

The title is enclosed in an ornate, Art Nouveau-style frame with flourishes and scrollwork. The letters 'A.P.A.' are visible on either side of the main title.

The Journal of the American Pharmaceutical Association

Volume I

MAY, 1912

No. 5

Office of Publication, 79-89 North Third St., Columbus, Ohio.

Subscription, \$3.00 per annum, within the United States. To Canada, \$3.35. To other foreign countries in Postal Union, \$3.50 per annum. Single copies, twenty-five cents.

Entered at the Postoffice at Columbus, Ohio, as Second-Class matter.

Papers and communications for insertion in the JOURNAL should be sent to the Editor, James H. Beal, Scio, Ohio. Subscriptions should be sent to the Treasurer, H. M. Whelpley, 2342 Albion Place, St. Louis, Mo.

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PRICE PROTECTION AND THE AGENCY-COUPON PLAN.

THE BEST of all price protection plans is the thorough organization of pharmacists, i. e., the collection of practically all pharmacists into local, state and national associations, and the close knitting together of these various bodies in purpose and sympathy. With such a complete organization of pharmacists almost any plan of protecting prices is feasible; without it no plan will be entirely successful.

The contest between the law which would maintain trade free and profitable for all alike and the efforts of organized business to concentrate it within the hands of a few is a never-ending one. Like the safe-breaker who uses in his tools the materials invented by the safe maker to protect his safes against burglary, so the trade demoralizer uses to drive out his competitor and to destroy competition the very rules of law which were invented to check his depredations.

The doctrine of the common law regulating contracts alleged to be in restraint of trade and in favor of monopoly is an ancient fetish, and while it may have served some useful purpose in an age of less complex business relations, has long since outlived its usefulness.

In fact, as interpreted under modern conditions, the phrase "in restraint of trade" is a euphemistic title for the rule of might over right, since no means has been found so efficient by great aggregations of capital for the destruction of the man of small means as by underselling him until he is driven out of business, and

the market is left in the grasp of those who control the longest purse. The monopolist finds that the losses endured while destroying his small competitors are trifling when compared with the advantage of securing complete and undisturbed control of the business.

The U. S. Supreme Court did not announce a new doctrine of the law when it decided that the lawful owner of goods can legally fix the price at which they may be sold by his agents, and also that when he divests himself of ownership his control ceases. These principles of the common law have been established so long that, in legal phrase, "the memory of man runneth not to the contrary."

What the Supreme Court did establish in the celebrated Miles case, decided some months ago, was simply that in the case at bar the relation of principal and agent was only seeming and not real; that the seeming agency was deceptive and that the seeming agent was the owner in fact of the goods in his possession, and therefore entitled to exercise all of the prerogatives that accompany ownership, including the right to fix his own selling price for them.

THE COUPON PLAN.

Trade agreements and selling plans are like automobiles and typewriters in that each addition to the number of parts in the working system increases enormously the break-down risk and the difficulty of keeping the system in effective running order. In other words, that with every additional person, element or detail introduced into a selling plan, the chance of failure increases by multiplication and not by simple addition.

A selling plan, then, should be simple, direct, easy to understand, and not tedious to apply; there should be as few parties involved as possible; and the plan should be one which will be as nearly as possible automatic in operation, i. e., one which will tend to enforce itself without the active intervention of all the parties to the contract.

The coupon plan of compelling a fixed price for the sale of proprietaries has been suggested at various times and in various forms, one form of which has lately been proposed by the N. A. R. D. under the name of the "Boehm plan."

In its simplest form it requires the affixing of a coupon to each serially numbered package, and which is detached at the time of sale, and upon return to the manufacturer or jobber, with satisfactory evidence that the package was sold at the full established price, entitles the holder to a rebate which constitutes his profit on the sale of the goods, the latter having been purchased at full retail price.

In this form the plan is analogous to the plan of enclosing coupons in the package which entitle the purchaser to some premium; it involves a minimum of detail, and if all parties should comply faithfully with the conditions, would perhaps come as near to solving the problem of price protection as anything that could be devised.

Before pronouncing absolutely in its favor, however, we must consider whether the plan runs afoul of the law against combinations or contracts in restraint of trade, and also how far it can be rendered inutile by the exercise of bad faith.

A contract consists of an offer, express or implied, followed by an unqualified

acceptance, express or implied. Both offer and acceptance are essential, and the pact is not capable of enforcement if either be lacking.

In the plan under consideration the offer made by the manufacturer is evidenced by the coupon attached to the bottle or parcel. It is a separate and distinct offer made with each unit package, and not with dozen, gross or car-load lots. The acceptance is evidenced by the resale of the package in accordance with the terms of the coupon, i. e., at full price, and by the return of the coupon for redemption.

The mere acceptance of the goods from the carrier does not constitute acceptance of the offer, because the goods may be obtained with the intention of violating the terms of the agreement, or the terms may be complied with in the sale of one package and violated in the sale of the remainder.

If this reasoning is valid, the contract or agreement is not a general one, but one which arises and is created with each separate sale, and even if 40,000 druggists handle the article, a combination is not produced, since it is open to each one to either accept or reject the offer at the time of each and every sale.

Neither does it seem that the mere presence of the coupon upon the package could be construed as operating in restraint of trade, because it is always open to the owner of the package to either sell in compliance with the terms of the coupon or to ignore them, as he may choose.

THE AGENCY-COUPON PLAN.

As regards simplicity, the coupon plan as above outlined leaves little to be desired, but it does not sufficiently guard against bad faith on the part of some of the parties to the transaction, neither will it prevent the trade demoralizer from selling the goods at less than the stipulated price if he chooses to do so, since he is their actual owner, and "a man may do what he will with his own."

To provide against these defects, and at the same time to make the retailer the real as well as the ostensible agent of the manufacturer, the agency-coupon plan has been proposed, and is the device of Frank H. Freericks, Esq., a member of the A. Ph. A., and special counsel of the N. A. R. D., and is set forth in N. A. R. D. Notes of April 11.

This plan seeks to join the coupon plan with a bona fide agency contract evidenced by written agreements of the retailer and jobber with the manufacturer, and retains the absolute right of ownership in the manufacturer until the retail sale has been made in accordance with the terms of the written agreement, the coupon evidencing the agent's claim for commission.

The plan contemplates the creation of two sorts of agents, distributing agents or wholesalers, and local agents or retailers.

Both distributing and local agents make cash deposits approximately equal to what they are now required to pay for the goods, in proportion to quantities purchased, and the per cent. of commission is proportioned in like manner. The retailer, within a specified time after receipt of the goods, returns to the manufacturer the coupons attached, properly filled out, whereupon the manufacturer notifies the distributing agent of the amount to be allowed to the local agent as commission.

The burden of keeping track of the distribution is thus laid mainly on the

manufacturer, the wholesaler being required only to furnish the goods to the local agent in the manner specified in the contract, and to charge the consignment account.

To persons not accredited as local agents, the wholesaler may sell only single packages, and at full retail price. In such cases the manufacturer may by separate agreement remit the commission to the person after the goods have been resold at full retail price.

The objects sought by this modification of the coupon plan are to make the wholesaler and retailer the actual as well as the ostensible agents of the manufacturer, and to retain the ownership of the goods in the latter until they are actually sold in accordance with the terms of the agreement. As the contract expressly provides that the goods are placed on consignment, the manufacturer can resume possession at any time if the retail agent violates the agreement as to selling price, while the compensation of the agent assumes the form of a commission on goods sold for another instead of a profit on goods of which he has complete ownership. Other details of the plan relate to the times of settlement, rates of commission in proportion to size of purchase, forfeiture of deposit for failure to conform to agency contract, settlement of disputes by arbitration, etc., etc.

While the plan will necessarily need much discussion, and perhaps a legal test before it can be regarded as providing a final solution of the question of price protection by contract, it possesses many attractive features from the retailer's standpoint, and it is to be hoped that proprietors, jobbers and retailers will unite to give it a thorough and honest trial.

J. H. BEAL.

A RATIONAL CALENDAR.

The calendar and the hours of the day seem to most of us almost like part of the natural and immutable order of things, and however much trouble the present indefensible system has caused, men have felt that it was rash—almost impious—to suggest a change in it. "Give us back our eleven days!" cried the mob when the Gregorian calendar was introduced into Great Britain. From the days of Julius Cæsar to our own, he has been a bold reformer indeed who would suggest changes in the disorderly procession of the months. Now enters Moses B. Cotsworth of Victoria, B. C., with a proposal for a rational calendar. He would divide the year into thirteen months, each of twenty-eight days, which would leave one extra day in the year, and this he beautifully plans as a free day for every one—free from interest charges on money, the necessity to work, the wage scale, etc. Then each month would commence on Sunday and the first, eighth, fifteenth and twenty-second days of each month would be Sundays. President Hadley of Yale is quoted as saying that the month of four weeks "will come as a commercial necessity." The adjustment to the change would be very small compared to that necessitated when standard time was introduced on transcontinental railways. Mr. Cotsworth has literature to distribute, poking fun at the present system. If he wins, school children need no longer learn: "Thirty days hath September."—*Jour. Am. Med. Assn.*