

the Associateship of the Institute of Chemistry. In 1889 he was appointed pharmacist to St. Thomas's Hospital, an appointment he held until 1903 when he joined the staff of Hopkins and Williams, of which he later became a director. In the meantime he had taken the fellowship of the Institute of Chemistry and the B.Sc. degree of the University of London of the first class honors in Chemistry. His official connections with the British Pharmaceutical Society included among others of importance that of Councillor, Vice-President and President. In 1903, he entered upon a term of six years as Honorary Joint General Secretary of the British Pharmaceutical Conference of which he was the Chairman in 1923. He was author of a book on "Chemical Reagents," co-author with John Humphrey of "Pharmacopœdia," member of the Committee on B. P. Codex, which carried out the experimental part, and his active connection with the revision of the British Pharmacopœia is well known here.

Former Secretary of the British Pharmaceutical Society, W. J. U. Woolcock said of him, "He was a tower of strength, his profound knowledge was invaluable, but of greater value still was the spirit he enthused into members of his Committee."

President D. Lloyd Howard, in writing of him, stated that it was difficult to write of Edmund White without a measure of eulogy which he would himself have detested, for through all his other qualities shown a tried and delightful humor which never tolerated excess of praise or blame.

We close with a quotation from former President Neathercoat's tribute, because it gives an exemplary view that alumni everywhere might follow with credit to themselves:

"He has been one of the outstanding figures in pharmaceutical history during the last twenty-five years, and he should be looked upon as one of the greatest leaders the Pharmaceutical Society has probably ever had. He was one of the students of the Society's School of Pharmacy, and I know that he always considered that it was an obligation and a duty on those who had passed through the School and received the advantages accruing therefrom that they should in after-life do what they could to serve the Pharmaceutical Society in return for the benefits received while in the School."

Sir Nestor Isidore Charles Tirard died at his home in London on November 10th, aged seventy-five years. It is striking that the news of the death of Edmund White and Sir Nestor is reported in the same number of the *JOURNAL*. His name was familiar to pharmacists chiefly through his joint editorship (with Prof. H. G. Greenish) of the *British Pharmacopœia*, 1914. He was also secretary to the *Pharmacopœia* Committee of the General Medical Council in connection with the 1898 *Pharmacopœia*, and a member of the Board of Trade Committee appointed in that year to revise the scales of medicines for merchant ships.

The death is announced, at the age of 81, of Prof. Albert Robin, of the Paris Faculty; he was in his younger days preparateur to Thenard.

## LEGAL AND LEGISLATIVE.

### THE PENNSYLVANIA DRUG STORE OWNERSHIP LAW DECLARED UNCONSTITUTIONAL IN DECISION OF U. S. SUPREME COURT.

On account of the importance of the decision by which the Pennsylvania Ownership Law was declared unconstitutional—the law is printed herewith, and also the decision and the dissenting opinion. Liberty is taken in printing parts of the decision in italics. It is believed that the law, decision and dissent should be on record for future reference.

#### THE PENNSYLVANIA OWNERSHIP LAW.

*Section 1.*—Every pharmacy or drug store shall be owned only by a licensed pharma-

cist, and no corporation, association or co-partnership shall own a pharmacy or drug store, unless all the partners or members thereof are licensed pharmacists; except that any corporation organized and existing under the laws of the Commonwealth of any other state of the United States, and authorized to do business in the Commonwealth, and empowered by its charter to own and conduct pharmacies, or drug stores, and any association or co-partnership which, at the time of the passage of this act, still owns and conducts a registered pharmacy or pharmacies or a drug store or drug stores in the Commonwealth, may continue to own and conduct the same; but no other or additional pharmacies or drug stores shall be

established, owned or conducted by such corporation, association or co-partnership, unless all the members or partners thereof are registered pharmacists; but any such corporation, association or co-partnership, which shall not continue to own at least one of the pharmacies or drug stores theretofore owned by it, or ceases to be actively engaged in the conduct of a pharmacy, shall not be permitted thereafter to own a pharmacy or a drug store, unless all of its partners or members are registered pharmacists; and except that any person, not a licensed pharmacist, who, at the time of the passage of this act, owns a pharmacy or a drug store in the Commonwealth may continue to own and conduct the same, but shall not establish or own any additional pharmacy or drug store, or if he or she ceases to operate such pharmacy or drug store, shall not thereafter own a pharmacy or drug store, unless he or she be a registered pharmacist; and except that the administrator, executor or trustee of the estate of any deceased owner of a registered pharmacy or drug store, may continue to own and conduct such pharmacy or drug store during the period necessary for the settlement of the estate: Provided, that nothing in this section shall be construed to prevent or affect the ownership, by other than a registered pharmacist, of a store or stores wherein the sale or manufacture of drugs or medicines is limited to proprietary medicines and commonly used household drugs, provided such commonly used household drugs are offered for sale or sold in packages which have been put up ready for sale to consumers by pharmacists, manufacturing pharmacists, wholesale grocers or wholesale druggists.

*Section 2.*—Any person, co-partnership or corporation, violating the provisions of this act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$100. Each day any such pharmacy is owned contrary to the provisions of this act shall be considered a separate offense.

#### THE DECISION.

The decision was delivered by Mr. Justice Sutherland; it follows:

"The act provides that every pharmacy or drug store shall be owned only by a licensed pharmacist, and, in the case of corporations, associations and co-partnerships, requires that all the partners or members thereof shall be licensed pharmacists, with the exception that

such corporations as are already organized and existing and duly authorized and empowered to do business in the state and own and conduct drug stores or pharmacies, and associations and partnerships, which, at the time of the passage of the act, still own and conduct drug stores or pharmacies, may continue to own and conduct the same.

"The appellant is a Massachusetts corporation authorized to do business in Pennsylvania. At the time of the passage of the act, appellant was empowered to own and conduct and owned and thereafter continued to own and operate a number of pharmacies or drug stores at various places within the latter state.

"After the passage of the act, appellant purchased and took possession of two additional drug stores in that state and carried on and continues and intends to continue to carry on a retail drug business therein under the title of 'drug store' or 'pharmacy,' including the compounding, dispensing, preparation and sale at retail of drugs, medicines, etc.

"The business was and is carried on through pharmacists employed by appellant and duly registered in accordance with the statutes of the state. All of the members (stockholders) of the appellant corporation are not registered pharmacists, and, in accordance with the provisions of the act, the Pennsylvania State Board of Pharmacy has refused to grant appellant a permit to carry on the business.

"It further appears that the State Attorney General and the District Attorney of the proper county have threatened and intend to and will prosecute appellant for its violation of the act, the penalties for which are severe and cumulative. Suit was brought to enjoin these officers from putting into effect their threats, upon the ground that the act in question contravenes the due process and equal protection clauses of the Fourteenth Amendment.

"It is clear from the pleadings and the record, and it is conceded, that if the act be unconstitutional as claimed, appellant is entitled to the relief prayed. *Terrace vs. Thompson*, 263 U. S. 197, 215; *Ex Parte Young*, 209 U. S. 123.

"The court below, composed of three judges, heard the case upon the pleadings, affidavits and an agreed statement of facts, and rendered a decree denying a preliminary injunction and, upon the agreed submission of the case, a final decree dismissing the bill for want of equity. 22 F. (2d) 993. The statute was

held constitutional upon the ground that there was a substantial relation to the public interest in the ownership of a drug store where prescriptions were compounded.

"In support of this conclusion, the court said that medicines must be in the store before they can be dispensed; that what is there is dictated not by the judgment of the pharmacist but by those who have the financial control of the business; that the legislature may have thought that a corporate owner in purchasing drugs might give greater regard to price than to quality, and that if such was the thought of the legislature the court would not undertake to say that it was without a valid connection with the public interest and so unreasonable as to render the statute invalid."

#### PROPERTY RIGHTS ENTITLED TO PROTECTION.

"That appellant's business is a property right, *Duplex Co. vs. Deering*, 254 U. S. 443, 465; *Truax vs. Corrigan*, 257 U. S. 312, 327, and as such entitled to protection against state legislation in contravention of the Federal Constitution, is, of course, clear.

"That a corporation is a 'person' within the meaning of the due process and equal protection clauses of the Fourteenth Amendment, and that a foreign corporation permitted to do business in a state may not be subjected to state statutes in conflict with the Federal Constitution, is equally well settled. *Kentucky Co. vs. Paramount Exch.*, 262 U. S. 544, 550; *Power Co. vs. Saunders*, 274 U. S. 490, 493, 496-497; *Frost Trucking Co. vs. R. R. Com.*, 271 U. S. 583, 594 *et seq.*

"And, unless justified as a valid exercise of the police power, the act assailed must be declared unconstitutional because the enforcement thereof will deprive appellant of its property without due process of law.

"The act is sought to be sustained specifically upon the ground that it is reasonably calculated to promote the public health; and the determination we are called upon to make is whether the act has a real and substantial relation to that end or is a clear and arbitrary invasion of appellant's property rights guaranteed by the Constitution. See *Adair vs. United States*, 208 U. S. 161, 173-174; *Mugler vs. Kansas*, 123 U. S. 623, 661.

"The police power may be exerted in the form of state legislation where otherwise the effect may be to invade rights guaranteed by the Fourteenth Amendment only when such

legislation bears a real and substantial relation to the public health, safety, morals or some other phase of the general welfare. Here the pertinent question is: What is the effect of mere ownership of a drug store in respect of the public health?"

#### *(What Does "Charge" Imply? Who Must Be in Charge?)*

*"A state undoubtedly may regulate the prescription, compounding of prescriptions, purchase and sale of medicines, by appropriate legislation to the extent reasonably necessary to protect the public health. And this the Pennsylvania legislature sought to do by various statutory provisions in force long before the enactment of the statute under review.*

"Briefly stated, these provisions are: No one but a licensed physician may practice medicine or prescribe remedies for sickness (Pa. St. 1290, Section 16779); *no one but a registered pharmacist lawfully may have charge of a drug store* (Pa. St. 1920, Sections 9323, 9327); *every drug store must itself be registered, and this can be only done where the management is in charge of a registered pharmacist* (Pa. St. Supp. 1928, Section 9329a-2); stringent provision is made to prevent the possession or sale of any impure drug or any below the standard, strength, quality and purity as determined by the recognized pharmacopœia of the United States (Pa. St. 1920, Section 9337; Pa. St. Supp. 1928, Section 9339); *none but a registered pharmacist is permitted to compound physicians' prescriptions* (Pa. St. 1920, Sections 9317, 9323); and, finally, *the supervision of the foregoing matters and the enforcement of the laws in respect thereof are in the hands of the State Board of Pharmacy, which is given broad powers for these purposes.*

"It, therefore, will be seen that without violating laws, the validity of which is conceded, the owner of a drug store, whether a registered pharmacist or not, cannot purchase or dispense impure or inferior medicines; he cannot, unless he be a licensed physician, prescribe for the sick; he cannot unless he be a registered pharmacist, have charge of a drug store or compound a prescription. Thus, it would seem, every point at which the public health is likely to be injuriously affected by the act of the owner in buying, compounding or selling drugs and medicines is amply safeguarded."

## CONSTITUTIONAL RIGHT DENIED BY STATE LAW.

"The act under review does not deal with any of the things covered by the prior statutes above enumerated. It deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right and, on its face, denies what the Constitution guarantees.

"A state cannot, 'under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.' *Burns Baking Co. vs. Bryan*, 264 U. S. 504, 513. See also *Meyer vs. Nebraska*, 262 U. S. 390, 399-400; *Norfolk Ry. vs. Public Serv. Comm.*, 265 U. S. 70, 74; *Pierce vs. Society of Sisters*, 268 U. S. 510, 534-535; *Weaver vs. Palmer Bros. Co.*, 270 U. S. 402, 412-415; *Fairmont Co. vs. Minnesota*, 274 U. S. 1, 9-11.

"In the light of the various requirements of the Pennsylvania statutes, it is made clear, if it were otherwise doubtful, that mere stock ownership in a corporation, owning and operating a drug store, can have no real or substantial relation to the public health; and that the act in question creates an unreasonable and unnecessary restriction upon private business.

"No facts are presented by the record, and, so far as appears, none were presented to the legislature which enacted the statute, that properly could give rise to a different conclusion.

"It is a matter of public notoriety that chain drug stores in great numbers, owned and operated by corporations, are to be found throughout the United States. They have been in operation for many years. We take judicial notice of the fact that the stock in these corporations is bought and sold upon the various stock exchanges of the country and, in the nature of things, must be held and owned to a large extent by persons who are not registered pharmacists.

"If detriment to the public health thereby has resulted or is threatened, some evidence of it ought to be forthcoming. None has been produced, and, so far as we are informed either by the record or outside of it, none exists.

"The claim, that mere ownership of a drug store by one not a pharmacist bears a reasonable relation to the public health, finally rests upon conjecture, unsupported by anything of substance. This is not enough; and it becomes our duty to declare the act assailed to be unconstitutional as in contravention of the

due process clause of the Fourteenth Amendment. Decree reversed."

November 19, 1928.

## THE DISSENTING OPINION.

The full text of the dissenting opinion of Mr. Justice Holmes, in which Mr. Justice Brandeis joined, follows:

"A standing criticism of the use of corporations in business is that it causes such business to be owned by people who do not know anything about it.

"Argument has not been supposed to be necessary in order to show that the divorce between the power of control and knowledge is an evil. The selling of drugs and poisons calls for knowledge in a high degree, and Pennsylvania after enacting a series of other safeguards has provided that in that matter the divorce shall not be allowed.

"Of course, notwithstanding the requirement that in corporations hereafter formed all the stockholders shall be licensed pharmacists, it still would be possible for a stockholder to content himself with drawing dividends and to take no hand in the company's affairs. But obviously he would be more likely to observe the business with an intelligent eye than a casual investor who looked only to the standing of the stock in the market.

"The Constitution does not make it a condition of preventive legislation that it should work a perfect cure. It is enough if the questioned act has a manifest tendency to cure or at least to make the evil less.

"It has been recognized by the professions, by statutes and by decisions that a corporation offering professional services is not placed beyond legislative control by the fact that all the services in question are rendered by qualified members of the profession. See *People vs. Title Guaranty & Trust Co.*, 227 N. Y. 366; *Tucker vs. New York State Board of Pharmacy*, 217 N. Y. Supp. 217, 220. *Matter of Co-operative Law Co.*, 198 N. Y. 479. *People vs. Merchants' Protective Corporation*, 189 Cal. 531. *New Jersey Photo Engraving Co. vs. Carl Schonert & Sons*, 95 N. J. Eq. 12. *Hodgen vs. Commonwealth*, 142 Ky. 722.

"But for decisions to which I bow I should not think any conciliatory phrase necessary to justify what seems to me one of the incidents of legislative power. I think, however, that the police power as that term has been defined and explained clearly extends to a law

like this, whatever I may think of its wisdom and that the decree should be affirmed.

"Of course, the appellant cannot complain of the exception in its favor that allows it to continue to own and conduct the drug stores that it now owns. The Fourteenth Amend-

ment does not forbid statutes and statutory changes to have a beginning and thus to discriminate between the rights of an earlier and those of a later time. *Sperry & Hutchinson Co. vs. Rhodes*, 220 U. S. 502, 505."

## BOOK NOTICES AND REVIEWS.

*Food and Drug Laws—Federal and State.* By CHARLES WESLEY DUNN, ESQ., Publishers, United States Corporation Company, 150 Broadway, New York City. Three volumes, 4193 pages. Price \$50.00.

The author is a member of the New York Bar, General Counsel for the organized American Food and Pharmaceutical Manufacturers, represented by the American Grocery Specialty Manufacturers' Association and the American Pharmaceutical Manufacturers' Association. General Counsel also for the National Association of Retail Grocers, various food, toilet and pharmaceutical manufacturers. These connections have contributed to information that has been brought together in these volumes, and arranged for reference.

*Part 1* of Volume 1 contains the Federal Food and Drugs Act and includes: The act with amendments; the statutory provisions creating the Food, Drug and Insecticide Administration for the administration of the act, etc., and also making the annual appropriation therefor; the miscellaneous statutory provisions; the miscellaneous general food and drug laws, in addition to the act; a complete analytical statement of the court cases reported under the act; the general rules and regulations promulgated under the act; the effective food inspection decisions published under the act; the effective definitions and standards for food products published for use in administering the act; regulatory announcements upon foods and drugs; miscellaneous informative statements.

*Part 2* is largely concerned with food laws and regulations.

*Part 3* includes the following: Abortifacient and contraceptive laws and all postal regulations and reported cases thereunder; caustic poison act; insecticide and fungicide act and regulations, decisions, regulatory announcements and reported cases thereunder; Harrison narcotic act and reported cases thereunder; narcotic drugs import and export act and all reported cases thereunder; manufacture of smoking opium act and Chinese imported

opium act; biologic products acts and all regulations and reported cases thereunder; mailing of poisons law and all postal regulations and reported cases thereunder; pharmacy, poison and narcotic act for the United States consular districts in China; venereal diseases control law; 18th amendment to Constitution of the United States; national prohibition act and acts supplementary thereto and reported cases decided by Supreme Court thereunder; tariff act (dutiable and free lists, to the extent they are pertinent).

*Part 4* considers among items Red Cross insignia law, Lottery law, Commerce protection law, Trade-mark law, Weights and Measures laws and all cases reported thereunder.

*Parts 1* and *2* of Volumes II and III are concerned with general state food and drug laws and special state food laws.

*Parts 3* and *4* give consideration to: Alcohol laws; antiseptic and disinfectant laws; biologic products laws; distribution of samples laws; embalming fluid laws; insecticide and fungicide laws; narcotic laws; pharmacy laws; poison laws; prohibition laws including those relative to Jamaica ginger; stock and poultry remedy laws; toilet preparation laws; wood alcohol laws; false advertising laws; flag desecration law; soap laws; tobacco and tobacco product laws; trade-mark and container protection laws; trading stamp laws; weights and measures laws.

*Part 5* reports cases under above laws, cases involving civil action to recover damages for alleged injury resulting from consumption or use of product.

The matter contained in these volumes makes the work useful for manufacturers, wholesalers, lawyers, pharmacy board and faculty members, who require such information in the discharge of their duties.

*The Opium Problem.* By CHARLES E. TERRY, M.D., AND MILDRED PELLENS for The Committee on Drug Addictions in collaboration with the Bureau of Hygiene, Inc., 370 Seventh