who

should be responsible for carrying on the business of a druggist in a proper manner; but if the construction contended for by the defendants be correct, they may sell poisons in large quantities without incurring any penalty. There is no reason in law why a corporation should not be liable to a penalty in an action; it may be sued for a tort: *Yarborough v. Bank of England* (16 East 6); and it may be indicted for a misfeasance, such as creating a nuisance. If the procedure for recovering the penalty had been by information before justices, the defendants would have been liable by force of 7 & 8 Geo. 4, c. 28, s. 14, and it will be a singular result if the defendants are exempt because the legislature has directed the penalty to be recovered by an action in the county court.

A. Wills, Q.C., in reply. At the time when the Pharmacy Act, 1868, was passed, probably it was not contemplated that corporate bodies would sell poisons; and if the legislature had no intention to include them, they ought not to be held liable to the penalties because this Court may think that they fall within the mischief aimed at by the statute.

Cur. adv. vult.

March 16.—The following judgments were delivered:—

BRAMWELL, L.J.—I am of opinion that this appeal must be allowed. I think the word “person” in section 15 of the Pharmacy Act, 1868, does not include a corporation. That the word “person” may include “corporation” I will not deny. Though at the same time, considering the way in which statutes are now drawn, that where “corporation” is meant, it is always named—at least there is no modern instance to the contrary—that when the legislature made a general interpretation clause that “person” should be male and female, plural and singular, etc., it did not include corporation, I should be reluctant to hold that in any particular statute “person” included “corporation,” unless there was a strong reason so to do. In this case there is, in my opinion, no such reason, but the contrary. Sections 1 and 15 of the Act create an “offence,” and provide for its punishment. But for section 15, section 1 would create a misdemeanour punishable by indictment, fine

and imprisonment. But offences, certainly offences of commission, are the offences of individuals, not of corporations. A corporation cannot have the *mens rea*. I do not say that a corporation cannot be guilty of an offence of nonfeasance—it certainly can be; but though if the legislature pleased it might enact that a corporation should in a certain event be taken to have committed an offence, it must be taken *primâ facie* that in speaking of “offenders” it speaks of individuals. If a statute were to say that any person publishing a libel should be guilty of an offence, or that no person should publish a libel, a corporate printing company publishing a libel would not be guilty in its corporate capacity, but the individuals publishing would be the offenders. So, for instance, as to the sale of beer or of spirits. No doubt if there was strong reason for saying “person” in this statute meant “corporation” one ought so to hold; as, for example, if the mischief to be prevented could not be otherwise. That is not so here, for the individual offender may be got at. If the servant or shopman of a corporation sells poison, not being a pharmaceutical chemist and registered under the Act, it will be no answer to an action for the penalty to say that he did it as a servant whether of an individual or a corporation not qualified. If the act is in itself unlawful it is not the less so because done as a servant. If it would be lawful because the servant was qualified, though his employer was not, I think the statute is shown by this construction to be all the more reasonable, as in that case a corporation is on the same footing as a partnership, and there is no reason why it should not be. It may be asked how is the “keeping open shop” to be reached? The servants do not keep it open. No, but the directors or managers do; they are the offenders in that case. I cannot see how they could deny that they kept open the shop. They do. They do it in fact. If they committed a public nuisance by smells, vapours, or otherwise, in the preparation or (if supposable) in the sale of their drugs, they and not the corporation would be indictable. I see no reason, then, for including “corporation” in the word “person.” I see many the other way. It is remarkable that “person” never includes “corporation” in any other section

of this statute. It is manifest that "persons" in the preamble keeping open shops, and "persons" known as chemists and druggists, mean individuals; for they are "persons" who it is expedient "should possess a competent practical knowledge." Then such "persons" are to be examined. It is manifest that "persons" there does not include corporations; why should it in section 1? So "persons" in section 3, who have been assistants, cannot include corporations. Nor the "person" in section 4 who is to be of full age. Nor the "persons" in section 5 who had been admitted pharmaceutical chemists, for no corporation had been. Nor the "person" in section 6, for a corporation never could have a "certificate of competent skill." Nor the "person" in section 10, who is a person that may die. In short, "person" in no other section of this Act includes "corporation." Further than this, I am by no means certain that the statute is not levelled at the individual actually acting, and not (at least, in all cases) his employer. Who would be liable under section 15 for compounding medicines of the British Pharmacopœia otherwise than according to its formularies? Surely the actual person compounding. Section 16 supposes there may be a qualified assistant and not a qualified master; again, section 17, which specially provides that for certain matters the master is liable, seems to suppose that otherwise he would not be. Then section 18 and the following where they use the word "person" clearly do not mean corporation. There is this advantage, as I have said, in this construction, that it does not exclude a corporation from the benefit of carrying on this business, nor the public from dealing with them. It is not needlessly in restraint of trade, as it otherwise would be, at least not directly. If it does indirectly operate to preclude a corporation carrying on the trade, however qualified all its members may be, it is to be regretted. But then there is no need for making "person" include "corporation," nor for creating the novelty of a corporate offence. It only would operate against a corporation as it would against a partnership.

Further, how is this the act of the corporation, if it is unlawful? For if it is, it is *ultra vires* of the directors. An assistant hired by them to sell these poisons, if so doing is

unlawful, could maintain no action against the corporation. They would have a good defence. Of course, if by their articles of association poisons are expressly to be sold, their sale would not be *ultra vires*, but that does not appear in this case ; and at all events the possibility is a reason for fixing the individual, and not the corporation.

In the result, considering the way in which modern statutes are drawn, that corporations are specified where corporations are meant, that offences are wilful breaches of law or inattention to its commands, and so the act of the individual offending : that there is no reason for holding corporations to be within the Act, that there are reasons to the contrary, and that in no other section of this Act does "persons" mean "corporations," I am of opinion that it does not in these sections. I am aware that the penalty is recoverable by plaint in the County Court (15 & 16 Vict. c. 56) ; but the sum recovered is at the disposition of the Crown (s. 14), and it is a penalty, and the act an "offence," and the person an "offender." I am also aware that there is ground for saying that under section 15 all of several partners keeping a shop must be qualified, though none attend, and the shopman need not be qualified. If so, it may be said so must all the shareholders and directors of a corporation. I do not know. The Act may have a more limited meaning, and be more reasonable. If not, still this furnishes no argument in favour of "person" meaning "corporation." But anyhow, this construction will effect the object of the statute ; for if that is to impose the penalty on the person actually doing the prohibited act, unless himself qualified, *e.g.* the shopman, this opinion will not affect his liability. If the intention is to impose the penalty on the person actually doing the prohibited act, unless the master or employer or principal is qualified, this opinion will not affect that liability.

If the statute means—it can have no other object except this—to impose the penalty on him who commands the prohibited act to be done, unless he is qualified, this opinion will not affect his liability. And if the penalty attaches to several, unless all are qualified, they will be liable, notwithstanding this opinion. While it will avoid this absurdity, that a corporation,

though all its members, all its directors, and all its servants are qualified, could not lawfully sell, nor acquire the power lawfully to sell, the articles in question. The statute was not meant to interfere with freedom of trade. It was for the protection of the public and not of chemists; for whose benefit alone this proceeding I suspect is taken.

BAGGALLAY, L.J.—I agree in opinion that this appeal should be allowed.

In modern times when the legislature has intended that the word "person" or any other word primarily importing an individual, should in any particular statute include a corporation, it has been usual to introduce an interpretation clause, declaring that the word shall have such extended meaning; and in the year 1868, the year in which the Act now under consideration was passed, at least four other Acts were passed into which such a clause was introduced, namely, the Sea Fisheries Act (c. 45), the Curragh of Kildare Act (c. 60), the Regulation of Railways Act (c. 119), and the Artisans and Labourers Dwellings Act (c. 130); and in another the Fairs (Ireland) Act (c. 12), the word "owners" was declared to have the same meaning. Now the omission from Lord Brougham's Act (13 & 14 Vict. c. 21) of any general declaration that the word "person" when used in subsequent statutes shall include a corporation, and the absence from the Act under consideration of any such interpretation clause, to my mind strongly support the view that the legislature had no intention that the word "person" when used in the Act, should include a corporation.

It probably is the fact, as was suggested in argument, that at the time when the Act passed it was not in the contemplation of the legislature that a corporate body would embark in the business of selling or of dispensing or compounding poisons, and that consequently it had no intention of either including or excluding a corporation when using the word "person." But, however this may be, it must, I think, be admitted that, although an Act may not contain a declaration that the word "person" shall include a corporation, and although it may be clear that the legislature could not reasonably be presumed to have had any intention in the matter, yet if it should be clear

from the general scope and purport of the Act that the selling, dispensing, or compounding of poisons by a corporation would or might be within the mischiefs intended to be guarded against, and if the extending the meaning of the word "person" so as to include a corporation would enable the necessary protection to be given, such an interpretation may and ought to be adopted. But when I turn to the Act now under consideration, I can find nothing to lead me to such a conclusion. The object of the Act is to prevent the selling, dispensing, or compounding of poisons by unqualified persons. A corporation cannot of itself sell, dispense, or compound; it can only do so by the aid of a servant or assistant, and if that servant or assistant is duly qualified in manner required by the Act, as is admittedly the case as regards the dispensers employed by the defendants, the object of the Act is obtained. And in the view which I take of the Act, the protection intended to be given to the public is sufficiently secured in the case of a corporation keeping an open shop for the sale, dispensing, and compounding of poisons; for, in my opinion, the seller referred to in the first section is the actual seller, and not the individual or corporation on whose behalf he may act, and this view is supported by the language of the 17th section, which, when dealing, not with the simple selling of poisons, but with selling particular poisons without the adoption of special precautions, imposes a comparatively small penalty on the seller, but declares that for the purposes of that section the person on whose behalf the sale is made shall be deemed to be the seller, thus implying that, except for the purposes of that section, the person referred to in the Act as selling means the person actually selling, and not the person by whom he is employed.

I need not refer to many sections of the Act which are quite inapplicable to the case of a corporation, as they have been pointed out in detail by BRAMWELL, L.J.

In the absence, then, of any declaration in the Act that the word "person" is to include a corporation, and not gathering from the general scope and purport of the Act that there is any necessity in the interest of the public that any such interpretation should be given to the word, I have arrived at the

conclusion that such an interpretation ought not to be put upon it, and that this appeal should be allowed.

THESIGER, L.J.—I also am of opinion, not without doubt, that this appeal should be allowed.

The question for determination is whether an incorporated company is subject to the prohibition contained in section 1 and liable to pay the penalty imposed in section 15 of the Pharmacy Act, 1868, or, in other words, whether the term "person" used in these two sections includes such a company. In dealing with this question I start with the axiom that the term "person" is in legal phraseology wide enough to include not merely natural persons, *i.e.* individuals, but artificial persons, such as corporations, aggregate as well as sole. I start at the same time with the undisputed fact, that the practice in modern statutes where corporations are intended to be affected is either to expressly name them, or to use in reference to them the term "person" with an interpretation clause expressly providing that corporations are intended to be included in the term. As a proper resultant of the opposition between the axiom and the practice, it appears to me that the term "person" when contained in a modern Act of Parliament should never be construed to include corporations, except where, first, the term is expressly interpreted as including them; or, secondly, the context of the Act clearly shows that they are so included; or, thirdly, the object and scope of the Act peremptorily require them to be so included, and the context does not clearly negative a construction to that effect.

Neither the first nor the second condition exist in the particular Act under consideration, but for a long time I have doubted whether the judgment of the Court below might not be supported upon the third. The object of the Act is that of providing for the safety of the public in the matter of the sale of poisons. The means by which that object is proposed to be attained is, *inter alia*, that of subjecting those who keep open shop for the retailing, dispensing, or compounding of poisons to certain conditions and restrictions. Corporations may keep open shop, their doing so without proper safeguards may expose the public to the mischiefs against which the Act is intended to

guard. There is, therefore, a strong presumption *à priori* that they would be made subject to the same conditions and restrictions as those to which individuals would be subjected, or at least to some conditions and restrictions that would serve to the same end. Proceeding a step further, it may be said that a statutory provision under which a particular thing is made unlawful for any individual to do, except under certain conditions, contains an indication that the thing itself is intended to be entirely prohibited except under those conditions, and consequently cannot be done by a corporation, even though the conditions are in their nature such as cannot under any circumstances be complied with by them. Lastly, a penalty by which the prohibition is to be enforced, recoverable by civil suit, is as applicable to corporations, who may even under certain circumstances be the subject of indictment, as it is to individuals.

Notwithstanding, however, the force of these considerations which still press themselves upon me, I have come to the conclusion that the whole context of the Act too clearly points to individuals alone being intended by the term "person" to allow of that term being held to include corporations in the 1st and 15th sections. I do not propose to repeat what has already been said by Bramwell, L.J., upon this point. He has shown conclusively that the preamble and every section of the Act, putting aside for the moment the two sections whose meaning is in dispute, when using the term "person" or "persons" refer to individuals alone. But in addition to what he has pointed out, I find in the 1st section itself evidence that the words "any person" in the earlier part of that section are limited to individuals and cannot be extended to corporations, for in a subsequent part of the same section the word "person" is again used with such a context as absolutely forbids its application to a corporation, and yet in such a relation to the same word contained in the earlier part of the section as to grammatically require that it should receive the same construction. I do not think that under such circumstances the Court ought to strain the language of the Act so as to make it include corporations, even if it were clear

that the mischief intended to be provided against would otherwise in the case of companies keeping open shop for the sale of poisons be remediless. But I feel bound to add that I am by no means satisfied that although a corporation as a separate entity be not liable to the penalty, which is sought to be recovered in this case, the individual members of the corporation, whether directors of company or otherwise, may not be liable, and thus the mischief be remedied. I prefer, however, to give no definite opinion upon this point, for it involves the question whether the legislature intended or not to practically put an absolute veto upon the keeping open shop for the sale of drugs by trading corporations, and the absence from the Act of any express reference to such companies is almost equally difficult to be accounted for upon the notion that the legislature had that intention, as upon the notion that the legislature did not think of the matter at all, and thereby a *casus omnissus* has occurred.

Judgment reversed.

HOUSE OF LORDS.

THE PHARMACEUTICAL SOCIETY (Appellants) and
THE LONDON AND PROVINCIAL SUPPLY ASSO-
CIATION, LIMITED (Respondents).*

July 20, 21, 22, 1880.

“Person”—“Corporation”—Statute, 31 & 32 Vict. c. 121.

Whether the word “person” in a statute can be treated as including a corporation must depend on a consideration of the object of the statute, and of the enactments passed with a view to carry that object into effect.

* Reprinted from 5 App. Cases, 857. Also reported, 49 L. J. Q. B. 736; 43 L. T. 389; 45 J. P. 20; 28 W. R. 857; *Pharmaceutical Journal*, July 24th, 1880, p. 65.

The 31 & 32 Vict. c. 121, was passed to protect the public against the sale by incompetent persons of poisonous drugs, and in the 1st section enacts that "it shall be unlawful for any person to sell, or keep open shop for retailing, dispensing, or compounding poisons, or to assume or use the title of chemist and druggist, etc., or pharmacist, etc., unless such person shall be a pharmaceutical chemist, etc., within the meaning of this Act, and be registered under this Act." By section 15, any person who shall offend in this respect (the words of section 1 being almost repeated) shall be liable to pay a penalty of £5, to be sued for as therein directed.

A small body of persons had obtained a registration under the Companies Acts, 1862-1867. One only of these persons was a qualified, certified, and registered chemist. His share in the company was very small; he was the person who appeared in the shop and conducted the sales, and he received a salary for his labour in dispensing the drugs, which were sold for the profit of the company.

Held, that, under these circumstances, the word "person" in the 1st and 15th sections of the statute did not apply so as to make this incorporated company liable to the penalty. But the actual seller must be a qualified person.

Appeal against a decision of the Court of Appeal, which had reversed a previous decision of the Queen's Bench Division (4 Q. B. D. 313; 5 Q. B. D. 310).

"The Pharmaceutical Society" was constituted of chemists and druggists, who had formed themselves into a society before 1843, and in that year received a charter of incorporation. The 15 & 16 Vict. c. 56, recited the formation of the society and its charter of incorporation, which was thereby confirmed, and declaring that it was expedient that persons exercising the business of pharmaceutical chemists should possess competent knowledge thereof, conferred on the society the power to examine persons, and to grant them certificates, and to register them, and prohibited such as had not certificates and were not registered, from assuming the name of pharmaceutical chemist or druggist.

"The London and Provincial Supply Association" consisted of some persons who had been registered under the Companies Acts, 1862, 1863, and carried on the general business of supply stores. The chief proprietor, one William Mackness, was the holder of 564 shares, the holdings of shares by some other persons being only of a nominal amount. Among these shareholders was Mr. Henry Edward Longmore. He was himself a duly registered pharmaceutical chemist, but he appeared also to be a salaried servant of the association, and his especial business was that of superintending the sale of chemicals, which were among the articles sold at the stores.

Certain articles, consisting of poisons, had been bought at the stores, and in respect of the sale of them an action was brought against the association for having infringed the provisions of the 31 & 32 Vict. c. 121. The action was brought in the Bloomsbury County Court, where the question discussed was whether the association, being a corporation, could be made liable under the prohibitory clause of the statute, in which the word "person" alone was used. Mr. George Lake Russell, the learned judge of the County Court, had decided that the corporation, as such, was not liable, and that the sale having been, in fact, conducted by Mr. Longmore, who was a duly registered pharmaceutical chemist, the action was not maintainable. On appeal the Queen's Bench Division overruled this decision and ordered judgment to be entered for the plaintiffs. The Appeal Court had reversed the decision of the Queen's Bench Division. This appeal was then brought.

Mr. *Benjamin*, Q.C., and Mr. *Lumley Smith*, Q.C., for the appellants.

The fact that the poisons were actually sold by a duly qualified person did not affect the case. The offence was that of keeping an open shop for the sale of poisons, and that offence, being the one described in the very words of the statute, had been committed by this corporation. The legislature had desired to secure the best possible protection for the public, and had therefore used expressions which prevented the exposure for sale of these medical poisons except by properly qualified persons. The corporation kept the open

shop and sold the poisons, and received the profits of the sale, and the corporation was therefore liable to the penalty for that breach of the law, for it was not pretended that a share of the profits was really taken by Mr. Longmore, who was in truth only a salaried assistant at the stores.

That a corporation could be liable in such a case as this was shown by many authorities. It did not matter that the word "corporation" was not used in the statute, the word "person" was sufficient. It was a settled rule of law that the word "person" would include a corporation: *Coke's Institutes* (2 Inst. 722), and that rule had been applied in many cases. It had, indeed, been questioned in argument by Mr. Kindersley in *The Corporation of Newcastle v. The Attorney-General* (12 Cl. & F. 402 at p. 411). But that doubt was effectually disposed of by Lord Chancellor LYNDHURST and Lord COTTENHAM in the same case (12 Cl. & F. at 419). In many cases since then the word "person" had been treated as including a corporation: *The Mayor of Hereford v. Morton* (15 L. T. (N.S.) 187). The Apothecaries Act (55 Geo. 3, c. 194) assumed (s. 30) that actions and suits under that Act might be brought against "bodies politic, corporate, or collegiate," and it required such suits or actions to be brought within six calendar months. The principle had been applied in cases of civil contracts as well as those of a different sort. Thus in *Altman v. The Royal Aquarian Society* (3 Ch. D. 228) a society was held liable to an injunction for its manager permitting a breach of an agreement. In *The Queen v. The Great North of England Railway Company* (9 Q. B. 315) it was expressly decided that a corporation aggregate may be indicted for a misfeasance. The legislature itself had recognised that principle of construction, for in the 7 & 8 Geo. 4, c. 28, the 14th section enacted that "wherever this or any other statute relating to any offence, whether punishable by indictment or upon summary conviction," in describing the offence shall use the singular number, the words used should be understood to include "bodies corporate as well as individuals." There the words "unless there is something repugnant to such a construction," were added. Those words, which seemed to establish an exception, really made the case here the stronger,

for throughout this Act there was nothing repugnant to the construction now contended for, while the 17th section used words so general as to show that "person" must include both natural persons and persons in law. Private partnerships would undoubtedly be within the mischief of the statute, and this association was really a private partnership, consisting only of a very small number of persons, although, from being registered under the Companies Acts of 1862 and 1867, it assumed the technical form of a corporation. In *Boyd v. The Croydon Railway Company* (4 Bing. N. C. 669) there was a provision that no action was to be brought against any person for anything done in pursuance of the Croydon Railway Act without a certain notice being given, and it was held that the word "person" included the company, which was therefore entitled to the required notice. So in *Cortis v. The Kent Waterworks Company* (7 B. & C. 314), where rates were authorised to be made on all and every persons or person who owned or occupied land in the parish, a corporation was held liable to be rated, and, under a section which required a personal demand of the rate, a demand made at a meeting of the corporate body was held sufficient.

The object of this Act, which was to secure the public against incompetent persons selling poisonous drugs, would be defeated if corporations, as such, which must be incompetent to perform such matters, were held not to be within the meaning of the statute.

Mr. *Wills*, Q.C., and Mr. *Finlay*, for the respondents.

The whole framework of this Act and all its provisions show that "person" here meant individual, and could not be applied to a corporation. There was no doubt that there were instances in which the word "person" used in a statute would mean corporation, but there the nature of the matter dealt with by the statute, and its obvious purpose, would show that that was the intention of the legislature. Here both reasons were opposed to such a construction. The work to be done could not be done by a corporation—the examinations to qualify for the work could not be gone through by a corporation, and the certificate of fitness and the registration could not be granted

to, or made for, a corporation. Every provision in the statute, as had been pointed out in the Court below, applied to individuals. Selling the drugs, and not keeping a shop for the sale, constituted the offence, and here the individual who sold the drugs was a qualified person. *Harrison's Case* (Leach C. C. 166) and *Raynard v. Chace* (1 Burr. 2), were referred to and commented on.

Mr. *Benjamin* replied.

The Lord Chancellor (Lord SELBORNE) :—

My Lords, I cannot say that this case appears to me to be free from difficulty, especially as we have two Courts of high authority differing from each other, the Lord Chief Justice and Mr. Justice MELLOR having taken the view of the statute for which the appellants contend, and the Court of Appeal having taken the opposite view.

The question really comes to be one upon the construction of the particular words of the 1st and 15th sections of the statute, having regard to the general principles on which an ambiguous word, such as "person" ought to be construed. There can be no question that the word "person" may, and I should be disposed myself to say *primâ facie* does, in a public statute, include a person in law; that is, a corporation as well as a natural person. But although that is a sense which the word will bear in law, and which, as I said, perhaps ought to be attributed to it in the construction of a statute unless there should be any reason for a contrary construction, it is never to be forgotten, that in its popular sense and ordinary use it does not extend so far. Statutes, like other documents, are constantly conceived according to the popular use of a language; and it is certain that this word is often used in statutes in a sense in which it cannot be intended to extend to a corporation. That accounts for the frequent occurrence in some statutes, in interpretation clauses, of an express declaration that it shall extend to a body politic or corporate; and in others, of which an example was cited during this argument by Mr. *Benjamin*, I mean the Act as to apothecaries, there will be found clauses which say that the remedies of persons who may complain of acts done under colour of the authority of the particular Act, or

in pursuance of it, must be prosecuted within certain limits of time, against all "persons and bodies politic and corporate;" language which appears to treat the word "persons" as not in itself including corporations.

I think the principle laid down by the junior counsel for the respondents was substantially right; that if a statute provides that no person shall do a particular act except on a particular condition, it is, *primâ facie*, natural and reasonable (unless there be something in the context, or in the manifest object of the statute, or in the nature of the subject-matter, to exclude that construction) to understand the legislature as intending such persons, as, by the use of proper means, may be able to fulfil the condition; and not those who, though called "persons" in law, have no capacity to do so at any time, by any means, or under any circumstances, whatsoever.

If that be a sound observation, it goes far to decide this case when we look to the language of the 1st and 15th sections. The 1st section (merely transposing the place in which certain words are used) is this: "From and after the 31st day of December, 1868, it shall be unlawful for any person (unless such person shall be a pharmaceutical chemist, or a chemist and druggist within the meaning of this Act, and be registered under this Act) to do certain things." *Primâ facie*, that contemplates individual persons, such as may or may not be pharmaceutical chemists, or chemists and druggists within the meaning of the Act, and be registered under the Act. What kind of persons can be such pharmaceutical chemists or chemists and druggists, and be so registered? Can a corporation, or can it not?

I think it is clear from the sequel of the Act that a corporation cannot. A corporation certainly cannot, under the provisions of the Pharmacy Act, be a pharmaceutical chemist. Nor can it be a chemist and druggist "within the meaning of this Act," and be registered under this Act. The 3rd clause says that "chemists and druggists within the meaning of this Act shall consist" (amongst others) "of all persons who at any time before the passing of this Act have carried on in Great Britain the business of a chemist and druggist, in the keeping of open

shop for the compounding of the prescriptions of duly qualified medical practitioners." That indeed might have applied to a corporation, if a corporation could be registered. But, with regard to that class of persons, who had previously carried on such a business, the 5th section requires them to be registered ; and, in order to be registered, requires a claim to be made by notice in writing signed by the person, which notice is to be in the form set forth in the schedule. I do not see myself how it is possible to suppose that the legislature contemplated that any one but a person who could sign the claim in the manner prescribed, was to be registered under those clauses. And, in addition, I find this in the 18th section : "Every person who at the time of the passing of this Act is or has been in business on his own account as a chemist and druggist as aforesaid, and who shall be registered as a chemist and druggist, shall be eligible to be elected, and continue a member of the Pharmaceutical Society according to the bye-laws thereof." That appears to me plainly to show that the legislature required and provided for the registration of persons who before the Act carried on the business of chemists and druggists, in a sense applicable only to those who could become members of the Pharmaceutical Society ; in other words, only to individual persons. With regard to those who might afterwards carry on the business of chemists and druggists, the Act requires them to undergo certain examinations, which are necessarily inapplicable to a corporation. The conclusion, therefore, which I come to is, that these words "unless," and so on, are inapplicable to corporations. This being not a general prohibition of the trade or business, but merely an enactment that it shall be unlawful for any person, unless he complies with certain conditions, to carry on these otherwise lawful trades or businesses (not only keeping a shop for retailing poisons or selling poisons, but also "to assume the title of chemist and druggist, or chemist or druggist")—I cannot but think it the sounder construction of the word "person" to hold that only such persons are contemplated as might, by the use of proper means, comply with the condition, and so be enabled to carry on the trade.

Exactly the same observations occur upon the 15th section.

There, again, transposing only some words, we find this description of the class of offenders on whom the penalties in question are imposed. "From and after the 31st of December, 1868, any person (not being a duly registered pharmaceutical chemist, or chemist and druggist) who shall sell or keep an open shop for the retailing, etc., poisons, or who shall take, etc., the name or title of chemist and druggist, or chemist or druggist;" or (again) "who (not being a pharmaceutical chemist) shall take, use, or exhibit the name or title pharmaceutical chemist, pharmacist, or pharmacist," shall be subject to certain penalties. The words follow shortly afterwards: "or who shall compound," etc.; having reference to the particular act of compounding on each occasion on which medicines may be made up; fortifying what I may describe as the individual, I was going to say "personal" construction. The very suggestion of that word exemplifies the difficulty of applying the word "person" in a colloquial and popular sense, to any but individuals.

My Lords, if you look through the Act, it will be found that there is only one place where it seems to be necessary to put upon the word "person" a wider sense; and that occurs in a clause which is in several respects contrasted with the rest of the provisions of the Act, I mean the 17th section. It begins with a general prohibition in unequivocal terms; not "it shall be unlawful for any person," etc., or "for any person not coming within a certain definition;" but "it shall be unlawful to sell," unlawful generally, absolutely, and unequivocally—"to sell any poison either by wholesale or by retail," as to which certain precautions are not observed. That form of prohibition is repeated twice. First, as to all poisons whatsoever, and then, four lines afterwards, as to certain particular kinds of poison, "it shall be unlawful to sell" to any person unknown to the seller, etc. That is a universal prohibition, not qualified by any exception as to any description of person; though, no doubt, the thing is only made unlawful, if done otherwise than in a certain manner and without the observance of certain conditions. The penalty, also, imposed by that section, is not (like that under the 15th section) a civil debt, to be recovered by a civil form of proceeding or action, though incurred by what is

called an "offence"; but it is a penalty to be recovered "upon a summary conviction before two justices of the peace." The words are added: "And, for the purposes of this section, the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller." The thing being made universally unlawful, "person" must, I think, there include a corporation, if the sale is made by any apprentice or servant on behalf of a corporation. My Lords, it appears to me that the difference in the substance, as well as the phraseology, of that section from the rest, is such as to make it no rule for the construction of the word "person" in other sections of the Act.

I have now to consider the main argument of the appellants; namely, that the Act will fail to accomplish its purpose, unless a corporation as well as an individual can be included in these sections. It seems to me, my Lords, that this argument cannot be successfully maintained. The act of selling, the act of compounding, and every other definite and particular act mentioned in the first section, and in the sections by which penalties are imposed, are struck at, whether the person who does them is a principal to whom the business belongs, or any one whom he employs to carry on the business. The words "keep open shop" may, perhaps, not be so; upon those words I will make an observation presently. But that the word "sell" is, and that the word "compound" also is, seems to me clear from that very clause in the 17th section which I just now read; that "for the purposes of this section, the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller." That, if it does not necessarily mean, beyond all doubt naturally implies, that this is a special construction for the purpose of that particular section, and that it is not to be extended to sales generally, when mentioned in other sections of the Act.

I will add, that regard to the mischief, which beyond all controversy the Act was intended to prevent, leads necessarily to the same conclusion; namely, that he who sells, whether he be master or servant, whether he be the principal or a person to whom the conduct and management of sales is delegated, is struck at by the 15th section; because, otherwise, a very wide

door would be opened to the evils which the Act was intended to guard against. If it were otherwise, nothing more would be necessary, according to the appellant's own argument, than that the business should belong to a person who does not himself carry it on, but who is qualified under the Act ; and he might be at liberty to employ in the management of his business persons not qualified, by whom the actual sales would be conducted ; and then the public would be exposed to all the dangers which the Act was passed to prevent. The statute, therefore, in order to be effectual must strike at the particular acts of those who actually conduct the sales, who actually compound the medicines ; and it does strike at those acts. No doubt the words "keep open shop" may extend to something more, and comprehend a person who keeps an open shop for the sale of poison, etc., although he may not with his own hands do the business of selling or compounding medicines ; one who is only the master or the proprietor of the business, if he be indeed a "person" within the proper construction of the words of the Act. But to say that the construction of the word "person" must be enlarged in order to prevent a corporation from "keeping open shop for retailing poisons," to say that this is necessary for the objects of the Act, appears to me to be really begging the question. "Keeping shop" is prohibited, not as a thing apart from, but as a thing involving the particular acts of sale and compounding, etc., within the shop. If a corporation, though it may keep open shop, cannot itself do these particular acts otherwise than by the agency of persons who come within the Act ; if the particular mischief which the public would suffer from the sale of things which ought not to be sold, and in a manner in which they ought not to be sold, is sufficiently guarded against by the prohibition of such sales, and by the conditions to which they are made subject, the Act seems to be strong enough for its purpose whether a corporation, in whose name and for whose profit the shop is kept open, is included or not.

My Lords, I said at the beginning that I did not regard this matter as free from difficulty, but in such a question of construction, it does seem to me to be best to remember the principle,

that the liberty of the subject ought not to be held to be abridged any farther than the words of the statute, considered with a proper regard to its objects, may require. It was open to her Majesty's subjects before this Act passed to carry on the business of chemists and druggists using the title of chemists and druggists for the purpose of that business, and to keep open shop for the sale (amongst other articles) of poisonous drugs, etc. It was perfectly lawful to do that by means of a company incorporated under the Joint Stock Companies Acts, and there is nothing to show that the legislature had any ground for assuming that there could be no such companies. In point of fact, there was at least one great and leading company of sellers of drugs, or "pharmacopolists," incorporated as long ago as the reign of James I., to whom by the Apothecaries Act, the legislature had given large disciplinary powers over other persons carrying on that business, and in whose name (as is admitted) the business of selling drugs had been carried on by their authority (though not, as it would seem, for their profit), and continues to be so down to the present time. That having been the state of the law and the facts, I think it would be wrong for your Lordships, without necessity, to impose upon the word "person" used in such a context as that in which you find it here, a construction which might render illegal that mode of carrying on the business of chemists and druggists by such corporations, although there is no direct reference from the beginning of the Act to the end to any such bodies, or to that kind of case; more especially when you do find in the Act, in the 16th section, a special provision for individuals carrying on that kind of business who might die, and whose executors or trustees, not being themselves qualified, might desire to carry it on after their deaths. It is true that the legislature has, in that case, required for the benefit of the public this safeguard, that there shall be an assistant duly qualified; but the legislature shows that, having that case in view, it was not thought necessarily inconsistent with the object or the policy of the Act, that the principals or proprietors of the business, the persons deriving profit from it, to whom those actually selling the drugs would

be responsible, might be unqualified persons, provided that there was in the business a duly qualified assistant. It by no means follows that all the drugs would necessarily be sold by that duly qualified assistant; or that he might not be, as in this case, under the general superintendence of a manager not himself duly qualified; all that is left open. It is, at least, not thought indispensable that the persons carrying on every such business should themselves, without exception, be duly qualified.

If, my Lords, there had not been adequate safeguards against the sale of poisonous drugs in a manner contrary to the provisions of the Act by the persons actually carrying on the business for a corporation, then I think the argument would have been extremely strong against corporations being permitted to carry on the business at all; but where you find that there are such safeguards, and that every one whom they employ will be penally answerable, if he sells or compounds poisons or other medicines without having the qualification required by, or without complying with the provisions of, the Act, I am unable to conclude that the purposes and objects of the Act require a larger construction to be placed upon the word "person" in the 1st and 15th sections than that placed upon it by the Court of Appeal. I therefore advise and move your Lordships that this Appeal should be dismissed with costs.

LORD BLACKBURN.—My Lords, I am of the same opinion. The question really, I think, when it is cleared of all superfluity, is reduced to a very short point, but I agree that it is one which is not free from difficulty. The difficulty which I feel about the case is not, generally, upon those things which seem to have troubled most of the members of the Court below. I own I have no great doubt myself, for instance, that the word "person" may very well include both a natural person, a human being, and an artificial person, a corporation. I think that in an Act of Parliament, unless there be something to the contrary, probably (but that I should not like to pledge myself to), it ought to be held to include both. I have equally no doubt that in common talk, the language of men, not speaking technically, a "person" does not include an artificial person, that is

to say, a corporation. Nobody in common talk, if he were asked, Who is the richest person in London, would answer, The London and North-Western Railway Company. The thing is absurd. It is plain that in common conversation and ordinary speech, "a person" would mean a natural person: in technical language it may mean the artificial person: in which way it is used in any particular Act, must depend upon the context and the subject-matter. I do not think that the presumption that it does include an artificial person, a corporation, if that is the presumption, is at all a strong one. Circumstances, and indeed circumstances of a slight nature in the context, might show in which way the word is to be construed in an Act of Parliament, whether it is to have the one meaning or the other. I am quite clear about this, that, whenever you can see that the object of the Act requires that the word "person" shall have the more extended or the less extended sense, then, whichever sense it requires, you should apply the word in that sense, and construe the Act accordingly.

My Lords, before I go farther I may say that my view of the matter is that it is the question of what the word "person" means in this particular Act that gives rise to the whole difficulty in the present case. But I may also say now, in order to avoid coming back to it, that I do not feel the least difficulty arising from what seems to have troubled some of the learned judges of the Court below. If this word does include a corporation—I quite agree that a corporation cannot, in one sense, commit a crime—a corporation cannot be imprisoned, if imprisonment be the sentence for the crime; a corporation cannot be hanged or put to death if that be the punishment for the crime; and so, in those senses, a corporation cannot commit a crime. But a corporation may be fined, and a corporation may pay damages; and therefore I must totally dissent, notwithstanding what Lord Justice Bramwell said, or is reported to have said, upon the supposition that a body corporate or a corporation that incorporated itself for the purpose of publishing a newspaper could not be tried and fined, or an action for damages brought against it for libel; or that a corporation which commits a nuisance could not be convicted of the nuisance or the like. I

must really say that I do not feel the slightest doubt upon that part of the case. If you could get over the first difficulty of saying that the word "person" here may be construed to include an artificial person, a corporation, I should not have the least difficulty upon those other grounds which have been suggested.

But, my Lords, my conclusion, looking at this Act, is that it is clear to my mind that the word "person" is so used as to show that it does not include a corporation, and that there is no object or intention of the statute which shows that it is requisite to extend the word to a sense which probably those who used it in legislation were not thinking of at all. I do not think that the legislature was thinking of bodies corporate at all. Beginning with the preamble the Act says: "Whereas it is expedient for the safety of the public that persons keeping open shop for the retailing, dispensing, or compounding of poisons, and persons known as chemists and druggists, should possess a competent practical knowledge of their business." Stopping there it is quite plain that those who used that language were not thinking of corporations. A corporation may in one sense, for all substantial purposes of protecting the public, possess a competent knowledge of its business, if it employs competent directors, managers, and so forth. But it cannot possibly have a competent knowledge in itself. The metaphysical entity, the legal "person," the corporation, cannot possibly have a competent knowledge. Nor, I think, can a corporation be supposed to be a "person known as a chemist and druggist." The legislature was not thinking of a corporation at that moment, but said in the preamble that henceforth it was desirable that those who kept open shop for the sale of these drugs, those who were known as chemists and druggists, should have a competent knowledge, and it afterwards appears that the legislature, those who framed the Act, were persuaded by the Pharmaceutical Society (I dare say very rightly) to think that the best test of having a competent knowledge was that they should be members of that society.

The Act then goes on, in the first section, which is I think really very important, to say that "it shall be unlawful for any person to sell or keep open shop for retailing, dispensing, or

compounding poisons, or to assume or use the title of 'chemist and druggist,' or chemist or druggist, or pharmacist, or dispensing chemist or druggist in any part of Great Britain, unless such person shall be a pharmaceutical chemist, or a chemist and druggist." Now, my Lords, standing there, it does seem to me, though without laying down any technical rule, that the plain meaning of the words is, and they are used in this sense, such a person as could become a pharmaceutical chemist. A corporation could not; an individual can. It seems to me, therefore, that the Act plainly says in the first section, "It shall be unlawful to sell or keep open shop or assume the name of a chemist or druggist for any person," that is to say, any natural person, "unless he becomes a pharmaceutical chemist."

The 15th section imposes a penalty; and the 15th section in imposing the penalty repeats the words which makes the thing unlawful. I think those two sections must be construed together and looked at together.

Now, is there anything here in the context, or in the object, to show that we must take that word "person," which I think must have been used by those who framed the Act, and understood by the legislature, as meaning a natural person, is there anything requiring us to extend it so that it will apply to a corporate person? I cannot see that there is. If there had been anything in the Act throughout, or anything in the nature of things, which made it reasonable that it should be provided that all the profits to be derived from selling poisons or poisonous drugs should be shared amongst those who were pharmaceutical chemists, and that nobody else should meddle with that trade, if there had been anything of that sort, then, in order to carry out that object of the Act it would be necessary to say that the word "person" did include a corporation, and not a natural person only. But that object is certainly not avowed upon the face of the Act. Whether any of those who promoted the Act had or had not any such idea in their minds I cannot tell; but they have not brought it forward, or put it in such words as to lead the legislature to think that they were doing it. And if it had been boldly said: "Bodies corporate and joint-stock companies shall not deal in drugs,"

or, if you like, "in poisonous drugs, unless they have paid blackmail to us the Pharmaceutical Society," I think it is exceedingly improbable that the legislature would have enacted that. At all events they have not said that in distinct terms if they did mean it.

Now, is there anything in the object of the Act here which would require that we should so read the Act? I quite agree that a body corporate may keep an open shop, and no mischief is done, if for the purpose of conducting the sale of drugs they keep qualified assistants, and if those qualified persons perform, or superintend the sale. There I see no harm that can arise. But no doubt the legislature, for what reason it is for those who passed the Act to say, have thought it best to say that a "person," which I take to be a natural person, shall not only not sell, but shall not keep an open shop for the sale. I myself think that probably one reason for that was to facilitate convictions, and another may have been that it was thought if there is a person who keeps a shop, who is unqualified, he may have a qualified assistant, and he may be able to overrule the qualified assistant at any moment he pleases, and there may be danger in that. At all events those would be intelligible motives. But neither of those motives applies in the case of a corporation, for the corporation, the body corporate itself, could not interfere, and however much and however little the body corporate may be unqualified, its being so would not affect the matter at all.

Then, my Lords, comes another objection. It is said, if you put that construction upon it you defeat the Act altogether. That I cannot agree to. I hold distinctly that there can be no sale, whether a corporation be the ultimate vendor or not, unless a "person"—meaning a natural person—manages the sale, and that natural person if unqualified would, in my mind, clearly become liable to the penalty under the Act; and although I am not so clear about this, I feel strongly inclined to think that if a corporation, or anybody else, caused an unqualified person to conduct sales, if it could be brought home to them and shown that they did deliberately cause a person who was unqualified to conduct sales, they would be liable to the penalty

under section 15, because *qui facit per alium facit per se*. I do not, however, say that as a certain thing, but I think it necessary to say that, because in the argument it was repeatedly assumed that if "person" was here to be construed natural person, a corporation was out of this Act altogether, which is not at all my *ratio decidendi*. I say that a corporation is entirely out of the clause which prohibits persons keeping an open shop, but I do not go farther than that and say anything more.

My Lords, I do not think that there were any other of the sections of the Act, or any of the cases cited, or any general legal principle, which requires any notice to be given to them. It seems to me that the case comes round after all to this, Does "person," which may include a corporation, include it here? For the reasons I have given I think it does not. Then is there anything in the context or anything in the object of the legislature which requires that although the word "person" would not so properly include a corporation, yet in this particular case we should extend it and make it include a corporation? I think there is not in this section. In section 17, which has been alluded to, there is sufficient reason for doing so, but in sections 1 and 15 I think there is not.

Therefore, my Lords, I agree in the motion which has been made by the noble and learned lord on the woolsack.

LORD WATSON.—My Lords, it is impossible to disguise the fact that this statute is characterised by great ambiguity, and I would almost go the length of saying, confusion of language. That probably arises from the circumstance that the framers of this Act were dealing with two separate matters; the one, the improvement of a society called the Pharmaceutical Society, and the other the regulation of the sale of poisons generally throughout Great Britain. That society had existed from 1843, when it was incorporated by a Royal Charter for the avowed purpose of "advancing chemistry and pharmacy, and promoting an uniform system of educating those who should practise the same," and also for the protection of those who carry on the business of chemists and druggists. In the year 1852 the legislature, by the statute 15 & 16 Vict. c. 56, made various improvements in the constitution of the body upon a recital that it was

“expedient to prevent ignorant and incompetent persons from assuming the title or of pretending to be pharmaceutical chemists or pharmacutists in Great Britain.”

But when you come to the Act of 1868, the Act with which we are dealing, you not only have farther improvements made in the character of the body and its constitution, but you have very important changes made in the position and the privilege accorded to their body by statute. Down to 1852, and subsequently to 1852, they had no special privilege—nothing in the nature of monopoly or exclusive privilege—and the Act of that year was simply intended, not to prevent other persons from dealing in drugs of any description, but to prevent other persons, when dealing in drugs, from assuming the title to which the members of the society alone were entitled. But when you come to the Act of 1868, the provisions of that statute undoubtedly give to the members of the Pharmaceutical Society the sole right to sell drugs, as individuals, or to keep open shops for the sale of poisonous drugs, as individuals, because all individuals who are not possessed of the qualification of membership of the society, or who have not passed the requisite examination and have their names upon the register, are prohibited under penalties from dealing by retail in those articles.

Now, my Lords, I must say that when I come to deal with what is called the intention of the legislature, I say it with all respect, I find the greatest possible difficulty in making up my mind as to what it should be held to be. I think that the considerations of policy on either side are pretty evenly balanced—in fact, I should be almost inclined to hold that the considerations of policy rather preponderate in favour of the appellants’ argument. But that is not enough. It is not enough for me to speculate as to what was in the mind of the framer of this statute, whether he had forgotten the fact that there were corporations which either were dealing or might deal in poisonous drugs ; or whether, having this in view, he framed this Act for the purpose of subjecting them to certain disabilities.

I can only look, my Lords, at the language which the legislature has employed in the enacting sections, 1 and 15, and I can only say this, that even if I was satisfied that it had been

the intention of the framer of these two sections to give to individuals registered under the Act, the exclusive privilege of selling poisonous drugs by retail, and to impose penalties on corporations keeping open shop for that purpose, I must say I come to this conclusion, that it would have been a very simple thing for the legislature to have said so in express terms, and I, for my own part, am quite satisfied, apart from those considerations which have led your lordships to put another construction on the terms of the statute, that the framer of it, if that was his intention, has entirely failed to use language adequate for the purpose he intended to attain.

Judgment under appeal affirmed and appeal dismissed with costs.

QUEEN'S BENCH DIVISION.

February 10, 1893.

PHARMACEUTICAL SOCIETY v. PIPER.*

Pharmacy Act, 1868—Sale of poison—Proprietary medicine—Poison as an ingredient—Patent Medicine—Chlorodyne—31 & 32 Vict. c. 121, ss. 15, 16, 17—52 Geo. 3, c. 150.

P., a grocer, sold a compound called chlorodyne which had opium for one of its ingredients, or opium and chloroform. Opium was classed as poison in the schedule to 31 & 32 Vict. c. 121, and one bottle of chlorodyne contained sufficient opium to kill an adult. P. was sued for selling poison without being a duly registered pharmaceutical chemist.

Held, that chlorodyne was a poison within the meaning of 31 & 32 Vict. c. 121, s. 15.

* Reprinted from 57 J. P. 502. Also reported, [1893] 1 Q. B. 686; 62 L. J., Q. B. 305; 68 L. T. 490; 41 W. R. 447; *Pharmaceutical Journal*, February 18th, 1893, p. 669; *Chemist and Druggist*, February 11th and 18th, 1893, pp. 217, 245; *British and Colonial Druggist*, February 10th and 17th, 1893, pp. 127, 151.

Held, further, that chlorodyne was not a patent medicine within section 16, though it was a proprietary medicine within the meaning of 52 Geo. 3, c. 150.

This was an appeal from the Bloomsbury County Court.

The Pharmaceutical Society sued the defendant for penalties for selling chlorodyne, which was a poison or compound of opium and chloroform. He was not a duly registered pharmaceutical chemist or chemist and druggist. The article called chlorodyne proved to contain as an ingredient opium or a preparation of opium and chloroform, which were poisons mentioned in section 2 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121). The chlorodyne was sold in bottles of half an ounce, and the amount of poison in one bottle would suffice to kill an adult.

The judge of the county court held that the plaintiffs were entitled to the penalties. The defendant appealed.

Bonsey, for the defendant, contended that chlorodyne did not come within the description of poison, and the statute 31 & 32 Vict. c. 121 was never intended to prevent the sale of this useful remedy in case of cholera and like diseases. For forty years grocers had sold it without interference, and the mere fact that there was some poison among the ingredients was no reason for holding this practice of grocers contrary to the statute. The object of the present action was merely to secure to the chemists a monopoly of selling this medicine.

Poland, Q.C., and *T. R. Grey*, for the plaintiffs, contended that the statute applied to medicines of which poison was an ingredient. The exception of patent medicines did not extend to proprietary medicines which were treated in the Stamp Act (52 Geo. 3, c. 150), as distinct things.

LAWRANCE, J.—Speaking for myself, I may say that I have felt considerable doubt during this case, and that my doubts are not entirely removed. However, having given the best consideration I can to the question before us, viz. whether any person who is not a chemist can sell a proprietary medicine containing poison, I come with some reluctance to the conclusion that such a person cannot. The statute which we have

to construe starts by declaring, "Whereas it is expedient for the safety of the public that persons keeping open shop for retailing, dispensing, or compounding of poisons, and persons known as chemists and druggists should possess a competent practical knowledge of their business," and then it goes on to say that all persons not already engaged in such business should before commencing such business be duly examined. Then section 1 says, it shall be unlawful to sell, etc., poisons, unless such person be a pharmaceutical chemist. The question here is whether the appellant in this case was a person who, not being a chemist, was retailing a poison. Our attention has been called to several sections of the statute, and the important one seems to be the 15th section under which he was convicted. I understand the learned judge found that the seller was liable to these penalties. Now the only exception with regard to the persons selling and retailing poisons is contained in section 16, which says: "Nothing hereinbefore contained shall extend to, or interfere with, the business of any legally qualified apothecary, etc., nor with the making or dealing in patent medicines;" and some other persons are also mentioned. What is argued here is that whatever this chlorodyne may be, whether it is a poison or not, that it is a patent medicine and that, therefore, none of the requirements of this Act have any reference to it. I had better deal with that point first. Now the question of a patent medicine is dealt with in the 52 Geo. 3, c. 150, which relates to the liability of patent and other medicines to stamp duty. The schedule to that Act contains several hundreds, perhaps, of medicines of that time, patent and proprietary. The schedule goes on "and also all other pills, powders, and lozenges," and so forth. To put it shortly, it describes three different sorts of persons who may have medicines which shall come under the schedule, viz. first, persons who have or claim to have the exclusive right or title to the making or preparing of secret medicines; secondly, those who have medicines for which they have taken out patents under the Great Seal; and, lastly, proprietary medicines. But those three classes of persons are mentioned as entirely distinct, and what we are asked to say with respect to section 16 is, that the term patent medicines

includes all the medicines dealt with in this schedule. At first, I was considerably impressed with the view that such was the case; but, on looking at this statute, and finding that a distinction is clearly taken between two sorts of medicines, if not three, viz. proprietary medicines, and medicines which are protected by letters patent, I come to the conclusion that the words patent medicines in section 16 mean medicines that are protected by letters patent under the Great Seal. Therefore, the rights reserved under section 16 do not apply to the medicine now in question, that is, chlorodyne, as not being a patent medicine. Now, in order to see what is meant by the word "poison," our attention has been called to section 17, and although it does not directly bear upon this case, it is useful as showing what the Act meant to include in the word "poison." Section 17 contains regulations to be observed by persons who are properly qualified to sell. "It shall be unlawful to sell any poison either by wholesale or retail, unless the box, bottle, vessel, or wrapper," and so forth, shall "be distinctly labelled with the name of the article, and the word 'poison,' and with the name and address of the seller of the poison." Then special regulations are made with regard to poisons in Schedule A, "and on every sale of any such article," which Mr. *Bonsey* says means the poison alone, "the seller shall, before delivery make, or cause to be made, an entry in a book to be kept for that purpose, stating, etc., the date of the sale, the name and address of the purchaser, the name and quantity of the article sold." Upon that we are asked to say that the word "article" applies simply to the particular poison itself, and has no reference whatever to any medicine in which a poison is an ingredient. I was at first impressed with this view; but, upon the whole, I come to the conclusion that the word "poison" in the Act does not mean a poison in the schedule pure and simple, but includes compounds containing poisonous ingredient. This view is supported by the latter part of section 17, which says its provisions shall not apply to any article that means an article being a poison—"when forming part of the ingredients of any medicine dispensed by a person registered under this Act. That is to say, when you have the protection of having a person who is

supposed to know how to deal with poisons, you need not put the poison label on when one of the ingredients is poison. The conclusion I should draw from the earlier part of the section is, that, if the medicine does contain a poison, it ought then to be labelled 'poison' for the protection of the public, and that the requirements of the Act would be carried out by the seller filling up the form in Schedule F by putting in the name and quantity of the poison sold. In answer to Mr. *Bonsey's* objection that he could not do that in the case of a proprietary medicine, because he does not know, that seems to me to be the very mischief aimed at by the Act. It is one of the objects and duties of the society—I suppose, one which it is now taking upon itself—to find out what poisons are contained in the proprietary medicines. In any case the observation does not apply to this medicine which we are dealing with—chlorodyne—because the quantity of the poison in it is known. But the Act, in my judgment, would be perfectly well carried out if a person was, under the name and quantity of poison sold, to put down two or three bottles, or whatever it might be, of chlorodyne. Of course it might be ridiculous if a medicine which contained only an infinitesimal quantity of poison should be labelled "poison." But, at all events, no harm would be done. There must be a point at which it would become dangerous, and I do not think the Act should be frittered away. Its object was to protect the public from persons who may have no chemical knowledge whatever of making up, dispensing, and compounding poisons, which ought only to be done according to this Act by properly qualified people. One good reason why patent medicines might be dealt with differently to proprietary medicines is, that in the case of patent medicines everybody knows or may know what they are composed of, and whether they contain poison or not. With proprietary medicines, of course, it can only be discovered by analysis. That is the object which the society has taken in hand. I think, therefore, that if chlorodyne does contain a poison, it is properly labelled poison, and that a person who sells it, not being qualified, is liable to the penalties imposed by the Act. The result is, that the county court judge was right, and the appeal must be dismissed.

COLLINS, J.—I am of the same opinion. It is not necessary to go through the various sections of the Act, which have been dealt with in detail by my brother Lawrance. It is enough to say that there are two points before us in this case. The first is, whether the article sold is a poison within the meaning of 31 & 32 Vict. c. 121; and, if so, then, secondly, does it come within the 16th section which exempts patent medicines from the provisions of the Act? The case is one of considerable difficulty, and I give my decision not without doubt. The conclusion, however, to which I have come is, that in this particular case, the article in question, namely, chlorodyne, does come within the designation of a poison within the meaning of the Act. It is found in the case that it is a compound which contains more than one poison, both of which are poisons named in the second part of the schedule to the Act, namely opium, or a preparation of opium and chloroform. It is also found that in any one of the bottles sold there is sufficient poison to kill an adult. So that I think it may be taken in this particular case now before us that the thing sold was a poisonous thing; that is, that a small quantity of it would take away life, which was the definition of a poison given by Mr. *Bonsey*. Whether I am right or not in that, I am also of opinion, for reasons that I shall give later on, that it is a compound into which poison enters as one of the ingredients, and that on that ground it is within the provision of the Act, and comes under the designation "poison" as there used. But while I am of that opinion with respect to this particular matter, which is the only thing we have to deal with in this case, viz. chlorodyne, I do not think it is necessary in this case to lay down a rule so comprehensive that it should include every compound which contained even the most infinitesimal quantity of poison. Those questions must be dealt with when they arise. The present case is the case of a subject-matter which taken in a quantity so small as the bottle sold would be capable of poisoning an adult. Now is it or is it not a poison within the meaning of the Act? The Act enacts broadly in the 1st section, that it shall be unlawful to sell poisons except by persons described. Then it contains two schedules, and enacts different provisions as to the poisons

mentioned in the different schedules. The poisons in question, as I say, are opium and chloroform. Chloroform is put in absolutely in the schedule, opium is put in with its preparations, and preparations of poppies, and we have had a very forcible argument addressed to us, that the schedule must and can mean only the actual poison named in the schedule, or some preparation of the poison, and that the Act did not intend to apply, and does not apply, to something into which those poisons enter, but which is incapable of being described either as a poison itself, or as a preparation of a poison. I do not think that chlorodyne could be described either as opium, or as a preparation of opium, nor *à fortiori* could it be described as chloroform. Therefore, I think it necessary that I should hold, in order to decide against Mr. *Bonsey*, that the Act does apply to something more than any actual poison named in the schedule itself, or a preparation of it. In other words, that an article may be poisonous which does not consist exclusively either of a poison itself, or of what can be designated as a preparation of that poison. Now, does the Act mean to limit its operation merely to that which consists exclusively of the poison, or of some of the preparations of the poison? I think not. I think section 17 comes in there, and shows us what was intended to be the purview of the Act. Because, after providing certain special precautions which have to be taken by chemists in dealing with poisons in the two schedules mentioned, it goes on to say: "The provisions of this section," which are so and so, "shall not apply to articles to be exported from Great Britain by wholesale dealers, nor to sales by wholesale to retail dealers in the ordinary course of wholesale dealing, nor shall any of the provisions of this section apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered under this Act." Now, that exception seems to me to show that the legislature did contemplate that, but for that exception, medicines, one of the ingredients in which was one of the poisons named, would be within the Act, and that, but for the exemption in the proviso, it would come within the prohibition of the Act. I think that

is a very strong argument to show that the legislature did not intend to limit the operation of the Act either to a mere poison, or to a preparation of a poison, in the sense of excluding every other ingredient or compound sold. That is the view which I arrive at myself, which I did arrive at before I saw the case which my brother Lawrance called my attention to, and I think that view is not only a dictum, but is necessary to the decision in the case of *Berry v. Henderson*, *L. R. 5 Q. B. 296*. Now, in that case, the thing sold was prussic acid mixed with rose water, and the case arose under section 17. It was alleged that some of the formalities of section 17 had not been complied with ; but it was conceded throughout the case that the thing was prussic acid largely diluted with rose water, which, therefore, taken in its entirety, was certainly not either prussic acid or a preparation of prussic acid, that this was a poison, and that the person convicted thereof had been properly convicted unless he could bring himself within the exemption by showing that this thing was a medicine into which poison entered as one of its ingredients. The Court came to the conclusion that, although there were only two things in the compound, viz. prussic acid and rose water, that did not prevent the prussic acid being an ingredient ; in other words, that it might be one of two ingredients, and that there need not be more ; and, further, the Court thought that, having regard to the uses to which it was to be applied, or to which the person who dispensed it thought it was to be applied, it could be described as a medicine, and, therefore, it came within the exemption. But it was necessary for the Court to find, first of all, that it fell within the general provisions of the Act before it was necessary to consider whether it was protected by the exemption. The Court did, in that case, find that the article sold was properly described as a poison, although, as I have pointed out, it certainly did not consist exclusively of a poison named in the schedule. Lush, J., in giving judgment, says this : “ I am of opinion that the appellant has brought himself within the proviso in section 17. The first part of the section, the enacting part, applies to the sale of poison. I observe that the schedule seems to treat all the poisons as sold in their simple state, or in some form of

preparation alone ; and it does not appear to contemplate any of them being mixed up with any other ingredients ; it applies to them pure and simple. But, taking the general sweeping words of the enactment alone, they would have prohibited any medical man, perhaps, from dispensing a prescription that contained a poison. In order to obviate that the proviso is inserted, which says that none of the provisions of this section shall apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered under this Act." So that it seems to me the view of Lush, J., was, that the Act did hit a compound made up in part of one of the scheduled poisons, and that it was necessary to his decision to arrive at that view. Therefore, that appears to me to be a distinct authority for the proposition I am laying down. When you once get to that, the question of more or less scheduled poison in the compound does not appear to me to have any logical bearing on the discussion until you get down to the other principle of law—*de minimis non curat lex*. But, as I have already said, it is not necessary for me to lay down any principle beyond what is applicable to this particular case, and in this particular there can be no sort of doubt that the poisonous element of scheduled poison is a very large factor in the total composition. Now that decides, in my view, the first point taken by Mr. *Bonsey*, and decides it against him, viz. that chlorodyne is a poison. But before I pass to the next point, I ought to deal with a formidable argument addressed to us, amongst others, by Mr. *Bonsey* on the wording of the 17th section. He says, and says properly, that the word "article" in the latter part of the section in the proviso means the poisonous element and only that, not the whole compound, but the poison or its preparation ; these are the words : "nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered under this Act." Well, he says, if that be so, the true meaning of "article" is a scheduled poison and nothing else. Then in the case of a medicine, such as chlorodyne, it would be absolutely impossible for a chemist to comply with the provisions of the 17th section,

because he could not put down the quantity of the scheduled poison sold, although it is true he might put down the quantity of the compound sold. But, if "article" in the earlier part of the section obliges him to state the quantity of the article sold—if "article" in that part of the section ought to bear the same meaning as it does in the latter part—he points out that in the case of a proprietary medicine when a chemist does not and cannot know the exact amount of poison contained, it would be impossible for him to conform to the conditions laid down in section 17, and he says that is a very strong argument for excluding proprietary medicine from the enactment. I do not, myself, think it is necessary to put the same meaning on the word "article" in both branches of the section. No doubt, there is a logical difficulty, and one never likes, if it be not absolutely necessary, to put a different meaning on the same word in two parts of the same section. But I think there is a certain amount of laxity in the way the word is used by the legislature in the first part of the section, and that it may fairly be construed to mean the thing sold, if, and when that thing, in the opinion of the Court, comes under the designation "poison." Chlorodyne does in my judgment on the whole for the reasons already given come under the designation "poison," although it does not consist exclusively of a scheduled poison, and when I have once arrived at that conclusion, I feel no difficulty in holding that, when the legislature says that the chemist selling must put down the quantity of the article sold, he must satisfy the obligation by describing the quantity of the particular compound—the bottle of chlorodyne it might be in this case—not the amount of scheduled poison contained therein. Now I come to the second argument of Mr. *Bonsey*. I am not sure that my last observation might not have been more germane to the second than to the first point. But the second point is, does Mr. *Bonsey* bring himself within the exception named in section 16, viz. making or dealing in patent medicines? I was a good deal impressed with his argument on that point. He says that the term patent medicines is really used to describe medicines which are dealt with in the same way as patent medicines in the legislation affecting stamps. And he says that

there was evidence before the county court judge, that, at the time of the passing of the Act of 1868, patent medicines did not mean what technically can be described as patent medicines, namely, those in respect of which letters patent have been granted; but that it meant broadly proprietary medicines, and he contended that the term must bear that meaning in the section. Now, I have come to the conclusion, having regard to the object of the statute, and to the provisions of the statute of 52 Geo. 3, c. 150, which have been referred to, that we ought not to put upon the term patent medicines in this Act of 1868, a meaning which would very much enlarge it beyond what *primâ facie* must be taken to be the meaning of a patent medicine, viz. a medicine that is the subject of letters patent. Now, what is the object of the Act itself? The Act deals with the sale of poisons. Its title is to regulate the sale of poisons, and alter and amend the Pharmacy Act, 1852. Therefore, broadly, what it deals with is poisonous drugs, not such things as soap and matters of that kind, which Mr. *Bonsey* referred to. It deals with things which can be described as *pharmaca* drugs, something applied for medicament, internally or externally, to mankind. The preamble says, "It is expedient for the safety of the public that persons keeping open shop for the retailing, dispensing, etc." Therefore, the legislature is dealing with the safety of the public in the matter of dispensing drugs, and that being so, they lay down these provisions with respect to poisons, insisting that competent persons who have gone through a certain training, and given certain credentials of their fitness, shall be the only persons who shall deal in such things; but excepting patent medicines. Now, I think the *onus* is on the person who says that the term "patent medicine" means something other than patent medicines in the strict sense, to show why medicines other than patent medicines should be excluded from this Act. It must be that, having once arrived at what is the principal purpose of the Act, it would be doing manifest injustice to embrace proprietary medicines in it. Now, I do not see that a case has been made at all conclusive or even satisfactory in favour of sweeping proprietary medicines into the immunity extended to patent medicines, the object being

for the safety of the public to secure in the case of compounds into which poison enters, because that is my view—now that such things shall only be dispensed by persons who have a technical knowledge of their properties. Can anything be more dangerous than that it shall be at large for any person whatever to sell a medicine which is called a proprietary medicine, but which may contain poison to any amount which, if Mr. *Bonsey's* contention be correct, could then be sold by any person, however incompetent, and not only sold, but compounded? Any person would then have the right to deal with these dangerous elements—it does not follow that he intended to put a large quantity in—but being an utterly unskilled person, intending to put in a grain he might put in a drachm, and if he does, the very mischief which the Act was passed to meet is open to the public. Now that mischief, as my brother Lawrance has pointed out, does not happen in the case of patent medicines, which stand recorded for everybody who wants to find out what the exact ingredients are of the medicine protected by patent. It is otherwise altogether with those which are the subject of some proprietary right. That is emphasised when we come to examine what the definition is in the Act which Mr. *Bonsey* relied on, which imposes the stamp duty on patent medicines and proprietary medicines, because when we look to see what the Act deals with, it deals not only with patent medicines, but with proprietary medicines, and uses very large words indeed showing what came within that designation. The words are “all other pills, etc., made, prepared,” and so on, “by any person or persons whatsoever wherein the person hath or claims to have any occult secret or art for making or preparing the same.” Then comes patent medicines in the proper sense of the term, and then “any which shall hereafter be, by any public notice or advertisement or by any label or words written or printed papers or handbills, or by any label or words written or printed, affixed to or delivered with any packet, box, bottle, phial, or other inclosure containing the same, held out or recommended to the public by the makers, vendors, or proprietors thereof as nostrums or proprietary

medicines, or as specifics, or as beneficial to the prevention, cure, or relief, etc." Therefore, practically, any person who chose to put forward a claim, however slight, to a proprietary right or to send out his compound with a notice or advertisement claiming that it was a nostrum or a specific compound, might thus bring the compound within the designation of a proprietary medicine, and as such get for it that complete immunity which is extended to patent medicines. That is to say, a person, however ignorant, might sell in that way as much poison as he liked, or might mix or compound poisonous elements which, when taken by the public, might be injurious, and, furthermore, leave behind no trace which could be followed out. But one of the main provisions of this Act is that whereby the amount sold, and the person to whom it is sold, can be traced. Therefore, I do not think that any case at all is made on the main purview of the Act for bringing proprietary medicines under the same category as patent ones. But then Mr. *Bonsey* says, are you going to stop the sale of these proprietary medicines altogether? He says if the Court takes the view I am now presenting it will be impossible for any person to sell proprietary medicines. First of all, a person who is not a chemist cannot sell them because they are poisonous, and a person who is a chemist cannot sell them, except under conditions which it is impossible for him to comply with. That is his argument under section 17. Now, I am less impressed with that argument when I come to examine it, because, if a proprietary medicine is really a thing which it is worth while for the public to buy, and, therefore, for the chemist to sell, surely it is quite worth his while to ascertain by analysis what is the amount of deleterious ingredients in any given compound, and when that has once been ascertained and circulated among chemists, there will be no difficulty whatever in the chemist conforming to the provisions of section 17 by putting down the amount of the poisonous ingredients. Therefore, I think practically where it is worth the while of the vendors to overcome the difficulty, it can be overcome, and I am not at all impressed by the inconvenience of that to the public as against the other and greater inconvenience—one which seems to me to be opposed

by the main scheme of the Act, viz. that of leaving in the hands of thoroughly incompetent persons this dangerous instrument poison, with leave to dispense it as they choose. I think, therefore, this appeal must be dismissed.

Judgment for the plaintiffs.

QUEEN'S BENCH DIVISION.

PHARMACEUTICAL SOCIETY v. POTTER.*

In the High Court of Justice, Queen's Bench Division, before Mr. Justice Hawkins and Mr. Justice Channell, on December 8, 1897, an appeal was heard from a decision of the County Court Judge at Reading refusing to convict for the sale of weed-killer.—Mr. Williams appeared for the plaintiffs, and Mr. St. Gerrans for the defendant.—Mr. Williams said this was an appeal against the decision of the County Court Judge sitting at Reading. The proceedings under which the judgment was given were under the 1st and 15th sections of the Pharmacy Act of 1868 for the recovery of penalties for the selling and keeping open shop for the sale of poisons, but one penalty only was sued for. The proceedings originally were merely for keeping open shop, but the learned Judge allowed him to amend by adding the word "selling." Having read section 1,

Mr. Justice HAWKINS said, as he understood it, the question was whether the word "sell" would apply to the defendant, who never knew of the existence of the tin of poison in the shop. There was no doubt that if he did, and sold it, he would be liable to the penalty; but the question was whether, having ordered that particular thing for himself, it never having been sent to the shop with his knowledge—it having been taken into

* Reprinted from *Pharmaceutical Journal*, December 11th, 1897, p. 538. Also reported, *Chemist and Druggist*, December 11th, 1897, p. 916; *British and Colonial Druggist*, December 10th, 1897, p. 754, but not in any recognised Law Reports.

the shop by the shopman and sold by him without any instructions or authority whatever—whether that was a sale by the defendant.

Mr. *Williams* said that was the contention of the defendant—that he had no knowledge. The point therefore arose, what did the Act mean when it said “no person shall sell,” or, in other words, who was to be regarded as the seller under sections 1 and 15? The meaning followed the words of section 1, which imposed a penalty on an unqualified person selling. In this case the evidence was that a person was sent down by the Pharmaceutical Society in order to make this purchase. He went to the shop of the defendant in the London Road, Reading, and asked the assistant if they sold Harrison’s weed-killer, whereupon the defendant replied that they did, turned round, and took up a tin and handed it to the purchaser.

Mr. Justice HAWKINS said the purchaser had not gone to buy it for his own use apparently.

Mr. *Williams* said from knowledge that had come to the Society it was supposed that if he went there he would get it.

Mr. Justice CHANNELL asked what the shop was in other respects? What were the ordinary things sold there?

Mr. *Williams* said he believed garden requisites. A bill was given when the purchase was made of various other things in which the defendants were spoken of as dealing in wagon-covers, oil-cloth, mackintoshes, etc., and he believed they also sold tools and things of that sort. In further reply to the Bench, he said he did not think either partner took part in this transaction personally.

Mr. Justice HAWKINS said it must be taken for granted that there was not any other poison of any sort or kind in the shop. The truth seemed to be that for his own purposes, and not for the purpose of sale at all, Mr. Potter had procured a tin of this weed-killer, which was in a back place, and ought not to have gone into the shop at all. The shopman who was managing the shop without any authority, there being no mark upon the tin indicating according to the ordinary course of things, that it was for sale, took it—on his own authority—into the shop and put it on a shelf, and when he was asked by the person who came

in whether he had any weed-killer, he took it down and sold it. When he was asked the price of it he found no mark upon it showing that it was intended to be sold, but he handed it over. Then the contention was that it was not done by the hand of Mr. Potter. It was conceded that if Potter had done it, then it was an infringement of the Act, as it certainly would be; and if Potter knew that the article was about to be sold it would not have signified in that case whether he sold it and delivered it with his own hand or by the hand of his manager; but the difficulty in this case was that it was not an article which they sold. It was not intended or marked for sale, and the sale was without authority—on the part of the manager—of an article which had never been brought into the shop or into stock.

Mr. *Williams* said it appeared that the weed-killer had been exhibited in the window for a certain time—he was not sure how long—but not a very long time certainly.

Mr. Justice HAWKINS said there was no evidence of its ever having been seen or being known to be in the shop or offered for sale. He could thoroughly understand that if there was in a shop poisonous matter kept in stock, and if the principal intended to sell with his own hand, or his manager sells it for him, it would be a reasonable argument that what the manager did in the conduct of the business the principal must be responsible for; but this was not part of the stock.

Mr. *Williams* said the plaintiffs were not in a position to prove that it was part of the stock, but it appeared that it had been first in a back office, subsequently in the shop itself, and then exposed in the window; and as he should submit, exposed for sale. Subsequently it was replaced on the shelf.

Mr. Justice HAWKINS said he should be in favour of the contention if the article were exposed with the authority and on behalf of the shopkeeper.

Mr. *Williams* said there was no evidence as to the intention with which it was purchased.

Mr. Justice HAWKINS said there was no necessity for it. He never put a price upon it, as was the custom with ordinary things.

Mr. *Williams* said that was so; there was no price upon it,

but the servant who sold it appeared to have charged a price which left a profit to the master. The prohibition in these sections was against the sale of a poison by any person not qualified, and he submitted that it was not necessary to show with what motive the thing was bought, or even that it was sold with the connivance, or by the authority of, the master.

Mr. Justice HAWKINS, having read the 15th section, asked whether Mr. *Williams* contended that the defendant kept open shop, or sold.

Mr. *Williams* said both. He kept open shop, and through his servant he sold, and if the sale took place in an open shop kept by the defendant he was then and there guilty of having kept open shop for retailing poisons. He did not think there was any actual decision on the meaning of the word "sell" in the Pharmacy Act, saying in so many words that it included the master as well as the servant, but he should submit that the natural meaning would include both principal and agent in a sale.

Mr. Justice HAWKINS said if it could be shown that the sale was made by the authority of the defendant, he should quite agree with that if he did not actually with his own hands sell it.

Mr. Justice CHANNELL asked if there was not a decision with regard to the sale of milk?

Mr. *Williams* said there was a case under the Food and Drugs Act, 1875, and the proceedings under section 6 of that Act were before a magistrate under the summary jurisdiction, not civil proceedings in the County Court, which he should submit made the decision stronger in his favour. He then proceeded to cite the case of *Brown v. Foot* in the "Law Times Reports," No. 8, vol. 66, in which it was decided by Mr. Justice HAWKINS and Mr. Justice WILLS in 1892 that a conviction by a magistrate of a milk seller whose servant had adulterated milk and sold it was correct, and that it was not necessary to prove the knowledge or connivance of the employer. He read the judgments in that case at length, which were to the effect that the principal was the seller. He submitted that the construction of the word in the present case must be the same as in that. In both cases the main word to be construed was "sell," and he

submitted that the natural meaning of the word, even in the absence of direct authority upon the legal meaning, would be to include both the principal and the servant who carried out the physical delivery of the article, and took money in return. If that was so the subsequent sections of the Act would not affect the construction. Before dealing with section 17, which was relied upon by the other side, he would deal with the second point, upon which the learned county court judge had decided against the appellants. Upon it appearing by the evidence of the defendant's partner that the defendant carried on business in partnership the judge held that there could be no conviction.

Mr. Justice CHANNELL said that did not appear upon the notes.

Mr. *St. Gerrans* admitted that it did not appear on the notes, but the judge had so decided, though he did not now intend to adduce any argument in support of it.

Mr. Justice CHANNELL said if the man would have been liable on the facts, and he had no partner, he did not see how the fact of his having a partner would make any difference.

Mr. Justice HAWKINS said the only question for the Court was whether the decision of the county court judge was right.

Mr. *Williams* said it was important for the Pharmaceutical Society—charged with administering the Act—to see that a decision of that sort was not unchallenged.

Mr. Justice CHANNELL said it might have been important if that were the sole ground upon which the question turned. What was the other ground?

Mr. *Williams* said the second point was whether the word "sell" in the 15th section included merely the physical seller.

Mr. Justice HAWKINS said the appellants had to make out a case of agency. There was no particle of evidence in the notes of any sale by the defendant, or by his partner or manager of any article of poison. They merely sold rakes and shovels.

Mr. *St. Gerrans* said the learned judge had so found as a fact.

Mr. *Williams* said he was not so sure of that. As the case was decided on the other points, it became unnecessary to go

into the evidence of fact. If the master was not liable for the sale because he did not sell with his own hand and was not liable for the act of his agent because he was a member of a partnership, it became unnecessary to prove whether the seller was an agent or not.

The further hearing was adjourned till Thursday.

The case was resumed on Thursday morning, when Mr. Williams continued his argument, citing several cases in which an employer had been held liable for the acts of his servant, even when acting contrary to his instructions. The main point of his argument was that weed-killer, being an article which would properly be classed amongst garden requisites, the shopman would have implied authority to dispose of it, and that in any civil action arising out of such sale the master would be liable.

At the conclusion of his argument, without calling on defendant's counsel, judgment was delivered as follows:—

Judgment.

Mr. Justice HAWKINS.—I am of opinion that this appeal ought to be dismissed. The learned county court judge gave judgment for the defendant on the points which were put before him in the course of the argument. The points which were raised before him were these. Mr. Williams submitted first that the condition of the defendant's mind was immaterial. He said, "I submit Potter did intend to sell that tin." Now, if that first point had been made out there would have been an end to the case, and if the county court judge had said, "I think that Potter did have possession of that tin with the intention that it should be sold, and that it was to be treated as being in stock," this case would have been utterly indefensible. The next point is that Potter sold, and it having been contended for the defendant after that, that Potter did not sell by his own hand, that matter is dealt with; and it was contended by Mr. Williams, and I think properly contended, that it is immaterial that he had a partner, and that partner was guilty, and that Potter was guilty of the unlawful act, and is liable to the penalty. I should have said that if Hawthorne had come in,

although Potter knew nothing about what Hawthorne did, and if he had said, "Put that tin in the window, it may attract somebody, and if anybody comes in sell it to them"—if he had said that, or said, "Put it in stock and sell it if anybody wants it, it is a new article altogether"—then I should have said it makes no difference whatsoever that Mr. Potter was not present himself; but that what he is said to have done was done through the agent of his partner. Then the next point was that it was immaterial that he sold by a servant. There, again, I think if that had been made out, if you have the first question answered in the affirmative, that he did intend to sell the tin, it would be utterly immaterial what was the hand which delivered it over to the purchaser, or the person who by word of mouth made the contract, he being authorised to conduct the general business of the shop. I should have said it was absolutely immaterial, and the plaintiff would be entitled to have the verdict entered for him. But now, that Potter did not intend to sell the tin must be taken to be one of those facts which the London County Court Judge found. That the tin was there there is no doubt. That it was in the premises under the roof there is no doubt, but the learned county court judge must be taken on these notes to have said that the tin was not there for the purpose of sale, and that Potter did not intend to sell that tin. And by Potter, I repeat, he must have meant that neither Potter nor his partner intended to sell that tin. That is in accordance with the facts as they are stated on the notes. I am not going to discuss at all, or to analyse the evidence for the purpose of asking myself, or of stating whether or not a case may not have been fairly presented to the jury, if there had been a jury to say that Potter's story was an odd thing, and in the absence of any explanation from Potter as to why he had bought that one tin and put it in the desk, or on the desk in his private office, I should have required myself, I think, some explanation how that happened. Potter might have been able to give satisfactory evidence as to why it was there. It may be that he had ordered a tin to be sent to him privately in order that he might consider whether it was an article that they would sell or authorise to be sold; and it may be that he, on examination

of the article, might say, "This is too dangerous an article for us to keep in the shop for sale," and would not put it into stock at all. The fact that he put no price upon it, as was customary with regard to all other articles which were kept in the shop, is a circumstance which tends to corroborate the view taken by the learned county court judge, that Potter never intended that particular tin to be offered for sale. Then if he did not intend to sell it, one has to ask one's self what is there to make him liable for the sale of a poison which he never intended to sell? If they had been dealing in that shop with articles of a similar description, and if this had been placed on the counter—I will not say by either of the masters—or had been there, and both Potter and Hawthorne, or one of them, had seen it in the window exposed for sale, although they did not mean actually to sell it, and had said to the assistant, "If anybody comes in to buy this tin, do not sell it," then if a person had come in, and the person who was in charge of the shop, having been asked for a tin of this description, had actually sold it, I should have said myself it would have been within the scope of his authority; that is to say, within the scope of his assumed authority, not of his actual authority. Not of his actual authority because he had himself received express instructions not to sell it, but in the scope of this assumed authority, because by allowing the thing to be put in the window as an article for sale, the assistant is supposed to have, and is assumed to have, authority for the purpose of selling it. But there is no such circumstance here. The boy, or young man—I do not know what his age was—certainly says he put it in the window one night and took it out next morning, but what he did was not with the authority of either of the partners, nor with their knowledge. It may be, if it was known to Hawthorne, he said, "Put it aside until Potter comes," and they did not even look for the mark upon it, which was usual in articles intended to be sold, viz. the price. It was put aside as an article not to be sold at all. It was not an article they had ever dealt in before, and it was sold directly in the teeth, I was going to say, of any authority, but certainly in the absence of any authority. That is found by the learned county court judge.

I do not at all differ from those cases—nor could I—in which it has been said that if a man is acting within the scope of his authority the master must be responsible in a matter of this description. In the case of the adulterated milk the defendant was a milk-seller, and it was part of the business which he carried on to sell milk. The man was entrusted with the sale of milk, and the man chose to adulterate it. Then the sales so made by him were made properly on account of his master, and the master was held responsible because the man had adulterated the milk, which in its pure state he was authorised to sell, and which it was part of his duty to sell. I do not think that class of cases assists us in the least here. But suppose even in the milk case some one had said to the man, Can you sell me any cocoa or anything of that sort? not being part of his business at all, and the man happened to have a packet of cocoa in the house, and said Yes, and sold it, and it turned out that the cocoa was altogether adulterated in such a manner as rendered the real seller of it liable to penalties, could it be said that the milk-seller was authorised by his master either expressly or impliedly to sell and dispose of an article in which the master never dealt at all, and which he had never given him any authority to sell? I cannot conceive that it could be so. Supposing in this very case it could be proved that the master had got possession of this particular tin of poison for his own private purposes and not for sale at all. Suppose that had been expressly proved and that the master had even opened the tin and used some portion of it for his own private purposes, could it be said that he, not meaning to sell it—which I take to be found as a fact—if his servant went into the back office behind the shop and took the article without authority, and took it into the shop and sold it, that the master is responsible for an act of that description? I think not. I admit that there are some circumstances which might have been more thoroughly investigated, perhaps by cross-examination of Mr. Hawthorne or by requiring the presence of Mr. Potter, but inasmuch as the case was conducted and came to this termination on the evidence which was offered to the learned county court judge, and he has found these facts which I have already stated, I

think the verdict must remain. The defendant is entitled to it on the finding of the learned county court judge.

Mr. Justice CHANNELL.—I am of the same opinion. Mr. Williams has put his points very clearly, and in almost all of them I agree with him. I think that in all probability there was a case here under which the property would have passed to a purchaser, and that, therefore, in that sense there was a sale, because it would have passed to the purchaser; but I think it is solely because of the doctrine of ostensible authority and estoppel, and that Mr. Potter could not have said that the property in this tin did not pass. But in order to make him liable to this penalty he must come within the words of these two sections: "It shall be unlawful to sell poisons," and so on. I leave out the immaterial words, and afterwards "any person who shall sell poisons shall for every such offence be liable to pay a penalty." It is said that the penalty is sought to be recovered here in civil proceedings, and no doubt that is so, but at the same time it is a penalty for what is called an offence; and it seems to me that although that offence would be committed by a master who sells through his servant, and probably even if he sold through his servant a matter stocked in the shop, though contrary to particular orders or anything of that sort, yet it can only apply to a sale that there is some real authority to make, and not to a sale which accidentally operates as it were by virtue of the doctrine of estoppel. In this case, if you believe the facts, there was no more real authority to sell this tin of stuff than there would have been authority to sell the chairs and tables in the same private office from which it was taken. Consequently it seems to me that Mr. Potter did not come within the provisions of the Statute. I myself should have looked with considerable suspicion on the story coming forward after this sale. I should have looked with very great suspicion on it myself, but there is no reason why it should not be true, and if the learned County Court Judge believed it, which he appears to have done, his decision would be right. Some of the grounds he gave for his decision certainly are not right; that about the partner I am clear is not, but I concur in the decision that this appeal must be dismissed.

Mr. *Williams* asked leave to appeal if it were deemed desirable, as an important public question was involved.

Mr. Justice CHANNELL said the plaintiffs had succeeded on everything of public importance, but there was a lack of evidence as to what the defendant was supposed to have done.

Mr. Justice HAWKINS said there would be no leave to appeal.

WEST LONDON POLICE COURT.

THE PHARMACY ACT (SECTION XVII).

The Name and Address of Seller.

PHARMACEUTICAL SOCIETY *v.* REECE.*

On Wednesday, February 13, 1901, at the West London Police Court, Mr. *Lane*, K.C., gave his decision in the above case, which was a prosecution instituted by the Pharmaceutical Society under section 17 of the Pharmacy Act of 1868 against Mr. Charles Clement Reece, who trades in the name of "Squire," for selling a preparation of opium called laudanum not properly labelled with his name and address. The poison in question was sold at a shop at 176, Uxbridge Road, carried on by the defendant, and was labelled with the name of "Squire," with an address at 61, Goodge Street, which was described as the head office.

Mr. *Vaughan Williams* and Mr. *Lane* appeared for the prosecution; Mr. *Brook Little* for the defendant.

The Magistrate: This summons raises two points, the first being that the label does not bear the name of the seller, meaning thereby not the actual seller, but the principal of the selling agent, and in the second place that the address was not given. Now, as to the name I do not think there is the slightest

* Reprinted from *Pharmaceutical Journal*, February 16th, 1901, p. 173. Also reported, *Chemist and Druggist*, February 16th, 1901, p. 277; *British and Colonial Druggist*, February 15th, 1901, p. 159.

difficulty or doubt. I do not see any difference in the sense or in the purposes of the 17th section, as compared with other sections of the Act, to show that the word "name" is to be taken in a different sense in section 17 from what it is in the other sections of the Act. Of course one agrees that the word "name" may be taken in different ways. There is its popular meaning, and it may bear its popular meaning in any one section or in any one Act, or it may bear a legally restricted meaning or a legally enlarged meaning in another Act, provided there is anything to show that it does, but in this particular case I can see nothing to show that it does. So far as regards all the Act, with the exception of the 17th section possibly—that is, the section with which we are concerned here—it is perfectly clear what is meant by "name." Persons are to be registered in the form set forth in the schedule, which contains the name and residence, which we shall come to hereafter, and in section 13 there are words occurring which place the matter beyond all doubt:—"The Registrar shall, in the month of January in every year, cause to be printed, published, and sold, a correct register of the names of all pharmaceutical chemists, and a correct register of all persons registered as chemists and druggists, and in such registers respectively the names shall be in alphabetical order, according to the surnames with the respective residences." Well, it is quite clear that for the purposes of the Register in that place and in every section but one the "name" means the man's surname and his christian name. The Act says so in express terms, and we need not bother any more about it. But when we turn to section 17 it provides that the box or bottle containing the poison is to be labelled with the name of the article and the word "poison" and the name and address of the seller of the poison. Now, for the purpose of this section—that is to say, for the purpose of enabling inquiry to be made and for the purpose of enabling an offence to be brought home to a person who has rendered himself responsible, his personal name is, to say the least, quite as ready a means of effecting that object as any trade name would be. A trade name might serve as a cover or as a mask if there were any difference between the two, whereas the real

name of the person is more effectual ; there is, therefore, nothing at all to show that in section 17 there was the faintest intention to alter the meaning of the word "name" from its popular meaning which it bears in every other section of the Act, and in point of fact, to take this particular case, to say that a man who trades under the name of Brown, Jones, Robinson, and Co., or who trades under the name of Squire without any other name, was using his own name, would be really applying a use to language such as, I venture to think, was absolutely unintended. The use by the seller as his personal appellation of the name of his business, which is all that "Squire" was in this particular case, is quite another matter. Of course, he might have adopted the name of "Squire" as his own name, and he might have become known to people by that name, and if that happened it would be quite another matter, but this has not happened ; the defendant bears his own individual name to all the world, but for business purposes he uses Squire's name and address. It appears to me, therefore, there is no difficulty about that matter. But about the other matter, the address, there is a little more complication. I do not think it is at all so easy a matter. The word "address" is of course a word that may vary very much according to the context in which it occurs and to the purposes for which it is used. If you are dealing with a person socially, "address" may mean one thing ; if you are dealing with him in business for business purposes, it may mean another thing ; it may, owing to the particular subject-matter or owing to the particular context in which it is used, require a further modification. Taking it in its popular sense, and no doubt the popular sense, that which *primâ facie* it must be supposed to bear, a man's address certainly in a social sense would be taken by any one to mean his residence, the place where he lived, the place where he slept, the place where he was to be found and for the purposes of the Register—and, as I say, this applies to every section but one—that is the view which apparently has been adopted in the scheme of this Act. Section 9 says that the Register is to be kept in the form set forth in Schedule B ; the form set forth in Schedule B specifies in the address column, "residence." Residence in the popular sense certainly means

the place where a man lives with his family, if he has one, where he sleeps. Then one goes on to section 10, and one finds that the addresses of the persons are to be registered under the Act. This Act certainly has the merit of using over and over again within a couple of lines different words to denote the same thing. Three lines below that we find that the addresses of the persons are to be kept carefully registered under the Act, and to enable the Registrar to fulfil his duties a letter is to be sent to any registered person addressed to him according to his address in the Register. Then section 10 says that his address in the Register shall be his residence. But according as I read it, though the disjunctive is used, there are really two inquiries, and "whether he has ceased to carry on business or has changed his residence" I take to mean "whether he has ceased to carry on business *and* has changed his residence," because carrying on business in fact has nothing to do with his being registered. There again, within a line and a half, "residence" is used instead of "address," but looking to the objects of the Register and to the fact that a man or any number of men may be upon the Register without carrying on any business at all, and that for the purpose of the inquiry and for taking any proceedings that are required to be taken under sections 1, 15, and 16, the man's residence would afford the most convenient address you could have, more so, perhaps, than the place of business, because the person at the place of business may be an assistant this month and be replaced by another next month, and so forth. I take it that what is meant in those sections by the word "residence" is a man's actual residence where he lives. Now, then, we come to section 17. Up to that, as far as I can gather from the preceding sections and the sections that follow, none of them deal with carrying on business at all; they do not deal with the method in which the business is to be conducted. They deal with the class of persons who are to conduct it and with the mode in which those persons are to be registered and in which the Register is to be kept, but as to carrying on business in the commercial sense of the word, the 17th section is the only section that bears upon the matter. When you come to the 17th section you do not find the term

"residence" at all, but we find the words "name and address." That section deals, as I say, with the method in which the actual business of the sale of poisons is to be conducted and the manner in which and the accompaniments with which they are to be delivered to the purchaser. Therefore, the "address" in that section I should say, notwithstanding the term "residence" in the preceding sections, might well be taken to mean the business address, the place where the business is carried on—that is to say, the place where the man may be found in the conduct of the business, and, as far as decisions go, even if "address" were to be read as "residence" for the purpose of the actual commercial conduct of the business, "residence" may very well be extended to the place where a man habitually spends the working hours of the day, so that really whether it be that you use the word "residence" or the word "address" seems to me very much the same thing. But then, in order that the place where the business is carried on may constitute the address, it must be the address—in fact, that is to say it must be the place—where the man is to be found in the conduct of the business during business hours, and where any one knows that he may find him. Now, there is no evidence in this case that Mr. Squire is ever at that house in the sense of carrying on business there. He has got eight or nine businesses, I understand—a very large number—and it is impossible that he should give his personal attention to them all beyond a rapid supervision, and there is no evidence that he is habitually there for prolonged hours of the working day in the sense that any person calling there would be certain to find him conducting his business. I do not say that he may not be ; all that I say is that there is no evidence that he is there, and if he is not there, then you cannot give the name of that particular locality or that particular place of business as his address. But even assuming that you can, he has other addresses, and in this particular case he has given the name of a place where, I am told, he personally to a considerable extent carries on business and sleeps, and moreover it is his registered address.

Mr. *Brook Little* pointed out that the defendant had changed his address since it was registered. His registered

address was at Rotherhithe and had not been changed, though he was now living in Goodge Street.

The Magistrate: He has given an address where he, in fact, resides. What is on the bottle?

Mr. *Brook Little*: "Chief Office, Goodge Street."

The Magistrate: "Squire, cash chemist, chief office, 61, Goodge Street."

Mr. *Brook Little*: And the evidence was that he lived and slept there.

The Magistrate: Does he carry on business there?

Mr. *Brook Little*: He has his warehouse there—his chief warehouse.

Mr. *Vaughan Williams* produced the Pharmaceutical Register, which is made evidence by the Act, showing defendant to be registered as "Charles Clement Reece, 189, High Street, Deptford."

The Magistrate: I did not refer to the Register as being material. I only referred to it in favour of your client. At this time I understand he gave the name of the place in which he does carry on business, and in which, moreover, he resides. I certainly do not understand why no alteration of the Register has been made. Not correcting the Register is obviously a thing that may get you into trouble some day; it may create complications. Defendant here has given the name in which and the place at which he carries on business. It is the principal place where he carries on business, and it is also his residence. However you may extend the meaning of "place," it seems to me, the most to which Mr. *Vaughan Williams* can carry his position is this—that if the defendant had given the address of the shop in the Uxbridge Road he would have given a correct address within that section, and I agree with Mr. *Vaughan Williams* as to that; I agree that he would. That does not show that if a man uses the address of one of his other places of business—which are equally addresses, one of them being, in a far stronger sense, an address—that he is not at perfect liberty to do so and does not fulfil the conditions of this Act. Mr. *Vaughan Williams*, as I understand him, has gone the length of saying that "address" in this section is to be read

as meaning, together with the name of the seller of the poison, the locality and description of the shop at which the said poison shall have been sold. If that is what was meant, that clearly would be the correct language to use, and if it is not what is meant, the omission to use such language can be understood only on the hypothesis—if there was any hypothesis of the kind—that every chemist would use the name of his shop. In the result, I find that an offence against this Act has been committed in regard to the name. That leaves the summons as it stands, and subjects him to a penalty—does it not? It is not a compound offence. Both omissions are necessary.

Mr. *Vaughan Williams*: It is two offences, really. He might have been convicted upon either or both.

The Magistrate: He has not used his own name; he has not put his own name on the label, but clearly the omission to do so was not due to any negligence. The omission to do so was not in the slightest degree owing to a disinclination to obey the law. The fact of the matter was, that he thought that if he used his trade name that was all that the law required of him, and for most practical purposes the use of the trade name would be sufficient, but not for the purposes of section 17, and there are many other sections in which it would be wholly insufficient. Therefore, as there has been no intentional wrong committed by the defendant, I propose to make him pay a purely nominal fine and the costs, if you see no objection to that course.

April 28, 1890.

PHARMACEUTICAL SOCIETY *v.* WHEELDON.*

Pharmacy Act, 1868—Sale of poisons—Unqualified assistant—
Manager of chemist—31 & 32 Vict. c. 121, s. 15.

W., a druggist's assistant in charge of the shop of a duly-qualified chemist, sold a packet of "Battle's vermin killer" containing

* Reprinted from 54 J. P. 407. Also reported, 24 Q. B. D. 683; 59 L. J., Q. B. 400; 62 L. T. 727; *Pharmaceutical Journal*, May 3rd, 1890, p. 902; *Chemist and Druggist*, May 3rd, 1890, p. 593; *British and Colonial Druggist*, May 3rd, 1890, p. 465.¹

a poison, his employer not being present or personally supervising the sale.

Held, *W. had incurred the penalty under 31 & 32 Vict. c. 121, s. 15.*

This was an appeal from a county court.

The society sued for a penalty alleged to be incurred by the defendant, a chemist's assistant, unregistered, for selling poison, to wit, strychnine, or a preparation thereof known as "Battle's vermin killer," contrary to the Pharmacy Act, 1868 (31 & 32 Vict. c. 121). A young woman had gone into the shop and asked for the vermin killer, which she afterwards took, and which caused her death.

The county court judge held that the Act 31 & 32 Vict. c. 121, s. 15, was wide enough to include this sale by an assistant, and that the defendant was liable to the penalty.

Finlay, Q.C., Rawlinson, and Ivor Bowen, for the defendant.

L. Smith, Q.C., and Granger, for the plaintiffs. *Cur. adv. vult.*

HAWKINS, J. (delivered the judgment of Pollock, B., and himself).—This action was brought in the county court of Surrey, holden at Wandsworth, to recover from the defendant a penalty of £5 for selling, on September 15th, 1889, poison—to wit, strychnine, or a preparation thereof known as "Battle's vermin killer," without being legally qualified so to do. The facts are few and simple. The defendant was the assistant or servant of a duly qualified chemist, but he was not himself a registered pharmaceutical chemist or a chemist and druggist within the meaning of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121). On September 15th, 1889, defendant was in sole charge of his employer's shop, and while he was so in charge he sold on behalf of his employer a packet of "Battle's vermin killer" to a female who came as a customer to the shop. This vermin killer contains strychnine, which is a poison, and is declared so to be by section 2 of the Act, coupled with Schedule A and certain additions to that schedule duly made in December, 1869. The county court judge held the defendant liable under section 15 of the Act, and gave judgment accordingly, giving defendant,

however, leave to appeal. The appeal was argued before us in the early part of Hilary sittings. After hearing the arguments, and having regard to the general importance of the case, we reserved our judgment, not because we entertained any serious doubt upon the matter, but for the purpose of assuring ourselves that we had overlooked nothing in favour of the appellant's contention. Having now carefully considered the subject, we are of opinion that the defendant is liable, and that the county court judge was right, and that his decision ought to be affirmed. The Act, section 15 of which we are called upon to construe, is entitled "An Act to regulate the sale of poison and alter and amend the Pharmacy Act, 1852." The preamble recites that it is expedient, for the safety of the public, that persons keeping open shop for the retailing, dispensing, or compounding of poisons, and persons known as chemists and druggists, should possess a competent practical knowledge of their business, and to that end that from and after December 31, 1868, all persons not already engaged in such business should, before commencing such business, be duly examined as to their practical knowledge, and that a register should be kept as in that Act provided. Section 1 makes it unlawful for any person to sell or keep open shop for retailing, dispensing, or compounding poisons unless such person shall be a pharmaceutical chemist or a chemist and druggist within the meaning of the Act and be registered under that Act. Section 2 declares that the several articles named or described in Schedule A shall be deemed to be poisons, and by reference to that schedule strychnine will be found named, and in the addition thereto already referred to "every compound containing any poison when prepared or sold for the destruction of vermin" is expressly included. Section 3 declares that chemists and druggists within the meaning of that Act shall consist of all persons who at any time before the passing of that Act have carried on in Great Britain the business of a chemist or druggist, in the keeping of open shop for the compounding of the prescriptions of duly qualified medical practitioners; also of all assistants who, before the passing of the Act, shall have been duly registered under or according to the provisions of the Pharmacy Act, and also of all such persons as may be duly

registered under that Act ; and section 4 gives facilities to be registered as chemists and druggists to persons who before the passing of that Act had been for three years employed in the dispensing and compounding of prescriptions as assistant to a chemist subject to the passing such modified examination as the council of the Pharmaceutical Society may declare to be sufficient evidence of their skill and competency to conduct the business of a chemist and druggist. Section 15, upon the construction of which the present case depends, enacts " That from and after December 31, 1868, any person who shall sell or keep open shop for the retailing, dispensing, or compounding of poisons not being a duly registered pharmaceutical chemist, or chemist and druggist, or shall fail to conform with any regulation as to the keeping or selling of poisons made in pursuance of this Act, shall be for every such offence liable to pay a penalty or sum of £5." It is not disputed that the plaintiff society is the proper body to sue for such penalty. Section 17 renders it unlawful to sell any poison unless certain regulations therein prescribed are observed. It is not, however, necessary to refer more particularly to it than to state that for non-observance of those regulations certain penalties are imposed on the vendors, and that for the purposes of that section the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the vendor. It was contended by Mr. *Finlay* on behalf of the appellant that it was not unlawful under section 15 for an unqualified assistant to a duly qualified chemist to sell poisons in his master's shop in the ordinary course of business ; that the sale by the appellant being a mere sale by him as a servant in the discharge of his duty, the master was in law and in fact the vendor ; and that as the master was qualified the sale was lawful. It was further suggested that great inconvenience and hardship would result to small chemists who could not afford to employ qualified assistants if we were to hold otherwise. We do not agree in this view, nor are we at all impressed by the suggestion. Nothing to our minds can be clearer than that the object of the Act was beyond all other considerations to provide for the safety of the public, and to guard, as far as possible, all members of the community from the disastrous consequences so frequently arising

from the sale of poisons by persons unacquainted with their baneful properties; and the whole object of the Act would be frittered away and the Act itself become a dead letter were we to declare by our judgment that an unqualified assistant can lawfully and with impunity sell any of the poisons to which the Act applies unless upon each occasion of such sale he acts under the personal supervision of a qualified employer, or a qualified assistant to such employer. By such personal supervision we mean not mere presence in the shop or room where the sale takes place, but actual personal supervision, so that every individual sale shall be so guarded round by those precautions prescribed by the Act that the safety of every member of the public may be provided for as far as the law can accomplish that object. Mr. *Finlay*, in the course of his argument, suggested that the legislature must have assumed that every qualified chemist keeping a shop would, if he required assistance, not be likely to employ an assistant other than one having proper knowledge and who could be depended upon, and did not mean to enforce upon chemists the employment of no assistants but those duly qualified. This is true enough so far as regards the general business of a chemist's shop—not involving the sale of such poisons as are contemplated by the Act. But it is otherwise where the assistant is to be intrusted with the sale of such poisons; to leave the selection of such an assistant, without regard to any qualification, to the discretion of his employer would be, in our opinion, to defeat the object of the legislature. One employer in a large way of business might feel that his assistant ought to possess a knowledge of poisons and poisonous drugs equal to his own. Another in a smaller way of business might be content to leave the management of his business to an assistant, who, though he had knowledge of the general character of poisons, had but imperfect knowledge of their distinctive properties and of the various degrees of strength contained in them. A third, who was but seldom asked for poisonous drugs, might think any person of ordinary intelligence sufficient, whilst a fourth might, without thought of danger, be content to risk a mishap and leave a mere servant in his household, who knew no more than that poison

is poison, to represent him. In our opinion the intention of the legislature was expressly to provide against such a state of things by insisting upon one uniform qualification for every person who should sell, whether on his own account or for any other person, such dangerous commodities—namely, registration under the Act, based on a certificate of proper skill and knowledge granted after examination by examiners carefully selected and appointed for that purpose. With such a certificate the holder of it may fairly be deemed to possess knowledge not only of the general effect and operation of the various poisons with which he may be called upon to deal, but what is quite as important, if not more so for the public safety, knowledge as to the quantities in which each poison may be harmlessly or beneficially taken, and the quantities in which, if taken, death or serious mischief would be inevitable. The language of section 17 fortifies us in the view we have taken, for in that section the legislature, where it intended that the person on whose behalf a sale is made shall be deemed the vendor, has said so in express words. We are also strongly fortified in our view by the judgments in the House of Lords in the case of *Pharmaceutical Society v. London and Provincial Supply Association*, *L. R. 5 App. Cas.* 857. It is true the question in that case was different to that raised in the present, but the views entertained, expressed particularly in the judgment of Lord Selborne, directly bear upon the point now at issue. As regards the appeal made to us on behalf of the smaller chemists, we can only say that those who cannot afford to keep qualified assistants must, if they desire to absent themselves from their shops for greater or less periods of time, take such precautions as are within their power by locking up their poisons, or by other means, to prevent any sale during their absence. It has been urged that it is hard to punish the servant for that which he has in ignorance of the law done in the interests of his master. This, however, is no answer to the action. We have only to deal with the law as it exists. We need hardly say that if mischief arose by reason of a master negligently leaving an unqualified person in charge of his poisons no punishment of the assistant would, under section 15, exonerate his master from his civil liability to any person

injured ; nor if death ensued through such negligence (if a jury found it to be of a criminally culpable character) would he be exonerated from liability to a charge of manslaughter. The object of the Act under discussion is, however, to prevent the occurrence of such mischief, and that can only be done by rigidly enforcing its provisions. Our judgment, for the reasons above given, is for the respondents, and we dismiss this appeal with costs.

Rawlinson asked for leave to appeal, but the application was refused.

Judgment for plaintiffs with costs.

COURT OF APPEAL.

February 15, 1901.

PHARMACEUTICAL SOCIETY *v.* WHITE.*

Pharmacy Acts—Sale of Poisons—Seller—Pharmacy Act, 1868
(31 & 32 Vict. c. 121), s. 15.

The defendant, who kept a florist's shop, took orders for a weed-killer containing poison from any person coming to his shop, received the price, and gave receipts for it. He did not keep the weed-killer in stock, but sent the orders to the manufacturers, who despatched it direct to the purchasers and allowed the defendant 25 per cent. commission.

In an action in a county court to recover a penalty under section 15 of the Pharmacy Act, 1868, the county court judge found as a fact that there was no contract of sale between the defendant and a purchaser of the weed-killer, but that the defendant acted as agent for the manufacturers, and was not the "seller" within the meaning of the Act.

* Reprinted from 65 J. P. 340. Also reported, [1901] 1 Q. B. 601; 70 L. J., K. B. 386; 84 L. T. 188; 49 W. R. 407; *Pharmaceutical Journal*, February 23rd, 1901, p. 234; *Chemist and Druggist*, February 23rd, 1901, p. 309; *British and Colonial Druggist*, February 22nd, 1901, p. 180.

Held (*affirming the decision of the High Court of Justice, Queen's Bench Division, reported 64 J. P. 168*), that as the county court judge had found as a fact that the defendant was not the seller, and as there was evidence to support that finding, the Court was bound thereby, and that upon that finding the defendant was not the seller of the weed-killer within the meaning of section 15 of the Pharmacy Act, 1868.

Appeal of plaintiffs from the judgment of the High Court of Justice, Queen's Bench Division (Grantham and Channell, JJ.).

The action was brought under section 15 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), to recover a penalty from the defendant White for selling a two-gallon drum of a certain weed-killer, which it was admitted was a poison within the section, he not being a duly registered pharmaceutical chemist or chemist and druggist. The following facts appeared from the notes of the county court judge:—The defendant kept a florist's shop at Worcester, and was agent for the sale of a certain weed-killer containing poison, which was manufactured by the Boundary Chemical Company of Liverpool. No weed-killer was kept by him upon the premises, but he would take an order for the weed-killer from any one who came to his shop, receive the money for it, and give a receipt. He then forwarded on the order to the manufacturers, who delivered the weed-killer to the purchaser. The defendant received 25 per cent. of the price of the weed-killer as his commission on the sale. He accounted to the company quarterly for his receipts from such sale of the weed-killer, deducting his 25 per cent. commission. It was admitted that the above-mentioned course of business had been pursued with reference to the sale, the subject of the action. The defendant in his evidence, which was accepted by the learned county court judge, stated that on being asked for the weed-killer he told the purchaser that the order might be sent direct to the manufacturers, or that he (the defendant) would forward it to them. The county court judge found the following facts: that the defendant acted as agent only, and that he was merely in the position of canvasser for orders for the Boundary Chemical Company. He further found

that there was no contract of sale between the defendant and the purchaser. He gave judgment for the defendant, holding that he was not the seller of the poison within the meaning of the Pharmacy Act, 1868, s. 15.

The Divisional Court affirmed the decision of the county court judge.

By the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 15. From and after the 31st of December, 1868, any person who shall sell or keep an open shop for the retailing, dispensing, or compounding poisons, or who shall take, use, or exhibit the name or title of chemist and druggist, or chemist or druggist, not being a duly registered pharmaceutical chemist, or chemist and druggist . . . or who shall fail to conform with any regulation as to the keeping or selling of poisons made in pursuance of this Act . . . shall for every such offence be liable to pay a penalty or sum of five pounds, and the same may be sued for, recovered, and dealt with in the manner provided by the Pharmacy Act for the recovery of penalties under that Act. . . .

Danckwerts, K.C., and *T. R. Grey*, for the plaintiffs.—The defendant was the seller. Section 17 of the Act may be looked at to see what “seller” means, and that section shows that the seller is the person who makes the contract of sale. There is a distinction between sale and delivery, and the seller may be a person who contracts on his own behalf or on behalf of another person. They referred to the following cases :—*Pharmaceutical Society v. Wheeldon*, 24 Q. B. D. 683 ; 54 J. P. 407 ; *Pharmaceutical Society v. London and Provincial Supply Association*, 5 A. C. 857 ; 45 J. P. 20 ; *Stallard v. Marks*, 3 Q. B. D. 412 ; and *Werle v. Colquhoun*, 20 Q. B. D. 753 ; 52 J. P. 644.

Cavanagh and *W. W. Orr*, for the defendant, were not called upon.

A. L. SMITH, M.R.—This is an appeal by the Pharmaceutical Society in an action brought by them against a florist at Worcester for selling poison in contravention of the provisions of the Pharmacy Act, 1868. The county court judge found that the defendant was not the seller within the meaning of the Act, but that he was merely a canvasser for orders for the Boundary

Chemical Company with authority to receive money on their account. The question is whether there was evidence to support that finding, because if there was we have no jurisdiction to interfere with it. [The Master of the Rolls read the evidence given by the defendant at the trial.] What is the meaning of "seller" within the Act? The House of Lords dealt with that question in the case of *Pharmaceutical Society v. London and Provincial Supply Association* (*supra*), and held in the first place that the word "person" in sections 1 and 15 does not include an incorporated company. The House then proceeded to deal with the argument that if that were so the object of the Act would be defeated, and Lord Selborne pointed out who comes within the Act as follows:—"I will add that regard to the mischief, which beyond all controversy the Act was intended to prevent, leads necessarily to the same conclusion, namely, that he who sells, whether he be master or servant, whether he be the principal or a person to whom the conduct and management of sales is delegated, is struck at by the 15th section." Towards the end of his judgment Lord Selborne said that every person employed by a corporation would be penally answerable if he sold or compounded poisons or other medicines without having the qualification required by or without complying with the provisions of the Act. It is clear from the judgments given in that case that the person hit by the Act is the person who actually sells the poison. In this case the county court judge found that the defendant was an agent only, and was merely in the position of a canvasser for orders, and he did not find that the defendant was the seller, that is to say, the actual seller within the meaning of the Act. That was a finding of fact with which, as there was ample evidence to support it, this Court cannot interfere. The appeal must therefore be dismissed.

COLLINS, L.J.—I am of the same opinion. The case may be decided upon the short ground that the county court judge has found as a fact that there was no contract of sale between the defendant and the purchaser. I express no opinion upon the question whether if there had been such a contract of sale the case would have come within the mischief aimed at by the Act so as to render the defendant liable to a penalty.

ROMER, L.J., concurred.

Appeal dismissed.

Solicitors for the plaintiffs: Flux, Thompson, and Flux.

Solicitors for the defendant: Timbrell and Deighton, for Dobbs and Hill, Worcester.

COURT OF EXCHEQUER.

PHARMACEUTICAL SOCIETY *v.* WRIGHT.*

In the High Court of Justice, at Westminster, on Monday, April 3, before Mr. Justice MATHEW and Mr. Justice CAVE, sitting in the Court of Exchequer, the appeal of the *Council of the Pharmaceutical Society of Great Britain v. Wright* came on for argument. It was an appeal from a judgment of the Judge of the Liverpool County Court, who had held that the defendant had not used or exhibited the name or title of "druggist" in connection with a business carried on in the name of Knowles and Wright, shipping chemists and druggists, at 76, South Castle Street, Liverpool, and consequently nonsuited the plaintiffs. The appeal of the Society was supported by Mr. *Lumley Smith*, Q.C., and Mr. *Aspland*, while the respondent was represented by Mr. *Sexton*.

Mr. *Lumley Smith* said: My lords, I appear with my learned friend Mr. *Aspland* in this case on behalf of the appellants, who are the Council of the Pharmaceutical Society of Great Britain. The case stated by the learned Judge of the County Court is very short, and, with your lordships' permission, I will read it. The question is whether or not the respondent Wright had infringed the Pharmacy Act by affixing the word "druggist" to the house in which he carried on business. The case is this:—1. This was an action brought by the plaintiffs (the appellants herein) against the defendant (the

* Reprinted from *Pharmaceutical Journal*, April 8th, 1882, p. 835. Also reported, *Chemist and Druggist*, April 15th, 1882, p. 163; but not in any recognised Law Reports.

respondent herein) to recover the sum of £5, being the amount of a penalty alleged to have been incurred by the respondent on the 10th day of October, 1881, in taking, using, or exhibiting the name or title of druggist contrary to the provisions of the Pharmacy Act, 1868 (31 and 32 Vict. c. 121). 2. By the 1st section of that Act it is enacted amongst other things that it should be unlawful for any person to assume or use the title "chemist and druggist" or "chemist" or "druggist" in any part of Great Britain, unless such person should be a pharmaceutical chemist or a chemist and druggist within the meaning of that Act and be registered under that Act. 3. By the 13th section of that Act it is enacted that the absence of the name of any person from the printed register (directed by that section to be printed) should be evidence, until the contrary should be made to appear, that such person is not registered according to the provisions of the Pharmacy Act or of this Act. 4. By the 15th section any person who shall sell or keep an open shop for the retailing, dispensing, or compounding poisons, or who shall take, use or exhibit the name or title of chemist and druggist, or chemist, or druggist, not being a duly registered pharmaceutical chemist or chemist and druggist, or who shall take, use or exhibit the name or title of pharmaceutical chemist, pharmaceutist, or pharmacist, not being a pharmaceutical chemist, shall for every such offence be liable to pay a penalty or sum of £5 and the same may be sued for, and recovered and dealt with in the manner provided by the Pharmacy Act for the recovery of penalties under that Act. Then the next section makes those penalties recoverable in the County Courts. Then the next section in the case goes to the facts in this particular action. It states:—6. It was proved by the appellants on the hearing of this action that on the 10th day of October, 1881, a bottle of paregoric, which is a preparation of opium, was purchased by the witness of the then sole attendant, one William Benson, then at the shop, 76, South Castle Street, Liverpool, that the name Knowles and Wright was on the outside of the said shop and that "Knowles and Wright, Shipping Druggists, 76, South Castle Street, Liverpool," was printed on the label which was on the said bottle.

7. The respondent was not in the shop at the time of the said sale by Benson of the said paregoric, but the same witness proved that he had earlier in the same day been served by the respondent in the said shop with some Epsom salts, which he, the said witness, had gone there to buy. 8. It was admitted by the respondent on the said hearing that he had, prior to November, 1880, with the consent of the hereinafter mentioned Richard Knowles, who is a duly registered chemist and druggist, carried on business on his, respondent's, own account at the said shop, under the style of Knowles and Wright, as shipping chemists and druggists, but that the respondent never at any time was a duly registered druggist within the meaning of the said Act of Parliament. 9. In the same month of November the respondent sold his interest in the said shop and business to the said Richard Knowles, who thenceforward carried on the business of a chemist and druggist there under the same style of Knowles and Wright, and there employed the respondent to solicit orders amongst the shipping in the docks; etc. 10. It was also admitted by the respondent that the label before referred to was within his knowledge the only one in use in the said shop both prior to and since November, 1880, and that he, the respondent, is the person designated as Wright in the same label. 11. It was contended by the said appellants on the hearing of the said action that on the above facts the respondent had, on the said 10th day of October, 1881, incurred the penalty sued for, as having used or exhibited the name or title of "druggist," contrary to the provisions of the Pharmacy Act, 1868, but the learned Judge held otherwise and non-suited the said appellants. The question for the opinion of the Court is whether the said respondent did, on the said 10th day of October, 1881, incur the penalty sued for, by having taken, used or exhibited the name or title of "druggist," contrary to the provisions of the Pharmacy Act, 1868, and if the Court should be of opinion in the affirmative, then that the judgment of the learned judge of the county court should be reversed and the respondent ordered to pay the costs of the proceedings in the county court and of this appeal. If the Court should be of opinion in the negative, then that the judgment of the

learned Judge should stand and the costs of this appeal be borne by the appellants.

Mr. Justice MATHEW : It appears to have been found that since November, 1880, the defendant Wright was not carrying on business as a chemist and druggist and was not at the date of this sale.

Mr. *Lumley Smith* : That seems to be rather the county court judge's view of the law. He appears to have assumed that Wright was no longer the owner of the shop ; therefore, he did not or could not, incur the penalties for using the title of chemist or druggist.

Mr. Justice MATHEW : That is the county court judge's view. It was that the firm of Knowles and Wright, Knowles being the firm, uses the label of " Knowles and Wright," and the question was whether the man Wright being employed there became liable to the penalty.

Mr. *Lumley Smith* : It is a fact that up to November, 1880, he was breaking the law. He had been up to that time using the name of " chemist and druggist " without being registered under the Act, but by some transaction, of the nature of which we have no means of getting at the bottom, everything goes on just as before, the name is over the door just as before, and on the labels just as before, and this person Wright is serving in the shop and going about soliciting orders just as before. The question is whether or not, under the section, this penalty is not incurred. Your lordships will see in the section under which this penalty was sued for, there are two classes of offences created. There is the offence of selling or keeping open shop for the sale of poisons. As to that, of course if this transaction was a *bonâ fide* one, it might be that we should fail to render this person Wright liable for the penalties. But when we come to the other, the " taking, using or exhibiting the name or title of chemist and druggist," it seems really immaterial whether it is his property or not, but the question is whether his name is kept up as professing to be a chemist and druggist when in fact he was not a registered druggist. The first part of the section is no answer to us ; " the selling and keeping open shop for the purpose of retailing, dispensing or compounding poisons,"

possibly would not hit him if it is a *bonâ fide* transaction. The latter part is applicable, whether or not he was proprietor of the shop. The case is not susceptible of lengthened argument, for on a former occasion the county court judge had convicted him of this very offence; and since November, 1880, I do not know whether there has been any change. It is by his own permission that the name of Wright is kept up, and that it is upon the label.

Mr. Justice MATHEW: The name "Wright" is still over the shop?

Mr. *Lumley Smith*: Yes; there has been no change whatever, apparently. The word "druggist" is not over the shop, but only on the label, which was used both before and after November, 1880. The judge has non-suited in this case and I submit the judgment is erroneous and ought to be reversed.

Mr. *Sexton*: I appear on behalf of the respondent and I wish to draw your lordships' particular attention to the 9th clause in the case, namely, that the respondent sold his interest in the shop and business to the said Richard Knowles in the month of November, 1880, and it is quite true, I say, that Wright, after having sold his business in the way stated in the ninth paragraph, was not only not obliged to compel the removal of his name from the shop door and from the labels, but that he could not have done it if he had chosen. It is undoubtedly the law that when a person sells whatever interest he has in the style or title of a firm, and retires in fact from the firm, the goodwill, such as it is, passes to the purchaser.

Mr. Justice CAVE: But there is no goodwill in using a title you are not entitled to use, you know.

Mr. *Sexton*: No; but under those circumstances the title would have not passed.

Mr. Justice CAVE: The question is, who used this title of "druggist"—Wright or Knowles?

Mr. Justice MATHEW: If Wright put the label on the bottle you would not contend that he had not used the title.

Mr. *Sexton*: Supposing an errand boy, who happened to have the name of Wright, gummed the label on a bottle and carried out the sale?

Mr. Justice CAVE: That would be another thing; but it is quite clear that the respondent is the person who is intended to be represented by the name of Wright—"Knowles and Wright, Shipping Druggists."

Mr. Justice MATHEW: It is stated to be so in the tenth paragraph. "It was also admitted by the respondent that the label before referred to was within his knowledge the only one in use in the said shop both prior to and since November, 1880, and that he, the respondent, is the person designated as 'Wright' in the said label." If he is in the shop and knows that it is to be used in the shop, is not that tantamount to saying that he must be taken to have used it in the shop?

Mr. *Sexton*: I think not.

Mr. Justice MATHEW: Supposing he puts it on the bottle. There must be a label on every bottle of this sort, must there not?

Mr. *Lumley Smith*: Yes, I think the Act requires one.

Mr. *Sexton*: He might have put the label on the bottle, no doubt; so might any other apprentice in the shop. Supposing another apprentice had done so?

Mr. Justice CAVE: That would not matter, because the apprentice would not be using his own name.

Mr. *Sexton*: No, but he would have been using the name of a person who is not entitled to use the title of chemist and druggist; he would have been liable to the penalty if Wright had been liable.

Mr. Justice CAVE: No, surely not.

Mr. *Sexton*: The offence, if any, was that Wright permitted his name to be used. That I take it to be the offence, if any. He could not be said himself in his own person to be using the label simply because another person carrying on business as a druggist had labels printed with Wright's name on them and ordered them to be stuck on his bottles.

Mr. Justice MATHEW: Yes, he would if it was done with his sanction.

Mr. *Sexton*: If done with his sanction or permission.

Mr. Justice MATHEW: Those are the only labels used in the shop in which he, in his own capacity, formerly carried on his

own business. The inference therefore is that what is done in the shop is done with his sanction.

Mr. *Sexton*: But is everything that is done in a chemist's shop assumed to be done with the sanction of every apprentice who is there?

Mr. Justice CAVE: Wright is not an apprentice.

Mr. *Sexton*: He is nothing more than an apprentice.

Mr. Justice CAVE: If he had done it as an apprentice it is done with his sanction.

Mr. *Sexton*: Supposing it was done without his sanction or consent, by what possible means could he have the name removed?

Mr. Justice CAVE: He is not bound to use it.

Mr. *Sexton*: He is not bound to take a pot of paint and a brush and erase the name from the shop window, nor is he bound to tear up all the labels.

Mr. Justice CAVE: He must not put the label on.

Mr. *Sexton*: Does the offence consist in putting the label on?

Mr. Justice CAVE: I should say that it does consist in putting the label on.

Mr. Justice MATHEW: The inference is that it is done with his sanction, because they both carried on business.

Mr. *Sexton*: It is not shown that any particular label was put on with his sanction on this particular day. The appellants must make out their case strictly.

Mr. Justice CAVE: There is no other label used in the shop.

Mr. *Sexton*: The offence, if any, as I say, was in permitting his name to be used in the shop. If that is so, by what means could he have prevented it? Was he bound to give up his situation as apprentice, and to go out to the world simply because his master used a label that he was not entitled to use?

Mr. Justice CAVE: If doing this kind of thing would involve himself in a penalty, and his master says you must do something which shall involve you in a penalty, the man must either omit to do it or be subject to the penalty.

Mr. *Sexton*: I am at a loss to see by what means he could have prevented it.

Mr. Justice CAVE: What was the object of putting the word "druggist" at the end of this man's name, or in keeping this man's name over the shop?

Mr. *Sexton*: I am not concerned to say as to what might have been the object. Of course it is not difficult to raise a kind of prejudice against this man because in former times he might have carried on a business as a druggist without being duly qualified, but it is for the appellants to show their case strictly. They do not show that he actually in person carried on the business. He was there in the shop simply when the label with his name was used, and if I understand your lordships to agree with the appellants' argument you will see that his only choice was to put it before his master either to destroy those labels and remove his name from the shop window, or to resign his situation.

Mr. Justice CAVE: Yes; why should not that be the alternative presented to this man—If he is to resign his situation or break the law? Which is he to do?

Mr. *Sexton*: Would not the offence be still going on, supposing he had gone away?

Mr. Justice CAVE: No, certainly (*sic*).

Mr. *Sexton*: There would have been the name, "Knowles and Wright, Chemists and Druggists."

Mr. Justice CAVE: But there would not have been the person using it.

Mr. *Sexton*: The person using those names would have been Knowles, the first partner; would not that have been an offence equally against the two?

Mr. Justice CAVE: I should not think so; it would not be an offence on your client's part.

Mr. *Sexton*: But if I could show that Wright, by resigning that situation and going elsewhere, would not have caused the least difference, that would not have prevented an offence against the Act from being committed.

Mr. Justice CAVE: Just see how far that goes. A man takes a £5 note to kill somebody, and he says: "If I refuse this, somebody else will do it; therefore I take it." I am afraid that would not be any argument in a criminal court.

Mr. *Sexton*: The question here is, who it is has really committed the offence. If my argument is correct that supposing Wright had gone out, the offence against the Act would still have been committed, surely it was Knowles and not Wright who was committing it.

Mr. Justice CAVE: It would not have been committed by your client, you know, which would make the whole difference.

Mr. *Sexton*: Will your lordships look at the exact words of the Act?

Mr. Justice MATHEW: Yes.

Mr. *Sexton*: The words are, "Any person who shall take, use, or exhibit the name or title of druggist, not being a duly registered pharmaceutical chemist." I contend that the defendant did not take, use, or exhibit the name; it was his master. The act of the servant is always the act of the master; it is not his own act.

Mr. Justice CAVE: Not in criminal matters.

Mr. *Sexton*: This is not a criminal matter.

Mr. Justice MATHEW: It is a matter in which a penalty is involved.

Mr. Justice CAVE: In civil matters the act of the servant is not the act of the master to the extent of exonerating the servant.

Mr. *Sexton*: When you can get at the master the servant escapes.

Mr. Justice CAVE: No, certainly not; that is a mistake. They are both liable.

Mr. *Sexton*: Well, my lord, that is my submission: that the defendant did not himself personally take, use, or exhibit the title "chemist and druggist."

Mr. Justice MATHEW: This appeal, it seems to me, must be allowed. The respondent was prohibited from taking, using, or exhibiting the name or title of chemist or druggist. It appears that up to November, 1880, the respondent was infringing the Act of Parliament, but after November, 1880, it transpired that the business went to a person named Knowles, into whose service the respondent went, and it was carried on subsequently

as detailed in the tenth paragraph of the case. It is admitted by the respondent that the label referred to, describing the firm as Knowles and Wright, shipping druggists, was within his knowledge the only one in use in the shop both prior to and since November, 1880, and that the respondent was the person designated as "Wright" in the said label. It seems to me, on that statement, that it is perfectly clear that the respondent was permitting his name to be used and exhibited in this business as a chemist. I see no other conclusion that it is possible to arrive at, after the statement in the tenth paragraph, but that he sanctioned the use of his name as a chemist, which is a clear infringement of the Act. Therefore the appeal must be allowed.

Mr. Justice CAVE: I am of the same opinion, that from the facts the proper inference to draw is that the respondent was using the name and title of druggist. It seems to me that what was done here is entirely within the mischief of the Act, and unless he wished to evade the provisions of the Act, he should not have used those labels. I am of opinion that the appeal must be allowed.

Mr. *Lumley Smith*: As provided by the case, the result will be judgment for £5 with costs in the county court and of this appeal.

Mr. Justice CAVE: Yes.

Mr. *Sexton*: As this is a novel point of the construction of the Act, will your lordships allow me to ask leave for the defendant to appeal?

Mr. Justice MATHEW: We think this Act is of great public importance, and that its provisions ought to be adhered to. It seems to me to be a question of fact whether this person used or exhibited the name or title of druggist.

Mr. *Sexton*: Will your lordships pardon me, but I understood your lordships held in fact that the words of the section are, "Should permit some other person to use or exhibit his name."

Mr. Justice MATHEW: No; it was in that shop in which he has carried on business and with which he was still connected.

Mr. *Sexton*: I took your lordships' judgment to mean to import the word "permit" into the Act.

Mr. Justice MATHEW: No, nothing of the sort. He sanctioned the use of his name in that shop.

Mr. Sexton: He "sanctioned the use" instead of "using."

Mr. Justice MATHEW: That is using.

Mr. Sexton: No, my lord, it is not strictly the same.

Mr. Justice CAVE: It is only a question of fact.

Mr. Justice MATHEW: It is a question of fact merely, and there is no question of principle, so that no appeal can be allowed.

QUEEN'S BENCH DIVISION.

November 16, 1881.

TEMPLEMAN, APPELLANT, *v.* TRAFFORD,
RESPONDENT.*

Pharmacy Act, 1868—Poisons—Label with name and address of seller—Agent selling on commission—31 & 32 Vict. c. 121, s. 17.

P., a qualified druggist, prepared poisons, and by arrangement with T. paid a sum for the use of T.'s window for displaying the poisons, and paid T. a commission on each sale, but P. had no control over T.'s shop or sales, except by way of accounting for sales. T. was not a druggist.

Held, that T. was the seller of the poisons, and his address and name ought to be on each label, pursuant to 31 & 32 Vict. c. 121, s. 17.

This is a case stated by us, the undersigned, being Her Majesty's justices of the peace in and for the city of Oxford, present at the petty sessions hereinafter mentioned, under the joint operation of the statutes 20 & 21 Vict. c. 43, and the Summary Jurisdiction Act, 1879, for the purpose of obtaining

* Reprinted from 46 J. P. 325. Also reported, 8 Q. B. D. 397; 51 L. J., M. C. 4; 45 L. T. 684; 30 W. R. 78; *Pharmaceutical Journal*, November 19th, 1881, p. 429; *Chemist and Druggist*, December 15th, 1881, p. 531.

the opinion of the court on questions of law which arose before us as hereinafter stated.

1. At a petty sessions holden at the police court, town hall, in the city of Oxford, on the 28th day of June, 1881, an information was preferred by George Revill Templeman, of No. 23, Burlington Chambers, Birmingham, assistant secretary to the Chemists and Druggists Trade Association of Great Britain (hereinafter called the appellant), against William Thomas Trafford, of No. 100, Friars Street, in the said city of Oxford (hereinafter called the respondent), under section 17 of the statute 31 & 32 Vict. c. 121, charging that on the 15th day of June, 1881, the said respondent at the parish of St. Ebbe, in the city of Oxford, unlawfully did sell a certain poison, to wit, red oxide of mercury (commonly known as red precipitate of mercury), the same not being in a box, wrapper, &c., distinctly labelled with the name and address of the seller, contrary to the Pharmacy Act, 1868, was heard and determined by us the said justices respectively being then present, and upon such hearing the said information was dismissed.

2. And whereas the appellant being dissatisfied with our determination upon the hearing of the said information as being erroneous in point of law, has pursuant to rule 17 of the Summary Jurisdiction Rules, 1880, duly applied to us in writing to state and sign a case setting forth the facts and grounds of such our determination, as aforesaid, for the opinion of this court, and has duly entered into a recognizance as required by the said statute in that behalf.

3. Now therefore we, the said justices, in compliance with the said application, and the provisions of the said statutes, do hereby state and sign the following case.

4. Upon the hearing of the said information it was proved that the said appellant on the 15th day of June, 1881, entered the shop situate at No. 100, Friars Street aforesaid, over which shop no name was painted up, and *inter alia*, asked a woman who was behind the counter for a pennyworth of red precipitate, and was supplied by her with a packet of the same, for which the appellant paid the said woman. The packet was not labelled with the name and address of the respondent, but was labelled

with a label in print, thus, "W. Paterson, chemist and druggist, 3, Cowley Road, Oxford." The appellant took the packet and contents away with him, and having analysed the contents, found the packet to contain red oxide of mercury, commonly known as red precipitate of mercury.

5. It was admitted by the respondent that the appellant had been served with the red oxide of mercury at the shop situate at No. 100, Friars Street aforesaid, of which the respondent was the occupier, and in respect of which the respondent alone was rated. It was also admitted by the respondent that the red oxide of mercury was an article which, by a resolution of the Pharmaceutical Society, duly perfected in accordance with the 2nd section of the Pharmacy Act, 1868, had been declared to be a poison within the meaning of the said Act.

6. It was contended by the respondent that William Hay Paterson was a tenant of the respondent in respect of the use of one of the windows and part of the respondent's shop, and that he, the respondent, only acted as a servant to the said William Hay Paterson in the sale of such red precipitate, and in support of such contention he called the said William Hay Paterson as a witness on his behalf, who deposed that he paid respondent 4s. a month for the partial use of one of the windows and part of the shop: that he, the said William Hay Paterson, considered the respondent (if anything) was a servant of his, and that he employed him to sell goods for him, that he paid respondent no salary but allowed him a commission of 10 per cent. on the sales. That he was accustomed to send down different articles to the respondent to be sold, but that he did not sell them to the respondent, nor did he ever invoice them to him, but that he kept an account against respondent, and if any of the goods were destroyed he should want respondent to pay him for them. He considered the packet in question sold to the appellant was his property and not the respondent's.

7. It was contended, on behalf of the appellant, by his solicitor, that the packet was not properly labelled, that the respondent was not a servant of the said William Hay Paterson within the meaning of the 17th section of the Pharmacy Act, 1868, but was the seller of the poison, and ought to have had

his own name and address distinctly labelled upon the said packet as provided by the said section.

8. We were of opinion upon the facts before us that the contention of the respondent was well founded, and we therefore dismissed the information.

9. The questions of law arising on the above statement for the opinion of this court therefore are (A) Were the justices right in drawing the conclusion from the evidence that the respondent was the servant of the said William Hay Paterson within the meaning of the said 17th section? (B) If the said respondent was not the servant of the said William Hay Paterson, but was his agent, does such agency carry with it such a contract of service as to bring the respondent within the 17th section or does it not? Or in one question, and in other words, was the packet in the opinion of the Court sufficiently or properly labelled within the meaning of the said 17th section of the Pharmacy Act, 1868.

10. If the Court should be of opinion that we, the said justices, were right in drawing the inference we did from the facts proved and in dismissing the said information, then the same is to stand, but if otherwise then the Court is humbly solicited according to the power vested in the Court by the joint operation of the statute 20 & 21 Vict. c. 43, and the Summary Jurisdiction Act, 1879, to remit the case to us the said justices with the opinion of the Court thereon that we may make such other order as to the Court may seem fit.

Given under our hands this 10th day of August, in the year of our Lord 1881, at the City of Oxford.

E. T. SPIERS.

JOHN RICHARD CARRS.

J. C. CAVELI.

WILLIAM WARD.

C. Higgins, for the appellant, contended that the real seller was the respondent. *Pharmaceutical Society v. London and Provincial Association*, 5 App. C. 857. The label ought therefore to have had the respondent's name and address, and the justices ought to have convicted.

No counsel appeared for the respondent.

GROVE, J.—I very much regret that this case, which is one of such great importance and interest to the public at large, should have been heard and argued on one side only. We must, however, decide the case to the best of our ability, without having had the benefit of that full assistance which would have been so acceptable to us. I am of opinion, then, that the justices did not decide the first question in accordance with, or rather I would say did not draw the correct inferences from the facts as stated in the case with regard to the sale, and that the packet of poison in question was not properly or sufficiently “labelled with the name and address of the seller” within the meaning of section 17 of the Pharmacy Act, 1868. The sections which principally relate to and bear upon the present question are sections 15 and 17. Section 15 makes it penal for any person who, not being a duly registered chemist and druggist, shall “sell or keep an open shop for the retailing of poisons”: and that, in my opinion, throws light upon section 17, which is the section under which and for infringing the provisions of which the present charge was brought against the respondent, because it requires all persons who sell poisons to be duly qualified by registration. The word “sell” is contradistinguished from the words “keep an open shop,” but there are sales which are not in “open shop,” and those I think are referred to here, so that the section applies to all sellers of poisons, whether in a shop or elsewhere. I think that at the same time it imposes the penalty upon the person who actually conducts or transacts the business of the sale. The same construction, I think, must be given to section 17, where the question is, who is “the seller”? Now, who is meant by these words? In my opinion, in every instance, in which the word “seller” is used in the Act, it means the person who actually conducts the sale, not necessarily the individual by whose hand it is delivered over the counter to the customer. In the present case it was a woman who actually delivered the poison to the appellant, and clearly she was not the “seller” within the meaning of that word in the tion—but the person who actually conducts or controls

the business of the sale, and of the shop where the sale takes place. Now clearly Paterson, the chemist who supplied the poison to the respondent, was not the seller within the meaning of the Act, for he lived and carried on his own business in another street in the town, at a distance from the respondent's shop, and so could not possibly conduct or control the business of the shop. By section 17 the "seller" of the poison must comply with various regulations and directions prescribed by the section to be observed on the occasion of every sale of a poison; for instance, he must, amongst other things, before delivering the article to the purchaser make an entry in the book to be kept for the purpose, stating the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, and so forth. Now a person living as Paterson did at a distance from the place of sale could not possibly fulfil any of those conditions, and, therefore, although he was himself a duly qualified chemist and druggist, and though his name and address were on the packet of poison, yet, as he could not comply with the other specific directions and requirements of section 17, it is clear that he could not be the seller within the meaning of section 17, and that the justices were in error in deeming him to be so. The seller here was the person on the spot, keeping the shop where the sale to the customer took place, and having control over and the general management and regulation of the business of the sale, and his name and address it is that the Act requires to be distinctly labelled on the packet containing the poison sold, the object and intention being to protect the public by insuring that the person who controls the business of the sale of poisons should be a duly qualified and duly registered chemist and druggist, whose name and address should appear on the packet. That person here was the respondent. From the moment that the chemist Paterson sent the goods in question to the respondent he had no control of any kind over the sale of them, nor had he anything whatever to do with them, except to receive from the appellant the amount, less the latter's commission, realized by their sale. If the decision of the justices were to be upheld,

the consequence would be that the Act of Parliament would be distinctly evaded and defeated, and it would be open, as Mr. *Higgins* observed, for a qualified chemist at Aberdeen to send poisons to unqualified persons in London for sale by them on commission, over which sales he could have no possible means of control. The questions, therefore, which the justices have put to the Court in this case must be answered in the negative.

LOPES, J.—I am of the same opinion. The real question for our determination in this case is, what is the meaning of the word “seller” in section 17? When that is once determined all further difficulty is at an end. It is, I think, clear that that word means the person who keeps, or carries on business at, the shop or place, or under whose control the shop or place is, at which the poison is sold. The respondent is that person, and, therefore, he is the person meant by the section in question as “the seller.” By thus construing the section we carry out the general scope and policy of the statute, which was passed for the protection and safety of the public. The case will, therefore, be remitted with our opinion that the justices were wrong in their construction of the statute.

Judgment for appellant.

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The figures in dark type are references to the Statutes, Byelaws, Regulations, etc., in Appendix B.

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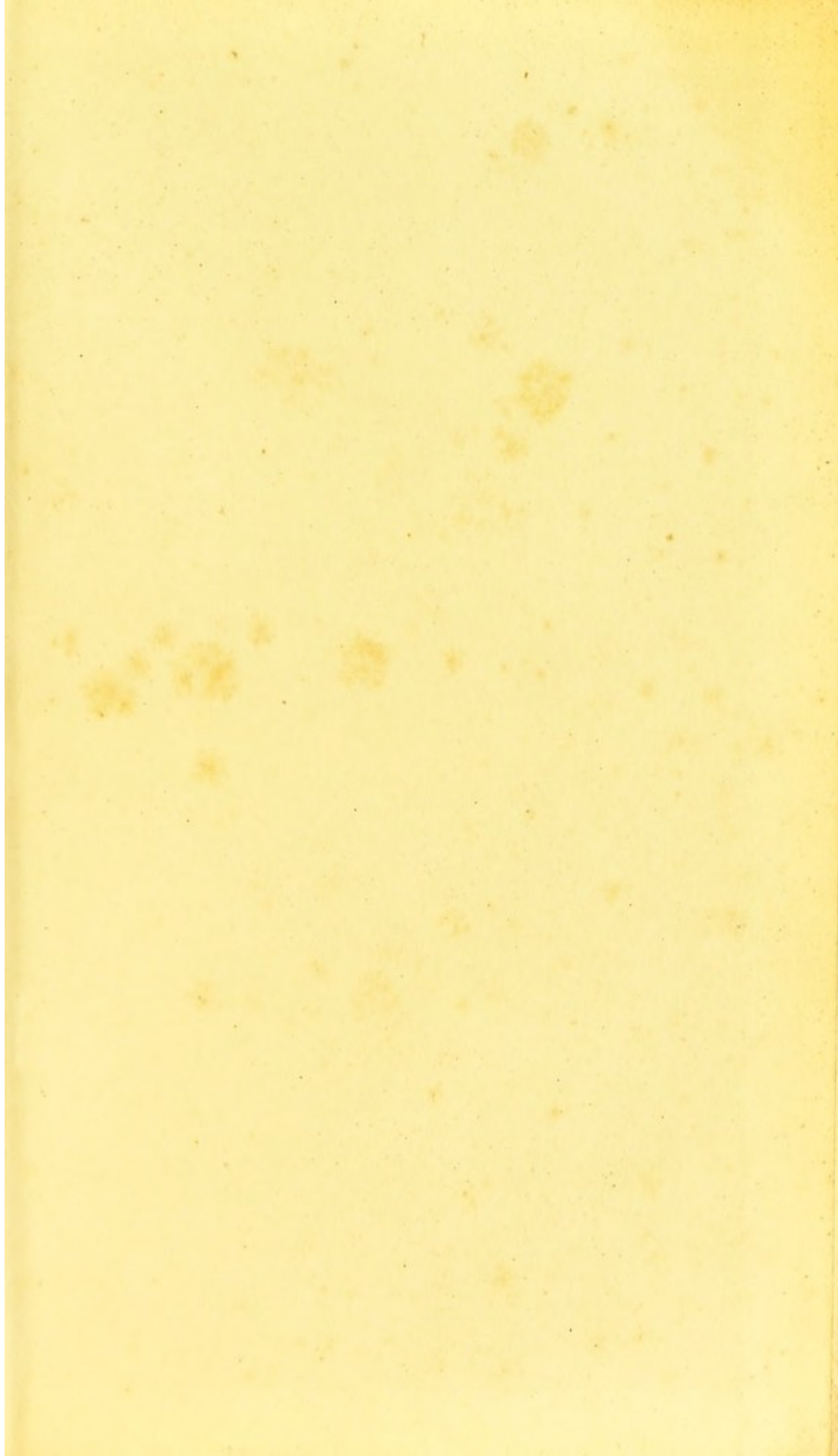
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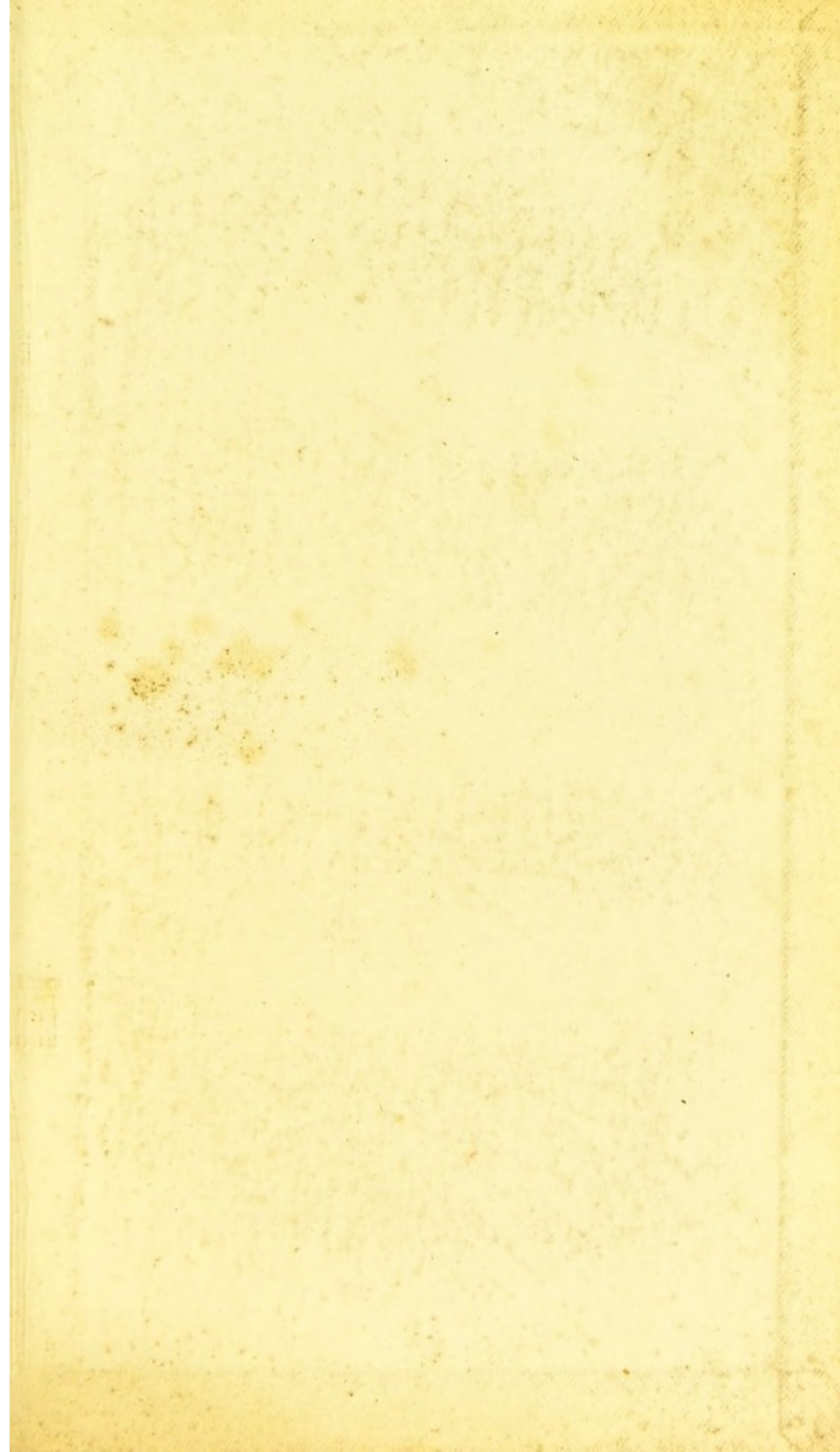
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