

L. P. Yager

VS

} Appeal

Commenced

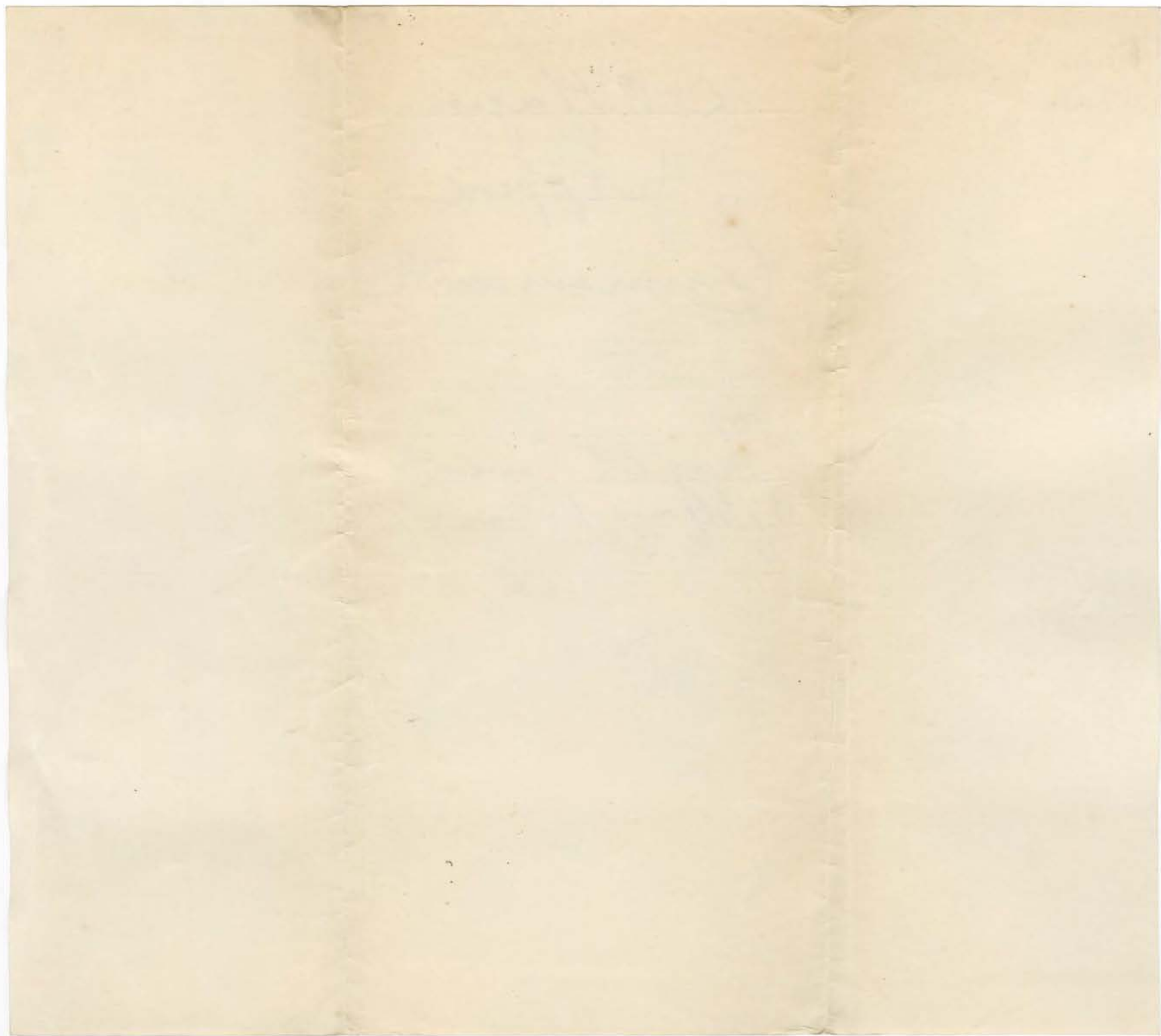
1905

July term

1907

May Ct. Judgt
of Magistrate off.

May 5/06



COMMONWEALTH OF VIRGINIA, }
ROCKINGHAM COUNTY, } TO-WIT:

To the Sheriff or any Constable of said County:

WHEREAS, SW Strickler of the said county, has this day made
complaint and information on oath before me, P. Byam a Justice of the said county, that

J. P. Yager

of the said county, on the 14th day of May 1906, at Penn Laird

in the said county, ~~as~~ in this being a merchant, unlawfully did sell
to said S. V. Strickler a certain drug a poison commonly called
Carbolic Acid the said J. P. Yager being then without authority
to sell and dispense the said drug and poison

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to summon

to appear before me, or some other Justice of the said County, the said J. P. Yager at Harrisonburg
at Harrisonburg on Monday the 2nd day of July 1906
to answer the said complaint, and to be farther dealt with according to law. And you are required to summon

to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence.

Given under my hand and seal this 28th day of June in the year 1906.

Pendleton Byam

J. P. [SEAL.]

This case was heard before me on the 2^d day of July 1906 and on 3^d day of July 1906 judgment was rendered adjudging the Defendant guilty of the offense charged within and a fine of Ten Dollars and \$150 costs imposed upon the Defendant and from my said judgment said Yager having prayed an appeal, an appeal from my said judgment is granted to the said J.P. Yager to the Circuit Court of Rockingham. Given under my hand this 9th day of July 1906

Anderson Bryan Jr.

County of Soc.

vs. Summ.

J.P. Yager

Sherriff. fee 80 cent

Filed Aug 10/06

at the County Clerk

1907

may Just of
Magistrate off

Executed June 29 1914 upon bond for J.P. Yager
By Reading and Explaining to him the contents of the same in
presence of J.P. Yager and all.
J.P. Yager
J.P. Yager
at to 40.00
per Clerk 176
L.P. 150
1826
210
2036

COMMONWEALTH OF VIRGINIA,
ROCKINGHAM COUNTY,

TO-WIT:

To the Sheriff or any Constable of said County:

WHEREAS, S. V. Strickler of the said county, has this day made complaint and information on oath before me, P. Bryan a Justice of the said county, that A. D. Bertam

of the said county, on the 14th day of May 1906, at Kingsletown in the said county, did he him being a merchant unlawfully did sell to the said S. V. Strickler his own drugs and poisons to wit Arsenic and Carbolic acid the said A. D. Bertam being him without authority to sell and dispense said drugs and poison

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to summon to appear before me, or some other Justice of the said County, the said A. D. Bertam at Harrisonburg in said county on Monday the 2nd day of July 1906 to answer the said complaint, and to be farther dealt with according to law. And you are required to summon

to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence.

Given under my hand and seal this 28th day of June in the year 1906.

Pendleton Bryan

J. P. [SEAL.]

On the 3^d day of July 1906, having heard the case on the 2^d day of July 1906) I adjudged the Defendant A. D. Berkam guilty of the offense charged within (but not that of selling arms) and imposed a fine of ten dollars and \$1.50 costs and the said A. D. Berkam having prayed an appeal from my said judgment in this case and tendered J. H. Berkam as his surety who thereupon undertook as his surety for the payment of the said judgment and all costs in case the same shall be affirmed, an appeal from my said judgment is granted the said A. D. Berkam to the Circuit Court of Buckingham County.

Given under my hand this 9th day of July 1906
 Pendleton Bryan J. S.

Court of Va.

vs. James.

A. D. Berkam

Sherriff fee 50 cent
 Fine July 10/06
 by the Mary Court

\$1.50 paid by Berkam

Executed June 29 1906 Thos A. D. Berkam By Reading and
 explaining to him the purport of the same in person
 W. Z. Lillard att.
 J. G. Davidson s. r. c.

OFFICE OF THE CLERK
Supreme Court of Appeals of Virginia,
ALEXANDER W. MAY, CLERK.
Staunton, Va.

November 21, 1907.

This is to certify that on the petition of A. D. Bertram, the Supreme Court of Appeals of Virginia has awarded a writ of error and supersedeas to a judgment of the Circuit Court of Rockingham county, rendered on the 10th day of June, 1907, in a prosecution by the Commonwealth against said A. D. Bertram, for a misdemeanor, provided the petitioner shall enter into bond, with sufficient security, in the clerk's office of the said Circuit Court, in the penalty of One Hundred Dollars (\$100.00), conditioned as the law directs.

Teste:

Alex. W. May
[Signature]
Clerk.

To the clerk of the circuit
court of Rockingham Co. Va. }

Alfred Carter

Commence

200

A. D. Osborn

280

JRB

Pendleton Bryant

M Commonwealth W E Lang

July 2
1906.

To SHERIFF OF ROCKINGHAM COUNTY, Dr.

To

Wasserd

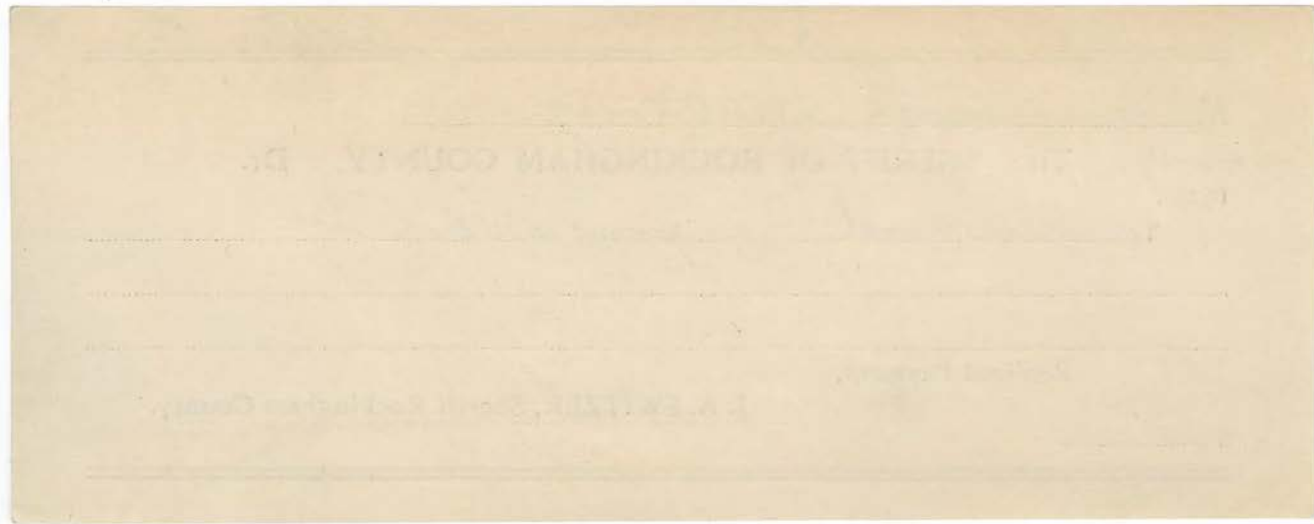
Executed on

W E Lang

Received Payment.

J. A. SWITZER, Sheriff Rockingham County.

\$ 50



229

WZD

Rendenton Bryan

M. Commonwealth of Va. J. P. Yager

June 29 To SHERIFF OF ROCKINGHAM COUNTY, Dr.
1906.

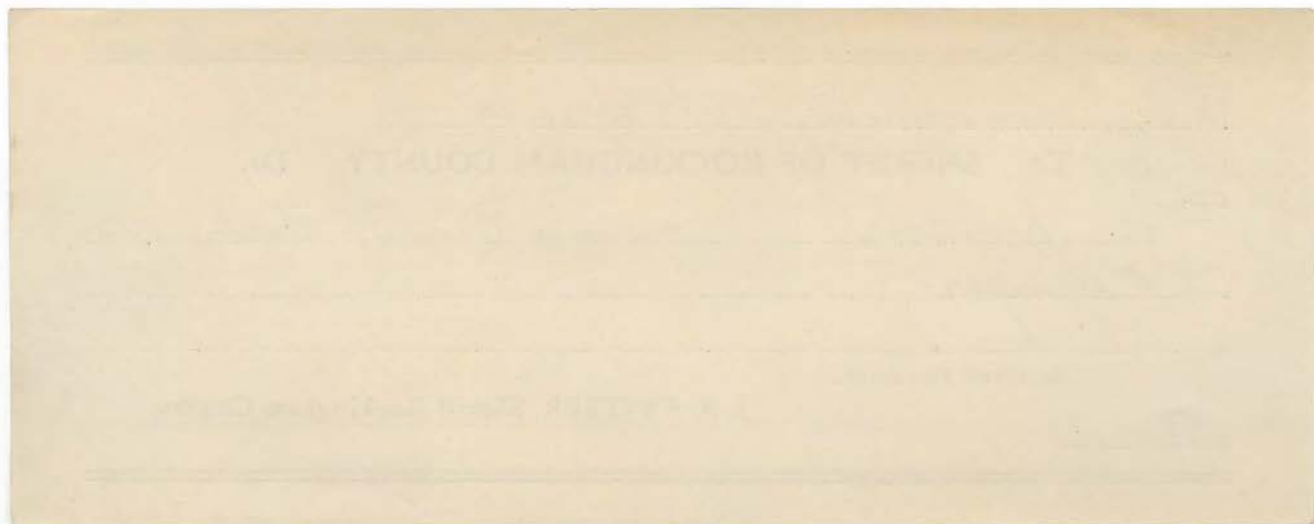
To Warrant Executed on Dinter Clerk for.

J. P. Yager.

Received Payment.

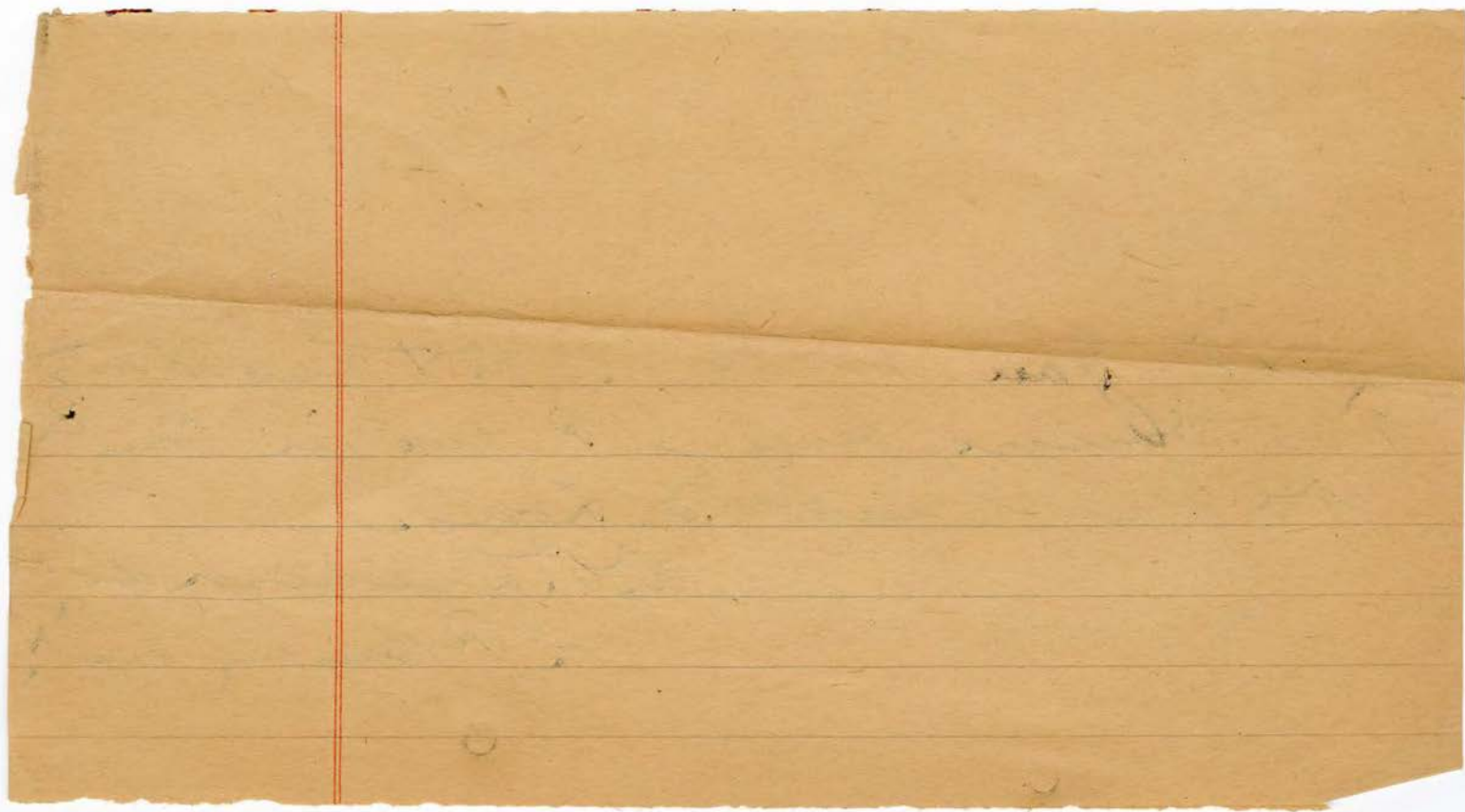
J. A. SWITZER, Sheriff Rockingham County.

\$50



Rec'd Jan. 22/08, of A. H. Lee Martz
Two Dollars, being J. P. fee in Court
v. D. Yager and E. E. Long.

A. H. Decker ad
of R. Bryan, dec'd.



Commonwealth

vs

Thomas P. Gager

Commonwealth

vs

A. D. Beltrami

The Court is of opinion that the objection to the constitutionality of the acts under which this prosecution is conducted is not well taken. The original act, ^{passed March 3, 1886,} was entitled: "An act to incorporate the Virginia Pharmaceutical Association, and to regulate the practice of pharmacy, and to guard the sale of poisons in the State of Virginia". The objects herein stated are germane to each other and the title is broad enough to cover all that is embodied in the statutes as they stand today.

This act was incorporated in the Code of 1887 as Chapter 98, the chapter ~~title~~ heading being "Regulating the practice of Pharmacy" and the chapter falls under Title 24 of the Code, the title heading of which is "The Public Health".

The act of March 3, 1894 (Acts 1893-94, p. 715) amends the Code of 1887 from section 1756 to 1766 inclusive, the amendment being made by reference to the numbers of the sections and the number and subject of the Chapter, the subject of

of the Chapter being described by the words
"in relation to the practice of pharmacy",
which is substantially the chapter heading
of chapter 78 of the Code of 1887. The Court
considers this amendment, and the others
like it, as valid amendments under the
case of *Inversum Brown*, 91 Va. 762. It
may be said in passing that if they
are not valid amendments, then sections
1764 & 1766 as they appear in the Code
of 1887 are the existing law on the sub-
ject, and the result as far as this case
is concerned, is the same, ^{except that the omission is manifestly a violation of the} The act of March
5, 1894, last referred to, changes the num-
ber of section 1764 of the Code of 1887
so that it appears in the new act as
section 1763 (acts 1893-94, p. 719), and
this change is manifestly the cause of
~~the confusion~~ ^{the confusion in} error of description contained in the act
of March 14, 1904 (acts extra session of 1904
p. 296). ^{it should be an error and not a mistake} The latter act was mani-
festly intended to amend section 1763
of the act of March 5, 1894, but section
1763 of the act of March 5, 1894 is an amend-
ment of sec. 1764 of the Code of 1887,
so that the act of March 14, 1904 is truly an
amendment of sec. ¹⁷⁶⁴ 1764 of the Code of
1887 as amended by the act of March 5,

from volume 120 of index of 102

1894, one feature of which last mentioned Amendment was a change of the section number from ¹⁷⁶⁴1794, as it was in the Code of 1887, to ¹⁷⁶³1793, as it appears in the act of 1894. The section should now appear in the Code as section ¹⁷⁶³1793 (that being the number given it by the act of 1894), but the act of March 14, 1904 is truly "an act to amend and re-enact section 1764 of the Code of Virginia, as amended by an act approved March 5, 1894, ~~relating to~~ ~~the practice of pharmacy~~". There is an error, however, in the act of March 14, 1904 in that in the margin of the body of the act (not in the title or in the enacting part) the section amended is numbered 1764 (following the Code of 1887) instead of 1763 which was the true number by virtue of the act of March 5, 1894. This confusion in numbers, however, even if ~~it~~ ~~exists~~ the error existed in the title or the enacting clause, would not vitiate the manifest purpose of the General Assembly to amend the section which was ¹⁷⁶⁴1794 in the Code of 1887 and 1763 in the act of 1894. The case falls under the influence of the principle expressed in the maxim "Falsa demonstratio non nocet cum corpore constat". This is

the law applicable to such a case as declared by Mr. Black in his "Interpretation of Laws," where he mentions the exact case, saying: "And if a later statute expressly refers to a designated section of an earlier act, to which it can have no application, but there is another section of the prior statute to which, and to which alone, in view of the subject matter, the later act can properly refer, it will be read according to the manifest purpose of the Legislature, and the misdescription will not vitiate." ~~The Court~~

~~false description contained~~ Black in his "Interpretation of Laws," pages 80 & 81, sec. 38.

For the proposition quoted above the author cites four decisions, as follows:

People v King, 28 Cal. 266

Stinebaugh v Whalley, 9 Iowa, 390

People v Hill, 3 Utah, 334

Comm. v Marshall, 69 Pa. St. 328

Applying this principle, the error in the marginal section number contained in the act of Mich. 14, 1904, should be corrected, and the section would remain No. 1763 as fixed by the act of 1894, and sec. 1764 would remain as fixed by that act. If for any reason the act of Mich. 14, 1904 is not a valid amendment of sec. 1763 of the act of 1894, then the latter act remains the law today. The constitutionality of this law and the status of sec. 1763 being undisputed, it remains to be considered whether the defendant as a carrying merchant comes within the opera-

him of the law, and ^{if so} whether he is guilty
 of violating it. It is claimed on behalf
 of the defendant that ~~merchants~~ sec. 1763
 applies only to "persons having authority"
 to sell or dispense medicines or poisons,
 to wit, as argued, ^{to} druggists, and that mer-
 chants, not being persons having author-
 ity to sell, do not fall under the pro-
 hibition or requirements of that section.
 The argument is a little paradoxical ~~at~~
~~its scope~~, in that it asserts that only
 persons authorized to sell are prohibited
~~to do the~~ things specified from selling ⁱⁿ the
 way condemned by the statute, and that
 all other persons, not being authorized
 to sell at all, may sell any way they
 please. It seems to me that it would be
 a singular sort of case with respect to
 the sale of poisons that would throw around
 druggists, as to whom the law makes special
 provisions because reliability & skill, the
 safe guards prescribed by sec. 1763, and
 at the same time permit the free and
 unregulated sale of the same articles
 by persons without special training or

Still. ~~Neither~~ do I think I do not think
the language of the section will bear this
restricted construction. It is moreover
manifest from the terms of sec. 1765
that sec. 1763 was intended to apply to
and govern merchants, certainly as to
the sale of "domestic medicines", under which
head, it is contended by counsel for deft.,
carbolic acid should be classed. When
sec. 1765 says that "none of the provisions
of this chapter except those contained in
secs. 1763 & 1764 shall prevent the
sale by merchants" &c, it is equivalent
to declaring that secs. 1763 & 1764 shall
govern merchants, at least to the extent
of the articles mentioned in sec. 1765, inclu-
ding "domestic medicines"; ~~and therefore if~~
~~that construction were made~~ And this section
also, if that construction were needed, author-
izes merchants to sell the designated ar-
ticles, and by that means also brings them
under the influence of sec. 1763 as "per-
sons having authority to sell". The de-
fendant sold carbolic acid without con-

Alleging with the argument of sec. 1763.
 It is plain, however, that he is guilty of
 a violation of that sec. & amounts to a
 penalty imposed by sec. 1766 even though
 Carbolic acid could be regarded as a "domes-
 tic medicine" ^{"within the meaning of sec. 1763"} ~~which is not~~ ^{as stated} ~~in the~~
 at all by merchants. I incline to the
 opinion, ^{however,} that it is not a "domestic medi-
 cine" within the meaning of that statute,
 and, if it is not, the defendant is
 guilty under sec. 1759. If it be true
 that the words "domestic medicines," as used
 in the statute, are to be construed as synon-
 ymous with "domestic remedies," and
 if he conceded that Carbolic acid is a remedy
 he a physician or remedy, yet Carbolic acid
 is certainly not a "domestic" medicine or
 a "domestic" remedy. "Medicine" is defined
 by the Webster dictionary as a "substance pro-
 ducing or reputed to produce curative or bene-
 ficial qualities," and "remedy" as "that which
 is used in any way for the cure or relief of
 bodily disease or ailment," a medicine, also,
 remedial treatment. There are also the mean-
 ing attached to the words by common ac-
 ceptation. I don't think either word can
 be broadened to include ^{trivially} ~~trivial~~ "factoid" in
 its meaning. The words "domestic medicine"
 or "domestic remedy," it seems to me, must be

inclined to mean a remedy or medicine which can be and commonly is used for the treatment of bodily disease in the ordinary administration of domestic affairs without the intervention of medical or other professional skill & aid. The fact that carbolic acid is commonly used ~~as~~ as a disinfectant does not make it a domestic medicine. All medicines & all remedies are domestic in the sense that they are used in the family & the home, but I would consider that only those which can be used ^{substantially} in the form in which they are bought, and which are commonly used without the aid of professional advice, can be considered "domestic medicines" within the meaning of the law. I do not think carbolic acid can come within this classification, and am of opinion therefore that it can not be sold by over-channels.

The Court finds the defendant guilty (in each case) and ascertains his punishment at a fine of \$10⁰⁰.

J. H. H.

Carr v. Gayer

Carr v. Bertram

IN VACATION :

*In the Clerk's Office of the Supreme Court of Appeals
of Virginia, at Staunton, on Thursday, the 10th day of
December, , 1908.*

*The Clerk of the Supreme Court of Appeals of Virginia at Richmond
certifies the following order in words and figures following, viz :*

VIRGINIA:

In the Supreme Court of Appeals, held at the Library Building
in the City of Richmond, on Thursday, the 19th day of Novem-
ber, 1908.

A. D. Bertram - - - - - Plaintiff in Error

against

The Commonwealth of Virginia - - - - - Defendant in Error

Upon a writ of error and supersedeas to a judgment ren-
dered by the Circuit Court of Rockingham County on the
10th day of June, 1907.

This cause, which is pending in this court at its place of ses-
sion at Staunton, having been fully heard but not determined at said
place of session; this day came here the parties by counsel, and the
court having maturely considered the transcript of the record of the
judgment aforesaid and arguments of counsel, is of opinion, for reasons
stated in writing and filed with the record, that there is no error in
the said judgment. It is therefore considered that the same be affirmed,
and that the defendant in error recover of the plaintiff in error thirty
dollars damages, and also her costs by her expended about her defence
herein.

Which is ordered to be entered in the order book here and forth-
with certified ~~certified~~ together with a certified copy of the opinion
in this cause, to the clerk of this court at Staunton, who will enter
this order in the order book there and certify it to the said Circuit
Court.

A Copy,

Teste: H. Stewart Jones, C.C.

Defendant in Error's
costs at Richmond, \$1.77

A Copy,

Teste: *Alex. Murray*, Clerk.

Defendant in Error's costs in
the Supreme Court of Appeals:
Attorney's fee - - - - - \$20.00
Costs at Richmond - - - - - 1.77
Total - - - - - \$21.77

Teste:

Alex. Murray clerk

J. P. Cook

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at

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J. D. Beetham

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the Comptroller of Virginia

DEC 14 1908

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A. D. Bartram

VS

} Appeal from J. P.

Commencement

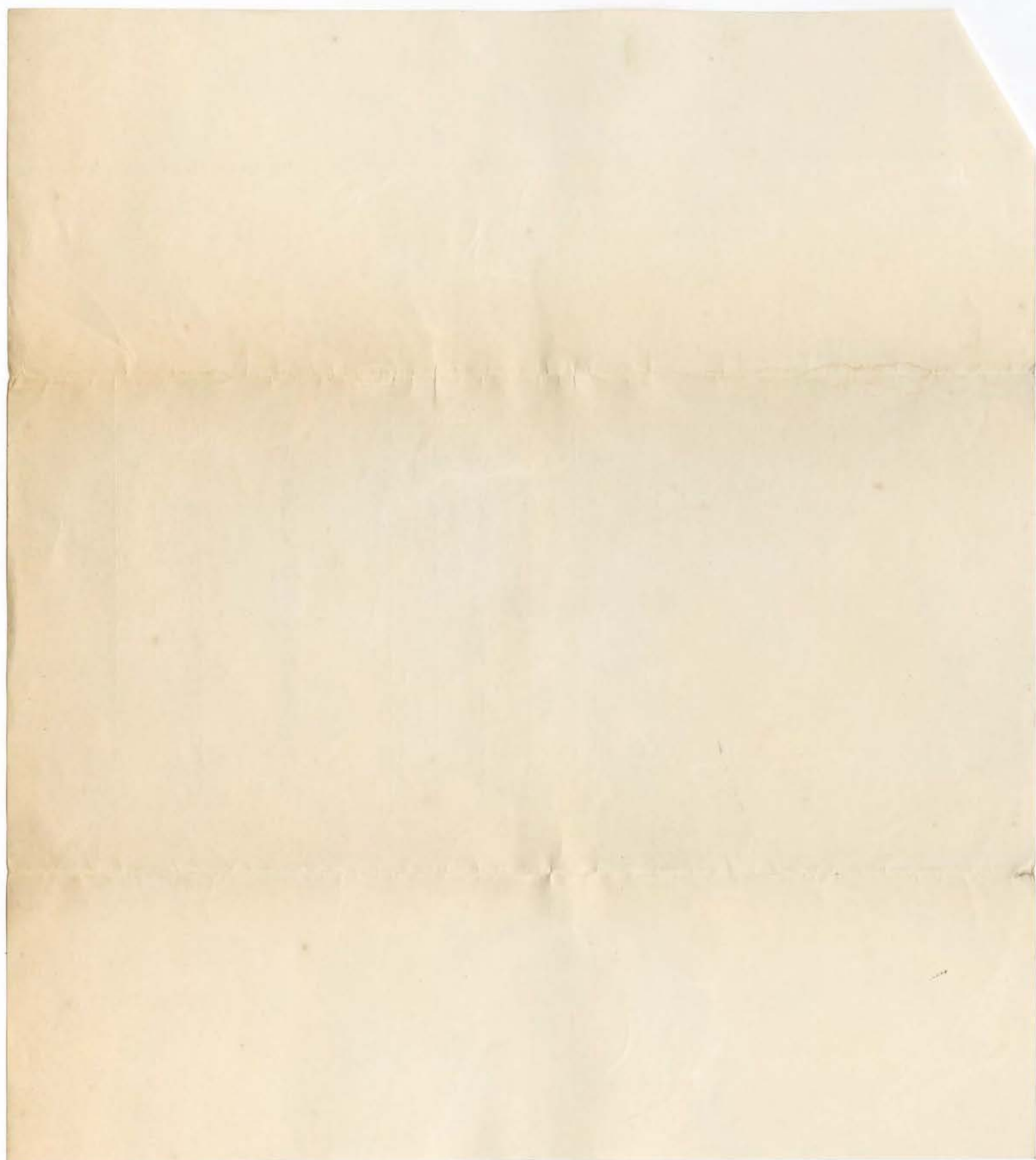
1906

H. W. B.

July term

1907

May Indict of
Magistrate aff'd



In the Circuit Court of Rockingham.

Commonwealth

Vs).

Upon an appeal from a Justice of the Peace.

A. D. Bertram.

BILL OF EXCEPTION No. I.

BE IT REMEMBERED that upon the trial of this cause the defendant, by his Counsel, moved the Court to exclude all of the testimony of the Commonwealth's witness S. B. Strickler, and so much of the testimony of James L. Avis, another witness in behalf of the Commonwealth, as relates to the contents of the bottle introduced in evidence being carbolic acid, on the grounds that the same is inadmissible, because it had been shown by the testimony that the said defendant is not a registered pharmacist, and there is no penalty imposed upon him by the Act. The said testimony of said S. B. Strickler and so much of the testimony of the said James L. Avis, as aforesaid, is found in the certificate of the evidence with the second bill of exceptions, and is here to be deemed taken as though fully written out in this bill of exceptions, and for the exclusion whereof the said motion was made. But the Court declined to grant the said motion, and considered the said testimony so offered, to which action of the court in overruling said motion and refusing to strike out the said testimony and considering the same, the defendant, by Counsel, excepted, and prayed that this his first bill of exceptions may be signed, sealed and enrolled and made a part of the record, which is accordingly done, this 25th day of June, 1907.

J. H. Haas

(Seal.)

In the Circuit Court of Rockingham County.

Commonwealth

Vs). Upon an appeal from a Justice of the Peace.

A. D. Bertram.

BILL OF EXCEPTION No. II.

BE IT REMEMBERED that upon the trial of this case before the Hon. T. N. Haas, Judge of the Circuit Court of Rockingham County, Virginia, -- a trial by jury having been waived -- the same having been appealed from the decision of a Justice of the Peace of said County, the Commonwealth to maintain the issue on its part offered the testimony of the following witnesses:

(Here insert testimony from Stenographer's transcript.)

This being all of the testimony offered by the Commonwealth, the said defendant, to maintain the issue on his part, offered the testimony of the following witnesses:

(Here insert testimony from Stenographer's transcript.)

This being all of the testimony submitted to the court on both sides, after arguments of counsel, the court upon taking time to consider said testimony and arguments, entered the following judgment:

(Here copy the judgment of the court.)

To which action of the court in entering said judgment the said defendant, by counsel, objected upon the ground that the

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same was erroneous because contrary to the law and the evidence,
and the certificate of the evidence
and prayed that this his second bill of exceptions, may be signed,
sealed and enrolled and made a part of the record, which is
is accordingly done this 25th day of June, 1907.

J. N. Haas

Seal.)

In the Circuit Court of Rockingham County.

Commonwealth

Vs). Upon appeal from a Justice of the Peace.

A. D. Bertram.

Transcript of the testimony offered before Judge T. N. Haas, Judge of said Court, at the hearing on Friday, February 15th, 1907.

APPEARANCES: Geo. N. Conrad, Esq., Attorney for the Commonwealth; and Capt. A. B. Guigon, Attorney for the Virginia Pharmaceutical Association.

APPEARANCES: H. W. Bertram, Esq., and Messrs. Sipe & Harris, Attorneys for the Defendant.

S. B. STRICKLER, being duly sworn, on examination for the Commonwealth, testified:-

Q Your name is S. B. Strickler?

A Yes, sir.

Q I believe you are at present a student at the Bridgewater College, in this county?

A Yes, sir.

Q I wish you would state whether, on the 14th day of last May, you bought carbolic acid from Mr. A. D. Bertram's store, at Keezletown, in this county?

A Yes, sir, I did.

In the Circuit Court of Rockingham County.

Commonwealth

Ver. Upon appeal from a Justice of the Peace.

A. D. Bortone.

Transcript of the testimony offered before Judge T. E. Hane, Justice of said Court, at the hearing on Friday, February 12th, 1907.

ATTORNEYS: Geo. W. Bortone, Esq., Attorney for the Commonwealth; and Capt. A. B. Guiton, Attorney for the Virginia Pharmaceutical Association.

ATTORNEYS: H. W. Bortone, Esq., and Mr. Bortone, Esq., Attorneys for the Defendant.

S. B. STECKMAN, being duly sworn, on examination for the

Commonwealth, testified:-

Q Your name is S. B. Steckman?

A Yes, sir.

Q I believe you are at present a student at the Bridgewater

College, in this county?

A Yes, sir.

Q I wish you would state whether, on the 12th day of last

May, you bought certain said land from Mr. A. D. Bortone's agent, at

Kearfottown, in this county?

A Yes, sir, I did.

Q Have you the package or bottle with you?

A Yes, sir. (Producing bottle.)

Q Here is a small bottle, marked A. D. Bertram, Keezletown, and labeled "Car. Acid, poison."

A Carbolic acid, poison, simply. I bought that of the clerk, Lewis Stultz, and labeled it.

Q This one label which has the red border was put on by you after you purchased the carbolic acid?

A Yes, sir.

Q And that memorandum on it was a memorandum made by you?

A Yes, sir.

Q And this other label, on the opposite side of the bottle. indicating carbolic acid, poison, who put that label on?

A The clerk took the bottle to the back part of the store and I think Mr. Bertram put it on himself; I am not sure.

Answer objected to by Defendant's Counsel.

THE COURT: Do you mean that the label was on when the bottle was taken down from the shelf, or when the bottle was delivered to you?

A The bottle was labeled when it was delivered to me.

THE COURT: Did you see the label put on the bottle?

A No, sir, I did not see it put on the bottle.

Q It was on the bottle when it came into your possession?

A Yes, sir.

Q Was it on the bottle when it was taken down from the shelf?

A No, sir.

Q It was put on the bottle after it was taken from the shelf?

A Yes, sir.

Q Who took it from the shelf, Mr. Bertram or the clerk?

(S.B.Strickler.)

--3--

A The clerk.

Q Did it pass through Mr. Bertram's hands from the time it was taken from the shelf until it was delivered to you?

A I do not know.

Q Was the bottle supplied by you, or was it supplied at the store?

A It was supplied at the store.

Q Did you see the bottle filled, or was it already filled before it was exhibited to you?

A I don't remember if I just saw it poured out or not.

Q Was the carbolic acid put into the bottle there at the time you bought it?

A It was put in the bottle at the time I bought it, I am sure.

Q Did you say that you saw it poured into the bottle, or did you say you did not see it poured out?

A I didn't say either. I said, I didn't remember whether I say it poured or not.

Q Just state how the -- Was the empty bottle taken down from the shelf and afterwards presented to you with carbolic acid in it, or was a bottle containing carbolic acid taken from the shelf and just delivered to you from the shelf?

A The clerk got an empty bottle and had it filled for me. That is the way it was.

Q He got an empty bottle and had it filled?

A Yes, sir; I saw him get the empty bottle.

Q Do you remember what you paid him for it?

A Nickel, I think.

A The clerk.

Q Did it pass through Mr. Barton's hands from the time it was taken from the shelf until it was delivered to you?

A I do not know.

Q Was the bottle supplied by you, or was it supplied at the

store?

A It was supplied at the store.

Q Did you see the bottle filled, or was it already filled

before it was exhibited to you?

A I don't remember if I just saw it poured out or not.

Q Was the carbolic acid put into the bottle there at the

time you bought it?

A It was put in the bottle at the time I bought it, I

am sure.

Q Did you say that you saw it poured into the bottle, or did

you say you did not see it poured out?

A I didn't say either. I said, I didn't remember

whether I saw it poured or not.

Q That state how the -- Was the empty bottle taken down

from the shelf and afterwards presented to you with carbolic acid

in it, or was a bottle containing carbolic acid taken from the

shelf and just delivered to you from the shelf?

A The clerk got an empty bottle and had it filled for

me. That is the way it was.

Q He got an empty bottle and had it filled?

A Yes, sir; I saw him get the empty bottle.

Q Do you remember what you paid him for it?

A Nickel, I think.

CROSS-EXAMINATION BY MR. SIPE.

XQ You stated the date of this purchase from Mr. Bertram's store, did you, Mr. Strickler?

A The 14th of May, 1906.

Q For what purpose did you make this purchase of carbolic acid?

A I was sent there by the Board of Pharmacy of Virginia to buy it.

XQ And who was acting for the Board of Pharmacy in sending you there?

Objected to as being contrary to public policy;
objection sustained and exception noted for
defendant.

XQ You have stated that you placed on this bottle this label: was that supplied to you by the Board of Pharmacy?

A Which, the label?

XQ Yes, sir.

A Yes, sir.

XQ What were your directions from the Board of Pharmacy.-- But, first, were those directions in writing?

Objected to as irrelevant; sustained, and exception noted for the defendant.

XQ You did have instructions from the Board of Pharmacy before going to this place; they supplied you with labels, and were you also supplied with bottles by the Board of Pharmacy?

A Yes, sir.

XQ How many bottles were you supplied with, Mr. Strickler?

A I don't remember how many there were. I don't know whether they were counted or not. Several dozen.

CHRONOLOGICAL HISTORY OF THE CASE.

Q You stated the date of this purchase from Mr. Barker's store, did you, Mr. Strickland?

A The 14th of May, 1900.

Q For what purpose did you make this purchase of carbolic

acid?

A I was sent there by the Board of Pharmacy of the

State to buy it.

Q And who was acting for the Board of Pharmacy in sending

you there?

Objection to an answer; in public policy;
objection sustained and question noted for
defendant.

Q You have stated that you placed on this bottle this

label: was that supplied to you by the Board of Pharmacy?

A Yes, the label.

Q Yes, sir.

A Yes, sir.

Q What were your directions from the Board of Pharmacy?

But, first, were these directions in writing?

Objection to an answer; sustained, and ex-
cluded noted for the defendant.

Q You did have instructions from the Board of Pharmacy

before going to this place; they supplied you with labels, and

were you also supplied with bottles by the Board of Pharmacy?

A Yes, sir.

Q How many bottles were you supplied with, Mr. Strickland?

A I don't remember how many there were. I don't know

whether they were counted or not. Several dozen.

(S.B.Strickler.)

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XQ Mr. Strickler, is it not a fact that you are permanently employed by the Board of Pharmacy to obtain information of these alleged infractions of the law by going to merchants in different parts of this Commonwealth and asking to purchase carbolic acid and other drugs?

A No, sir, not permanently employed.

XQ How long have you been in this employment of the Board of Pharmacy?

A I was only employed by them a couple of months. I am not employed by them now.

XQ How many stores did you visit in Rockingham county on this mission?

A I don't know.

XQ Did you not keep a record of the stores you visited?

A Only those that I purchased goods from.

XQ How many were there of those stores at which you made purchases of this character?

A Between fifty and seventy-five. I don't know the number exactly.

XQ Is it a fact that you were engaged in other counties, in the same business, by the Board of Pharmacy?

A I was.

XQ What counties, sir?

A Augusta, Shenandoah, Loudoun, Prince William, Alexandria, and Fairfax.

XQ How many did you report in Augusta county?

A I don't remember, at all.

(S.B.Strickler.)

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XQ Well, how many did you report altogether, in Rockingham county and in the other counties mentioned?

A I don't remember that.

XQ Well, about how many?

A I cannot tell you about how many. Several hundred.

XQ Several hundred?

A Between two and three hundred, I would say.

XQ And, Mr. Strickler, what arrangement did you have with the Board of Pharmacy with regard to your compensation for this service?

A Twenty-five dollars a month salary and two dollars and a half for each conviction.

XQ And you received \$25.00 a month salary and two dollars and fifty cents on each conviction. Were you to receive any compensation to cover your travelling expenses and other expenses?

A Yes, sir; all of my expenses were paid.

XQ Who was to pay this salary, your expenses and this \$2.50 on each conviction?

A The Board of Pharmacy.

XQ Who represented this Board of Pharmacy in making this contract with you?

Objection; sustained; exception for defendant.

XQ Was this salary, expenses and commission paid to you?

A The salary and expenses were.

XQ How much did you receive?

A I don't know that, in all.

XQ Have you received any thing on account of convictions?

A No, sir.

XQ Your compensation, then, with regard to convictions, awaits the result of pending proceedings; that is a fact, is it not?

Q Well, how many did you report altogether, in Washington County and in the other counties mentioned?

A I don't remember that.

Q Well, about how many?

A I cannot tell you about how many. Several hundred.

Q Several hundred?

A Between two and three hundred, I would say.

Q And, Mr. Strickler, what arrangement did you have with the Board of Prisoners with regard to your compensation for this service?

A Twenty-five dollars a month salary and two dollars

and a half for each conviction.

Q And you received that a month salary and two dollars

and fifty cents on each conviction. Were you to receive any com-

pensation to cover your traveling expenses and other expenses?

A Yes, all of my expenses were paid.

Q Who was to pay this salary, your expenses and that \$2.50

on each conviction?

A The Board of Prisoners.

Q The Board of Prisoners? This Board of Prisoners in making this

contract with you?

Q Yes, understood; execution for defendant.

Q Was this salary, expenses and commission paid to you?

A The salary and expenses were.

Q How much did you receive?

A I don't know that, sir.

Q Have you received any thing on account of convictions?

A No, sir.

Q Your compensation, then, with regard to convictions, awaits

the result of pending proceedings; that is a fact, is it not?

A Yes, sir.

XQ What did you do with the various drugs that you purchased from the merchants?

Objection; sustained; exception for defendant.

XQ Well, what did you do with the carbolic acid which you say you purchased in this bottle from Mr. Bertram's store?

A I kept it in a box here at Mr. Avis's.

XQ What did you do with it?

A Kept it in a box here in Mr. Avis's store.

XQ Mr. Avis is a druggist here in Harrisonburg?

A Mr. James L. Avis; yes, sir.

XQ Has he any official position in connection with the State Board of Pharmacy?

A Yes, sir.

XQ When did you first see this bottle after it was placed in the box in charge of Mr. Avis?

A I saw it in the Magistrate's court.

XQ You said that the label with a red border was attached to this bottle after you purchased its contents: do you know when the other label was put on the bottle?

A Put on it the day I purchased it.

XQ Where was it put on?

A In the rear part of Mr. Bertram's store.

XQ Were you in the rear part of the store?

A No, sir.

XQ You say that you were not?

A No, sir. I was about the centre of the store.

XQ Did you see Mr. Bertram put that label on that bottle?

Q Yes, sir.

Q What did you do with the various things that you purchased from the defendant?

Q Objection; sustained; exception for defendant.

Q Well, what did you do with the cartons and what did you do with the bottles in this bottle from Mr. Berman's store?

A I kept it in a box here at Mr. Avia's.

Q What did you do with it?

A I kept it in a box here in Mr. Avia's store.

Q Mr. Avia is a druggist here in Harrisonburg?

A Mr. James L. Avia; yes, sir.

Q Has he any official position in connection with the State Board of Pharmacy?

A Yes, sir.

Q When did you first see this bottle after it was placed in the box in charge of Mr. Avia?

A I saw it in the Magistrate's court.

Q You said that the label with a red border was attached to this bottle after you purchased its contents; do you know when the other label was put on the bottle?

A First on is the day I purchased it.

Q Where was it put on?

A In the rear part of Mr. Berman's store.

Q Were you in the rear part of the store?

A No, sir.

Q You say that you were not?

A No, sir. I was about the center of the store.

Q Did you see Mr. Berman put that label on that bottle?

(S.B.Strickler.)

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A I don't know who he was.

XQ You don't know who put it on?

A No, sir.

XQ Do you know that you saw any body in the back part of the store put the label on that bottle?

A I know it was put on back there.

XQ I ask you the direct question: did you see any body in Mr. Bertram's store, put that label on that bottle?

A No, sir, I did not see it.

XQ Mr. Strickler, you have said that you did not see the liquid poured into that bottle -- hav'n't you said that?

A Yes, sir, I believe I did.

XQ How much did you buy, Mr. Strickler, in that bottle?

A Five cents worth.

XQ How near full was the bottle?

A I don't remember whether it was poured full or not.

XQ Do you know of your certain knowledge that that bottle was not labeled with the contents in it as an original package when you bought it?

A Yes, sir, I know it.

XQ How do you know it, now, sir? You stated you did not see the contents put in and that you did not see it labeled?

A I saw the clerk get the empty bottle.

XQ But as you did not see any body put the label on there, how can you say that that was the bottle on which that label was put?

A Well, I have stated what I know about it.

XQ But you did not see it; how do you know it, sir? Explain to the court: you have said that you did not see the liquid

A I don't know who it was.

Q Now don't know who put it on?

A No, sir.

Q Do you know that you saw any body in the back part of

the store put the label on that bottle?

A I know it was put on back there.

Q I ask you the direct question: did you see any body in

Mr. Bartlett's store, put that label on that bottle?

A No, sir, I did not see it.

Q Mr. Strickland, you have said that you did not see the

liquid poured into that bottle -- haven't you said that?

A Yes, sir, I believe I did.

Q Now when did you say, Mr. Strickland, in that bottle?

A Five cents worth.

Q How many full was the bottle?

A I don't remember whether it was poured full or not.

Q Do you know of your own knowledge that that bottle

was not labeled with the contents in it as an original package

when you bought it?

A Yes, sir, I know it.

Q How do you know it, now, sir? You stated you did not see

the contents put in and that you did not see it labeled?

A I saw the clerk get the empty bottle.

Q And he did not see any body put the label on there,

now can you say that that was the bottle on which that label was

put?

A Well, I have stated that I know about it.

Q But you did not see it; how do you know it, sir? Ex-

plain to the court: you have said that you did not see the liquid

(S.B.Strickler.)

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poured in the bottle, and that you did not see that label put on the bottle, now, I want you to tell the court how you know, in a criminal proceeding against this man, whether that is the same bottle that you saw the clerk take to the back part of the store?

A I don't know whether it is the same bottle or not.

XQ Did Mr. Conrad ask you your age?

A No, sir.

XQ What is your age?

A Twenty-two.

REDIRECT EXAMINATION BY MR. CONRAD.

Q. This label which you say was put on the bottle when it was delivered to you is just a piece of common writing paper?

A Yes, sir.

Q And written with a pen?

A Yes, sir.

Q And underneath of it is there not the appearance of another label having been upon the bottle?

A Yes, sir.

Q Underneath this label, I mean, which is marked "carbolic acid poison" //

A Yes, sir.

The witness was told to stand aside.

MR. CONRAD: The fact of Mr. Bertram's not being a registered pharmacist is a matter of proof --

MR. HARRIS: You can offer proof, and we will not object to it.

MR. GUIGON: Can not that fact go in as agreed?

MR. HARRIS: It is agreed; but I want it to emanate from you

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as proof, and not come as a concession from us.

THE COURT: You could write out the question and forward it to the Secretary of the State Board of Pharmacy and have his answer here in time for the next term of court.

MR. CONRAD: WE will put Mr. Avis on the stand, and prove it in two ways.

JAMES L. AVIS, being duly sworn, on examination testified as follows:

Q You are a druggist and a registered pharmacist of the State of Virginia?

A Yes, sir.

Q How long have you been engaged in business as a pharmacist?

A All my life.

Q What is your age?

A I am in my sixty-second year.

Q You don't mean that you have been in the pharmacy business for sixty-two years?

A Oh, no, but since I was old enough -- about forty years.

Q I wish you would examine this vial and state whether you have examined its contents and whether it contains carbolic acid or not?

A Well, from my general knowledge of carbolic acid I would say that it was a grade of carbolic acid -- some grade.

Q You are a member of the State Board of Pharmacy, I believe?

A Yes, sir.

Q What is your official connection with it?

A I am president of the board.

an error, and not as a consequence of the error.
THE COURT: You could write out the question and answer it
to the satisfaction of the State Board of Pharmacy and have his answer
here in time for the next term of court.
MR. CONRAD: We will put Mr. Ayle on the stand, and prove it
in two days.

JAMES L. AYLE, being duly sworn, on examination testified

as follows:

Q You are a druggist and a registered pharmacist of the

State of Virginia?

A Yes, sir.

Q How long have you been engaged in business as a pharmacist?

A All my life.

Q What is your age?

A I am in my eighti-second year.

Q You don't mean that you have been in the pharmacy business

for eighty-two years?

A Oh, no, and since I was old enough -- about forty

years.

Q I wish you would examine this vial and state whether you

have examined its contents and whether it contains carbolic acid

or not?

A Well, from my general knowledge of carbolic acid I

would say that it was a grade of carbolic acid -- some grade.

Q You are a member of the State Board of Pharmacy, is that not

so, sir?

Q What is your official connection with it?

A I am president of the board.

(Jas. L. Avis.)

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Q State, if you know, whether Mr. A. D. Bertram, of Keezle-town, in this county, is a registered pharmacist or not?

A He is not.

Q Carbolic acid is not a proprietary medicine, Captain Avis, is it?

A No, sir.

Q Is it a domestic remedy -- domestic medicine?

A It is classed in pharmacy law as a deadly poison, and the same special label that is directed to be put on all deadly poisons is required to be put on carbolic acid.

Answer is objected to, because a statement of law and not a statement of fact.

A (Concluded) I am not attempting to construe the law, but state it as I understand it and as it is printed.

Q Carbolic acid is, as a matter of fact, a deadly poison?

A Yes, sir.

Q And is not a domestic remedy?

A No, sir, I would not so consider it. I suppose I am here to give evidence and not merely to answer strictly any little question, and I will just state; My information is that many states of this country prohibit the sale of carbolic acid in its original strength; they will not permit the sale of pure carbolic acid; they only allow it to be sold when the purchaser makes known the use he wishes to make of it and the druggist is allowed to prepare a solution, a weaker preparation of it, to meet his wants.

Same objection to this answer as made last above.

CROSS-EXAMINATION BY MR. HARRIS:

XQ You are not prepared to say what solution of so-called

(Jas. L. Avis.)

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carbolic acid is contained in this vial, or what amount of pure carbolic acid is in it?

A No, sir; but I would not take it to be a very pure grade of carbolic acid. Its odor would indicate that it is not of a very good grade. This is what is known as commercial carbolic acid.

XQ For what sort of use?

A Well, it is really -- That grade of acid, if it is what I believe it is, an ordinary carbolic acid, it is not fit for any thing except disinfectant purposes. It would not do to make a solution of it and put on wounds. That is why restrictions are thrown around a solution of carbolic acid; it might set up inflammation in a wound and cause serious injury to man or beast.

XQ That quality of carbolic acid is designed almost entirely for use for domestic purposes in the way of a disinfectant, is it not?

A Well, it is sometimes used --It has very many uses, because the public --

XQ (Interposing) I am not talking about the public, I am asking you if it is not a fact that there is such a grade of carbolic acid which is known as commercial carbolic acid for disinfectants?

A There is such a grade known, and it is regarded as a very dangerous grade of acid.

XQ Mr. Avis, how did it come to be called commercial acid?

A That is just an ordinary name given to a cheaper grade of carbolic acid.

XQ Is it not a fact, Mr. Avis, that it is called "Commercial" because it is prevalent in commerce; that it is bought and

carbolic acid is contained in this vat, or what amount of pure carbolic acid is in it?

A. No, sir; but I would not take it to be a very pure grade of carbolic acid. Its odor would indicate that it is not of a very good grade. This is what is known as commercial carbolic acid.

Q. For what sort of use?

A. Well, it is really -- that grade of acid, it is in what I believe is an ordinary carbolic acid, it is not fit for any thing except disinfectant purposes. It would not do to make a solution of it and put on wounds. That is why restrictions are thrown around a solution of carbolic acid; it might set up inflammation in a wound and cause serious injury to men or horses.

Q. That quality of carbolic acid is designed almost entirely for use for domestic purposes in the way of a disinfectant, is it not?

A. Well, it is sometimes used -- it has very many uses, because the public --

Q. (Interposing) I am not talking about the public, I am asking you if it is not a fact that there is such a grade of carbolic acid which is known as commercial carbolic acid for disinfectant?

A. There is such a grade known, and it is regarded as a very dangerous grade of acid.

Q. Mr. Ains, how did it come to be called commercial acid?

A. That is just an ordinary name given to a cheaper

grade of carbolic acid.

Q. Is it not a fact, Mr. Ains, that it is called "commercial"

acid because it is prevalent in commerce; that it is bought and

(James L. Avis.)

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sold in the stores? Is not that the meaning of commercial?

A No, sir. If I was to designate an article in ordering it as "commercial" I would mean by that that I wanted a cheaper grade; if I wanted pure carbolic acid I would designate it as chemically pure.

XQ And I ask you, how did that grade you speak of come to be termed "Commercial" if it were not for the fact that it is in common use, commercially?

A There are several grades that may be termed "Commercial."

XQ But are they not in common commercial use, and so are called "Commercial" grades?

A I don't understand it that way. The word "Commercial" is simply used by the dealers. The public are not supposed to know any thing about it as commercial. What I mean by that is, that it is not my understanding that the word "Commercial" is used by the public; it is one used by those who are familiar with the varieties of it.

XQ You have stated that there is a cheaper grade of carbolic acid known as "Commercial" carbolic acid --

A Well, there are several cheaper grades.

XQ Is not the term itself indicative of the common use in commerce of this grade, or these grades, and, is it not a fact that they are more commonly used in commerce than the pure carbolic acid?

A You do not understand me exactly right. When I used the word "commercial" I do not want to be understood as saying that it is known generally as commercial acid.

hold in the stores? In not that the meaning of commerciality? A No, sir. It is to designate an article in order- ing it as "commercial." I could mean by that I wanted a cheap- er grade; if I wanted pure cathodic sold I would designate it as chemically pure.

X9 And I ask you, how did grade you speak of come to be termed "commercial"? It is not for the fact that it is in common use, commercially?

A There are several grades that may be termed "commer- cial."

X9 But are they not in common commercial use, and so are called "commercial"? A I don't understand it that way. The word "commer- cial" is simply used by the dealer. The public are not supposed to know any thing about it as commercial. What I mean by that is, that it is not by understanding that the word "commercial" is used by the public; it is one used by those who are familiar with the variation of it.

X9 You have stated that there is a cheaper grade of cathodic sold known as "commercial" cathodic sold --

A Well, there are several cheaper grades. X9 Is not the term itself indicative of the common use in commerce of this grade, or these grades, and, is it not a fact that they are commonly used in commerce than the pure cathodic sold?

A You do not understand me exactly right. When I speak the word "commercial" I do not want to be understood as say- ing that it is known generally as commercial sold.

XQ I am not asking you how it is generally known, but I am asking you how it got that term in trade, and if, as a matter of fact, it is not sold in commercial trade?

A Well, it is a term generally used in the trade to designate a cheaper grade. And it applies to other goods besides carbolic acid.

XQ But do you know whether for years it has been commonly bought and sold in the stores of this Commonwealth, and in this county particularly, as carbolic acid, that grade of it, by the merchants, I mean, sold by the merchants to farmers for domestic purposes? Is not that a fact, Mr. Avis?

A Well, I have known from hearsay that merchants sell carbolic acid; but as to what they sell it for -- what grade they sell it for -- I do not know any thing about that.

XQ For what purposes would you sell that grade of carbolic acid?

A Merely to sprinkle around henhouses, cess-pools, and things of that kind.

XQ That is a very common use for it in the country?

A Not a common use, but it is used by a great many about hen houses.

XQ Do they use it on galled shoulders of horses?

A It would be a risky business for that.

XQ Have you ever known any horses or men to suffer any injury from having used commercial carbolic acid?

A I cannot state any cases. I am just speaking from my general information on the effect of that class of goods.

XQ Mr. Avis, if a person would send to you for some carbolic acid to sprinkle around hen houses or cess-pools as a disinfectant

XQ I am not asking you how it is generally known, but I am asking you how it got into the trade, and it, as a matter of fact, it is not sold in commercial grades?

A Well, it is a term generally used in the trade to designate a cheaper grade. And it applies to other goods besides carbolic acid.

XQ But do you know whether for years it has been commonly bought and sold in the stores of this Commonwealth, and in this country particularly, as carbolic acid, that grade of it, by the merchants, I mean, sold by the merchants to farmers for domestic purposes? Is not that a fact, Mr. Davis?

A Well, I have known from hearsay that merchants sell carbolic acid; but as to what they sell it for -- what grade they sell it for -- I do not know any thing about that.

XQ For what purposes would you sell that grade of carbolic acid?

A Merely to sprinkle around houses, cess-pools, and things of that kind.

XQ That is a very common use for it in the country?

A Not a common use, but it is used by a great many

about here.

XQ Do they use it for the purpose of disinfecting?

A It would be a risky business for that.

XQ Have you ever known any horses or men to suffer any injury

from having used commercial carbolic acid?

A I cannot state any cases. I am just speaking from my

general information on the effect of that class of goods.

XQ Mr. Davis, if a person would send to you for some carbolic

acid to sprinkle around hen houses or cess-pools as a disinfectant

would you send them that grade of carbolic acid?

A Well, I might send them that, or I might send them some other grade. I have several grades.

XQ But would that grade of carbolic acid answer that purpose?

A Yes, sir.

XQ And would that be the purpose for which that grade of acid is designed to be used?

A It is what it ought to be used for.

XQ That is the purpose to which it is generally put by persons who buy it, is it not?

A That would make me make a statement that I would not like to make. In the first place, it is rather doubtful whether the average purchaser of carbolic acid would know any thing about it.

XQ But he is sending to you -- the president of the Board of Pharmacy, an expert druggist skilled in your profession -- for some carbolic acid to sprinkle around his hen house or cess-pool, or to be used generally as a disinfectant, would you send him that grade to answer that purpose?

A Yes, sir, I would either send him that or some similar grade, if he made known his purpose -- made known the use of it.

XQ You have described at some length the difference between commercial carbolic acid and the pure carbolic acid. Which is the more concentrated form of poison, the pure carbolic acid or the commercial grade?

A Well, I don't know that I could answer that question exactly. They are all considered deadly poisons.

XQ You say now, Mr. Avis, that as a druggist you do not know that pure carbolic acid is a more concentrated and deadly

Would you send them that grade of carbolic acid?

A Well, I might send them that, or I might send them

some other grade. I have several grades.

Q But would that grade of carbolic acid answer that purpose?

A Yes, sir.

Q And would that be the purpose for which that grade of

acid is designed to be used?

A It is what it ought to be used for.

Q That is the purpose to which it is generally put by

persons who buy it, is it not?

A That would make me make a statement that I would not

like to make. In the first place, it is rather doubtful whether

the average purchaser of carbolic acid would know any thing about

it.

Q But he is sending to you -- the President of the Board of

Health, an expert druggist killed in your profession -- for some

carbolic acid to sprinkle around his new house or cess-pool, or to

be used generally as a disinfectant, would you send him that grade

to answer that purpose?

A Yes, sir, I would either send him that or some other

grade, if he had known his purpose -- and he knows the use of it.

Q You have observed at some length the difference between

commercial carbolic acid and the pure carbolic acid. Which is the

more concentrated form of poison, the pure carbolic acid or the

commercial grade?

A Well, I don't know that I don't answer that question

exactly. They are all concentrated deadly poisons.

Q You say now, Mr. Davis, that as a druggist you do not

know that pure carbolic acid is a more concentrated and deadly

(Jas. L. Avis.)

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form of poison that the ordinary commercial grade of the acid?

A I say that ordinarily the pure carbolic acid would not be as deadly poison because it is used medicinally, and the pure grade only should be used medicinally.

XQ How many drops of pure carbolic acid could be taken safely, Mr. Avis, as a medicine?

A Well, I suppose, ordinarily, one drop of pure carbolic acid would be about the average dose.

XQ And you think that less than a drop of the commercial acid --

A I hav'n't said that at all.

RE-DIRECT EXAMINATION RESUMED.

Q You have stated in your answer a moment ago that you had only examined one sample, and that is the only one you had seen. Please examine this one and say if what you have stated applies to both samples which are exhibited here, as we want to use your testimony in both cases?

A Well, sir, there is a good deal put up in the way of carbolic acid. There is a good deal of it handled by merchants who do not do business direct with druggists.

Q As I understand you, these are both, according to your judgment, inferior grades of carbolic acid?

A Yes, sir; I regard both as inferior grades of carbolic acid.

THE COURT: You say that both are deadly poisons?

A Yes.

Q And you say that the ordinary grades of carbolic acid are more deadly than the pure grade?

A Not only because the pure carbolic acid is supposed

form of poison that the ordinary commercial grade of the acid?
A I say that ordinarily the pure carbolic acid would
not be as deadly as the commercial because it is used medicinally, and the
pure grade only should be used medicinally.

Q How many drops of pure carbolic acid could be taken safely,
Mr. Ains, as a medicine?

A Well, I suppose, ordinarily, one drop of pure carbolic
acid would be about the average dose.

Q And you think that less than a drop of the commercial acid --
A I haven't said that at all.

RE-EXAMINATION

Q You have stated in your answer a moment ago that you had
only examined one sample, and that is the only one you had seen.
Please examine this one and say if what you have stated applies
to both samples which are exhibited here, or we want to use your
testimony in both cases?

A Well, sir, there is a good deal put up in the way of
carbolic acid. There is a good deal of it handled by merchants
who do not do business direct with druggists.

Q As I understand you, these are both, according to your

judgment, inferior grades of carbolic acid?

A Yes, sir; I regard both as inferior grades of carbolic

acid.

THE COURT: You say that both are deadly poisons?

A Yes.

Q And you say that the ordinary grades of carbolic acid are

more deadly than the pure grade?

A Not only because the pure carbolic acid is supposed

to contain nothing but carbolic acid, while many of the cheaper grades contain other substances which are injurious to human life and tissue, and so on --

MR. SIPE (Interposing) Then if the impurity with which the carbolic acid was impregnated was less poisonous than the carbolic acid, it would not be so poisonous as the pure article? I will change the word "impregnated" to "diluted."

A That would depend upon what it was diluted with. It might be diluted with something that was as great a poison.

XQ Then you have not understood my question. The question is, if it were diluted with a less poisonous substance, wouldn't the compound be less poisonous than the carbolic acid?

A Well, it might be diluted with something that might form a chemical compound that would make it more poisonous.

XQ Is it not a fact, Mr. Avis, that there are few things in pharmaceutical products that are as poisonous as carbolic acid?

A Oh, yes, sir, there are a good many that are equally so; some of them more so.

XQ Is it not a fact that in the domestic remedies sold in the stores, generally, and used on the farms and about the homes of the people of the country, there are a great many poisons? Is not copperas a poison, Mr. Avis?

A Yes, sir. It is not designated in the books as a deadly poison, but it would be a poison.

XQ How much copperas in solution would it take to be fatal?

A That would be right hard to tell.

XQ How much copperas in solution in a dose would be fatal?

A Well, it is not likely any body would take a sufficient

to obtain nothing but carbolic acid, while many of the cheaper grades contain other substances which are injurious to human life and health, and so on.

Q. Now, Sir (Interposing) Then if the inquiry with which the carbolic acid was impregnated was less poisonous than the carbolic acid, it would not be as poisonous as the pure article. I will change the word "impregnated" to "diluted."

A. That would depend upon what it was diluted with. It might be diluted with something that was as great a poison.

Q. Then you have not understood my question. The question is, if it were diluted with a less poisonous substance, wouldn't the compound be less poisonous than the carbolic acid?

A. Well, it might be diluted with something that might form a chemical compound that would make it more poisonous.

Q. Is it not a fact, Mr. Davis, that there are few things in the pharmaceutical products that are as poisonous as carbolic acid?

A. Oh, yes, Sir, there are a good many that are equally as poisonous as carbolic acid.

Q. Is it not a fact that in the domestic remedies sold in the stores, generally, and used on the farms and about the houses of the people of the country, there are a great many poisons?

A. Yes, Sir, there are a great many poisons.

Q. Now, Sir, it is not designated in the books as a deadly poison, but it would be a poison.

Q. Now when dropped in solution would it take to be fatal?

A. That would be right hard to tell.

Q. Now when dropped in solution in a dose would be fatal?

A. Well, it is not likely any body would take a sufficient

amount of solution of copperas or give enough to make a fatal dose.

XQ Now, is it not a fact, that it has recently been discovered that a great many proprietary and patent medicines are deadly poisons?

A Well, they are not supposed to be.

XQ Is it not a fact, Mr. Avis, that they have been demonstrated to be poisons -- proprietary medicines sold now out of the stores and drug stores in Rockingham county and elsewhere?

A No, sir. I don't know that I am aware of that fact, exactly, strictly speaking, as deadly poisons.

XQ In making a solution of carbolic acid and water for disinfectant purposes, in the same quantity of water, used for the same purpose, would you place more of the pure carbolic acid than you would of the inferior grade or less?

A Not necessarily so.

XQ Which would you do, Mr. Avis?

A That would depend a little upon the purpose for which the solution was intended and the grade of the acid I was using.

XQ Suppose you wanted to use it for sprinkling around hen houses, cess-pools, stables, hog pens, and things of that sort.

A Well, there is a grade of carbolic acid that is sold very cheap, but it is not supposed to possess as great disinfectant properties as a pure grade of acid.

XQ You sell that do you?

A Yes, sir.

XQ If I sent to you for some carbolic acid, a grade of that sort for a disinfectant, would you require me to register it?

A No, sir, I do not require you to register it. I would

amount of solution of arsenic or any other to make a fatal dose.

XQ Now, is it not a fact, that it has recently been discovered that a great many proprietary and patent medicines are deadly poisons?

A Well, they are not supposed to be.

XQ Is it not a fact, Mr. A. Vile, that they have been demonstrated to be poisons -- proprietary medicines sold now out of the stores and drug stores in Rockingham county and elsewhere?

A No, sir, I don't know that I am aware of that fact.

exactly, strictly speaking, as deadly poisons.

XQ In making a solution of carbolic acid and water for disinfectant purposes, in the same quantity of water, used for the same purpose, would you place more of the pure carbolic acid than you would of the inferior grade or less?

A Not necessarily so.

XQ Which would you do, Mr. A. Vile?

A That would depend a little upon the purpose for which the solution was intended and the grade of the acid I was using. XQ Suppose you wanted to use it for scrubbing around the house, over-pools, stables, hog pens, and things of that sort.

A Well, there is a grade of carbolic acid that is sold very cheap, but it is not supposed to possess as great disinfectant properties as a pure grade of acid.

XQ You call that do you?

A Yes, sir.

XQ If I sent to you for some carbolic acid, a grade of that

sort for a disinfectant, would you require me to register it?

A No, sir, I do not require you to register it. I would

(Jas.L.Avis.)

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put a special label on it that the law requires and mark it poison.
I wouldn't send it either unless by a grown person.

The witness was told to stand aside.

MR. HARRIS: We submit the motion, if your Honor please, to exclude all of the testimony of Mr. Strickler and so much of that of Mr. Avis as relates to the contents of the bottle being carbolic acid, as being ⁱⁿ⁻admissible, it having been shown by the Commonwealth that the defendant is not a registered pharmacist, there is no penalty imposed upon him by the statute as he has violated none of the provisions of said act.

THE COURT: Your motion is, that one who is not a registered pharmacist is not subject to the penalty; that being only a merchant the defendant is not within the provisions of the act?

MR. SIPE: We want to ~~move~~ to strike out all of the evidence the Commonwealth has introduced, except that showing Mr. Bertram is not a registered pharmacist.

MR. CONRAD: You do not deny, then, that this is carbolic acid or the fact of the sale to Strickler?

MR. HARRIS: Our motion does not mean that at all.

MR. SIPE: It means that the evidence which the Commonwealth has introduced on those points is irrelevant and immaterial.

THE COURT: As I understand you gentlemen, your contention -- your motion is based upon the idea that the prohibition in the act does not apply to the sale of carbolic acid by a merchant -- that there is no penalty attached to the prohibition, but if there is, then it does not apply to merchants who are not registered pharmacists?

But a special appeal on it that the law requires and that it is
I would not want it unless by a person.
The witness was told to stand aside.

THE COURT: Now, what is the evidence?

MR. HARRIS: We submit the motion, if your Honor please.

to exclude all of the testimony of Mr. Erickson and so much of
that of Mr. Ayle as relates to the contents of the bottle being
admitted, as being irrelevant, it having been shown by the
Government that the defendant is not a registered pharmacist,
there is no penalty imposed upon him by the statute as he has

violated none of the provisions of said act.
THE COURT: Your motion is, that one who is not a regis-

tered pharmacist is not subject to the penalty; that being only a
material fact, it is not within the provisions of the act.

MR. HARRIS: We want to have it strike out all of the
evidence the Government has introduced, except that showing the

defendant is not a registered pharmacist.
MR. CONRAD: You do not deny, then, that this is irrelevant

and of the fact of the sale to Erickson?
MR. HARRIS: My motion does not mean that at all.

MR. HARRIS: It means that the evidence which the Govern-
ment has introduced on those points is irrelevant and immaterial.

THE COURT: As I understand your position, your conten-
tion is that the motion is based upon the fact that the prohibition in

the act does not apply to the sale of narcotics sold by a merchant --
that there is no penalty attached to the prohibition, but if there

is, then it does not apply to merchants who are not registered

pharmacists.

MR. SIPE: Yes, sir; it is brutum fulmen is our position. The motion speaks for itself; it is on record.

TESTIMONY ON BEHALF OF DEFENDANT.

WILLIAM H. SIPE, first duly sworn, testified as follows:

Q What is your occupation?

A I am a merchant.

Q How long have you been in the merchantile business in Rockingham county?

A About twenty-five years.

Q Have you conducted a business that is rather larger than is usually conducted in stores in this county?

A I have conducted a good sized business. I think it is generally considered that I have a good business.

Q Let me change the question a little. Do you conduct, and have you conducted for a number of years, or not, a large country store in Rockingham county?

A Yes, sir.

Q Can you saw whether the people of the community in which you have conducted business, and elsewhere in the county, make frequent use of carbolic acid for domestic purposes in matters of disinfectant, in the way of sprinkling of hen houses and cess-pools, and, also, for veterinary purposes, that is, ^acleansing the sores on horses, etc.?

A Yes, sir. It is generally used, to the best of my knowledge.

Q And you say it is generally used, to the best of your knowledge, on farms?

A Yes, sir.

Q What has been your observation, Mr. Sipe, with regard to the use of carbolic acid for domestic purposes around the farm houses in this county?

A Why, I have considered that it was a very important remedy.

Q I mean to say, to what extent is it used?

A We have been keeping it in the store and have had calls for it, and people would tell us that it was for use around their places; some times for sores; if a horse would get a sore shoulder, or some thing of that kind, they would want to put some of it in water. Now, at home, I know we ordered some at my own home, and keep a bottle in the room all the time.

Q Do you know whether this is generally true of the farm houses around the county? Is it not a fact that they very frequently keep carbolic acid around the premises? Is that your observation?

A I cannot say that I know positively from my own observation, but only from inference --

Q That people purchase it at your store?

A Yes, that they purchase it, and I have every reason to believe that it is used.

CROSS-EXAMINATION BY MR. GUIGON.

XQ Mr. Sipe, you say that you sold it very generally. Did Mr. Strickler buy any carbolic acid from you?

MR. SIPE: Did you sell any yourself to Mr. Strickler?

A No, sir.

THE COURT: Did I understand you to say that you did not sell carbolic acid, generally?

(Wm.H.Sipe.)

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A Yes, sir; it has been sold at the stores, generally.

XQ The question is, at your store?

A Yes, sir.

XQ Have you been prosecuted, Mr. Sipe?

A No, sir, not that I know of. No; I don't think there has ever been any case against me.

XQ Sir?

A I heard that he bought -- Now, I have another store at which I do not stay myself. This is hearsay, do you want me to tell that?

MR. HARRIS: You cannot tell what you heard.

THE COURT: He can as to that. They want to show that Mr. Strickler bought carbolic acid at his store.

MR. SIPE: If he don't know it himself he cannot state hearsay.

MR. CONRAD: If Mr. Wm. H. Sipe is interested in the outcome of this case, we would have a right to show his interest.

MR. HARRIS: You cannot go into the question of his prosecution?

THE COURT: No, I don't think that would be proper, but you can show his interest. It is admissible for that purpose.

XQ Have you any interest in the outcome of this case here?

Objection; overruled; exception for defendant.

A Only on general principles; as far as it affects me as a merchant; and from hearsay. Part of that comes from hearsay -- whether I might be affected.

XQ It is possible that your own interests will be affected by the decision of this case, is it not?

A In a general way I might be, I might say.

A Yes, sir; it has been sold at the store, generally.

XQ The question is, is your story?

A Yes, sir.

XQ Have you been prosecuted, Mr. Stige?

A No, sir, not that I know of. No; I don't think there

has ever been any case against me.

XQ Sir?

A I heard that he bought -- Now, I have another story
at which I do not stay myself. This is hearsay, so you want me to

tell that?

MR. HARRIS: You cannot tell what you heard.

THE COURT: He can go to that. They want to show that he

testifies against himself at the store.

MR. STIGE: If he don't know it himself he cannot state hearsay.

MR. CONRAD: If Mr. Stige is interested in the outcome

of this case, we would have a right to show his interest.

MR. HARRIS: You cannot go into the question of his interest.

tion?

THE COURT: No, I don't think that would be proper, but you

can show his interest. It is admissible for that purpose.

XQ Have you any interest in the outcome of this case never

objection overruled; exception for defendant.

A Only on general principles; as far as it affects me

as a merchant; and from hearsay. Part of that comes from hearsay --

whether I might be interested.

XQ It is possible that your own interests will be affected

by the decision of this case, is it not?

A In a general way I might be, I might not.

(Wm.H.Sipe.)

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XQ Have you co-operated in the defense which is being made here?

A Yes, sir, I have.

XQ Have you contributed towards the defense of this case which is being tried here now?

A I said, in a general way, that is, as the fraternity of merchants are interested. And I might be interested in some other way, by hearsay.

XQ Have you contributed towards the expense of defending this case?

A Must I answer as to whether I have agreed --

XQ Whether you have agreed to, or have done it, either one.

Objection; overruled; exception for defendant.

A Yes, sir, I have agreed to bear my proportional part of the expense for the general good, I consider.

MR. HARRIS: For the general good?

A Yes, sir.

XQ Since you say "for the general good," is it not a fact that one reason which induces you to contribute towards the expense of this case is that you are advised that Mr. Strickler, at the time he was purchasing carbolic acid from other merchants, made a purchase at one of your stores; and are you not, in that way, directly interested in that question?

Objection; overruled; exception for defendant.

A Yes, I was advised, but not directly though, that Mr. Strickler --

XQ Had purchased carbolic acid at your store?

A Yes, sir.

XQ And your name was in the list of merchants in the county

Q Have you been operating in the business which is being made

known?

A Yes, sir, I have.

Q Have you contributed towards the defense of this case

which is being tried here now?

A I said, in a general way, that is, as the testimony

of witnesses has indicated. And I might be interested in some

other way, by chance.

Q Have you contributed towards the expense of defending this

case?

A Just I answer as to whether I have agreed --

Q Whether you have agreed to, or have done it, either one.

A Yes, sir, I have agreed to bear my proportional part

of the expense for the general good, I consider.

MR. HARRIS: Now the general good?

A Yes, sir.

Q Since you say "for the general good," is it not a fact

that one reason which induces you to contribute towards the expense

of this case is that you are advised that Mr. Sullivan, at this

time he has purchased articles and from other witnesses, and a

purchase of one of your stores; and are you not, in that way,

directly interested in that question?

A Yes, I was advised, but not directly through that.

Stricker --

Q Has the witness advised you at your store?

A Yes, sir.

Q And your name was in the list of witnesses in the army.

(Wm.H.Sipe.)

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to be reported for selling carbolic acid?

A Yes, sir.

RE-DIRECT EXAMINATION RESUMED BY MR. SIPE.

Q You have been asked, Mr. Sipe, with regard to your interest as a merchant --

A (Interposing) Allow me to qualify that answer a little. I don't know but that I would have been willing to chip in my part even if there had not been any --

Q I didn't understand that.

A I might have been perfectly willing to have assisted in the defense even if there had not been --

Q Even if there had not been any prosecution against yourself?

A Yes, sir.

Q Is it not a fact that the merchants of this Commonwealth are formulating an association to protect themselves and their interests in this matter, somewhat similar to the druggists association in this state?

A In this matter and in other matters of general interest to the merchants -- whatever may come up.

Q In other words, you want to have the right to sell carbolic acid over your counters without registering it, just like Captain Avis, and other druggists, sell it over their counters, by their clerks, without registering it?

A Yes, sir.

MR. AVIS: I did not say any such thing.

Witness was told to stand aside.

to be reported for selling securities...
Yes, sir.
RE-EXAMINATION BY MR. H. H. H.

Q You have been asked, Mr. H. H. H., with regard to your interest in the defense...
A (Interposing) Allow me to qualify that answer a little. I don't know but that I would have been willing to ship in my part even if there had not been any...
Q I didn't understand that.

A I might have been perfectly willing to have assisted in the defense...
Q Even if there had not been any...
A Yes, sir.

Q Is it not a fact that the members of this committee are formulating an association to protect themselves and their interests in this matter, somewhat similar to the Knights of the Ku Klux Klan in this state...
A In this matter and in other matters of public interest to the community...
Q In other words, you want to have the right to sell securities...

Q In other words, you want to have the right to sell securities...
A Yes, sir.
Q I don't see any harm in that.
A Witness can only testify to what he knows.

A. N. RHODES, duly sworn, testified on behalf of the defendant as follows:

Q Mr. Rhodes, you are a farmer of Rockingham county?

A Yes, sir.

Q Where do you live?

A Bridgewater at present, and have been for the last year or so.

Q But you have been living for years in this county?

A Yes, sir. I have been farming in this county for the last thirty years.

Q Will you state whether or not carbolic acid has been for a number of years a familiar remedy in your home?

A Yes, sir, it has been on my place. As far as my experience is concerned, I have used it in various ways, such as --

Q Has it been your habit to keep it on your premises?

A Yes, sir; aimed to keep it pretty near all the time.

Q Will you describe to the court the various uses to which carbolic acid was put at your home?

A I used it for galled shoulders of horses, or sores of any kind about horses. I used it as a remedy for chickens in case of roup. I also used it in the house as a disinfectant, in hot dry weather. I live on the creek, here, and it is very offensive, and I have put the acid in the house to use it that way. I have often used it in swill-tubs for hogs when cholera was in the country, as a preventative. I believe that is about all the use I made of it, and I keep it pretty near all the time.

Q Mr. Rhodes, what do you say as to the extent to which carbolic acid is in common use among farmers generally, so far as you have observed?

A Well, I think it is very generally in use. You will find it in most every barn. That is as to my knowledge of the fact. Of course, I don't know that just every one keeps it, but as a general thing you will find it about all barns.

The witness was told to stand aside.

M. P. FLORY, duly sworn for defendant, testified as follows:

Q You are a farmer, are you?

A No, sir.

Q Oh, yes, I believe you are not. What is your occupation?

A Blacksmithing.

Q Will you state to the court whether or not you use carbolic acid as a common household remedy at your home?

A I do, yes, sir. I keep it there at home. I used it there last night and for the last several nights. I use it on my hands for chapped hands. It is good for that, and for sores of any kind. I use it in that way. We always keep it at the house as far as I know, and I recommend it for different things -- for sores on horses that I would see about the shop -- horses that I would see raw-like where the collar binds their shoulders, and I would recommend to get that and wash with it, it would be good.

Q State whether or not, from your observation, it is a common household remedy among the farmers in the community where you live?

A As far as I know it is; yes, sir.

Witness was told to stand aside.

E. C. ROLSTON, sworn on behalf of defendant, testified as follows:-

Q Squire Rolston, you are a farmer of Rockingham county are you?

A Yes, sir.

Q You live near Dayton, I believe?

A Yes, sir.

Q Do you keep carbolic acid on your premises and use it as a household remedy?

A Yes, sir; rarely without it.

Q You say that you are never without it?

A Rarely without it.

CROSS-EXAMINATION.

XQ How do you use it?

A We regard it as a remedy for sores, especially among stock. If any stock gets hurt -- stock or any thing like that -- when the veterinary comes to see us that is one of the first things he wants. He tells us to make a solution of carbolic acid.

XQ The veterinary makes a solution of carbolic acid. Do you apply it externally?

A Yes, sir. And we use it some as a disinfectant.

XQ You have used it as a remedy for hog diseases and about chicken houses, &c.?

A That is one of the things that my wife thinks we could not do without.

The COURT: You put it in whitewash to whitewash chicken coops?

E. C. ROLSTON, sworn on behalf of defendant, testified as follows:

Q During Rolston, you are a farmer of Washington county and

your

A Yes, sir.

Q You live near Dayton, I believe?

A Yes, sir.

Q Do you keep carbolic acid in your premises and use it as a

household remedy?

A Yes, sir; rarely without it.

Q You say that you are never without it?

A Rarely without it.

CROSS-EXAMINATION.

Q How do you use it?

A We regard it as a remedy for sores, especially sores

on stock. If any stock gets hurt -- stock or any thing like that -- when the veterinary comes to see us that is one of the first things he wants. He tells us to make a solution of carbolic acid.

Q The veterinary makes a solution of carbolic acid. Do you

apply it externally?

A Yes, sir. And we use it some as a disinfectant.

Q You have used it as a remedy for hog diseases and about

chicken houses, do you?

A That is one of the things that my wife thinks we

could not do without.

The COURT: You put it in whitewash to whitewash chicken

coops?

A Put it in the water to wash the chickens.

XQ Do you, or not, know that it is a remedy in very common use among the farmers of Rockingham county?

A I think so. I hear my neighbors speak of it; and in cases where stock gets hurt, one of the first things the veterinary speaks of doing is to make a solution of carbolic acid.

XQ Is it not a fact, Squire Rolston, that there are many neighborhoods in Rockingham county remote from drug stores?

A Yes, sir, a number of them.

MR. GUIGON: There are a great many communities in the county remote from physicians?

A Yes, sir.

MR. CONRAD: And a good many are remote from bar-rooms?

A Yes, sir.

Witness was told to stand aside.

JOHN W. LISKEY, sworn on behalf of defendant, testified as follows:

Q You are a farmer of Rockingham County?

A Yes, sir.

Q Do you use carbolic acid on your premises?

A Yes, sir.

Q Do you know whether it is a common household remedy in Rockingham County?

A Yes, sir.

Q Now, Mr. Liskey, you say that you do keep it on your premises as a common household remedy, and you believe it is a com-

Q Now, it is the fact that the children
to you, of course, know that it is a remedy in very common
use among the farmers of Hooking county?
A I think so. I hear my neighbors speak of it; and in
cases where I have seen it, one of the first things the veterinary
agents of doing is to make a solution of carbolic acid.
Q Is it not a fact, S. C. Johnston, that there are many
neighborhoods in Hooking county remote from their nearest
A Yes, sir, a number of them.

MR. QUINN: There are a great many communities in the county
remote from physicians?
A Yes, sir.
MR. QUINN: And, too, many are remote from the nearest
A Yes, sir.
Witness has told us that carbolic acid is used.

JOHN W. LISKY, sworn on behalf of defendant, testified as
follows:
Q You are a farmer of Hooking county?
A Yes, sir.
Q Do you use carbolic acid on your premises?
A Yes, sir.
Q Do you know whether it is a common household remedy in
Hooking county?
A Yes, sir.
Q Now, Mr. Lisky, you say that you do keep it on your
premises as a common household remedy, and you believe it is a com-

(J.W.Liskey.)

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mon household remedy amongst farmers in Rockingham county, generally?

A Yes, sir.

Witness was told to stand aside.

MR. GUGON: If your Honor please, we except to all of the testimony offered by the defendant, and move to strike it out as immaterial and irrelevant.

MR. CONRAD: If the Court please, we would like to be at some absolute and definite understanding as to -- as Mr. Guigon has said -- "where we are at"? Our understanding is that the evidence is now closed, and that the cases will be argued by briefs between this and the next term of the court.

MR. SIPE: Had we not better have a little written stipulation in regard to this trial of the case.

THE COURT: I understand that the evidence now taken shall be read at the next term as oral evidence delivered on trial at that time.

MR. SIPE: That is it.

MR. HARRIS: I have no objection to a stipulation, but I doubt the advisability of letting the record show any thing more than that this evidence was taken to be read at the next term of the court.

THE COURT: I think ^{as} this is a matter of misdemeanor, ~~and that~~ you can make almost any agreement with reference to it that you could in a civil case. The arguments will be submitted in vacation and the case is to be decided at the next term of the court on the evidence now reduced to writing, which will then be considered as produced orally in court, and there will be nothing for the

non-pointed, merely amongst lawyers in non-pointed manner, generally.

A Yes, sir.

Witness was told to stand aside.

MR. OUTSON: If your Honor please, we except to all of the testimony offered by the defendant, and move to strike it out as immaterial and irrelevant.

THE COURT: If the Court please, we would like to see at some

absolute and definite understanding as to -- as Mr. Outson has said -- "where we are at?" Our understanding is that the evidence is now closed, and that the case will be argued by briefs between this and the next court session.

MR. ALPER: And we not better have a little written stipulation

in regard to this trial of the case.

THE COURT: I understand that the evidence now taken shall be

read at the next term as oral evidence delivered on trial at that time.

MR. ALPER: That is it.

MR. HANBES: I have no objection to a stipulation, but I doubt the advisability of letting the record show any thing more than that this evidence was taken so be read at the next term of the court.

THE COURT: I think this is a matter of expediency, and that you can make almost any agreement with reference to it that you could in a civil case. The arguments will be submitted in vacation and the case is to be decided at the next term of the court on the evidence now taken so be read at the next term of the court as produced orally in court, and there will be nothing for the

court to do except to declare its judgment.

MR. CONRAD: I understand that these gentlemen have submitted a motion to strike out the evidence, and we expect you to submit arguments in writing, first, and we will reply.

MR. SIPE: Do you understand that we are to close?

MR. CONRAD: Oh, yes. That is all right.

The defendant desiring further time to submit argument, it was later agreed that the judgment of the Court should be rendered at the May Term 1907, & which the case was ^{regularly} continued.

and to the same effect.

MR. GORDON: I am not sure that the committee has

the right to hear the testimony of the witness.

MR. GORDON: Yes, that is all right.

MR. GORDON: Do you understand that we are to close?

MR. GORDON: Oh, yes. That is all right.

The committee has the honor to inform you that the
testimony of the witness has been heard and the committee
has the honor to inform you that the committee has
the honor to inform you that the committee has

In the Circuit Court of Rockingham.

Commonwealth

Vs).

Upon an appeal from a Justice of the Peace.

Thomas P. Yager.

BILL OF EXCEPTION No. I.

BE IT REMEMBERED that upon the trial of this cause the defendant, by his Counsel, moved the Court to exclude all of the testimony of the Commonwealth's witness S. B. Strickler, and so much of the testimony of James L. Avis, another witness in behalf of the Commonwealth, as relates to the contents of the bottle introduced in evidence being carbolic acid, on the grounds that the same is inadmissible, because it had been shown by the testimony that the said defendant is not a registered pharmacist, and there is no penalty imposed upon him by the Act. The said testimony of said S. B. Strickler and so much of the testimony of the said James L. Avis, as aforesaid, is found in the certificate of the evidence with the second bill of exceptions, and is here to be deemed taken as though fully written out in this bill of exceptions, and for the exclusion whereof the said motion was made. But the Court declined to grant the said motion, and considered the said testimony so offered, to which action of the court in overruling said motion and refusing to strike out the said testimony and considering the same, the defendant, by Counsel, excepted, and prayed that this his first bill of exceptions may be signed, sealed and enrolled and made a part of the record, which is accordingly done, this 25 day of June, 1907.

J. M. Haas

(Seal.)

In the Circuit Court of Rockingham County.

Commonwealth

Vs). Upon an appeal from a Justice of the Peace.

Thomas P. Yager.

BILL OF EXCEPTION No. II.

BE IT REMEMBERED that upon the trial of this case before the Hon. T. N. Haas, Judge of the Circuit Court of Rockingham County, Virginia, -- a trial by jury having been waived -- the same having been appealed from the decision of a Justice of the Peace of said County, the Commonwealth to maintain the issue on its part offered the testimony of the following witnesses:

(Here insert testimony from Stenographer's transcript.)

This being all of the testimony offered by the Commonwealth, the said defendant, to maintain the issue on his part, offered the testimony of the following witnesses:

(Here insert testimony from Stenographer's transcript.)

This being all of the testimony submitted to the Court on both sides, after arguments of counsel, the Court upon taking time to consider said testimony and arguments, entered the following judgment:

(Here copy the judgment of the Court.)

To which action of the Court in entering said judgment the said defendant, by Counsel, objected upon the ground that the

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

IN RE: THE ESTATE OF JAMES EARL RAY, JR.

Case No. 17-1000

FILED FOR RECORDING IN 1968

IT IS ORDERED that the will of the said James Earl Ray, Jr. be admitted to probate, and that the executor named therein, the said James Earl Ray, Jr., be and he is authorized to execute the same, and that the said will be admitted to probate, and that the executor named therein, the said James Earl Ray, Jr., be and he is authorized to execute the same, and that the said will be admitted to probate, and that the executor named therein, the said James Earl Ray, Jr., be and he is authorized to execute the same.

(Here insert testimony from witnesses, if any.)

This being all of the testimony offered by the executor, the court is satisfied that the will of the said James Earl Ray, Jr. is the last will and testament of the said James Earl Ray, Jr., and that the executor named therein, the said James Earl Ray, Jr., is qualified to execute the same.

(Here insert testimony from witnesses, if any.)

This being all of the testimony offered by the executor, the court is satisfied that the will of the said James Earl Ray, Jr. is the last will and testament of the said James Earl Ray, Jr., and that the executor named therein, the said James Earl Ray, Jr., is qualified to execute the same.

(Here copy the text of the will.)

To which effect of the court is hereby certified, and the said will is hereby admitted to probate, and the executor named therein, the said James Earl Ray, Jr., is qualified to execute the same.

same was erroneous because contrary to the law and the evidence,
and the certificate of the evidence
and prayed that this his second bill of exceptions may be signed,
sealed and enrolled and made a part of the record, which is
is accordingly done this 25th day of June, 1907.

J. N. Haas

Seal.)

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In the Circuit Court of Rockingham County.

Commonwealth

Vs). Upon appeal from a Justice of the Peace.

Thomas P. Yager.

Transcript of the testimony offered before Judge T. N. Haas, Judge of said Court, at the hearing on Friday, February 15th, 1907.

APPEARANCES: Geo. W. Conrad, Esq., Attorney for the Commonwealth; and Capt. A. B. Guigon, Attorney for the Virginia Pharmaceutical Association.

APPEARANCES: H. W. Bertram, Esq., and Messrs. Sipe & Harris, Attorneys for the defendant.

S. B. STRICKLER, being duly sworn on behalf of the Commonwealth, testified as follows:

Q Your name is S. B. Strickler?

A Yes, sir.

Q I believe you are at present a student at the Bridgewater College, in this county?

A Yes, sir.

Q Mr. Strickler, state whether or not you purchased from Mr. T. P. Yager's store, or of Mr. T. P. Yager, on the 14th day of May, 1906, carbolic acid?

A I did.

In the Circuit Court of Washington County.
Commonwealth
vs.

Upon appeal from a judgment of the Circuit Court.
Thomas P. Yager.

Testimony of the witness taken before Judge J. N.
Harris, Judge of said Court, at the hearing on Friday, February 13th,
1907.

APPEARANCES: For the Commonwealth, J. N. Harris, Judge of said Court, and
for the Defendant, Thomas P. Yager, and John J. O'Connell,
Attorney for the Virginia Agricultural
Association.

APPEARANCES: H. W. Bostwick, Esq., and Messrs. Sigsbee &
Harris, Attorneys for the Defendant.

Q. Now, Thomas P. Yager, being duly sworn on behalf of the Commonwealth,
testify as follows:

Q. Your name is T. P. Yager?
A. Yes, sir.

Q. I believe you are at present a student at the Bridgewater
College, in this county, is that right?
A. Yes, sir.

Q. Mr. Yager, state whether or not you were employed from the
T. P. Yager's store, on or after T. P. Yager, on the 1st day of
May, 1906, outside of said store?
A. Yes, I did.

Q Have you the vial in which the acid was delivered to you?

A Yes, sir. (Bottle produced and handed to counsel.)

Q This vial has on it a label with this writing on it: "Thomas P. Yager, Penn-Laird, Va. Frank Suter. Loose Car. Acid," and some little marks under that which I cannot make out.

A "N. Q., meaning "No questions."

Q What does the name of Frank Suter mean on this label?

A He was the clerk.

Q The clerk in Mr. Yager's store?

A Yes, sir.

Q That "No questions," what does that mean?

A That the clerk asked me no question as to what I was going to use it for, or whether I knew any thing about the article, or any thing about it.

Q You paid the clerk for the acid?

A Yes, sir.

Q And it was delivered to you there at Mr. Yager's store by this clerk of his, Frank Suter?

A Yes, sir.

Q On the 14th day of last May?

A Yes, sir.

Q Penn-Laird is in this county, is it not?

A Yes, sir.

Q How much did you pay for this acid that you got of him?

A Five cents.

Q This label on here was a label attached by you after the purchase?

A Yes, sir.

Q And this writing on the label was made by you after the

(S.B.Strickler.)

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bottle was delivered to you?

A Yes, sir.

Q And there is no other label on the bottle?

A No, sir.

Q Was there any other label on the bottle when it was delivered to you?

A No, sir.

Q That is the identical bottle which was delivered to you?

A Yes, sir.

Q And the same contents that was delivered to you at that store?

A Yes, sir.

CROSS-EXAMINATION BY MR. SIPE.

XQ You say that the bottle was not labeled at all when it was delivered to you?

A No, sir.

XQ Did you request that the bottle should be delivered to you without a label?

A No, sir.

XQ Did you see that bottle filled?

A Yes, sir.

XQ Did you see Mr. Suter, now, pour the contents into the bottle?

A I did.

XQ Did you see him get the empty bottle?

A I gave it to him.

XQ You supplied the bottle yourself?

A Yes, sir.

bottle was delivered to you?

A Yes, sir.

Q And there is no other label on the bottle?

A No, sir.

Q Was there any other label on the bottle when it was delivered-

to you?

A No, sir.

Q That is the identical bottle which was delivered to you?

A Yes, sir.

Q And the same contents that was delivered to you at that

moment?

A Yes, sir.

DETECTIVE EXAMINATION BY MR. SMITH.

Q You say that the bottle was not labeled at all when it

was delivered to you?

A No, sir.

Q Did you remember that the bottle should be delivered to

you without a label?

A No, sir.

Q Did you see that bottle filled?

A Yes, sir.

Q Did you see Mr. Smith, now, pour the contents into the

bottle?

A I did.

Q Did you see him get the empty bottle?

A I gave it to him.

Q You supplied the bottle previously?

A Yes, sir.

XQ You gave him an empty vial and asked him to fill that empty vial that you had?

A Yes, sir.

XQ And you had no label on it?

A No, sir.

XQ Well, did you request a label to be put on it?

A No, sir.

XQ Was any thing said at all about the label?

A No, sir.

XQ What did you say to Mr. Suter when you asked for this carbolic acid?

A I asked him for a nickel's worth of carbolic acid, or some thing to that effect.

XQ Did you hand him the vial to fill?

A When I found that he did not have one I gave him one I had in my pocket.

XQ He had no empty vials about the store?

A He didn't have any handy anywhere.

XQ Did he say he did not have any empty vials?

A Indicated it in some way.

XQ He indicated that he did not have any empty vials?

A Yes.

XQ Then you would not have gotten the carbolic acid if you had not produced the vial yourself which you asked him to fill from a written package?

A I could not say that, because he may have found an empty bottle.

XQ What was the size of the vessel out of which the carbolic acid was poured into your vial.

Q You gave him an empty vial and asked him to fill it?

A Yes, sir.

Q And you had no label on it?

A No, sir.

Q Well, did you request a label to be put on it?

A No, sir.

Q Was any thing said at all about the label?

A No, sir.

Q What did you say to Mr. Baker when you handed him this

A I asked him for a needle worth of cocaine salt, or

some thing to that effect.

Q Did you hand him the vial to fill?

A When I found that he did not have one I gave him one

I said to Baker:

Q He had no empty vial about the house?

A He didn't have any empty vials.

Q Did he say he did not have any empty vials?

A Indicated by his own say.

Q He indicated that he did not have any empty vials?

A Yes.

Q Then you would not have gotten the cocaine salt if you

had not purchased the vial yourself which you said to fill from

a witness yesterday?

A I could not say that, because he may have found an

empty bottle.

Q What was the size of the vessel out of which the cocaine

salt was poured into your vial.

(S.B.Strickler.)

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A I don't remember that.

XQ For what purpose did you make this purchase of carbolic acid?

A I was sent there by the Board of Pharmacy of Virginia to buy it.

XQ And who was acting for the Board of Pharmacy in sending you there?

Objected to as being contrary to public policy;
objection sustained and exception noted for
defendant.

XQ You have stated that you placed on this bottle this label: was that supplied to you by the Board of Pharmacy?

A Which, the label?

XQ Yes, sir?

A Yes, sir.

XQ What were your directions from the Board of Pharmacy -- But, first, were those directions in writing?

Objected to as irrelevant; sustained, and exception noted for the defendant.

XQ You did have instructions from the Board of Pharmacy before going to this place; they supplied you with labels, and were you also supplied with bottles by the Board of Pharmacy?

A Yes, sir.

XQ How many bottles were you supplied with, Mr. Strickler?

A I don't remember how many there were. I don't know whether they were counted or not. Several dozen.

XQ Mr. Strickler, is it not a fact that you are permanently employed by the Board of Pharmacy to obtain information of these alleged infractions of the law by going to merchants in different parts of this Commonwealth and asking to purchase carbolic acid

A I don't remember that.

Q For what purpose did you make this purchase of carbide?

Q

A I was sent there by the Board of Pharmacy of Virginia

to buy it.

Q And who was acting for the Board of Pharmacy in sending

you there?

Q Objected to as being contrary to public policy;
objection sustained and exception noted for
defendant.

Q You have stated that you placed on this bottle this label:

was this supplied to you by the Board of Pharmacy?

A Yes, the label.

Q Yes, sir.

A Yes, sir.

Q What were your directions from the Board of Pharmacy --

Q Yes, that were those directions in writing?

Q Objected to as irrelevant; sustained, the court
then noted for the defendant.

Q You did have instructions from the Board of Pharmacy

before going to this place; they supplied you with labels, did they

you also supplied with bottles by the Board of Pharmacy?

A Yes, sir.

Q How many bottles were you supplied with, Mr. Strickland?

A I don't remember how many there were. I don't know

whether they were ordered or not. Several dozen.

Q Mr. Strickland, is it not a fact that you are personally

employed by the Board of Pharmacy to obtain information of these

alleged infractions of the law by going to persons in different

parts of this Commonwealth and asking to purchase carbide and

(S.B.Strickler.)

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and other drugs?

A No, sir, not permanently employed.

XQ How long have you been in this employment of the Board of Pharmacy?

A I was only employed by them a couple of months. I am not employed by them now.

XQ How many stores did you visit in Rockingham County on this mission?

A I don't know.

XQ Did you not keep a record of the stores you visited?

A Only those that I purchased goods from.

XQ How many were there of those stores at which you made purchases of this character?

A Between fifty and seventy-five. I don't know the number exactly.

XQ Is it a fact that you were engaged in other counties, in the same business, by the Board of Pharmacy?

A I was.

XQ What counties, sir?

A Augusta, Shenandoah, Loudoun, Prince William, Alexandria, and Fairfax.

XQ How many did you report in Augusta County?

A I don't remember, at all.

XQ Well, how many did you report altogether, in Rockingham county and in the other counties mentioned?

A I don't remember that.

XQ Well, about how many?

A I cannot tell you about how many. Several hundred.

and other things

A No, sir, not permanently employed.

Q How long have you been in this employment of the Board of

Prisoners?

A I was only employed by them a couple of months. I am

not employed by them now.

Q Now what station did you visit in Washington County for this

division?

A I don't know.

Q Did you not keep a record of the stores you visited?

A Only those that I purchased goods from.

Q How many stores of those stores at which you made

purchases of this character?

A Between fifty and seventy-five. I don't know the

number exactly.

Q Is it a fact that you were engaged in other business, in

the same business, at the Board of Prisoners?

A I was.

Q What business, sir?

A Auctioneer, showman, peddler, farmer, fisher, and

other, and painter.

Q How many did you report in August, 1892?

A I don't remember, at all.

Q Well, how many did you report in September, in Washington

County and in the other counties mentioned?

A I don't remember that.

Q Well, about how many?

A I cannot tell you about how many. I cannot remember.

(S.B.Strickler.)

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XQ Several hundred?

A Between two and three hundred, I would say.

XQ And, Mr. Strickler, what arrangement did you have with the Board of Pharmacy with regard to your compensation for this service?

A Twenty-five dollars a month salary and two dollars and fifty cents for each conviction.

XQ And you received \$25.00 a month salary and two dollars and fifty cents on each conviction. Were you to receive any compensation to cover your travelling expenses and other expenses?

A Yes, sir; all of my expenses were paid.

XQ Who was to pay this salary, your expenses and this \$2.50 on each conviction?

A The Board of Pharmacy.

XQ Who represented this Board of Pharmacy in making this contract with you?

Objection; sustained; exception for defendant.

XQ Was this salary, expenses and commission paid to you?

A The salary and expenses were.

XQ How much did you receive?

A I don't know that, at all.

XQ Have you received any thing on account of convictions?

A No, sir.

XQ Your compensation, then, with regard to convictions, awaits the result of pending proceedings; that is a fact, is it not?

A Yes, sir.

XQ What did you do with the various drugs that you purchased from the merchants?

Objection; sustained; exception for defendant.

XQ Well, what did you do with the carbolic acid which you

(S.B.Strickler.)

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say you purchased in this bottle from Mr. Yager's store?

A I kept it in a box here at Mr. Avis's.

XQ What did you do with it?

A Kept it in a box here in Mr. Avis's store.

XQ Mr. Avis is a druggist here in Harrisonburg?

A Mr. James L. Avis; yes, sir.

XQ Has he any official position in connection with the State Board of Pharmacy?

A Yes, sir.

XQ When did you first see this bottle after it was placed in the box in charge of Mr. Avis?

A I saw it in the Magistrate's court.

XQ What is your age?

A Twenty-two.

The witness was told to stand aside.

MR. CONRAD: The fact of Mr. Yager's not being a registered Pharmacist is a matter of proof --

MR. HARRIS: You can offer proof, and we will not object to it.

MR. GUIGON: Can not that fact go in as agreed?

MR. HARRIS: It is agreed; but I want it to emanate from you as proof, and not come as a concession from us.

MR. CONRAD: I could have had the Secretary of the State Board of Pharmacy here, if I had thought it was necessary.

THE COURT: You could write out the question and forward it to the Secretary of the State Board of Pharmacy and have his answer here in time for the next term of court.

MR. CONRAD: We will put Mr. Avis on the stand and prove it in two ways.

Q Now you witnessed in this bottle from Mr. Yager's store?

A I kept it in a box here at Mr. Ayle's.

Q What did you do with it?

A I kept it in a box here in Mr. Ayle's store.

Q Mr. Ayle is a druggist here in Harrisburg?

A Mr. James L. Ayle; yes, sir.

Q Has he any official position in connection with the State

Board of Pharmacy?

A Yes, sir.

Q When did you first see this bottle after it was placed in

the box in charge of Mr. Ayle?

A I saw it in the Magistrate's court.

Q What is your age?

A Twenty-two.

The witness was told to stand aside.

MR. CONRAD: The fact of Mr. Yager's not being a registered

pharmacist is a matter of proof --

MR. HANDEL: You can offer proof, and we will not object to it.

MR. GIBSON: Can you not find to be already?

MR. HANDEL: It is already; but I want it to establish from you

as proof, and not come as a concession from us.

MR. CONRAD: I could have had the testimony of the State Board

of Pharmacy here, if I had thought it was necessary.

THE COURT: You could write out the question and forward it

to the Secretary of the State Board of Pharmacy and have his answer

here in time for the next term of court.

MR. CONRAD: We will put Mr. Ayle on the stand and prove it

in two days.

(Jas.L.Avis.)

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JAMES L. AVIS, being duly sworn on behalf of the Commonwealth, testified as follows:

Q You are a druggist and a registered pharmacist of the State of Virginia?

A Yes, sir.

Q How long have you been engaged in business as a pharmacist?

A All my life.

Q What is your age?

A I am in my sixty-second year.

Q You don't mean that you have been in the pharmacy business for sixty-two years?

A Oh, no, but since I was old enough -- about forty years.

Q I wish you would examine this vial and state whether you have examined its contents and whether it contains carbolic acid or not?

A Well, from my general knowledge of carbolic acid I would say that it was a grade of carbolic acid -- some grade.

Q You are a member of the State Board of Pharmacy, I believe?

A Yes, sir.

Q What is your official connection with it?

A I am president of the board.

Q State, if you know, whether Mr. Thomas P. Yager, of Penn-Laird, in this county, is a registered pharmacist or not?

A He is not.

Q Carbolic acid is not a proprietary medicine, Captain Avis, is it?

A No, sir.

JAMES L. AVIS, being duly sworn on behalf of the Commonwealth,

testifies as follows:

Q You are a druggist and a registered pharmacist of the State of Virginia?

A Yes, sir.

Q How long have you been engaged in business as a pharmacist?

A All my life.

Q What is your age?

A I am in my sixty-second year.

Q You don't mean that you have been in the pharmacy business

for sixty-two years?

A Oh, no, but since I was old enough -- about forty

years.

Q I wish you would examine this vial and state whether you have examined the contents and whether it contains carbolic acid or not?

A Well, from my general knowledge of carbolic acid I would say that it was a grade of carbolic acid -- good grade.

Q You are a member of the State Board of Pharmacy, is that correct?

A Yes, sir.

Q What is your official connection with it?

A I am president of the board.

Q State, if you know, whether Mr. Thomas P. Vetter, of Penn-

sylvania, is a registered pharmacist or not?

A He is not.

Q Carbolic acid is not a proprietary medicine, Captain Avis,

is it?

A No, sir.

Q Is it a domestic remedy -- domestic medicine?

A It is classed in pharmacy law as a deadly poison, and the same special label that is directed to be put on all deadly poisons is required to be put on carbolic acid.

Answer is objected to, because a statement of law and not a statement of fact.

A (Concluded) I am not attempting to construe the law, but state it as I understand it and as it is printed.

Q Carbolic acid is, as a matter of fact, a deadly poison?

A Yes, sir.

Q And is not a domestic remedy?

A No, sir, I would not so consider it. I suppose I am here to give evidence and not merely to answer strictly any little question, and I will just state: My information is that many states of this country prohibit the sale of carbolic acid in its original strength; they will not permit the sale of pure carbolic acid; they only allow it to be sold when the purchaser makes known the use he wishes to make of it and the druggist is allowed to prepare a solution, a weaker preparation of it, to meet his wants.

Same objection to this answer as made last above.

CROSS-EXAMINATION BY MR. HARRIS:

XQ You are not prepared to say what solution of so-called carbolic acid is contained in this vial, or what amount of pure carbolic acid is in it?

A No, sir; but I would not take it to be a very pure grade of carbolic acid. Its odor would indicate that it is not of a very good grade. This is what is known as commercial carbolic acid.

XQ For what sort of use?

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of a lady who was... the first of the...

A... the first of the...

the first of the...

CROSS-EXAMINATION BY MR. HENRY:

Q. Now, you say that you saw the... the first of the...

A. Yes, I saw the...

Q. Now, you say...

the first of the...

A. Yes, I saw the...

Q. Now, you say...

the first of the...

the first of the...

the first of the...

(Jas.L.Avis.)

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A Well, it is really -- That grade of acid, if it is what I believe it is, an ordinary carbolic acid, it is not fit for any thing except disinfectant purposes. It would not do to make a solution of it and put on wounds. That is why restrictions are thrown around a solution of carbolic acid; it might set up inflammation in a wound and cause serious injury to man or beast.

XQ That quality of carbolic acid is designed almost entirely for use for domestic purposes in the way of a disinfectant, is it not?

A Well, it is sometimes used -- It has very many uses, because the public --

XQ (Interposing) I am not talking about the public, I am asking you if it is not a fact that there is such a grade of carbolic acid which is known as commercial carbolic acid for disinfectants?

A There is such a grade known, and it is regarded as a very dangerous grade of acid.

XQ Mr. Avis, how did it come to be called commercial acid?

A That is just an ordinary name given to a cheaper grade of carbolic acid.

XQ Is it not a fact, Mr. Avis, that it is called "Commercial" because it is prevalent in commerce; that it is bought and sold in the stores? Is not that the meaning of commercial?

A No, sir. If I was to designate an article in ordering it as "commercial" I would mean by that that I wanted a cheaper grade; if I wanted pure carbolic acid I would designate it as chemically pure.

XQ And I ask you, how did that grade you speak of come to be termed "Commercial" if it were not for the fact that it is in common use, commercially?

A Well, it is really -- That grade of acid, if it is what I believe it is, an ordinary carbolic acid, it is not fit for any thing except disinfectant purposes. It would not do to make a solution of it and put on wounds. That is why restrictions are thrown around a solution of carbolic acid; it might set up inflammation in a wound and cause serious injury to man or beast.

XQ That quality of carbolic acid is designed almost entirely for use for domestic purposes in the way of a disinfectant, is it not?

A Well, it is sometimes used -- It has very many uses,

-- because the public --

XQ (Interposing) I am not talking about the public, I am asking you if it is not a fact that there is such a grade of carbolic acid which is known as commercial carbolic acid for disinfectant? A There is such a grade known, and it is regarded as a very dangerous grade of acid.

XQ Mr. Davis, how did it come to be called commercial acid? A That is just an ordinary name given to a cheaper grade of carbolic acid.

XQ Is it not a fact, Mr. Davis, that it is called "commercial" because it is prevalent in commerce; that it is bought and sold in the stores? Is not that the meaning of commercial?

A No, sir. If I was to designate an article in commerce it as "commercial" I would mean by that that I wanted a cheaper grade; if I wanted pure carbolic acid I would designate it as chemically pure.

XQ And I ask you, how did that grade you speak of come to be termed "commercial" if it were not for the fact that it is in common use, commercially?

A There are several grades that may be termed "Commercial."

XQ But are they not in common commercial use, and so are called "Commercial" grades?

A I don't understand it that way. The word "Commercial" is simply used by the dealers. The public are not supposed to know any thing about it as commercial. What I mean by that is, that it is not my understanding that the word "Commercial" is used by the public; it is one used by those who are familiar with the varieties of it.

XQ You have stated that there is a cheaper grade of carbolic acid known as "Commercial" carbolic acid --

A Well, there are several cheaper grades.

XQ Is not the term itself indicative of the common use in commerce of this grade, or those grades, and, is it not a fact that they are more commonly used in commerce than the pure carbolic acid?

A You do not understand me exactly right. When I used the word "commercial" I do not want to be understood as saying that it is known generally as commercial acid.

XQ I am not asking you how it is generally known, but I am asking how it got that term in trade, and if, as a matter of fact, it is not sold in commercial trade?

A Well, it is a term generally used in the trade to designate a cheaper grade. And it applies to other goods besides carbolic acid.

XQ But do you know whether for years it has been commonly bought and sold in the stores of this Commonwealth, and in this

(Jas.L.Avis.)

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Commonwealth, and in this county particularly, as carbolic acid, that grade of it, by the merchants, I mean, sold by the merchants to farmers for domestic purposes? Is not that a fact, Mr. Avis?

A Well, I have known from hearsay that merchants sell carbolic acid; but as to what they sell it for -- what grade they sell it for -- I do not know any thing about that.

XQ For what purpose would you sell that grade of carbolic acid?

A Merely to sprinkle around hen houses, cess-pools, and things of that kind.

XQ That is a very common use for it in the country?

A Not a common use, but it is used by a great many about hen houses.

XQ Do they use it on galled shoulders of horses?

A It would be a risky business for that.

XQ Have you ever known any horses or men to suffer any injury from having used commercial carbolic acid?

A I cannot state any cases. I am just speaking from my general information on the effect of that class of goods.

XQ Mr. Avis, if a person would send to you for some carbolic acid to sprinkle around hen houses or cess-pools as a disinfectant would you send them that grade of carbolic acid?

A Well, I might send them that, or I might send them some other grade. I have several grades.

XQ But would that grade of carbolic acid answer that purpose?

A Yes, sir.

XQ And would that be the purpose for which that grade of acid is designed to be used?

Commonwealth, and in this country particularly, as carbolic acid, first grade of it, by the merchants, I mean, sold by the merchants to farmers for domestic purposes? Is not that a fact, Mr. Davis?

A. Well, I have known from hearsay that merchants sell carbolic acid; but as to what they sell is for -- what grade they sell is for -- I do not know any thing about that.

Q. For what purpose would you sell that grade of carbolic acid?

A. Merely to sprinkle around hen houses, cess-pools, and things of that kind.

Q. That is a very common use for it in the country?

A. Not so common use, but it is used by a great many about hen houses.

Q. Do they use it on killed animals of horses?

A. It would be a risky business for that.

Q. Have you ever known any person or man to suffer any injury from having used commercial carbolic acid?

A. I cannot state any cases. I am just speaking from my general information on the effect of that class of goods.

Q. Mr. Davis, if a person would send to you for some carbolic acid to sprinkle around hen houses or cess-pools as a disinfectant would you send them that grade of carbolic acid?

A. Well, I might send them that, or I might send them some other grade. I have several grades.

Q. But would that grade of carbolic acid answer that purpose?

A. Yes, sir.

Q. And would that be the purpose for which that grade of acid is designed to be used?

A It is what it ought to be used for.

XQ That is the purpose to which it is generally put by persons who buy it, is it not?

A That would make me make a statement that I would not like to make. In the first place, it is rather doubtful whether the average purchaser of carbolic acid would know any thing about it.

XQ But he is sending to you -- the president of the Board of Pharmacy, an expert druggist skilled in your profession -- for some carbolic acid to sprinkle around his hen house or cess-pool, or to be used generally as a disinfectant, would you send him that grade to answer that purpose?

A Yes, sir, I would either send him that or some similar grade, if he made known his purpose -- made known the use of it.

XQ You have described at some length the difference between commercial carbolic acid and the pure carbolic acid. Which is the more concentrated form of poison, the pure carbolic acid or the commercial grade?

A Well, I don't know that I could answer that question exactly. They are all considered deadly poisons.

XQ You say, now, Mr. Avis, that as a druggist you do not know that pure carbolic acid is a more concentrated and deadly form of poison than the ordinary commercial grade of the acid?

A I say that ordinarily the pure carbolic acid would not be as deadly poison because it is used medicinally, and the pure grade only should be used medicinally.

XQ How many drops of pure carbolic acid could be taken safely, Mr. Avis, as a medicine?

A Well, I suppose, ordinarily, one drop of pure carbolic acid would be about the average dose.

and the other side of the river.

It was a very small boat, and the crew was very small.

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The boat was very small, and the crew was very small.

XQ And you think that less than a drop of the commercial acid --

A I hav'n't said that at all.

RE-DIRECT EXAMINATION RESUMED.

Q You have stated in your answer a moment ago that you had only examined one sample, and that is the only one you had seen. Please examine this one and say if what you have stated applies to both samples which are exhibited here, as we want to use your testimony in both cases?

A Well, sir, there is a good deal put up in the way of carbolic acid. There is a good deal of it handled by merchants who do not do business direct with druggists.

Q As I understand you, these are both, according to your judgment, inferior grades of carbolic acid?

A Yes, sir; I regard both as inferior grades of carbolic acid.

THE COURT: You say that both are deadly poisons?

A Yes.

Q And you say that the ordinary grades of carbolic acid are more deadly than the pure grade?

A Not only because the pure carbolic acid is supposed to contain nothing but carbolic acid, while many of the cheaper grades contain other substances which are injurious to human life and tissue, and so on --

MR. SIPE: (Interposing) Then if the impurity with which the carbolic acid was impregnated was less poisonous than the carbolic acid, it would not be so poisonous as the pure article? I will change the word "impregnated" to "diluted."

A That would depend upon what it was diluted with. It

might be diluted with some thing that was as great a poison.

XQ Then you have not understood my question. The question is, if it were diluted with a less poisonous substance, wouldn't the compound be less poisonous than the carbolic acid?

A Well, it might be diluted with some thing that might form a chemical compound that would make it more poisonous.

XQ Is it not a fact, Mr. Avis, that there are few things in pharmaceutical products that are as poisonous as carbolic acid?

A Oh, yes, sir, there are a good many that are equally so; some of them more so.

XQ Is it not a fact that in the domestic remedies sold in the stores, generally, and used on the farms and about the homes of the people of the country, there are a great many poisons? Is not copperas a poison, Mr. Avis?

A Yes, sir. It is not designated in the books as a deadly poison, but it would be a poison.

XQ How much copperas in solution in a dose would be fatal?

A Well, it is not likely any body would take a sufficient amount of solution of copperas to make a fatal dose.

XQ Now, is it not a fact, that it has recently been discovered that a great many proprietary and patent medicines are deadly poisons?

A Well, they are not supposed to be.

XQ Is it not a fact, Mr. Avis, that they have been demonstrated to be poisons -- proprietary medicines sold now out of the stores and drug stores in Rockingham county and elsewhere?

A No, sir. I don't know that I am aware of that fact, exactly, strictly speaking, as deadly poisons.

XQ In making a solution of carbolic acid and water for dis-

(Jas.L.Avis.)

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infectant purposes, in the same quantity of water, used for the same purpose, would you place more of the pure carbolic acid than you would of the inferior grade or less?

A Not necessarily so.

XQ Which would you do, Mr. Avis?

A That would depend a little upon the purpose for which the solution was intended and the grade of the acid I was using.

XQ Suppose you wanted to use it for sprinkling around hen houses, cess-pools, stables, hog pens, and things of that sort.

A Well, there is a grade of carbolic acid that is sold very cheap, but it is not supposed to possess as great disinfectant properties as a pure grade of acid.

XQ You sell that do you?

A Yes, sir.

XQ If I sent to you for some carbolic acid, a grade of that sort for a disinfectant, would you require me to register it?

A No, sir, I do not require you to register it. I would put a special label on it that the law requires and mark it poison. I wouldn't send it either unless by a grown person.

The witness was told to stand aside.

MR. HARRIS: We submit the motion, if your Honor please, to exclude all of the testimony of Mr. Strickler and so much of that of Mr. Avis as relates to the contents of the bottle being in-carbolic acid, as being admissible, it having been shown by the Commonwealth that the defendant is not a registered pharmacist, there is no penalty imposed upon him by the statute as he has violated none of the provisions of said act.

THE COURT: Your motion is, that one who is not a regis-

tered pharmacist is not subject to the penalty; that being only a merchant the defendant is not within the provisions of the act?

MR. SIPE: We want to move to strike out all of the evidence the Commonwealth has introduced, except that showing Mr. Yager is not a registered pharmacist.

MR. CONRAD: You do not deny, then, that this is carbolic acid or ~~or~~ the fact of the sale to Strickler?

MR. HARRIS: Our motion does not mean that at all.

MR. SIPE: It means that the evidence which the Commonwealth has introduced on those points is irrelevant and immaterial.

THE COURT: As I understand you gentlemen, your contention -- your motion -- is based upon the idea that the prohibition in the act does not apply to the sale of carbolic acid by a merchant -- that there is no penalty attached to the prohibition, but if there is, then it does not apply to merchants who are not registered pharmacists?

MR. SIPE: Yes, sir; it is brutum fulmen is our position. The motion speaks for itself; it is on record.

TESTIMONY ON BEHALF OF DEFENDANT.

WILLIAM H. SIPE, being first duly sworn, testified as follows:

Q What is your occupation?

A I am a merchant.

Q How long have you been in the merchantile business in Rockingham county?

A About twenty-five years.

Q Have you conducted a business that is rather larger than is usually conducted in stores in this county?

A I have conducted a good sized business. I think it

(Wm. H. Sipe.)

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is generally considered that I have a good business.

Q Let me change the question a little. Do you conduct, and have you conducted for a number of years, or not, a large country store in Rockingham county?

A Yes, sir.

Q Can you state whether the people of the community in which you have conducted business, and elsewhere in the county, make frequent use of carbolic acid for domestic purposes in matters of disinfectant, in the way of sprinkling of hen houses and cess-pools, and, also, for veterinary purposes, that is, cleansing the sores on horses, etc.?

A Yes, sir. It is generally used, to the best of my knowledge.

Q And you say it is generally used, to the best of your knowledge, on farms?

A Yes, sir.

Q What has been your observation, Mr. Sipe, with regard to the use of carbolic acid for domestic purposes around the farm houses in this county??

A Why, I have considered that it is a very important remedy.

Q I mean to say, to what extent is it used?

A We have been keeping it in the store and have had calls for it, and people would tell us that it was for use around their places; some times for sores; if a horse would get a sore shoulder, or some thing of that kind, they would want to put some of it in water. Now, at home, I know we ordered some at my own home, and keep a bottle in the room all of the time.

Q Do you know whether this is generally true of the farm

is generally considered that I have a good business.

Q Let us change the question a little. Do you conduct, and have you conducted for a number of years, or not, a large country store in Rockingham county?

A Yes, sir.

Q Can you state whether the people of the community in which

you have conducted business, and elsewhere in the county, make frequent use of carbolic acid for domestic purposes in matters of disinfectant, in the way of sprinkling on houses and out-buildings, and, also, for veterinary purposes, that is, cleansing the sores on horses, etc.?

A Yes, sir. It is generally used, to the best of my

knowledge.

Q And you say it is generally used, to the best of your

knowledge, on farms?

A Yes, sir.

Q What has been your observation, Mr. Sipe, with regard to

the use of carbolic acid for domestic purposes around the farm houses in this county?

A Why, I have considered that it is a very important

remedy.

Q I mean to say, to what extent is it used?

A We have been keeping it in the store and have had calls for it, and people would tell us that it was for use around their places; some times for sores; if a horse would get a sore shoulder, or some thing of that kind, they would want to put some of it in water. Now, at home, I know we ordered some of it to use, and keep a bottle in the room all of the time.

Q Do you know whether this is generally true of the farm

(Wm.H.Sipe.)

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houses around the country? Is it not a fact that they very frequently keep carbolic acid around the premises? Is that your observation?

A I cannot say that I know positively from my own observation, but only from inference --

Q That people purchase it at your store?

A Yes, that they purchase it, and I have every reason to believe that it is used.

CROSS-EXAMINATION BY MR. GUIGON.

XQ Mr. Sipe, you say that you sold it very generally. Did Mr. Strickler buy any carbolic acid from you?

MR. SIPE: Did you sell any yourself to Mr. Strickler?

A No, sir.

THE COURT: Did I understand you to say that you did not sell carbolic acid, generally?

A Yes, sir, it has been sold at the stores generally.

XQ The question is, at your store?

A Yes, sir.

XQ Have you been prosecuted, Mr. Sipe?

A No, sir, not that I know of. No; I don't think there has ever been any case against me.

XQ Sir?

A I heard that he bought -- Now, I have another store at which I do not stay myself. This is hearsay, do you want me to tell that?

MR. HARRIS: You cannot tell what you heard.

THE COURT: He can as to that. They want to show that Mr. Strickler bought carbolic acid at his store.

MR. SIPE: If he don't know it himself he cannot state

(Wm.H.Sipe.)

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hearsay.

MR. CONRAD: If Mr. Wm. H. Sipe is interested in the outcome of this case, we would have a right to show his interest.

MR. HARRIS: You cannot go into the question of his prosecution.

THE COURT: No, I don't think that would be proper, but you can show his interest. It is admissible for that purpose.

XQ Have you any interest in the outcome of this case here?

Objection; overruled; exception for defendant.

A Only on general principles; as far as it affects me as a merchant; and from hearsay. Part of that comes from hearsay -- whether I might be affected.

XQ It is possible that your own interests will be affected by the decision of this case, is it not?

A In a general way I might be, I might say.

XQ Have you co-operated in the defense which is being made here?

A Yes, sir, I have.

XQ Have you contributed towards the defense of this case which is being tried here now?

A I said, in a general way, that is, as the fraternity of merchants are interested. And I might be interested in some other way, by hearsay.

XQ Have you contributed towards the expense of defending this case?

A Must I answer as to whether I have agreed --

XQ Whether you have agreed to, or have done it, either one.

Objection; overruled; exception for defendant.

A Yes, sir, I have agreed to bear my proportional part

(Wm.H.Sipe.)

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of the expense for the general good, I consider.

MR. HARRIS: For the general good?

A Yes, sir.

XQ Since you say "for the general good," is it not a fact that one reason which induces you to contribute towards the expense of this case is that you are advised that Mr. Strickler, at the time he was purchasing carbolic acid from other merchants, made a purchase at one of your stores; and are you not, in that way, directly interested in that question?

Objection; overruled; exception for defendant.

A Yes, I was advised, but not directly though, that Mr. Strickler --

XQ Had purchased carbolic acid at your store?

A Yes, sir.

XQ And your name was in the list of merchants in the county to be reported for selling carbolic acid?

A Yes, sir.

RE-DIRECT EXAMINATION RESUMED BY MR. SIPE.

Q You have been asked, Mr. Sipe, with regard to your interest as a merchant --

A (Interrupting) Allow me to qualify that answer a little. I don't know but that I would have been willing to chip in my part even if there had not been any --

Q I didn't understand that?

A I might have been perfectly willing to have assisted in the defense even if there had not been --

Q Even if there had not been any prosecution against yourself?

of the expense for the general good, I consider.

MR. HARRIS: For the general good?

A Yes, sir.

Q Since you say "for the general good," is it not a fact that one reason which induces you to contribute towards the expense of this case is that you are advised that Mr. Strickler, at the time he was purchasing carbolic acid from other merchants, made a purchase of one of your stores; and are you not, in that way, directly interested in that question?

Objection; overruled; exception for defendant.

A Yes, I was advised, but not directly though, that Mr.

Strickler --

Q And purchased carbolic acid at your store?

A Yes, sir.

Q And your name was in the list of merchants in the county

to be reported for selling carbolic acid?

A Yes, sir.

RE-DIRECT EXAMINATION RESUMED BY MR. SIBE.

Q You have been asked, Mr. Sipe, with regard to your interest

as a merchant --

A (Interposing) Allow me to qualify that answer a little.

I don't know but that I would have been willing to chip in my part

even if there had not been any --

Q I didn't understand that?

A I might have been perfectly willing to have assisted

in the defense even if there had not been --

Q Even if there had not been any prosecution against your-

self?

A Yes, sir.

Q Is it not a fact that the merchants of this Commonwealth are formulating an association to protect themselves and their interests in this matter, somewhat similar to the druggists' association in this state?

A In this matter and in other matters of general interest to the merchants -- whatever may come up.

Q In other words, you want to have the right to sell carbolic acid over your counters without registering it, just like Captain Avis, and other druggists, sell it over their counters, by their clerks, without registering it?

A Yes, sir.

MR. AVIS: I did not say any such thing.

Witness was told to stand aside.

A. N. RHODES, duly sworn on behalf of defendant, testified as follows:-

Q Mr. Rhodes, you are a farmer of Rockingham county?

A Yes, sir.

Q Where do you live?

A Bridgewater at present, and have been for the last year or so.

Q But you have been living for years in this county?

A Yes, sir. I have been farming in this county for the last thirty years.

Q Will you state whether or not carbolic acid has been for a number of years a familiar remedy in your home?

A Yes, sir, it has been on my place. As far as my

Q Is it not a fact that the merchants of this community are complaining in association to protect themselves and their interests in this matter, somewhat similar to the druggists' association in this state?

A In this matter and in other matters of general interest to the merchants -- whatever may come up.

Q In other words, you want to have the right to sell carbolic acid over your counters without registering it, just like kerosene, kerosene, and other druggists, sell it over their counters, by their clerks, without registering it?

A Yes, sir.

Q Mr. Rhodes, I did not say any more thing.

Witness was told to stand aside.

A. N. RHODES, duly sworn on behalf of defendant, testified as follows:-

Q Mr. Rhodes, you are a farmer or stockman, is that right?

A Yes, sir.

Q Where do you live?

A Bridgewater at present, and have been for the last year or so.

Q Has your wife been living for years in this county?

A Yes, sir. I have been farming in this county for the last thirty years.

Q Will you state whether or not carbolic acid has been for a number of years a valuable remedy in your home?

A Yes, sir, it has been on my place. As far as my knowledge goes, it is a very valuable remedy.

A Yes, sir.

Q Is it not a fact that the merchants of this Commonwealth are formulating an association to protect themselves and their interests in this matter, somewhat similar to the druggists' association in this state?

A In this matter and in other matters of general interest to the merchants -- whatever may come up.

Q In other words, you want to have the right to sell carbolic acid over your counters without registering it, just like Captain Avis, and other druggists, sell it over their counters, by their clerks, without registering it?

A Yes, sir.

MR. AVIS: I did not say any such thing.

Witness was told to stand aside.

A. N. RHODES, duly sworn on behalf of defendant, testified as follows:-

Q Mr. Rhodes, you are a farmer of Rockingham county?

A Yes, sir.

Q Where do you live?

A Bridgewater at present, and have been for the last year or so.

Q But you have been living for years in this county?

A Yes, sir. I have been farming in this county for the last thirty years.

Q Will you state whether or not carbolic acid has been for a number of years a familiar remedy in your home?

A Yes, sir, it has been on my place. As far as my

(S. H. 1000)

Q Is it not a fact that the members of this community are concerned in this matter, somewhat similar to the drugists' association in this state?

A In this matter and in other matters of general interest to the community -- whatever may come up.

Q In other words, you want to have the right to sell opium without your consent without registering it, just like opium, and other drugists, sell it over their counters, by their clerks, without registering it?

A Yes, sir.

Q Mr. Rhodes, you are a citizen of Washington county?

A Yes, sir.

Q Where do you live?

A Bridgeton at present, and have been for the last year or so.

Q Have you been living for years in this county?

A Yes, sir. I have been traveling in this county for the last thirty years.

Q Will you state whether or not opium has been sold in your home?

A Yes, sir, it has been on my place. As far as my knowledge goes, it has been sold in this county for the last thirty years.

experience is concerned, I have used it in various ways, such as --

Q Has it been your habit to keep it on your premises?

A Yes, sir; aimed to keep it pretty near all the time.

Q Will you describe to the court the various uses to which carbolic acid was put at your home?

A I used it for galled shoulders of horses, or sores of any kind about horses. I used it as a remedy for chickens in case of roup. I also used it in the house as a disinfectant, in hot dry weather. I live on the creek, here, and it is very offensive, and I have put the acid in the house to use it that way. I have often used it in swill-tubs for hogs when cholera was in the country, as a preventative. I believe that is about all of the use I made of it, and I keep it pretty near all of the time.

Q Mr. Rhodes, what do you say as to the extent to which carbolic acid is in common use among farmers generally, so far as you have observed?

A Well, I think it is very generally in use. You will find it in most every barn. That is as to my knowledge of the fact. Of course, I don't know that just every one keeps it, but as a general thing you will find it about all barns.

The witness was told to stand aside.

M. F. FDORY, duly sworn on behalf of defendant, testified as follows:

Q You are a farmer, are you?

A No, sir.

Q Oh, yes, I believe you are not. What is your occupation?

A Blacksmithing.

Q Will you state to the court whether or not you use carbolic

experience is concerned, I have used it in various ways, such as --
Q Has it been your habit to keep it on your premises?

A Yes, sir; aimed to keep it pretty near all the time.

Q Will you describe to the court the various uses to which

carbolic acid was put at your home?

A I used it for killing specimens of horses, or some of

any kind about horses. I used it as a remedy for cholera in

cases of fever. I also used it in the house as a disinfectant, in

hot dry weather. I live on the creek, here, and it is very often

alive, and I have put the acid in the house to use if that was.

I have often used it in swill-tubs for pigs when cholera was in the

country, as a preventive. I believe that is about all of the

use I made of it, and I keep it pretty near all of the time.

Q Mr. Rhodes, would do you say as to the extent to which

carbolic acid is in common use among farmers generally, so far as

you have observed?

A Well, I think it is very generally in use. You will

find it in most every barn. That is as to my knowledge of the fact.

Of course, I don't know that just every one keeps it, but as a

general thing you will find it about all barns.

The witness was told to stand aside.

M. W. PHOXY, duly sworn on behalf of defendant, testified as

follows:

Q You are a farmer, are you?

A No, sir.

Q Oh, yes, I believe you are not. What is your occupation?

A Blacksmithing.

Q Will you state to the court whether or not you use carbolic

acid as a common household remedy at your house?

A I do, yes, sir. I keep it there at home. I used it there last night and for the last several nights. I use it on my hands for chapped hands. It is good for that, and for sores of any kind. I use it in that way. We always keep it at the house as far as I know, and I recommend it for different things -- for sores on horses that I would see about the shop -- horses that I would see raw-like where the collar binds their shoulders, and I would recommend to get that and wash with it, it would be good.

Q State whether or not, from your observation, it is a common household remedy among the farmers in the community where you live?

A As far as I know it is; yes, sir.

Witness was told to stand aside.

E. C. ROLSTON, duly sworn on behalf of defendant, testified as follows:-

Q Squire Rolston, you are a farmer of Rockingham county are you?

A Yes, sir.

Q You live near Dayton, I believe?

A Yes, sir.

Q Do you keep carbolic acid on your premises and use it as a household remedy?

A Yes, sir; rarely without it.

Q You say that you are never without it?

A Rarely without it.

CROSS-EXAMINATION.

XQ How do you use it?

Q Is it a common household remedy at your house?
A I do, yes, sir. I keep it there at home. I used it
there last night and for the last several nights. I use it on my
hands for chapped hands. It is good for that, and for sores of
any kind. I use it in that way. We always keep it at the house as
far as I know, and I recommend it for different things -- for
sores on horses that I would not about the shoes -- horses that I
would not shoe where the colic blade their shoulders, and I
would recommend to get that and wash with it, it would be good.
Q State whether or not, from your observation, it is a common
household remedy among the farmers in the community where you live?
A As far as I know it is, yes, sir.
Witness my hand to what I said.

E. D. HOLSTON, duly sworn on behalf of defendant, testified
as follows:-
Q Eugene Holston, you are a farmer of Rockingham county and
your
A Yes, sir.
Q You live near Dayton, I believe?
A Yes, sir.
Q Do you keep cayenne oil on your premises and use it as a
household remedy?
A Yes, sir; rarely without it.
Q You say that you are never without it?
A Rarely without it.

CROSS-EXAMINATION.

22 How do you use it?

A We regard it as a remedy for sores, especially among stock. If any stock gets hurt :-- stock or any thing like that -- when the veterinary comes to see us that is one of the first things he wants. He tells us to make a solution of carbolic acid.

XQ The veterinary makes a solution of carbolic acid. Do you apply it externally?

A Yes, sir. And we use it some as a disinfectant.

XQ You have used it as a remedy for hog diseases and about chicken houses, &c.?

A That is one of the things that my wife thinks we could not do without.

THE COURT: You put it in whitewash to whitewash chicken coops?

A Put it in the water to wash the chickens.

XQ Do you, or not, know that it is a remedy in very common use among the farmers of Rockingham county?

A I think so. I hear my neighbors speak of it; and in cases where stock gets hurt, one of the first things the veterinary speaks of doing is to make a solution of carbolic acid.

XQ Is it not a fact, Squire Rolston, that there are many neighborhoods in Rockingham county remote from drug stores?

A Yes, sir, a number of them.

MR. GUGON: There are a great many communities in the county remote from physicians?

A Yes, sir.

MR. CONRAD: And a good many are remote from bar-rooms?

A Yes, sir.

Witness was told to stand aside.

A We regard it as a remedy for sores, especially among
stock. It may stock gets hurt: -- stock or any thing like that --
when the veterinary comes in and he tells us that is one of the first things
he wants. He tells us to make a solution of carbolic acid.
Q The veterinary makes a solution of carbolic acid. Do you
apply it externally?

A Yes, sir. And we use it some as a disinfectant.
Q You have used it as a remedy for hog diseases and about
chicken houses, do you?

A That is one of the things that my wife thinks we
could not do without.
Q THE COURT: You put it in water and wash the chicken cages?
A Put it in the water to wash the chickens.
Q Do you, or not, know that it is a remedy in very common

use among the farmers of Rockingham county?
A I think so. I hear my neighbors speak of it; and in
cases where stock gets hurt, one of the first things the veterinary
speaks of doing is to make a solution of carbolic acid.
Q Is it not a fact, Spence Holston, that there are many
neighborhoods in Rockingham county remote from drug stores?

A Yes, sir, a number of them.
Q MR. OUTCH: There are a great many communities in the county
remote from physicians?

A Yes, sir.
Q MR. DONAH: And a good many are remote from drug-stores?
A Yes, sir.

Witness was told to stand aside.

(John W. Liskey.)

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JOHN W. LISKEY, sworn on behalf of the defendant, testified as follows:

Q You are a farmer of Rockingham county?

A Yes, sir.

Q Do you use carbolic acid on your premises?

A Yes, sir.

Q Do you know whether it is a common household remedy in Rockingham county?

A Yes, sir.

Q Now, Mr. Liskey, you say that you do keep it on your premises as a common household remedy, and you believe it is a common household remedy amongst farmers in Rockingham county, generally?

A Yes, sir.

Witness was told to stand aside.

MR. GUGON: If your Honor please, we except to all of the testimony offered by the defendant, and move to strike it out as immaterial and irrelevant.

MR. CONRAD: If the court please, we would like to be at some absolute and definite understanding as to -- as Mr. Guigon has said -- "where we are at." Our understanding is that the evidence is now closed, and that the case will be argued by briefs between this and the next term of the court.

MR. SIPE: Had we not better have a little written stipulation in regard to the trial of this case.

THE COURT: I understand that the evidence now taken shall be read at the next term as oral evidence delivered on trial at that

(John W. Lacey.)

—37—

JOHN W. LACEY, sworn on behalf of the defendant, testified as follows:

Q You are a farmer of Rockingham county?

A Yes, sir.

Q Do you use catfish as bait on your premises?

A Yes, sir.

Q Do you know whether it is a common household remedy in

Rockingham county?

A Yes, sir.

Q Now, Mr. Lacey, you say that you do keep it on your premises

as a common household remedy, and you believe it is a common

household remedy among farmers in Rockingham county, don't you?

A Yes, sir.

Witness was told to stand aside.

MR. OUTSON: If your Honor please, we object to all of the

testimony offered by the defendant, and move to strike it out as

irrelevant and immaterial.

MR. COUNSEL: If the court please, we would like to be at some

distance and desire to be excused as to -- as Mr. Outson has

said -- "where we are at." Our understanding is that the evidence

is now closed, and that the case will be argued by briefs between

this and the next term of the court.

MR. LIPS: Had we not better have a little written submission

in regard to the trial of this case.

THE COURT: I understand that the evidence now taken shall be

read at the next term as oral evidence delivered on trial at that

time.

MR. SIPE: That is it.

MR. HARRIS: I have no objection to a stipulation, but I doubt the advisability of letting the record show any thing more than that this evidence was taken to be read at the next term of the court.

THE COURT: I think ^{as} this is a matter of misdemeanor, and that you can make almost any agreement with reference to it that you could in a civil case. The arguments will be submitted in vacation and the case is to be decided at the next term of the court on the evidence now reduced to writing, which will then be considered as produced orally in court, and there will be nothing for the court to do except to declare its judgment.

MR. CONRAD: I understand that these gentlemen have submitted a motion to strike out the evidence, and we expect you to submit arguments in writing, first, and we will reply.

MR. SIPE: Do you understand that we are to close?

MR. CONRAD: Oh, yes. That is all right.

*The defendant desiring further time to
submit argument, it was later agreed
that the judgment of the Court should be rendered
at the May Term 1907, to which the case was
regularly continued*

111.

MR. SHER: That is it.

MR. HARRIS: I have no objection to a stipulation, but I doubt the advisability of letting the record show any thing more than that this evidence was taken to be read at the next term of the court.

THE COURT: I think this is a matter of wisdom, and that you can make almost any arrangement with reference to it that you could in a civil case. The arguments will be submitted in your opinion and the case is to be decided at the next term of the court on the evidence now before the court, which will then be considered as the evidence on which the case is to be decided. I do not want to be understood as saying that there will be anything for the court to do except to decide the case.

MR. CONRAD: I understand that these gentlemen have submitted a motion to strike out the evidence, and we expect you to submit arguments in writing, first, and we will reply. MR. SHER: Do you understand that we are to allow? MR. CONRAD: Oh, yes. That is all right.

Handwritten notes at the bottom of the page, mostly illegible due to fading.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA.

.....
COMMONWEALTH
vs.
A. D. BERTRAM

and

COMMONWEALTH
vs.
THOS. P. YAGER
.....

NOTE FOR THE COMMONWEALTH

In replying to the note filed by the learned counsel for the defendants in these cases, it would seem desirable to clarify the situation somewhat by reference to the various statutes regarding pharmacy matters, which have been passed from time to time, and by giving their titles in proper sequence, as follows:

FIRST: March 3rd, 1886, Acts 1885-86, p. 405
"An act to incorporate the Virginia
Pharmaceutical Association, and to regulate the practice of pharmacy, and to guard the sale of poisons in the State of Virginia."

This is the original Act constituting the State Board of Pharmacy, prescribing its rights and duties, formulating rules for its guidance, and for the regulation of the practice of pharmacy in the State, prescribing penalties, &c. This Act was incorporated into the Code of 1887 as Chapter 78.

SECOND: May 6th, 1887, Acts of 1887, p. 210,
"An act to amend and reenact Sections 6 and 12 of an act approved March 3, 1886, entitled an act to incorporate the Virginia Pharmaceutical Association, and to regulate the practice of pharmacy and to guard the sale of poisons in the State of Virginia."

NOTE FOR THE COMMISSIONER

vs.
D. HARRIS
and
COMMONWEALTH
vs.
THOS. P. YAGER

In reply to the note filed by the District Court-
and for the defendant in these cases, it would seem
to be clearly the situation described by reference to the
various sections of the Pharmacy Act, which have been
passed since the time, and by giving effect to the
noted provisions, as follows:

FIRST:
Section 217, Act of 1905, Acts 1905-06, p. 405
"An act to incorporate the Virginia
Pharmaceutical Association, and to regu-
late the practice of pharmacy, and to
grant the sale of poison in the State
of Virginia."

This is the original Act constituting the State Board of
Pharmacy, prescribing its rights and duties, formulating
rules for its guidance, and for the regulation of the prac-
tice of pharmacy in the State, prescribing penalties, etc.

SECOND:
Act 218, 1907, Acts of 1907, p. 210.
"An act to amend and extend Section
217 of an act approved March 2,
1905, entitled an act to incorporate
the Virginia Pharmaceutical Association,
and to regulate the practice of pharmacy
and to grant the sale of poison in the
State of Virginia."

The amendments contained in this Act simply extend the time for registration. This Act having been approved subsequent to the 16th day of March, 1887, was not inserted in the Code of 1887, and the Code not having been at that time published, the amendments had, of necessity, reference to the sections of the original Act, rather than to the sections of the Code. (See preface of the Revisors, p. V. See also Chapter 206, Code of 1887, Sections 4202 and 4203.)

THIRD: March 5th, 1894, Acts 1893-94, p. 715, "An Act to amend and re-enact Sections 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765 and 1766 of Chapter 78 of the Code of Virginia, in relation to the practice of pharmacy, as amended by an act approved May 6, 1887, entitled an act to amend and re-enact Sections 6 and 12 of an act approved March 3, 1886, entitled an act to incorporate the Virginia Pharmaceutical Association, and to regulate the practice of pharmacy, and to guard the sale of poisons in the State of Virginia."

This Act contains radical changes in the pharmacy law as originally enacted, March 3rd, 1886, (No. 1 ante). ~~xxxxx~~
~~incorporatedxxxxxx222xxxxxxchapter72xx~~

FOURTH: March 2, 1898, Acts of 1897-98, p. 686, "An Act to amend and re-enact Section 1759 of the Code of Virginia, in relation to the practice of pharmacy, as amended and re-enacted by an act approved March 5th, 1894."

This Act simply amends Section 1759 as to the registration of physicians practicing in rural districts, &c., removing the requirement of five years experience, and adding the provision that such registration shall be effective only so long as there is no registered pharmacist in such town. There are a few slight verbal and immaterial changes, evidently accidental, and having no bearing upon this case.

FIFTH: March 5th, 1900, Acts of 1899-1900, p. 825,
"An Act to amend and re-enact Section
1759 of the Code of Virginia, in rela-
tion to the practice of pharmacy, as
amended and re-enacted by an Act ap-
proved March 2nd, 1898, entitled an act
to amend and re-enact Section 1759 of
the Code of Virginia in relation to the
practice of pharmacy, as amended and re-
enacted by an act Approved March 5th,
1894."

This Act amends Section 1759 by again prescribing five years
experience as necessary to a practicing physician desiring
registration in rural districts and towns having a popula-
tion of fifteen hundred or less, and by eliminating the
qualification "so long as there is no registered pharmacist
in said town". It also contains a provision specifically
permitting any retail druggist or drug company or their
employees to sell, compound, dispense or manufacture in the
regular course of business any patent or proprietary medicines,
&c.

SIXTH: February 16th, 1901, Acts of Extra Session
1901, p. 338,
"An Act to require the Board of Pharmacy
of Virginia to register as pharmacists
certain parties who failed to avail them-
selves of the requirements of the act
of March 3, 1886, as amended by the Act
of March 3, 1887, and to permit such
persons so registered to practice pharma-
cy in the State of Virginia as registered
pharmacists and without examination."

This is an independent act, requiring the registration of
certain parties who shall apply on or before July 1, 1901,
and not later, and has no bearing on this case.

SEVENTH: March 5th, 1903, Acts of 1902-3-4, p. 71,
"An Act to amend and re-enact Section
1759 of the Code of Virginia, in rela-
tion to the practice of pharmacy, as
amended and re-enacted by an act approv-
ed March 5th, 1900, entitled an act to
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Virginia in relation to the practice of

to amend and re-enact Section 1759 of the Code of Virginia in relation to the practice of pharmacy, as amended and re-enacted by an act approved March 5th, 1894."

This Act amends Section 1759 by again prescribing five years experience as necessary to a practicing physician desiring registration in rural districts and towns having a population of fifteen hundred or less, and by eliminating the qualification "as long as there is no registered pharmacist in said town". It also contains a provision specifically permitting any retail druggist or drug company or their employees to sell, compound, dispense or manufacture in the regular course of business any patent or proprietary medicine,

20.

SIXTH:

February 18th, 1901, Acts of Extra Session 1901, p. 338.
"An Act to regulate the Board of Pharmacy of Virginia to register as pharmacists certain parties who failed to avail themselves of the requirements of the act of March 3, 1886, as amended by the act of March 3, 1887, and to permit such persons so registered to practice pharmacy in the State of Virginia as registered pharmacists and without examination."

This is an independent act, requiring the registration of certain parties who shall apply on or before July 1, 1901, and not later, and has no bearing on this case.

SEVENTH:

March 5th, 1903, Acts of 1903-3-4, p. 11.
"An Act to amend and re-enact Section 1759 of the Code of Virginia, in relation to the practice of pharmacy, as amended and re-enacted by an act approved March 5th, 1903, entitled an act to amend a re-enact Section 1759 of the Code of Virginia in relation to the practice of

pharmacy, as amended and re-enacted by act approved March 2, 1898, entitled an act to amend and re-enact Section 1759 of the Code of Virginia, in relation to the practice of pharmacy, as amended and re-enacted by act approved March 5, 1894."

This Act amends Section 1759 again as to the right of a practicing physician to be registered without examination in rural districts and in towns having a population of fifteen hundred or less, and prescribing that such physicians shall be regularly licensed, in place of the section as previously amended, March 5, 1900, that such physicians shall be recognized by the Medical Society of Virginia. It also again removes the requirement of five years experience as a practicing physician.

EIGHTH: March 14th, 1904, Acts of Extra Session 1904, p. 296,
"An Act to amend and re-enact Section 1764 of the Code of Virginia, as amended by an act approved March 5th, 1894, relating to the practice of pharmacy."

This Act was plainly intended to amend Section 1763 of the Code, commonly known as the "poison section", and not 1764, known as the "adulteration section". The Act is not artistically drafted, but it is manifest that it was the intention of the draftsman and of the Legislature by the passage of the Act to amend the poison section (No. 1763), only in three particulars--- first, to prescribe more severe regulation of the sale of morphine and its preparations, and, second, to rigidly control, and practically prohibit the sale of cocaine, and, third, to prevent furnishing of any drug to an habitue. It has no bearing upon the subject matter contained in Section 1764 of the Code, which prohibits the adulteration of food and drugs. It is at least an open

This Act amends Section 1753 again as to the right of a practicing physician to be registered without examination in rural districts and in towns having a population of fifteen hundred or less, and prescribing that such physicians shall be regularly licensed, in place of the section as previously amended, March 5, 1900, that such physicians shall be recognized by the Medical Society of Virginia. It also again removes the requirement of five years experience as a practicing physician.

EIGHT: March 14th, 1904, Acts of Extra Session 1904, p. 238.
"An act to amend and re-enact Section 1754 of the Code of Virginia, as amended by an act approved March 5th, 1904, relating to the practice of pharmacy."
This Act was plainly intended to amend Section 1753 of the Code, commonly known as the "poison section", and not 1754, known as the "adulteration section". The Act is not explicitly drafted, but it is manifest that it was the intention of the draftsman and of the Legislature by the passage of the Act to amend the poison section (No. 1753), only in three particulars--first, to prescribe more severe regulation of the sale of morphine and its preparations, and, second, to rigidly control, and practically prohibit the sale of cocaine, and, third, to prevent furnishing of any drug to an habitue. It has no bearing upon the subject matter contained in Section 1754 of the Code, which prohibits the adulteration of food and drugs. It is at least an open

question whether the original poison section (No. 1763) remains in full force and virtue, or whether it has been superseded by Section 1764, as amended in this Act of March 14th, 1904, and likewise concerning the sale of poisons, and also whether the original Section 1764, pertaining to adulterations has been repealed by the unfortunate muddle brought about by the manifest misnomer of the section sought to be amended.

All the Acts hereinbefore referred to may be dismissed from consideration as immaterial in this case, except the original Act of March 3rd, 1886 (No. 1 ante); chapter 78 of the Code, in which the various provisions of this Act are embodied; the general amending Act of March 5th, 1894 (No. 3 ante); the Act of March 5th, 1903 (No. 7 ante) and the Act of March 14th, 1904, amending the poison Section (No. 8 ante). It is suggested that the attention of the Court may be exclusively given to these Acts, and also to Sections 1765 and 1766, neither of which has been amended since the Act of March 5th, 1894.

Are the original Act, Chapter 78 of the Code, the several amendatory Acts, or either of them, repugnant to Article 4, Section 52 of the Constitution?

It will be observed that the original Act was entitled "An Act to incorporate the Virginia Pharmaceutical Association, and to regulate the practice of pharmacy, and to guard the sale of poisons in the State of Virginia"; that the general amending Act of March 5th, 1894, was entitled

that the General Assembly of 1834, was entitled
to make the laws of the State of Virginia;
and to regulate the business of the
State and to make the Virginia Constitution

It will be observed that the original act was en-

acted in 1834

then referred to Article 4, Section 25 of

the several amendments of the

the original act, Chapter 23 of the Code.

which the act of 1834, 1834.

to Section 1234 and 1235, which was then amended

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an Act to amend and re-enact certain sections by number of "Chapter 78 of the Code of Virginia in relation to the practice of pharmacy as amended" &c.; that Chapter 78 of the Code is entitled "Regulating the practice of Pharmacy"; that the Act of March 5th, 1903, amended and re-enacted Sections 1759 of the Code.

The purpose of all these Acts is manifest. It was to regulate the compounding, dispensing and sale of drugs and medicines, and especially of poisons, the use of which is particularly dangerous to the health of the public, and to that end all of these various provisions tend. There is no incongruity in the objects sought to be accomplished by this Statute; they vary in detail, but the general purpose is single, and the things authorized to be done or prohibited may be fairly regarded as in furtherance of the object expressed in the title. The subjects embraced in the Statute, whether specified in the title or not, have the most natural and intimate connection and correlation with each other, and are all germane to the general purpose of the Legislature. Where this is the case, the authorities in Virginia, and almost without exception in every jurisdiction, agree that the prohibition of the Constitution does not apply.

In the one case cited by the learned counsel for the defendants, Board of Supervisors of Henrico County vs. McGruder, 84 Va. p. 828, the Act in question provided-

"The late treasurer of Henrico County be allowed until the 1st day of February, 1885, to make his supplementary returns of delinquent taxes for the years" &c.,

and it was held to be unconstitutional because the object of the Act was not embraced in its title, and because the title and the body of the Act are ⁱⁿ irreconcilable conflict; the title being "An Act to allow further time for the treasurer

of Henrico County to make returns of delinquent taxes".

The manifest conflict was that the title to the Act referred to the "treasurer", and the body of the Act referred to the "late treasurer", and also because the title referred to "returns of delinquent taxes", and the body of the Act referred to "supplementary returns of delinquent taxes", which was not permitted by the general law.

In marked distinction to this decision, is a very full line of cases in Virginia, of which only a few will be briefly cited, as follows:

In the case of *Morriss vs. Virginia Insurance Co.*, 85 Va. pp. 588 and especially 595, it was held that an Act entitled "an Act to enlarge the jurisdiction of the Hustings Court" &c., and which in the body of the Act enlarged the powers of the Judge of the Hustings Court, in addition to extending the jurisdiction of the court, was not repugnant to the provision of the Constitution in question.

See also *Powell vs. Supervisors of Brunswick County*, 88 Va. pp. 713 and 714, in which the court uses the following emphatic language:

"To require every end and every means necessary or convenient for the accomplishment of the general object, to be provided for by a separate act, relating to that alone, would not only be unreasonable, but would actually render legislation impossible.
* * * * *
The generality of a title is no objection to it, so long as it is not made a cover for legislation incongruous in itself, and which, by no fair intendment, can be considered as having a necessary or proper connection."

See also *Ingles vs. Straus*, 91 Va., pp. 209 and 216.

The attention of the Court is especially called to *Iverson Brown's case*, 91 Va., pp. 762 and 772 at seq., which seems particularly applicable to the cases at bar,

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See also Ingles vs. Strens, 91 Va., pp. 809 and 816.

The attention of the Court is especially called to Iverson Brown's case, 91 Va., pp. 788 and 792 et seq., which seems particularly applicable to the cases at bar.

as it stands absolutely on all fours with them, and is conclusive of the constitutional objections raised by the defendants. In this case, Judge Riely in delivering the opinion of the Court says:

"On the other hand it (referring to Article 5, Section 15 of the Constitution of 1869, which is identical in terms with Article 4, Section 52 of the present Constitution) was not intended to obstruct honest legislation, or to prevent the incorporation into a single act of the entire statutory law upon one general subject. It was not designed to embarrass legislation by compelling the multiplication of laws by the passage of separate acts on a single subject. Although the act or statute authorizes many things of a diverse nature to be done, the title will be sufficient if the things authorized may be fairly regarded as in furtherance of the object expressed in the title. It is therefore to be liberally construed and treated, so as to uphold the law, if practicable", citing numerous cases.

In the syllabus on pp. 762 and 763 will be found a condensation of the very able and exhaustive opinion on the points involved in the cases at bar, as follows:

"The title of an act will be sufficient, within the meaning of Sec. 15, Art. V of the Constitution, if the things authorized to be done, though of a diverse nature, may be fairly regarded as in furtherance of the object expressed in the title. All that is required is that the subjects embraced in the statute, but not specified in the title, be congruous and have natural connection with or be germane to the subject expressed in the title. And the Constitution is to be liberally construed so as to uphold the law, if practicable."

"If an act of Assembly has been amended, it is unnecessary to enquire whether the title of the amendatory act would, of itself, be sufficient; it is enough if the title of the original act is sufficient to embrace the matters contained in the amendatory act."

"Where a prior act of Assembly has been substantially incorporated into the Code, and some of these provisions of the Code are amended and re-enacted, others repealed, and new sections added to that chapter by a subsequent act of Assembly, the title of which refers to the numbers of the sections amended or repealed, and the number and subject of the chapter, and the amendment and new sections are germane to the title of the original act, the

are referred to the title of the original act; that of the chapter, and the amendment and new sections amended or repealed, and the number and subject of which refer to the number of the sections chapter by a subsequent act of Assembly; the title others repealed, and new sections added to that provisions of the Code are amended and re-enacted, is incorporated into the Code, and some of these where a prior act of Assembly has been amended, it is in the amendatory act."

It is sufficient to embrace the matters contained in it in enough in the title of the original act amendatory act would, of itself, be sufficient; unnecessarily to enquire whether the title of the act as act of Assembly has been amended, it is so as to uphold the law, it is practically."

And the Constitution is to be liberally construed so far as to the subject expressed in the title. It is congruent and have natural connection with or in the statute, but not specified in the title. All that is required is that the subject expressed in the title of the object expressed in the title. Various matters may be fairly regarded as in it the things authorized to be done, though of a the meaning of Sec. 18, Art. 7 of the Constitution, and title of an act will be sufficient. Again

the points involved in the cases at bar, are follows:

a consideration of the very able and exhaustive opinion on

in the volume on pp. 262 and 263 will be found given.

Uphold the law, it is practically, giving numbers to be liberally construed and treated, so as to object expressed in the title. It is therefore may be fairly regarded as in the presence of the title will be sufficient if the things authorized things of a diverse nature to be done, the Although the act or statute authorized may be separate of separate acts on a single subject. compelling the multiplication of laws by the It was not designed to embrace legislation by five statutory law upon one general subject. the incorporation into a single act of the entire operative present legislation, or to prevent ES of the present Constitution) was not intended to be identical in form with Article 4, Section 18 of the Constitution of 1868, which upon the other hand it (referring to Article 4,

title of the amendatory act is a sufficient compliance with Sec. 15, Art. V. of the Constitution."

"Sec. 15, Art. V. of the Constitution of the State has no application to amendments of the Code; and in amending and re-enacting or repealing any part of the Code or adding thereto, it is not necessary to do more (if so much) than refer to the proper chapter and section thereof to be amended, or repealed, or added to, and adopt and express in the title of the amendatory act the number and subject of such chapter, if the provision of such amendment by re-enactment or by additional section or sections is germane to the subject of the chapter."

In concluding this opinion the Court used the following impressive language:

"Every law enacted by the legislature is presumed to be in conformity with the Constitution, until the contrary is shown, and it devolves on him who alleges its invalidity to show it. It is a grave responsibility for a court or judge to pronounce a solemn and deliberate act of the sovereign law-making power unconstitutional and void. It should never be done in a doubtful case, and especially where no great principle of liberty or the security of property 'enshrined in the Constitution of the United States and repeated in that of the State' is involved, but only some rule of legislative action. When it is done, the conflict between the Constitution and the law must be clear and palpable. To doubt is to affirm the validity of the law."

In the case of the Prison Association of Va. vs. Ashby, 93 Va., p. 667, it was held that "section 3 of the Act in question which gives to the Circuit Court of the City of Richmond exclusive jurisdiction of all habeas corpus and other proceedings to test the right of the Association to retain custody of minors committed", &c. is not broader than the title of the act, which is "An act in relation to the commitment of minors to the Prison Association of Virginia and their custody."

In Bosang vs. Building Assc., 96 Va., p. 119, it was held that "an act the title of which is 'An Act to provide a new charter for the Iron Belt Building and Loan Association' is not unconstitutional on the ground that its

to do more than to amend, or to
chapter and section thereof to be amended, or to
be added to, and adopt and express in the
title of the amendment the number and sub-
ject of such chapter, if the provision of such
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Asbury, 93 Va., p. 687, it was held that "section 5 of the
Act in question which gives to the Circuit Court of the City
of Richmond exclusive jurisdiction of all habeas corpus and
other proceedings to test the right of the Association to
retain custody of minors committed", &c., is not broader
than the title of the act, which is "An act in relation to
the commitment of minors to the Prison Association of Vir-
ginia and their custody."

In *Bonham vs. Building Assoc.*, 92 Va., p. 119, it

was held that "an act the title of which is 'An Act to
provide a new charter for the Iron Belt Building and Loan
Association' is not unconstitutional on the ground that the

title embraced more than one object, or that the title was broader than the act, in so far as it validates contracts previously made by such association which were usurious when made. The provision is germane to the title, and in furtherance of the object expressed in the title. This is all that is required. The Constitution is to be liberally construed, so as to uphold the law, if practicable."

See also *Trehy, Clerk, vs. Marye*, 100 Va., p. 40.

In *Whitlock vs. Hawkins*, 105 Va., p. 242, decided only last fall, in which Keith, President, delivered the opinion of the court, this subject is considered exhaustively, with elaborate references to previous leading cases, which have been cited *supra*, and this latest deliverance of the Court would seem to be absolutely conclusive.

In addition to this long line of authorities, the attention of the Court is respectfully called to the very able and comprehensive note to the case of *Lewis vs. Dunne* (Cal.), 55 L. R. A., p. 83 et seq., bearing more particularly upon similar constitutional provisions as applied to codifications and amendments thereto.

See also Hurst's notes on the New Constitution of Virginia, p. 48, and 1st Va. Law Register, p. 119.

CONSTITUTIONALITY OF THE STATUTE PRESUMED.

Every statute is presumed to be constitutional, and the Constitution itself must be liberally construed so as to uphold the law, if possible. "As to matters not ceded to the Federal Government, the legislative powers of the General Assembly are without limit, except so far as restrictions are imposed by the Constitution of the State in expressed terms or by strong implication. The State

ness of the object expressed in the title. This is all that is required. The Constitution is to be liberally construed, so as to uphold the law, if practicable."

See also *Trentham v. Clerk*, 100 Va., p. 40.

In *Whitlock v. Hawkins*, 100 Va., p. 242, decided

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See also Hurst's notes on the New Constitution of

Virginia, p. 48, and 1st Va. Law Register, p. 119.

CONSTITUTIONALITY OF THE STATUTE PRESERVED.

Every statute is presumed to be constitutional, and the Constitution itself must be liberally construed so as to uphold the law, if possible. "As to matters not ceded to the Federal Government, the legislative power of the General Assembly are without limit, except so far as restrictions are imposed by the Constitution of the State in expressed terms or by strong implication. The State

Constitution is a restraining instrument only, and every presumption is made in favor of the constitutionality of a State statute. No stronger presumption is known to the law. In order to warrant the courts to declare a State statute unconstitutional, the infraction must be clear and palpable." Whitlock vs. Hawkins, 105 Va., p. 242.

Button vs. State Corporation Commission, 105 Va., p. 634.

See also quotation from the opinion of the Court in Brown's case, 91 Va., to be found on p. 9 ante.

See also National Council vs. State Council, 104 Va. pp. 197 and 202.

AS TO CLASS LEGISLATION.

See Va. Dev. Co. et al. vs. Crozer Iron Co. et als., 90 Va., pp. 126 and 129 et seq., in which the Court held, following a long line of cases cited, that in construing the 14th amendment, and particularly its provision that no citizen shall be deprived of an equal protection of the laws, "It is no objection to the statute that it is special, if all persons subject to it are treated alike under the same conditions".

See also Christy vs. Elliott, 1 L. R. A., N. S., p. 215.

See also Ex parte O'Neil, 3 L. R. A., N. S., p. 563.

"When the calling or profession or business is attended with danger, or requires a certain degree of scientific knowledge upon which others must rely, then legislation properly steps in and imposes conditions upon its execution."

Minneapolis & St. L. R. Co. vs. Beckwith, 129 U. S. p. 29, cited in Christy vs. Elliott supra.

unconventional, the intention must be clear and palpable."

Whitlock vs. Hawkins, 103 Va., p. 242.

Button vs. State Corporation Commission, 103 Va.,

p. 234.

See also quotation from the opinion of the Court

in Brown's case, 91 Va., to be found on p. 3 ante.

See also National Council vs. State Council, 104 Va.

pp. 197 and 202.

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Minnesota & St. L. R. Co. vs. Beckwith, 129 U. S.

p. 20, cited in Christy vs. Elliott supra.

these respects. No person's attention is drawn to the fact
that the act under which they are prosecuted is repugnant to the
Constitution of the United States, or of the State of Vir-
ginia, is shown to be completely without foundation, and
must be disregarded.

It is respectfully submitted that in the light of
all these authorities the objection of the defendants that
the act under which they are prosecuted is repugnant to the
Constitution of the United States, or of the State of Vir-
ginia, is shown to be completely without foundation, and
must be disregarded.

and finally that carbolic acid was not a deadly
or poisonous article. THE FACTS. On the contrary it is a deadly

The testimony against each of these defendants is
practically identical so far as concerns the offence charged
against them.

In each case carbolic acid was bought from the
defendant's store, and delivered to the purchaser in a
small bottle filled upon the premises. In neither case was
it ascertained upon due enquiry as required by Section 1764,
or Section 1763, that the purchaser was aware of the poison-
ous nature of the carbolic acid, and that it was to be used
for a legitimate purpose; and in neither case was the bottle
labelled with the "name and place of business of the seller
and in addition thereto, at least two of the most readily
obtainable effective antidotes to such poisonous article",
as required by the first paragraph of this Section.

In Bertram's case the requirement of the same
paragraph that the bottle should be labelled with the name
of the article and the word "Poison", was partially complied
with by pasting on it a label bearing in ink the words
"Car. Acid. Poison", while in Yager's case no label what-
ever was affixed to the bottle by the seller.

Mr. Jas. L. Avis, the President of the Board of
Pharmacy of Virginia, and a pharmacist of prominence and

which, in some cases, is shown to be completely without foundation, and must be disregarded.

THE FACTS.

The testimony against each of these defendants is practically identical as far as concerns the offense charged against them.

In each case carbolic acid was bought from the defendant's store, and delivered to the purchaser in a small bottle filled upon the premises. In neither case was it ascertained upon due enquiry as required by Section 1764, or Section 1767, that the purchaser was aware of the poisonous nature of the carbolic acid, and that it was to be used for a legitimate purpose; and in neither case was the bottle labelled with the "name and place of business of the seller and in addition thereto, at least two of the most readily obtainable effective antidotes to such poisonous articles," as required by the first paragraph of this Section.

In *Bortman's* case the requirement of the same paragraph that the bottle should be labelled with the name of the article and the word "Poison", was partially complied with by pasting on it a label bearing in ink the words "Carb. Acid. Poison", while in *Yager's* case no label whatever was affixed to the bottle by the seller.

Mr. Jas. L. Aikin, the President of the Board of Pharmacy of Virginia, and a pharmacist of prominence and

...to be considered as a separate section...
...of the United States... of the State of Ala-
...the act... and also... to be considered as a separate section...
...the objection of the defendant...
...it is respectfully submitted that in the light of

long experience, testified that neither defendant was regis-
tered under the act; that the bottles shown in the evidence
to have been purchased under the conditions named from the
defendants respectively, each contained carbolic acid of a
cheap and inferior grade, more dangerous even than the pure
article; and finally that carbolic acid was not a domestic
or proprietary medicine, but was on the contrary a deadly
poison. Several witnesses, not druggists or experts, but
farmers, merchants and mechanics, testified that carbolic
acid was a domestic "remedy" frequently used by them and
their neighbors for purposes of disinfection and the like,
and occasionally, when diluted, as a wash for wounded or
injured animals, and that it was kept by many retail dealers.

DEFENDANTS HAVE VIOLATED SECTION 1763 or
SECTION 1764.

It is respectfully submitted that defendants are
guilty of violating the provisions of the poison section
whether that be Section 1763 or Section 1764. The compiler
of Pollard's Code has seen fit to construe the Act of
Assembly of March 14th, 1904 (No. 8 ante, q. v.) as enacting
a new poison section and repealing by implication and nec-
essary consequence the adulteration section formerly numbered
1764 in the Code of 1887, and has placed the two poison
sections, the old and the new, opposite each other at pages
926 and 927 of his work, for convenience of comparison and
selection, no doubt. It would seem, as before suggested,
that the numbering was but a clerical error and that the new
section should be considered as an amendment and re-enact-
ment of the old, leaving the adulteration section as before,

but whatever conclusion the Courts may reach as to the purpose of the General Assembly in this regard, at least it is certain that one or the other of the poison sections is now in force and effect, and was at the time of the commission of the offences charged against these defendants, and, so far as these prosecutions are concerned, it is immaterial which is the present law. The provisions as to carbolic acid, contained in the first and fourth paragraph of each, are identical. Any violation of the poison section, whichever be now in force, is a grave menace to the lives and health of the community, and the Statute should be strictly construed and rigidly enforced.

"In one sense, every law imposing a penalty or forfeiture may be deemed a penal law; in another sense, such laws are often deemed, and truly deserve to be called, remedial. The judge was, therefore, strictly accurate, when he stated that 'it must not be understood that every law which imposes a penalty is, therefore, legally speaking, a penal law, that is, a law which is to be construed with great strictness in favor of the defendant. Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in the strict sense, penal acts, although they may inflict a penalty for violating them.' "

Mr. Justice Story, in Taylor vs. United States, 3rd Howard, p. 210.

According to the learned counsel for the defendants, the only object of the act in question is "to regulate the practice of pharmacy", and they add that the act is not "designed to protect the public health". "This is plainly apparent", they say, "upon the most cursory reading of Section 1764, which applies solely to persons 'having authority to retail or dispense medicines or poisons'. This law has no application to any other persons than those having authority to sell or dispense medicines."

but whatever conclusion the Court may reach as to the purpose of the General Assembly in this regard, at least it is certain that one or the other of the poison sections is now in force and effect, and was at the time of the commission of the offenses charged against these defendants, and, so far as these prosecutions are concerned, it is immaterial which is the present law. The provisions as to carbolic acid, contained in the first and fourth paragraph of each, are identical. Any violation of the poison section, which ever be now in force, is a grave menace to the lives and health of the community, and the Statute should be strictly construed and rigidly enforced.

"In one sense, every law imposing a penalty or forfeiture may be deemed a penal law; in another sense, such laws are often deemed, and truly deserve to be called, remedial. The judge who, therefore, strictly construes, when he states that 'it must not be understood that every law which imposes a penalty is, therefore, legally speaking, a penal law, that is, a law which is to be construed with great strictness in favor of the defendant. Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in the strict sense, penal laws, although they may in fact impose a penalty for violating them.'"

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The inspection given by counsel to the act generally and to Section 1764 in particular, must have been cursory indeed, to have left such impressions, for the entire Chapter 78 "Regulating the practice of Pharmacy," is contained under "Title 24" of the Code, entitled "The Public Health", which also includes separate chapters concerning contagious or infectious diseases, regulating the practice of medicine and surgery, the professional nursing of the sick, the practice of dentistry, and the procuring and distribution of dead bodies for the promotion of medical science; and each of the fifty-two pages comprised under that title contains at its head the words "Public Health" in capital letters! Counsel are likewise in error in saying that "This law (Section 1764) has no application to any other persons than those having authority to sell or dispense medicines." It is true that the section begins, "It shall not be lawful for any person, having authority to sell or dispense medicines or poisons, to retail, except" &c., &c., but it is worthy of note that the prohibitions throughout the remainder of the section are invariably to "any person", without any qualification whatever. It is hard to believe that counsel would seriously contend for such construction as would exact of persons "having authority to sell or dispense medicines or poisons" the strictest observance of all the many and rigid safe-guards thrown by this Section around the sale of poisons, and yet would permit their free and untrammelled sale by all others, - the ignorant and inexperienced, as well as by the cautious and trained, and to the evil disposed as well as to the prudent and kindly. Such construction would be to scatter death and sorrow throughout the land. It is too monstrous for serious consideration.

These defendants have sold carbolic acid without the labels required by the first paragraph of the poison section, and thus they have violated the law and incurred the prescribed punishment. But they have also violated the fourth paragraph of the same Section, for they have sold a poison enumerated in Schedule "B" without the prescribed enquiry whether the purchaser was aware of its poisonous nature and without his assurance that it was to be used for a legitimate purpose. There is no dispute about the facts,- they are uncontradicted; the exemptions to merchants contained in Section 1765 do not apply to the poison section, whether it be No. 1763 or No. 1764, nor whether carbolic acid be or be not a domestic medicine. No strained construction can be appealed to for even a possibility of escape; the prohibition is to "any person". It has been disregarded and the penalty has been incurred. That penalty as affixed by Section 1766 is-

- (A) "A fine of not less than ten nor more than one hundred dollars", or
- (B) "A fine of not less than ten nor more than one hundred dollars, or imprisonment not exceeding thirty days or both",

according to the construction which the Court may place upon Section 1766 in connection with the amending act of March 14th, 1904.

We respectfully renew the suggestion that it was the plain purpose of the Legislature to amend the poison Section 1763, and that the penalty prescribed by Section 1766 for violation of Section 1763 is the lawful penalty appropriate to the cases at bar.

These defendants have sold carbolic acid without the label required by the first paragraph of the poison section, and thus they have violated the law and incurred the prescribed punishment. But they have also violated the fourth paragraph of the same section, for they have sold a poison enumerated in Schedule "B" without the prescribed enquiry whether the purchaser was aware of its poisonous nature and without his assurance that it was to be used for a legitimate purpose. There is no dispute about the facts, - they are uncontroverted; the exemptions to manufacture contained in Section 1785 do not apply to the poison section, whether it be No. 1785 or No. 1786, nor whether carbolic acid be or be not a domestic medicine. No strained construction can be applied to for even a possibility of escape; the prohibition is to "any person". It has been disregarded and the penalty has been incurred. That penalty as inflicted by Section 1786 is -

(A) "A fine of not less than ten nor more than one hundred dollars", or

(B) "A fine of not less than ten nor more than one hundred dollars, or imprisonment not exceeding thirty days or both",

according to the construction which the Court may place upon Section 1786 in connection with the amending act of March 14th, 1904.

We respectfully renew the suggestion that it was the plain purpose of the Legislature to amend the poison section 1785, and that the penalty prescribed by Section 1786 for violation of Section 1785 is the lawful penalty appropriate to the case at bar.

DEFENDANTS HAVE ALSO VIOLATED SECTION 1759,
as amended by the Act of March 5, 1903,
(No. 7 ante.)

That portion of this section as amended applicable
to the cases at bar is as follows:

"And it shall not be lawful for any person to engage in the business or occupation of compounding or dispensing medicines on prescriptions of physicians or otherwise, or to sell at retail any drugs, chemicals, poisons, or pharmaceutical preparation within this State, without first obtaining a certificate of registry as provided in this chapter."

None of the exceptions or qualifications contained in the section have any bearing or application to these cases, and so the guilt or innocence of the defendants of the charge of violating this section must be determined by careful consideration of the language quoted, in conjunction with the exemption of merchants in certain cases, as set out in Section 1765, and the penalty prescribed in the first paragraph of Section 1766.

It is submitted that the facts proven against each of the defendants clearly show the violation of Section 1759. Each defendant was proven to have sold and dispensed as a matter of course, and without comment, a certain drug, medicine or chemical, which was at the same time a deadly poison, to-wit- carbolic acid, and each defendant is shown ~~not~~ to have been provided with a certificate of registry as required in the chapter. It is true that only one sale was proven to have been made by each defendant, but the circumstances surround^{ing} this sale, and the testimony introduced by the defendants themselves as to the general practice of retail dealers in their neighborhood, would seem

DEFENDANTS HAVE ALSO VIOLATED SECTION 1789,

as amended by the Act of March 3, 1903,

(No. 7 ante.)

That portion of this section as amended applicable

to the case at bar is as follows:

"And it shall not be lawful for any person to engage in the business or occupation of compounding or dispensing medicines or preparations of physicians or otherwise, or to sell or retail any drugs, chemicals, poisons, or pharmaceutical preparations within this State, without first obtaining a certificate of registration as provided in this chapter."

None of the exceptions or qualifications contained

in the section have any bearing or application to these cases, and so the guilt or innocence of the defendants of the charge of violating this section must be determined by careful consideration of the language quoted, in connection with the exemption of narcotics in certain cases, as set out in Section 1788, and the penalty prescribed in the first paragraph of Section 1788.

It is submitted that the facts proven against each of the defendants clearly show the violation of Section 1789. Each defendant was proven to have sold and dispensed as a matter of course, and without comment, a certain drug, medicine or chemical, which was at the same time a deadly poison, to-wit: carbolic acid, and each defendant is shown not to have been provided with a certificate of registry as required in the chapter. It is true that only one sale was proven to have been made by each defendant, but the circumstances surround this sale, and the testimony introduced by the defendants themselves as to the general practice of retail dealers in their neighborhood, would seem

conclusive that the defendants were actually engaged "in the business or occupation of compounding or dispensing medicines on prescriptions of physicians or otherwise". But should there be any doubt in the mind of the Court whether the acts proven were within the prohibition just recited, at least it is undisputable that the testimony showed that the defendants did sell at retail a drug, chemical or poison called carbolic acid in violation of the distinct provision of the statute that "it shall not be lawful for any person to engage in", &c., &c. * * * * * or to sell at retail any drugs, chemicals, poisons or pharmaceutical preparations within this State, without first obtaining a certificate" &c. The violation, therefore, of one at least of the prohibitions of this section, if not both, is certain, and it only remains to enquire if the defendants come within the exceptions of Section 1765. This section provides that "none of the provisions of this chapter, except those contained in Sections 1763 and 1764 (the original poison and adulteration sections, which have been fully considered hereinbefore) shall prevent the sale, by merchants, of quinine" &c., &c. * * * * * and such other domestic and proprietary medicines as are usually kept by retail dealers". If carbolic acid comes properly and truly within the terms "such other domestic and proprietary medicines as are usually kept by retail dealers", the defendants have not violated Section 1759.

It is not claimed that carbolic acid is a proprietary medicine, nor could such claim be maintained, but it is urged by the learned counsel for the defendants that it is a "domestic medicine", and they have appealed for confirmation of that dictum to the testimony of the merchants,

farmers and mechanics introduced by them upon the trial. It is a remarkable fact that not one single witness testified one single time that carbolic acid was a domestic medicine. The extreme extent to which they went in their testimony was to say that it was a domestic remedy. It is confidently suggested to the Court, that even if this testimony was true, the term "remedy" is so distinct from that of medicine that the testimony for the defendants in this particular could be of no avail in their defense. A hot bath, the application of electricity, the taking of physical culture and deep breathing, the fashionable rest cure, and dozens of other remedies could be mentioned, supposed to be efficacious in the treatment of diseases, but surely it would not be contended that such remedies could be seriously considered, or even termed, "medicines within the plain intent and purview of this Statute."

The President of the Board of Pharmacy, an expert, a man of long experience, and a citizen of unblemished reputation, has testified most emphatically that carbolic acid is not only ^{not} a domestic medicine or even a domestic remedy, but that it is unequivocally a deadly poison. It might be urged that by a preponderance in number of witnesses at least the testimony of the defendants outweighed that of the Commonwealth on this point, but, fortunately, the very Statute itself leaves no doubt what carbolic acid is, for it is included in the list of poisons in Schedule "B", Section 1763 ^{or} ~~and~~ 1764, whichever may be considered as now valid. So clearly did the law making power consider carbolic acid to be a poison, and a deadly ~~and dangerous~~ poison, that it ~~was~~ incorporated it among the list of such poisons in ~~the~~ section filled by the most stringent safe-guards thrown around the use of the drugs and poisons mentioned therein. The supreme law making power of

testimony and evidence introduced by them upon the trial. It is a remarkable fact that not one single witness testified on a single time that carbolic acid was a domestic remedy. The extreme extent to which they went in their testimony was to say that it was a domestic remedy. It is confidently suggested to the Court, that even if this testimony was true, the term "remedy" is so distinct from that of medicine that the testimony for the defendants in this particular could be of no avail in their defense. A hot bath, the application of electricity, the taking of physical culture and deep breathing, the fashionable rest cure, and dozens of other remedies could be mentioned supposed to be efficacious in the treatment of diseases, but surely it would not be contended that such remedies could be seriously considered, or even termed, medicines within the plain intent and purview of this Statute. The President of the Board of Pharmacy, an expert, a man of long experience, and a citizen of unblemished reputation, has testified most emphatically that carbolic acid is not only a domestic medicine or even a domestic remedy, but that it is unambiguously a deadly poison. It might be urged that by a preponderance in number of witnesses at least the testimony of the defendants outweighed that of the Commonwealth on this point, but, fortunately, the very Statute itself leaves no doubt what carbolic acid is, for it is included in the list of poisons in Schedule "B", Section 1783 and 1784, which may be considered as now valid. So clearly did the law making power consider carbolic acid to be a poison, and a deadly unambiguous poison, that it was incorporated it among the list of such poisons in the section filled by the most stringent safe-guard thrown around the use of the drug and poisons mentioned therein. The supreme law making power of

the State has declared that carbolic acid is a poison, and is not a domestic medicine, and no testimony however strong will be heard to contradict that declaration.

The first paragraph of Sec. 1766 prescribes "That any person violating the provisions of 1759 of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars, and each day that the said provisions, or any of them, are violated, shall constitute a separate and distinct offence." This language may be crude and awkward as applied to the offence under consideration, but it is plain and decided. It admits of no doubt, and though a person found guilty of more than one sale on the same day, similar to those under consideration, might not be punished under the Statute for more than one offence each day, yet to that extent the punishment prescribed is clear and definite.

It is contended for the defendants, among the many objections found to the Statute under discussion, that it is in violation of Article 4, Section 63 of the Constitution, which prohibits the enactment by the General Assembly of any local, special or private law for the punishment of crime, and the learned counsel urge in support of this contention the language of the concluding paragraph of Section 1766 that "in all prosecutions under this chapter, the Board of Pharmacy of the State of Virginia shall be constituted the informer, and one-half of the fines imposed by this section shall go to the Board of Pharmacy, and the other half to the Commonwealth". It is surprising that immediately

the State has declared that carbolic acid is a poison, and is not a domestic medicine, and no testimony however strong will be heard to contradict that declaration.

The first paragraph of Sec. 1788 prescribes "That any person violating the provisions of 1788 of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars, and each day that the said provision, or any of them, are violated, shall constitute a separate and distinct offense." This language may be made and applied as applied to the offense under consideration, but it is plain and decided. It admits of no doubt, and though a person found guilty of more than one sale on the same day, similar to those under consideration, might not be punished under the statute for more than one offense each day, yet to that extent the punishment prescribed is clear and definite.

It is contended for the defendants, among the many objections raised to the statute under discussion, that it is in violation of Article 4, Section 22 of the Constitution, which prohibits the enactment by the General Assembly of any local, special or private law for the punishment of crime, and the learned counsel urge in support of this contention the language of the concluding paragraph of Section 1788 that "in all prosecutions under this chapter, the Board of Pharmacy of the State of Virginia shall be constituted the informer, and one-half of the fines imposed by this section shall go to the Board of Pharmacy, and the other half to the Commonwealth." It is surprising that immediately

following the very plain language quoted from the Statute, counsel should suggest that this "Board of Pharmacy of the State of Virginia", as it is termed throughout the Statute, is a "separate, special set of men", "a corporation", and that they are "constituted the sole prosecutors in any special or particular class of offences under a special law to the exclusion of the general police power of the state and the public generally".

The further suggestion is quite as startling, to the effect that "no authority can be found in support of the proposition that exclusive power to initiate and prosecute crimes may be vested in a corporation such as the Board of Pharmacy". Again it might be intimated that counsel have given but a cursory examination to the Statute, devoting more attention probably to the search for constitutional objections.

In answer to this remarkable conclusion of the brief filed by the learned counsel for the defendants, it is sufficient to refer the Court to the first paragraph of Section 1765, constituting "The Board of Pharmacy of the State of Virginia", as a State body, - not it will be observed, a corporation, and to the first paragraph of Sec. 1757, requiring the Board "to examine into all cases of abuse, fraud, adulteration, substitution or malpractice, and report all violations of the provisions of this chapter to the Commonwealth's Attorney of the county or corporation in which they occur, who shall investigate and prosecute the same when brought to his attention". Many of the cases already cited hereinbefore show beyond peradventure that the Statute in question is essentially of a public nature, seeking to prevent offences against public health and safety.

Following the very plain language quoted from the Statute, counsel should suggest that this "Board of Pharmacy of the State of Virginia", as it is termed throughout the Statute, is a "separate, special set of men", "a corporation", and that they are "constituted the sole prosecutors in any special or particular class of offenses under a special law to the exclusion of the general police power of the state and the public generally".

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The attention of the Court would not be asked to matters of a personal nature were not the injustice sought to be done to the honored President of the Board of Pharmacy of Virginia in the brief filed by the distinguished counsel for the defendants so palpable, and so grave. Counsel charge that the President of the Board has shown by his own testimony that he was guilty of distinct violations of the very provisions of the statute under consideration, and under substantially the same circumstances as are disclosed in these cases. That is a serious charge, and one absolutely without warrant in fact or in the testimony, in either case. The attention of the Court is asked to Mr. Avis' testimony in full, and it is respectfully submitted not only that he failed to show the prejudice with which he is charged in this brief for the defendants, but that his testimony though positive, was careful and conservative. By reference to pp. 18 and 19 of the testimony in the Bertram case, and p. 17 in the Yager case, it will be seen that the witness distinctly stated in response to a question asked by counsel for the defendants, that he did in every respect comply with the law in such matters. In no other part of the testimony of this witness, or of any other witness, is there a single suggestion that the President of the Board of Pharmacy has failed in the most minute particular to fully perform his duties under the law.

It would almost seem necessary to apologise to the Court for so voluminous a note of argument in a case apparently so unimportant, but it is hoped, however, that the Court will perceive the necessity felt by the representatives of the Commonwealth to give the very fullest

The attention of the Court would not be asked to matters of a personal nature were not the inquiries sought to be gone to the honored President of the Board of Pharmacy of Virginia in the brief filed by the distinguished counsel for the defendant as defendant, and so grave. Counsel charge that the President of the Board has shown by his own testimony that he was guilty of distinct violations of the very provisions of the statute under consideration, and under substantially the same circumstances as are disclosed in these cases. That is a serious charge, and one absolutely without warrant in fact or in the testimony, in either case. The attention of the Court is asked to Mr. Ayle's testimony in full, and it is respectfully submitted not only that he failed to show the prejudice with which he is charged in this matter for the defendant, but that his testimony though positive, was untruthful and unconvincing. By reference to pp. 18 and 19 of the testimony in the Barker case, and p. 19 in the Yager case, it will be seen that the witness distinctly stated in response to a question asked by counsel for the defendant, that he did in every respect comply with the law in each matter. In no other part of the testimony of this witness, or of any other witness, is there a single suggestion that the President of the Board of Pharmacy has failed in the most minute particular to fully perform his duties under the law.

It would almost seem necessary to apologize to the Court for so voluminous a note of argument in a case apparently so unimportant, but it is hoped, however, that the Court will perceive the necessity felt by the representatives of the Commonwealth to give the very fullest

investigation to the many constitutional questions raised, and to endeavor, as far as possible, to aid the court in its consideration of this beneficent Statute, upon the proper enforcement of which so largely depends the safety of the community from the blunders of the ignorant, as well as from the crimes of the lawless.

Respectfully submitted,

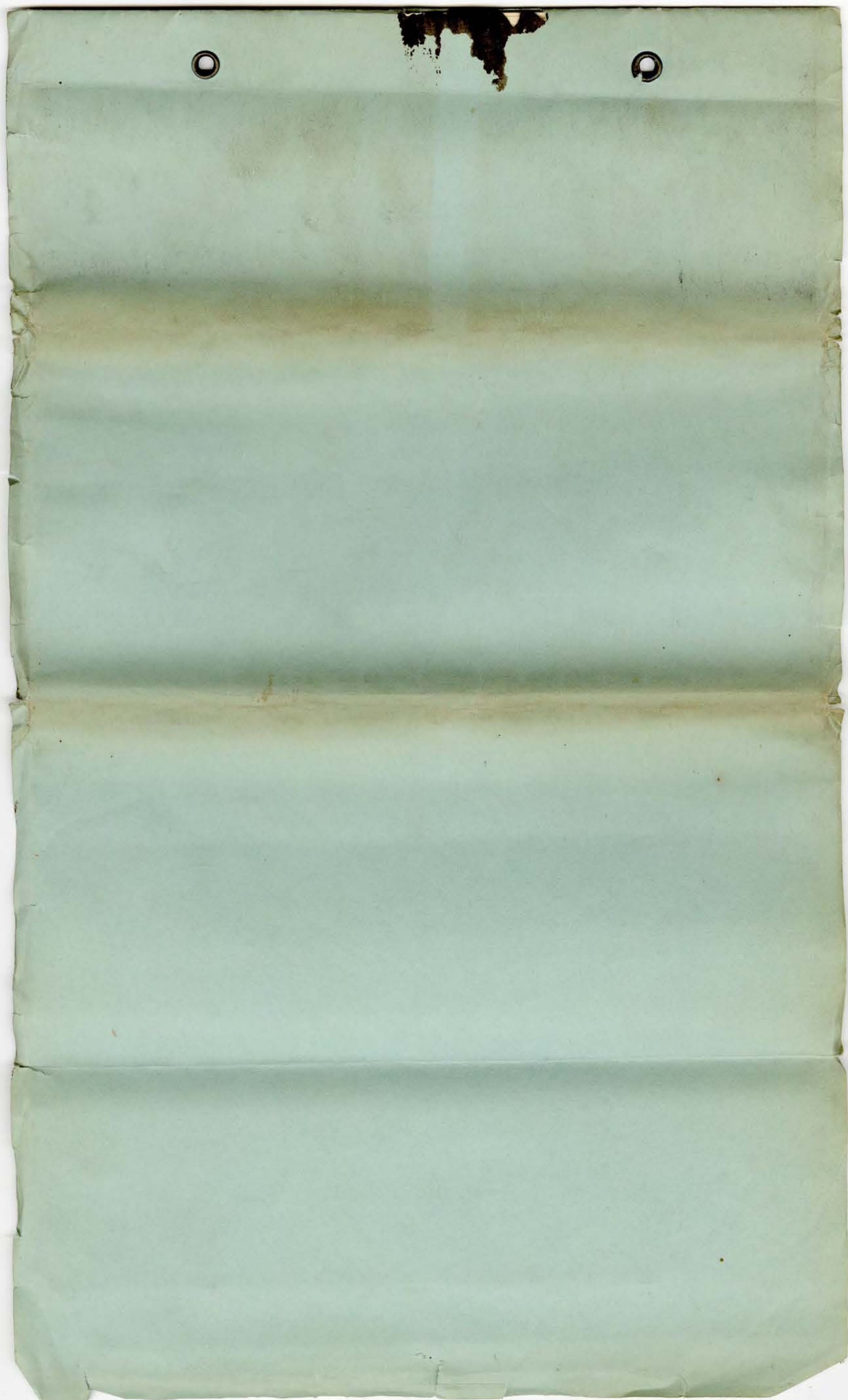
AB Simpson

Investigation to the many constitutional questions raised
and to endeavor, as far as possible, to aid the court in
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Respectfully submitted,

W. B. Smith





In the Circuit Court of Rockingham County, Va.

Commonwealth

Vs). Upon Appeal from a Justice of the Peace.

Thomas P. Yager.

Transcript of the testimony given before Hon. T. N.
Haas, Judge of said Court, Friday, February 15th, 1907, pursuant to
agreement of Counsel.

I n d e x.

Witnesses	In Chief	Cross-Examn.	Re-Direct.
S. B. Strickler,	1	3	
James L. Avis,	9	10	15
MOTION BY DEFENDANT'S COUNSEL,	19		
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Appearances:

H. W. Bertram, Esq., and
Messrs. Sipe & Harris,, for Defdt.

Capt. A. B. Guigon, for State Board of Pharmacy, and
Geo. N. Conrad, Esq., Atty. for Commonwealth.

In the Circuit Court of Washington County, N. H.

Commonwealth

vs. Upon Appeal from a Justice of the Peace.

Thomas F. Yarn.

Transcript of the testimony given before Hon. T. W. Hays, Judge of said Court, Friday, February 1st, 1907, pursuant to agreement of Counsel.

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APPEARANCES:
H. W. Peckham, Esq., and
Messrs. Sipe & Hickey, for Defd.

Geo. A. B. Milnor, for State Board of Pharmacy, and
Geo. H. Gossel, Esq., Atty. for Commonwealth.

In the Circuit Court of Rockingham County.

Commonwealth

Vs). Upon appeal from a Justice of the Peace.

Thomas P. Yager.

Transcript of the testimony offered before Judge T. N. Haas, Judge of said Court, at the hearing on Friday, February 15th, 1907.

APPEARANCES: Geo. N. Conrad, Esq., Attorney for the Commonwealth; and Capt. A. B. Guigon, Attorney for the Virginia Pharmaceutical Association.

APPEARANCES: H. W. Bertram, Esq., and Messrs. Sipe & Harris, Attorneys for the defendant.

S. B. STRICKLER, being duly sworn on behalf of the Commonwealth, testified as follows:

Q Your name is S. B. Strickler?

A Yes, sir.

Q I believe you are at present a student at the Bridgewater College, in this county?

A Yes, sir.

Q Mr. Strickler, state whether or not you purchased from Mr. T. P. Yager's store, or of Mr. T. P. Yager, on the 14th day of May, 1906, carbolic acid?

A I did.

Q Have you the vial in which the acid was delivered to you?

A Yes, sir. (Bottle produced and handed to counsel.)

Q This vial has on it a label with this writing on it: "Thomas P. Yager, Penn-Laird, Va. Frank Suter. Loose Car. Acid," and some little marks under that which I cannot make out.

A "N. Q., meaning "No questions."

Q What does the name of Frank Suter mean on this label?

A He was the clerk.

Q The clerk in Mr. Yager's store?

A Yes, sir.

Q That "No questions," what does that mean?

A That the clerk asked me no question as to what I was going to use it for, or whether I knew any thing about the article, or any thing about it.

Q You paid the clerk for the acid?

A Yes, sir.

Q And it was delivered to you there at Mr. Yager's store by this clerk of his, Frank Suter?

A Yes, sir.

Q On the 14th day of last May?

A Yes, sir.

Q Penn-Laird is in this county, is it not?

A Yes, sir.

Q How much did you pay for this acid that you got of him?

A Five cents.

Q This label on here was a label attached by you after the purchase?

A Yes, sir.

Q And this writing on the label was made by you after the

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bottle was delivered to you?

A Yes, sir.

Q And there is no other label on the bottle?

A No, sir.

Q Was there any other label on the bottle when it was delivered to you?

A No, sir.

Q That is the identical bottle which was delivered to you?

A Yes, sir.

Q And the same contents that was delivered to you at that store?

A Yes, sir.

CROSS-EXAMINATION BY MR. SIPE.

XQ You say that the bottle was not labeled at all when it was delivered to you?

A No, sir.

XQ Did you request that the bottle should be delivered to you without a label?

A No, sir.

XQ Did you see that bottle filled?

A Yes, sir.

XQ Did you see Mr. Suter, now, pour the contents into the bottle?

A I did.

XQ Did you see him get the empty bottle?

A I gave it to him.

XQ You supplied the bottle yourself?

A Yes, sir.

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(S.B.Strickler.)

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XQ You gave him an empty vial and asked him to fill that empty vial that you had?

A Yes, sir.

XQ And you had no label on it?

A No, sir.

XQ Well, did you request a label to be put on it?

A No, sir.

XQ Was any thing said at all about the label?

A No, sir.

XQ What did you say to Mr. Suter when you asked for this carbolic acid?

A I asked him for a nickel's worth of carbolic acid, or some thing to that effect.

XQ Did you hand him the vial to fill?

A When I found that he did not have one I gave him one I had in my pocket.

XQ He had no empty vials about the store?

A He didn't have any handy anywhere.

XQ Did he say he did not have any empty vials?

A Indicated it in some way.

XQ He indicated that he did not have any empty vials?

A Yes.

XQ Then you would not have gotten the carbolic acid if you had not produced the vial yourself which you asked him to fill from a written package?

A I could not say that, because he may have found an empty bottle.

XQ What was the size of the vessel out of which the carbolic acid was poured into your vial.

Let's see how many of these are left.

It is the duty of the owner to see that the property is properly cared for.

The owner is responsible for the care of the property and for the safety of the person.

The owner is responsible for the care of the property and for the safety of the person.

The owner is responsible for the care of the property and for the safety of the person.

Yes.

The owner is responsible for the care of the property and for the safety of the person.

Yes.

The owner is responsible for the care of the property and for the safety of the person.

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The owner is responsible for the care of the property and for the safety of the person.

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The owner is responsible for the care of the property and for the safety of the person.

Yes.

The owner is responsible for the care of the property and for the safety of the person.

The owner is responsible for the care of the property and for the safety of the person.

(S.B. Strickler.)

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A I don't remember that.

XQ For what purpose did you make this purchase of carbolic acid?

A I was sent there by the Board of Pharmacy of Virginia to buy it.

XQ And who was acting for the Board of Pharmacy in sending you there?

Objected to as being contrary to public policy;
objection sustained and exception noted for
defendant.

XQ You have stated that you placed on this bottle this label: was that supplied to you by the Board of Pharmacy?

A Which, the label?

XQ Yes, sir?

A Yes, sir.

XQ What were your directions from the Board of Pharmacy -- But, first, were those directions in writing?

Objected to as irrelevant; sustained, and exception noted for the defendant.

XQ You did have instructions from the Board of Pharmacy before going to this place; they supplied you with labels, and were you also supplied with bottles by the Board of Pharmacy?

A Yes, sir.

XQ How many bottles were you supplied with, Mr. Strickler?

A I don't remember how many there were. I don't know whether they were counted or not. Several dozen.

XQ Mr. Strickler, is it not a fact that you are permanently employed by the Board of Pharmacy to obtain information of these alleged infractions of the law by going to merchants in different parts of this Commonwealth and asking to purchase carbolic acid

A I don't remember that.

XQ Now that you have said that you have this package of bottles

added?

A I was sent there by the Board of Pharmacy of Virginia

to buy it.

XQ And you were called for the Board of Pharmacy in making

you money?

Objected to as being contrary to public policy;
objection sustained and exception noted for
delinquent.

XQ You have stated that you placed on this bottle this label:

was this supplied to you by the Board of Pharmacy?

A Yes, the label.

XQ Yes, sir?

A Yes, sir.

XQ What were your directions from the Board of Pharmacy --

But, first, were those directions in writing?

Objected to as irrelevant; sustained, and excep-
tion noted for the delinquent.

XQ You did have instructions from the Board of Pharmacy?

before going to this place; they supplied you with labels, and were

you also supplied with bottles by the Board of Pharmacy?

A Yes, sir.

XQ Now many bottles were you supplied with, Mr. Strickland?

A I don't remember how many there were. I don't know

whether they were counted or not. Several dozen.

XQ Mr. Strickland, is it not a fact that you are permanently

employed by the Board of Pharmacy to obtain information of these

alleged infractions of the law by going to merchants in different

parts of this Commonwealth and asking to purchase carbolic acid

and other drugs?

A No, sir, not permanently employed.

XQ How long have you been in this employment of the Board of Pharmacy?

A I was only employed by them a couple of months. I am not employed by them now.

XQ How many stores did you visit in Rockingham County on this mission?

A I don't know.

XQ Did you not keep a record of the stores you visited?

A Only those that I purchased goods from.

XQ How many were there of those stores at which you made purchases of this character?

A Between fifty and seventy-five. I don't know the number exactly.

XQ Is it a fact that you were engaged in other counties, in the same business, by the Board of Pharmacy?

A I was.

XQ What counties, sir?

A Augusta, Shenandoah, Loudoun, Prince William, Alexandria, and Fairfax.

XQ How many did you report in Augusta County?

A I don't remember, at all.

XQ Well, how many did you report altogether, in Rockingham county and in the other counties mentioned?

A I don't remember that.

XQ Well, about how many?

A I cannot tell you about how many. Several hundred.

and other things?

A. No, sir, not personally engaged.

Q. How long have you been in this employment of the House of

Representatives?

A. I was only employed by them a couple of months. I am

not employed by them now.

Q. How many stores did you visit in Washington County on this

mission?

A. I don't know.

Q. Did you not keep a record of the stores you visited?

A. Only those that I purchased goods from.

Q. How many were there of those stores at which you made

purchases of this character?

A. Between fifty and seventy-five. I don't know the

number exactly.

Q. Is it a fact that you were engaged in other counties, in

the same business, by the House of Representatives?

A. I am.

Q. What counties, sir?

A. Augusta, Shennandoah, Loudoun, Prince William, Alaska-

ville, and Fairfax.

Q. How many did you report in Augusta County?

A. I don't remember, sir.

Q. Well, how many did you report altogether, in Washington

County and in the other counties mentioned?

A. I don't remember that.

Q. Well, about how many?

A. I cannot tell you about how many. Several hundred.

XQ Several hundred?

A Between two and three hundred, I would say.

XQ And, Mr. Strickler, what arrangement did you have with the Board of Pharmacy with regard to your compensation for this service?

A Twenty-five dollars a month salary and two dollars and fifty cents for each conviction.

XQ And you received \$25.00 a month salary and two dollars and fifty cents on each conviction. Were you to receive any compensation to cover your travelling expenses and other expenses?

A Yes, sir; all of my expenses were paid.

XQ Who was to pay this salary, your expenses and this \$2.50 on each conviction?

A The Board of Pharmacy.

XQ Who represented this Board of Pharmacy in making this contract with you?

Objection; sustained; exception for defendant.

XQ Was this salary, expenses and commission paid to you?

A The salary and expenses were.

XQ How much did you receive?

A I don't know that, at all.

XQ Have you received any thing on account of convictions?

A No, sir.

XQ Your compensation, then, with regard to convictions, awaits the result of pending proceedings; that is a fact, is it not?

A Yes, sir.

XQ What did you do with the various drugs that you purchased from the merchants?

Objection; sustained; exception for defendant.

XQ Well, what did you do with the carbolic acid which you

The first of these is the fact that the
 government has not yet decided
 whether it will accept the offer of
 the United States to purchase the
 Alaska pipeline. The second is the
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 decided whether it will accept the
 offer of the United States to purchase
 the Alaska pipeline.

(S.B.Strickler.)

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say you purchased in this bottle from Mr. Yager's store?

A I kept it in a box here at Mr. Avis's.

XQ What did you do with it?

A Kept it in a box here in Mr. Avis's store.

XQ Mr. Avis is a druggist here in Harrisonburg?

A Mr. James L. Avis; yes, sir.

XQ Has he any official position in connection with the State Board of Pharmacy?

A Yes, sir.

XQ When did you first see this bottle after it was placed in the box in charge of Mr. Avis?

A I saw it in the Magistrate's court.

XQ What is your age?

A Twenty-two.

The witness was told to stand aside.

MR. CONRAD: The fact of Mr. Yager's not being a registered pharmacist is a matter of proof --

MR. HARRIS: You can offer proof, and we will not object to it.

MR. GUIGON: Can not that fact go in as agreed?

MR. HARRIS: It is agreed; but I want it to emanate from you as proof, and not come as a concession from us.

MR. CONRAD: I could have had the Secretary of the State Board of Pharmacy here, if I had thought it was necessary.

THE COURT: You could write out the question and forward it to the Secretary of the State Board of Pharmacy and have his answer here in time for the next term of court.

MR. CONRAD: We will put Mr. Avis on the stand and prove it in two ways.

any one present in this office from Mr. Yager's store.

A I kept it in a box here at Mr. Yager's.

XQ What did you do with it?

A I kept it in a box here in Mr. Yager's store.

XQ Mr. Yager is a druggist here in Hartmanburg?

A Mr. James B. Yager, yes, sir.

XQ Has he any official position in connection with the State

Board of Pharmacy?

A Yes, sir.

XQ When did you first see this bottle after it was placed in

the box in charge of Mr. Yager?

A I saw it in the Magistrate's court.

XQ What is your age?

A Twenty-two.

The witness was held to stand aside.

MR. CONRAD: The fact of Mr. Yager's not being a registered

pharmacist is a matter of proof --

MR. HARRIS: You can offer proof, and we will not object to it.

MR. QUINN: Can you offer proof to the contrary?

MR. HARRIS: It is agreed; but I want it to emanate from you

as proof, and not come as a concession from me.

MR. CONRAD: I could have had the testimony of the State Board

of Pharmacy here, if I had thought it was necessary.

THE COURT: You could write out the question and forward it

to the Secretary of the State Board of Pharmacy and have his answer

here in time for the next term of court.

MR. CONRAD: We will put Mr. Yager on the stand and prove it

in two days.

JAMES L. AVIS, being duly sworn on behalf of the Commonwealth, testified as follows:

Q You are a druggist and a registered pharmacist of the State of Virginia?

A Yes, sir.

Q How long have you been engaged in business as a pharmacist?

A All my life.

Q What is your age?

A I am in my sixty-second year.

Q You don't mean that you have been in the pharmacy business for sixty-two years?

A Oh, no, but since I was old enough -- about forty years.

Q I wish you would examine this vial and state whether you have examined its contents and whether it contains carbolic acid or not?

A Well, from my general knowledge of carbolic acid I would say that it was a grade of carbolic acid -- some grade.

Q You are a member of the State Board of Pharmacy, I believe?

A Yes, sir.

Q What is your official connection with it?

A I am president of the board.

Q State, if you know, whether Mr. Thomas P. Yager, of Penn-laird, in this county, is a registered pharmacist or not?

A He is not.

Q Carbolic acid is not a proprietary medicine, Captain Avis, is it?

A No, sir.

JAMES L. DAVIS, being duly sworn on behalf of the Government,

testified as follows:

Q You are a druggist and a registered pharmacist of the

State of Virginia?

A Yes, sir.

Q How long have you been engaged in business as a pharmacist?

A All my life.

Q What is your age?

A I am in my sixty-second year.

Q You don't mean that you have been in the pharmacy business

for sixty-two years?

A Oh, no, but since I was old enough -- about forty

years.

Q I wish you would examine this vial and state whether you
have examined its contents and whether it contains carbolic acid
or not?

A Well, from my general knowledge of carbolic acid I
would say that it was a grade of carbolic acid -- some grade.

Q You are a member of the State Board of Pharmacy, is that correct?

A Yes, sir.

Q What is your official connection with it?

A I am president of the board.

Q State, if you know, whether Mr. Thomas P. Yeager, of Penn-

sylvania, in this country, is a registered pharmacist or not?

A He is not.

Q Carbolic acid is not a proprietary medicine, Captain Davis,

is it?

A No, sir.

Q Is it a domestic remedy -- domestic medicine?

A It is classed in pharmacy law as a deadly poison, and the same special label that is directed to be put on all deadly poisons is required to be put on carbolic acid.

Answer is objected to, because a statement of law and not a statement of fact.

A (Concluded) I am not attempting to construe the law, but state it as I understand it and as it is printed.

Q Carbolic acid is, as a matter of fact, a deadly poison?

A Yes, sir.

Q And is not a domestic remedy?

A No, sir, I would not so consider it. I suppose I am here to give evidence and not merely to answer strictly any little question, and I will just state: My information is that many states of this country prohibit the sale of carbolic acid in its original strength; they will not permit the sale of pure carbolic acid; they only allow it to be sold when the purchaser makes known the use he wishes to make of it and the druggist is allowed to prepare a solution, a weaker preparation of it, to meet his wants.

Same objection to this answer as made last above.

CROSS-EXAMINATION BY MR. HARRIS:

XQ You are not prepared to say what solution of so-called carbolic acid is contained in this vial, or what amount of pure carbolic acid is in it?

A No, sir; but I would not take it to be a very pure grade of carbolic acid. Its odor would indicate that it is not of a very good grade. This is what is known as commercial carbolic acid.

XQ For what sort of use?

A. Well, it is really -- that grade of acid, it is what I believe is, an ordinary carbolic acid, it is not for any thing except disinfectant purposes. It would not do to make a solution of it and put on wounds. That is why restrictions are thrown around a solution of carbolic acid; it might set up inflammation in a wound and cause serious injury to man or beast.

Q. That quality of carbolic acid is designed almost entirely for use for domestic purposes in the way of a disinfectant, is it not?

A. Well, it is sometimes used -- it has very many uses,

because the public --

Q. (Interposing) I am not talking about the public, I am asking you if it is not a fact that there is such a grade of carbolic acid which is known as commercial carbolic acid for disinfectant? A. There is such a grade known, and it is regarded as a very dangerous grade of acid.

Q. Mr. Davis, how did it come to be called commercial acid?

A. That is just an ordinary name given to a cheaper

grade of carbolic acid.

Q. Is it not a fact, Mr. Davis, that it is called "commercial" because it is prevalent in commerce; that it is bought and sold in the stores? Is not that the meaning of commercial?

A. No, sir. If I was to designate an article in order- ing it as "commercial" I would mean by that that I wanted a cheaper grade; if I wanted pure carbolic acid I would designate it as chemically pure.

Q. And I ask you, how did that grade you speak of come to be termed "commercial" if it were not for the fact that it is in common use, commercially?

A There are several grades that may be termed "Commercial."

XQ But are they not in common commercial use, and so are called "Commercial" grades?

A I don't understand it that way. The word "Commercial" is simply used by the dealers. The public are not supposed to know any thing about it as commercial. What I mean by that is, that it is not my understanding that the word "Commercial" is used by the public; it is one used by those who are familiar with the varieties of it.

XQ You have stated that there is a cheaper grade of carbolic acid known as "Commercial" carbolic acid --

A Well, there are several cheaper grades.

XQ Is not the term itself indicative of the common use in commerce of this grade, or those grades, and, is it not a fact that they are more commonly used in commerce than the pure carbolic acid?

A You do not understand me exactly right. When I used the word "commercial" I do not want to be understood as saying that it is known generally as commercial acid.

XQ I am not asking you how it is generally known, but I am asking how it got that term in trade, and if, as a matter of fact, it is not sold in commercial trade?

A Well, it is a term generally used in the trade to designate a cheaper grade. And it applies to other goods besides carbolic acid.

XQ But do you know whether for years it has been commonly bought and sold in the stores of this Commonwealth, and in this

A There are several grades that may be termed "common-

cial."

XQ But are they not in common commercial use, and so the

called "Commercial" grades?

A I don't understand it that way. The word "common-

cial" is simply used by the dealers. The public are not supposed

to know any thing about it as commercial. What I mean by that is,

that it is not my understanding that the word "commercial" is used

by the public; it is one used by those who are familiar with the

varieties of it.

XQ You have stated that there is a cheaper grade of catholis

sold known as "Commercial" catholis sold --

A Well, there are several cheap grades.

XQ Is not the term itself indicative of the common use in

commerce of this grade, or those grades, and, is it not a fact

that they are more commonly used in commerce than the pure catholis

sold?

A You do not understand me exactly right. When I used

the word "commercial" I do not want to be understood as saying

that it is known generally as commercial sold.

XQ I am not asking you how it is generally known, but I am

asking how it got that term in trade, and if, as a matter of fact,

it is not sold in commercial trade?

A Well, it is a term generally used in the trade to

designate a cheaper grade. And it applies to other goods besides

catholis sold.

XQ But do you know whether for years it has been commonly

bought and sold in the stores of this community, and in this

(Jas.L.Avis.)

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Commonwealth, and in this county particularly, as carbolic acid, that grade of it, by the merchants, I mean, sold by the merchants to farmers for domestic purposes? Is not that a fact, Mr. Avis?

A Well, I have known from hearsay that merchants sell carbolic acid; but as to what they sell it for -- what grade they sell it for -- I do, not know any thing about that.

XQ For what purpose would you sell that grade of carbolic acid?

A Merely to sprinkle around hen houses, cess-pools, and things of that kind.

XQ That is a very common use for it in the country?

A Not a common use, but it is used by a great many about hen houses.

XQ Do they use it on galled shoulders of horses?

A It would be a risky business for that.

XQ Have you ever known any horses or men to suffer any injury from having used commercial carbolic acid?

A I cannot state any cases. I am just speaking from my general information on the effect of that class of goods.

XQ Mr. Avis, if a person would send to you for some carbolic acid to sprinkle around hen houses or cess-pools as a disinfectant would you send them that grade of carbolic acid?

A Well, I might send them that, or I might send them some other grade. I have several grades.

XQ But would that grade of carbolic acid answer that purpose?

A Yes, sir.

XQ And would that be the purpose for which that grade of acid is designed to be used?

commonly, and in this country particularly, as Carlisle said, that grade of it, by the merchants, I mean, sold by the merchants to farmers for domestic purposes? Is not that a fact, Mr. Davis?

A Well, I have known from hearsay that merchants sell Carlisle said; but as to what they sell it for -- what grade they sell it for -- I do not know any thing about that.

XQ Now what purpose would you sell that grade of Carlisle

sold?

A Merely to sprinkle around hen houses, near-pools, and things of that kind.

XQ That is a very common use for it in the country?

A Not a common use, but it is used by a great many

about hen houses.

XQ Do they use it on galvanized shoulders of horses?

A It would be a risky business, I think.

XQ Have you ever known any horse or man to suffer any injury

from having used Carlisle's sold?

A I cannot state any cases. I am just speaking from my

general information on the effect of that class of goods.

XQ Mr. Davis, if a person would send to you for some Carlisle

sold to sprinkle around hen houses or near-pools as a disinfectant

would you send them that grade of Carlisle sold?

A Well, I might send them that, or I might send them

some other grade. I have several grades.

XQ But would that grade of Carlisle sold answer that purpose?

A Yes, sir.

XQ And would that be the purpose for which that grade of sold

is designed to be used?

A It is what it ought to be used for.

XQ That is the purpose to which it is generally put by persons who buy it, is it not?

A That would make me make a statement that I would not like to make. In the first place, it is rather doubtful whether the average purchaser of carbolic acid would know any thing about it.

XQ But he is sending to you -- the president of the Board of Pharmacy, an expert druggist skilled in your profession -- for some carbolic acid to sprinkle around his hen house or cess-pool, or to be used generally as a disinfectant, would you send him that grade to answer that purpose?

A Yes, sir, I would either send him that or some similar grade, if he made known his purpose -- made known the use of it.

XQ You have described at some length the difference between commercial carbolic acid and the pure carbolic acid. Which is the more concentrated form of poison, the pure carbolic acid or the commercial grade?

A Well, I don't know that I could answer that question exactly. They are all considered deadly poisons.

XQ You say, now, Mr. Avis, that as a druggist you do not know that pure carbolic acid is a more concentrated and deadly form of poison than the ordinary commercial grade of the acid?

A I say that ordinarily the pure carbolic acid would not be as deadly poison because it is used medicinally, and the pure grade only should be used medicinally.

XQ How many drops of pure carbolic acid could be taken safely, Mr. Avis, as a medicine?

A Well, I suppose, ordinarily, one drop of pure carbolic acid would be about the average dose.

A It is what it ought to be used for.

XQ That is the purpose to which it is generally put by

persons who buy it, is it not?

A That would make me make a statement that I would not

like to make. In the first place, it is rather doubtful whether

the average purchaser of carbolic acid would know any thing about it.

XQ But he is sending to you -- the president of the Board of

Pharmacy, an expert druggist killed in your profession -- for some

carbolic acid to sprinkle around his bar house or cess-pool, or to

be used generally as a disinfectant, would you send him that grade

to answer that purpose?

A Yes, sir, I would either send him that or some similar

grade, if he made known his purpose -- and he knows the use of it.

XQ You have recognized it some length the difference between

commercial carbolic acid and the pure carbolic acid. Which is

the more concentrated form of poison, the pure carbolic acid or

the commercial grade?

A Well, I don't know that I could answer that question

exactly. They are all concentrated deadly poisons.

XQ You say, now, Mr. A. V. 1914, that as a druggist you do not

know that pure carbolic acid is a more concentrated and deadly

form of poison than the ordinary commercial grade of the acid?

A I say that ordinarily the pure carbolic acid would not

be as deadly poison because it is used medicinally, and the pure

grade only should be used medicinally.

XQ How many drops of pure carbolic acid could be taken safely,

Mr. A. V. 1914, as a medicine?

A Well, I suppose, ordinarily, one drop of pure carbolic

acid would be about the average dose.

(Jas.L.Avis.)

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XQ And you think that less than a drop of the commercial acid --

A I hav'n't said that at all.

RE-DIRECT EXAMINATION RESUMED.

Q You have stated in your answer a moment ago that you had only examined one sample, and that is the only one you had seen. Please examine this one and say if what you have stated applies to both samples which are exhibited here, as we want to use your testimony in both cases?

A Well, sir, there is a good deal put up in the way of carbolic acid. There is a good deal of it handled by merchants who do not do business direct with druggists.

Q As I understand you, these are both, according to your judgment, inferior grades of carbolic acid?

A Yes, sir; I regard both as inferior grades of carbolic acid.

THE COURT: You say that both are deadly poisons?

A Yes.

Q And you say that the ordinary grades of carbolic acid are more deadly than the pure grade?

A Not only because the pure carbolic acid is supposed to contain nothing but carbolic acid, while many of the cheaper grades contain other substances which are injurious to human life and tissue, and so on --

MR. SIPE: (Interposing) Then if the impurity with which the carbolic acid was impregnated was less poisonous than the carbolic acid, it would not be so poisonous as the pure article? I will change the word "impregnated" to "diluted."

A That would depend upon what it was diluted with. It

Q And you think that is a fair amount of the commercial work --
A I haven't said that at all.

RE-DIRECT EXAMINATION RESUMED.

Q You have stated in your answer a moment ago that you had
only examined one sample, and that is the only one you had seen.
Please examine this one and say if that you have stated applied
to both samples which are exhibited here, are we right or are you
testimony in both cases?

A Well, sir, there is a good deal of it in the way of
carboloid acid. There is a good deal of it handled by merchants
who do not do business direct with druggists.

Q And I understand you, there are both, according to your
judgment, inferior grades of carboloid acid?
A Yes, sir; I regard both as inferior grades of carboloid
acid.

THE COURT: For say that both are deadly poisons?
A Yes.

Q And you say that the ordinary grades of carboloid acid are
more deadly than the pure grades?

A Not only because the pure carboloid acid is supposed
to contain nothing but carboloid acid, while many of the cheaper
grades contain other substances which are injurious to human life
and tissue, and so on --

MR. STUBB: (Interposing) Then if the impurity with which the
carboloid acid was impregnated was less poisonous than the carboloid
acid, it would not be so poisonous as the pure carboloid? I will
change the word "impregnated" to "diluted."

A That would depend upon what it was diluted with. If

might be diluted with some thing that was as great a poison.

XQ Then you have not understood my question. The question is, if it were diluted with a less poisonous substance, wouldn't the compound be less poisonous than the carbolic acid?

A Well, it might be diluted with some thing that might form a chemical compound that would make it more poisonous.

XQ Is it not a fact, Mr. Avis, that there are few things in pharmaceutical products that are as poisonous as carbolic acid?

A Oh, yes, sir, there are a good many that are equally so; some of them more so.

XQ Is it not a fact that in the domestic remedies sold in the stores, generally, and used on the farms and about the homes of the people of the country, there are a great many poisons? Is not copperas a poison, Mr. Avis?

A Yes, sir. It is not designated in the books as a deadly poison, but it would be a poison.

XQ How much copperas in solution in a dose would be fatal?

A Well, it is not likely any body would take a sufficient amount of solution of copperas to make a fatal dose.

XQ Now, is it not a fact, that it has recently been discovered that a great many proprietary and patent medicines are deadly poisons?

A Well, they are not supposed to be.

XQ Is it not a fact, Mr. Avis, that they have been demonstrated to be poisons -- proprietary medicines sold now out of the stores and drug stores in Rockingham county and elsewhere?

A No, sir. I don't know that I am aware of that fact, exactly, strictly speaking, as deadly poisons.

XQ In making a solution of carbolic acid and water for dis-

might be diluted with some thing that was as great a poison.
 XQ Then you have not understood my question. The question is,
 if it were diluted with a less poisonous substance, wouldn't the
 compound be less poisonous than the carbolic acid?

A Well, it might be diluted with some thing that might
 form a chemical compound that would make it more poisonous.

XQ Is it not a fact, Mr. Davis, that there are few things in
 pharmaceutical products that are as poisonous as carbolic acid?

A Oh, yes, sir, there are a good many that are equally
 so; some of them more so.

XQ Is it not a fact that in the domestic remedies sold in
 the stores, generally, and used on the farms and about the homes
 of the people of the country, there are a great many poisons? Is
 not copperas a poison, Mr. Davis?

A Yes, sir. It is not designated in the books as a
 deadly poison, but it would be a poison.

XQ How much copperas in solution in a dose would be fatal?
 A Well, it is not likely any body would take a sufficient
 amount of solution of copperas to make a fatal dose.

XQ Now, is it not a fact, that it has recently been discovered
 that a great many proprietary and patent medicines are deadly
 poisons?

A Well, they are not supposed to be.
 XQ Is it not a fact, Mr. Davis, that they have been demonstrated
 to be poisons -- proprietary medicines sold now out of the stores
 and drug stores in Rockingham county and elsewhere?

A No, sir. I don't know that I am aware of that fact,
 exactly, strictly speaking, as deadly poisons.

XQ In making a solution of carbolic acid and water for dis-

(Jas. L. Avis.)

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infectant purposes, in the same quantity of water, used for the same purpose, would you place more of the pure carbolic acid than you would of the inferior grade or less?

A Not necessarily so.

XQ Which would you do, Mr. Avis?

A That would depend a little upon the purpose for which the solution was intended and the grade of the acid I was using.

XQ Suppose you wanted to use it for sprinkling around hen houses, cess-pools, stables, hog pens, and things of that sort.

A Well, there is a grade of carbolic acid that is sold very cheap, but it is not supposed to possess as great disinfectant properties as a pure grade of acid.

XQ You sell that do you?

A Yes, sir.

XQ If I sent to you for some carbolic acid, a grade of that sort for a disinfectant, would you require me to register it?

A No, sir, I do not require you to register it. I would put a special label on it that the law requires and mark it poison. I wouldn't send it either unless by a grown person.

The witness was told to stand aside.

MR. HARRIS: We submit the motion, if your Honor please, to exclude all of the testimony of Mr. Strickler and so much of that of Mr. Avis as relates to the contents of the bottle being in-carbolic acid, as being admissible, it having been shown by the Commonwealth that the defendant is not a registered pharmacist, there is no penalty imposed upon him by the statute as he has violated none of the provisions of said act.

THE COURT: Your motion is, that one who is not a regis-

THE COURT: Now, what is the first question that arises in your mind?
The first question is, whether the defendant is a citizen of the United States.
The second question is, whether the defendant is a resident of the United States.
The third question is, whether the defendant is a person of legal age.
The fourth question is, whether the defendant is a person of sound mind.
The fifth question is, whether the defendant is a person of good character.
The sixth question is, whether the defendant is a person of good reputation.
The seventh question is, whether the defendant is a person of good conduct.
The eighth question is, whether the defendant is a person of good fame.
The ninth question is, whether the defendant is a person of good name.
The tenth question is, whether the defendant is a person of good honor.

THE COURT: Now, what is the second question that arises in your mind?
The second question is, whether the defendant is a resident of the United States.
The third question is, whether the defendant is a person of legal age.
The fourth question is, whether the defendant is a person of sound mind.
The fifth question is, whether the defendant is a person of good character.
The sixth question is, whether the defendant is a person of good reputation.
The seventh question is, whether the defendant is a person of good conduct.
The eighth question is, whether the defendant is a person of good fame.
The ninth question is, whether the defendant is a person of good name.
The tenth question is, whether the defendant is a person of good honor.

THE COURT: Now, what is the third question that arises in your mind?
The third question is, whether the defendant is a person of legal age.
The fourth question is, whether the defendant is a person of sound mind.
The fifth question is, whether the defendant is a person of good character.
The sixth question is, whether the defendant is a person of good reputation.
The seventh question is, whether the defendant is a person of good conduct.
The eighth question is, whether the defendant is a person of good fame.
The ninth question is, whether the defendant is a person of good name.
The tenth question is, whether the defendant is a person of good honor.

THE COURT: Now, what is the fourth question that arises in your mind?
The fourth question is, whether the defendant is a person of sound mind.
The fifth question is, whether the defendant is a person of good character.
The sixth question is, whether the defendant is a person of good reputation.
The seventh question is, whether the defendant is a person of good conduct.
The eighth question is, whether the defendant is a person of good fame.
The ninth question is, whether the defendant is a person of good name.
The tenth question is, whether the defendant is a person of good honor.

tered pharmacist is not subject to the penalty; that being only a merchant the defendant is not within the provisions of the act?

MR. SIPE: We want to move to strike out all of the evidence the Commonwealth has introduced, except that showing Mr. Yager is not a registered pharmacist.

MR. CONRAD: You do not deny, then, that this is carbolic acid or ~~of~~ the fact of the sale to Strickler?

MR. HARRIS: Our motion does not mean that at all.

MR. SIPE: It means that the evidence which the Commonwealth has introduced on those points is irrelevant and immaterial.

THE COURT: As I understand you gentlemen, your contention -- your motion -- is based upon the idea that the prohibition in the act does not apply to the sale of carbolic acid by a merchant -- that there is no penalty attached to the prohibition, but if there is, then it does not apply to merchants who are not registered pharmacists?

MR. SIPE: Yes, sir; it is brutum fulmen is our position. The motion speaks for itself; it is on record.

TESTIMONY ON BEHALF OF DEFENDANT.

WILLIAM H. SIPE, being first duly sworn, testified as follows:

Q What is your occupation?

A I am a merchant.

Q How long have you been in the merchantile business in Rockingham county?

A About twenty-five years.

Q Have you conducted a business that is rather larger than is usually conducted in stores in this county?

A I have conducted a good sized business. I think it

tered pharmacist is not subject to the penalty; what being only
throughout the defendant is not within the provisions of the act.
MR. SIBB: We want to move to strike out all of the
evidence the Commonwealth has introduced, except that showing Mr.
Yager is not a registered pharmacist.

MR. COMBARD: You do not deny, then, that this is carbolic
acid or is the fact of the sale to Strickland?
MR. HARRIS: Our motion does not mean that at all.

MR. SIBB: It means that the evidence which the Com-
wealth has introduced on those points is irrelevant and immaterial.
THE COURT: As I understand your gentleman, your conten-
tion -- your motion -- is based upon the idea that the prohibi-
tion in the act does not apply to the sale of carbolic acid by a
merchant -- that there is no penalty attached to the prohibition,
but if there is, then it does not apply to merchants who are not
registered pharmacists?

MR. SIBB: Yes, sir; it is prima facie in my position.
The motion speaks for itself; it is on record.

TESTIMONY ON DETAILS OF DEFENDANT.

WILLIAM H. SIBB, being first duly sworn, testified as follows:

Q What is your occupation?

A I am a merchant.

Q How long have you been in the mercantile business in

Hockleyham county?

A About twenty-five years.

Q Have you conducted a business that is rather larger than

is usually conducted in stores in this county?

A I have conducted a good sized business. I think it

(Wm.H.Sipe.)

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is generally considered that I have a good business.

Q Let me change the question a little. Do you conduct, and have you conducted for a number of years, or not, a large country store in Rockingham county?

A Yes, sir.

Q Can you state whether the people of the community in which you have conducted business, and elsewhere in the county, make frequent use of carbolic acid for domestic purposes in matters of disinfectant, in the way of sprinkling of hen houses and cess-pools, and, also, for veterinary purposes, that is, cleansing the sores on horses, etc.?

A Yes, sir. It is generally used, to the best of my knowledge.

Q And you say it is generally used, to the best of your knowledge, on farms?

A Yes, sir.

Q What has been your observation, Mr. Sipe, with regard to the use of carbolic acid for domestic purposes around the farm houses in this county?

A Why, I have considered that it is a very important remedy.

Q I mean to say, to what extent is it used?

A We have been keeping it in the store and have had calls for it, and people would tell us that it was for use around their places; some times for sores; if a horse would get a sore shoulder, or some thing of that kind, they would want to put some of it in water. Now, at home, I know we ordered some at my own home, and keep a bottle in the room all of the time.

Q Do you know whether this is generally true of the farm

Y 134, 172.

PLANTAS DE LA ZONA DE LA SIERRA

V AGO, 1873.

(AM·H·STDE·)

— 30 —

(Wm.H.Sipe.)

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houses around the country? Is it not a fact that they very frequently keep carbolic acid around the premises? Is that your observation?

A I cannot say that I know positively from my own observation, but only from inference --

Q That people purchase it at your store?

A Yes, that they purchase it, and I have every reason to believe that it is used.

CROSS-EXAMINATION BY MR. GUIGON.

XQ Mr. Sipe, you say that you sold it very generally. Did Mr. Strickler buy any carbolic acid from you?

MR. SIPE: Did you sell any yourself to Mr. Strickler?

A No, sir.

THE COURT: Did I understand you to say that you did not sell carbolic acid, generally?

A Yes, sir, it has been sold at the stores generally.

XQ The question is, at your store?

A Yes, sir.

XQ Have you been prosecuted, Mr. Sipe?

A No, sir, not that I know of. No; I don't think there has ever been any case against me.

XQ Sir?

A I heard that he bought -- Now, I have another store at which I do not stay myself. This is hearsay, do you want me to tell that?

MR. HARRIS: You cannot tell what you heard.

THE COURT: He can as to that. They want to show that Mr. Strickler bought carbolic acid at his store.

MR. SIPE: If he don't know it himself he cannot state

houses around the country? Is it not a fact that they very frequently keep carbolic acid around the premises? Is that your observation?

A I cannot say that I know positively from my own observation, but only from inference --

Q That people purchase it at your stores?

A Yes, that they purchase it, and I have every reason to believe that it is used.

CROSS-EXAMINATION BY MR. GILSON.

Q Mr. Sipe, you say that you sold it very generally. Did Mr. Strickler buy any carbolic acid from you?

MR. SIPE: Did you sell any yourself to Mr. Strickler?

A No, sir.

THE COURT: Did I understand you to say that you did not sell carbolic acid, generally?

A Yes, sir, it has been sold at the stores generally.

Q The question is, at your stores?

A Yes, sir.

Q Have you been purchased, Mr. Sipe?

A No, sir, not that I know of. No; I don't think there

has ever been any case against me.

Q Sir?

A I heard that he bought -- Now, I have another store at which I do not stay myself. This is necessary, do you want me to tell that?

MR. HARRIS: You cannot tell what you heard.

THE COURT: He can as to that. They want to show that Mr.

Strickler bought carbolic acid at his store.

MR. SIPE: Is he don't know it himself he cannot state

hearsay.

MR. CONRAD: If Mr. Wm. H. Sipe is interested in the outcome of this case, we would have a right to show his interest.

MR. HARRIS: You cannot go into the question of his prosecution.

THE COURT: No, I don't think that would be proper, but you can show his interest. It is admissible for that purpose.

XQ Have you any interest in the outcome of this case here?

Objection; overruled; exception for defendant.

A Only on general principles; as far as it affects me as a merchant; and from hearsay. Part of that comes from hearsay -- whether I might be affected.

XQ It is possible that your own interests will be affected by the decision of this case, is it not?

A In a general way I might be, I might say.

XQ Have you co-operated in the defense which is being made here?

A Yes, sir, I have.

XQ Have you contributed towards the defense of this case which is being tried here now?

A I said, in a general way, that is, as the fraternity of merchants are interested. And I might be interested in some other way, by hearsay.

XQ Have you contributed towards the expense of defending this case?

A Must I answer as to whether I have agreed --

XQ Whether you have agreed to, or have done it, either one.

Objection; overruled; exception for defendant.

A Yes, sir, I have agreed to bear my proportional part

hearsay.

MR. CONRAD: If Mr. Wm. H. Sipe is interested in the outcome of this case, we would have a right to show his interest.

MR. HARRIS: You cannot go into the question of his present-tion.

THE COURT: No, I don't think that would be proper, but you can show his interest. It is admissible for that purpose.

XQ Have you any interest in the outcome of this case here? Objection; overruled; exception for defendant.

A Only on general principles; as far as it affects me as a merchant; and from hearsay. Part of that comes from hearsay -- whether I might be affected.

XQ It is possible that your own interests will be affected by the decision of this case, is it not?

A In a general way I might be, I might say. XQ Have you co-operated in the defense which is being made

here?

A Yes, sir, I have.

XQ Have you contributed towards the defense of this case

which is being tried here now?

A I said, in a general way, that is, as the testimony of merchants are interested. And I might be interested in some other way, by hearsay.

XQ Have you contributed towards the expense of defending this case?

A Must I answer as to whether I have agreed --

XQ Whether you have agreed to, or have done it, either one.

Objection; overruled; exception for defendant.

A Yes, sir, I have agreed to bear my proportional part

(Wm.H.Sipe.)

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of the expense for the general good, I consider.

MR. HARRIS: For the general good?

A Yes, sir.

XQ Since you say "for the general good," is it not a fact that one reason which induces you to contribute towards the expense of this case is that you are advised that Mr. Strickler, at the time he was purchasing carbolic acid from other merchants, made a purchase at one of your stores; and are you not, in that way, directly interested in that question?

Objection; overruled; exception for defendant.

A Yes, I was advised, but not directly though, that Mr. Strickler --

XQ Had purchased carbolic acid at your store?

A Yes, sir.

XQ And your name was in the list of merchants in the county to be reported for selling carbolic acid?

A Yes, sir.

RE-DIRECT EXAMINATION RESUMED BY MR. SIPE.

Q You have been asked, Mr. Sipe, with regard to your interest as a merchant --

A (Interrupting) Allow me to qualify that answer a little. I don't know but that I would have been willing to chip in my part even if there had not been any --

Q I didn't understand that?

A I might have been perfectly willing to have assisted in the defense even if there had not been --

Q Even if there had not been any prosecution against yourself?

of the expense for the general good, I consider.

MR. DISTRICT ATTORNEY: For the general good?

A Yes, sir.

Q Since you say "for the general good," is it not a fact that one reason which induces you to contribute towards the expense of this case is that you are advised that Mr. Stickler, at the time he was furnishing evidence said from other transactions, made a purchase of one of your stores; and are you not, in that way, directly interested in that question?

OBJECTION: overruled; question for defendant.

A Yes, I was advised, but not directly through, that Mr.

Stickler --

Q Had purchased evidence said at your store?

A Yes, sir.

Q And your name was in the list of respondents in the county

to be reported for selling evidence said?

A Yes, sir.

RE-DIRECT EXAMINATION RESUMED BY MR. SIFE.

Q You have been asked, Mr. Sipe, with regard to your interest

as a respondent --

A (Interposing.) Allow me to qualify that answer a little.

I don't know but that I would have been willing to sign in my own

even if there had not been any --

Q I didn't understand that?

A I might have been perfectly willing to have assisted

in the defense even if there had not been --

Q Even if there had not been any prosecution against you --

Self?

(Wm.H.Sipe.)

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A Yes, sir.

Q Is it not a fact that the merchants of this Commonwealth are formulating an association to protect themselves and their interests in this matter, somewhat similar to the druggists' association in this state?

A In this matter and in other matters of general interest to the merchants -- whatever may come up.

Q In other words, you want to have the right to sell carbolic acid over your counters without registering it, just like Captain Avis, and other druggists, sell it over their counters, by their clerks, without registering it?

A Yes, sir.

MR. AVIS: I did not say any such thing.

Witness was told to stand aside.

A. N. RHODES, duly sworn on behalf of defendant, testified as follows:-

Q Mr. Rhodes, you are a farmer of Rockingham county?

A Yes, sir.

Q Where do you live?

A Bridgewater at present, and have been for the last year or so.

Q But you have been living for years in this county?

A Yes, sir. I have been farming in this county for the last thirty years.

Q Will you state whether or not carbolic acid has been for a number of years a familiar remedy in your home?

A Yes, sir, it has been on my place. As far as my

A Yes, sir.
Q Is it not a fact that the members of this community are formulating an association to protect themselves and their interests in this matter, somewhat similar to the druggists' association in this state?
A In this matter and in other matters of general interest to the merchants -- whatever may come up.
Q In other words, you want to have the right to sell narcotics and over your counters without registering it, just like certain other, and other druggists, sell it over their counters, by their clerks, without registering it?

A Yes, sir.
MR. AVIS: I did not say any such thing.
Witness was told to stand aside.

A. H. HUBBARD, duly sworn on behalf of defendant, testified as follows:-

Q Mr. Hubbard, you are a farmer of Rockingham county?
A Yes, sir.
Q Where do you live?

A Bridgewater at present, and have been for the last year or so.

Q But you have been living for years in this county?
A Yes, sir. I have been farming in this county for the last thirty years.

Q Will you state whether or not narcotics sold has been for a number of years a familiar remedy in your home?
A Yes, sir, it has been on my place. As far as my

experience is concerned, I have used it in various ways, such as --

Q Has it been your habit to keep it on your premises?

A Yes, sir; aimed to keep it pretty near all the time.

Q Will you describe to the court the various uses to which carbolic acid was put at your home?

A I used it for galled should~~ers~~ of horses, or sores of any kind about horses. I used it as a remedy for chickens in case of roup. I also used it in the house as a disinfectant, in hot ~~dry~~ weather. I live on the creek, here, and it is very offensive, and I have put the acid in the house to use it that way. I have often used it in swill-tubs for hogs when cholera was in the country, as a preventative. I believe that is about all of the use I made of it, and I keep it pretty near all of the time.

Q Mr. Rhodes, what do you say as to the extent to which carbolic acid is in common use among farmers generally, so far as you have observed?

A Well, I think it is very generally in use. You will find it in most every barn. That is as to my knowledge of the fact. Of course, I don't know that just every one keeps it, but as a general thing you will find it about all barns.

The witness was told to stand aside.

M. F. FLORY, duly sworn on behalf of defendant, testified as follows:

Q You are a farmer, are you?

A No, sir.

Q Oh, yes, I believe you are not. What is your occupation?

A Blacksmithing.

Q Will you state to the court whether or not you use carbolic

experience in connection, I have used it in various ways, such as --

Q Has it been your habit to keep it on your premises?

A Yes, sir; aimed to keep it pretty near all the time.

Q Will you describe to the court the various uses to which

carbolic acid was put at your home?

A I used it for killed specimens of horses, or bones of

any kind about horses. I used it as a remedy for chickens in

case of rot. I also used it in the house as a disinfectant, in

hot dry weather. I live on the creek, here, and it is very often

alive, and I have put the acid in the house to use it that way. I

have often used it in winter-time for dogs when cholera was in the

country, as a preventive. I believe that is about all of the

use I make of it, and I keep it pretty near all of the time.

Q Mr. Rhodes, what do you say as to the extent to which

carbolic acid is in common use among farmers generally, as far as

you have observed?

A Well, I think it is very generally in use. You will

find it in most every barn. That is as to my knowledge of the fact.

Of course, I don't know just every one keeps it, but as a

general thing you will find it about all barns.

The witness was told to stand aside.

E. F. TERRY, duly sworn on behalf of defendant, testified as

follows:

Q You are a farmer, are you?

A No, sir.

Q Oh, yes, I believe you are not. What is your occupation?

A Blacksmithing.

Q Will you state to the court whether or not you saw carbolic

acid as a common household remedy at your house?

A I do, yes, sir. I keep it there at home. I used it there last night and for the last several nights. I use it on my hands for chapped hands. It is good for that, and for sores of any kind. I use it in that way. We always keep it at the house as far as I know, and I recommend it for different things -- for sores on horses that I would see about the shop -- horses that I would see raw-like where the collar binds their shoulders, and I would recommend to get that and wash with it, it would be good.

Q State whether or not, from your observation, it is a common household remedy among the farmers in the community where you live?

A As far as I know it is; yes, sir.

Witness was told to stand aside.

E. C. ROLSTON, duly sworn on behalf of defendant, testified as follows:-

Q Squire Rolston, you are a farmer of Rockingham county are you?

A Yes, sir.

Q You live near Dayton, I believe?

A Yes, sir.

Q Do you keep carbolic acid on your premises and use it as a household remedy?

A Yes, sir; rarely without it.

Q You say that you are never without it?

A Rarely without it.

CROSS-EXAMINATION.

XQ How do you use it?

Q Did you ever use any of these things?
A I do, yes, sir. I keep it there at home. I used it
there last night and for the last several nights. I use it on my
hands for chapped hands. It is good for that, and for some of
any kind. I use it in that way. We always keep it at the house as
far as I know, and I recommend it for different things -- for
sores on horses that I would see about the shop -- horses that I
would see anywhere where the collar binds their shoulders, and I
would recommend to get that and wash with it, it would be good.

Q State whether or not, from your observation, it is a common
household remedy among the farmers in the community where you live?

A As far as I know it is, yes, sir.

Witness was told to stand aside.

R. G. HOLSTON, duly sworn on behalf of defendant, testified

as follows:--

Q Squire Holston, you are a farmer of Rockingham county are
you?

A Yes, sir.

Q You live near Dayton, I believe?

A Yes, sir.

Q Do you keep carbolic acid on your premises and use it as a
household remedy?

A Yes, sir; rarely without it.

Q You say that you are never without it?

A Rarely without it.

CROSS-EXAMINATION.

Q How do you use it?

A We regard it as a remedy for sores, especially among stock. If any stock gets hurt :-- stock or any thing like that -- when the veterinary comes to see us that is one of the first things he wants. He tells us to make a solution of carbolic acid.

XQ The veterinary makes a solution of carbolic acid. Do you apply it externally?

A Yes, sir. And we use it some as a disinfectant.

XQ You have used it as a remedy for hog diseases and about chicken houses, &c.?

A That is one of the things that my wife thinks we could not do without.

THE COURT: You put it in whitewash to whitewash chicken coops?

A Put it in the water to wash the chickens.

XQ Do you, or not, know that it is a remedy in very common use among the farmers of Rockingham county?

A I think so. I hear my neighbors speak of it; and in cases where stock gets hurt, one of the first things the veterinary speaks of doing is to make a solution of carbolic acid.

XQ Is it not a fact, Squire Rolston, that there are many neighborhoods in Rockingham county remote from drug stores?

A Yes, sir, a number of them.

MR. GUIGON: There are a great many communities in the county remote from physicians?

A Yes, sir.

MR. CONRAD: And a good many are remote from bar-rooms?

A Yes, sir.

Witness was told to stand aside.

A We regard it as a remedy for sores, especially among
stock. If any stock gets hurt:-- stock or any thing like that --
when the veterinary comes to see us that is one of the first things
he wants. He tells us to make a solution of carbolic acid.

Q The veterinary makes a solution of carbolic acid. Do you
apply it externally?

A Yes, sir. And we use it some as a disinfectant.
Q You have used it as a remedy for hog diseases and used

chicken houses, etc.
A That is one of the things that my wife thinks we
could not do without.

THE COURT: You put it in whiskey to whitewash chicken coops?
A Put it in the water to wash the chickens.

Q Do you, or not, know that it is a remedy in very common
use among the farmers of Rockingham county?

A I think so. I hear my neighbors speak of it; and in
cases where stock gets hurt, one of the first things the veterinary
speaks of using is to make a solution of carbolic acid.

Q Is it not a fact, Spence Holston, that there are many
neighborhoods in Rockingham county remote from drug stores?

A Yes, sir, a number of them.

MR. GIBSON: There are a great many communities in the county
remote from physicians?

A Yes, sir.

MR. CONRAD: And a good many are remote from drug-stores?

A Yes, sir.

Witness was told to stand aside.

JOHN W. LISKEY, sworn on behalf of the defendant, testified as follows:

Q You are a farmer of Rockingham county?

A Yes, sir.

Q Do you use carbolic acid on your premises?

A Yes, sir.

Q Do you know whether it is a common household remedy in Rockingham county?

A Yes, sir.

Q Now, Mr. Liskey, you say that you do keep it on your premises as a common household remedy, and you believe it is a common household remedy amongst farmers in Rockingham county, generally?

A Yes, sir.

Witness was told to stand aside.

MR. GUIGON: If your Honor please, we except to all of the testimony offered by the defendant, and move to strike it out as immaterial and irrelevant.

MR. CONRAD: If the court please, we would like to be at some absolute and definite understanding as to -- as Mr. Guigon has said -- "where we are at." Our understanding is that the evidence is now closed, and that the case will be argued by briefs between this and the next term of the court.

MR. SIPE: Had we not better have a little written stipulation in regard to the trial of this case.

THE COURT: I understand that the evidence now taken shall be read at the next term as oral evidence delivered on trial at that

JOHN W. HICKEY, sworn on behalf of the defendant, testified

as follows:

Q You are a farmer of Rockingham county?

A Yes, sir.

Q Do you use carbolic acid on your premises?

A Yes, sir.

Q Do you know whether it is a common household remedy in

Rockingham county?

A Yes, sir.

Q Now, Mr. Hickey, you say that you do keep it on your premises

as a common household remedy, and you believe it is a common

household remedy amongst farmers in Rockingham county, generally?

A Yes, sir.

Witness was told to stand aside.

MR. GURDON: If your Honor please, we object to all of the

testimony offered by the defendant, and move to strike it out as

irrelevant and immaterial.

MR. CONRAD: If the court please, we would like to be at some

absolute and definite understanding as to -- as Mr. Gurdon has

said -- "where we are at." Our understanding is that the evidence

is now closed, and that the case will be argued by briefs between

this and the next term of the court.

MR. SIFE: Had we not better have a little written stipulation

in regard to the trial of this case.

THE COURT: I understand that the evidence now taken shall be

read at the next term as oral evidence delivered on trial at that

time.

MR. SIPE: That is it.

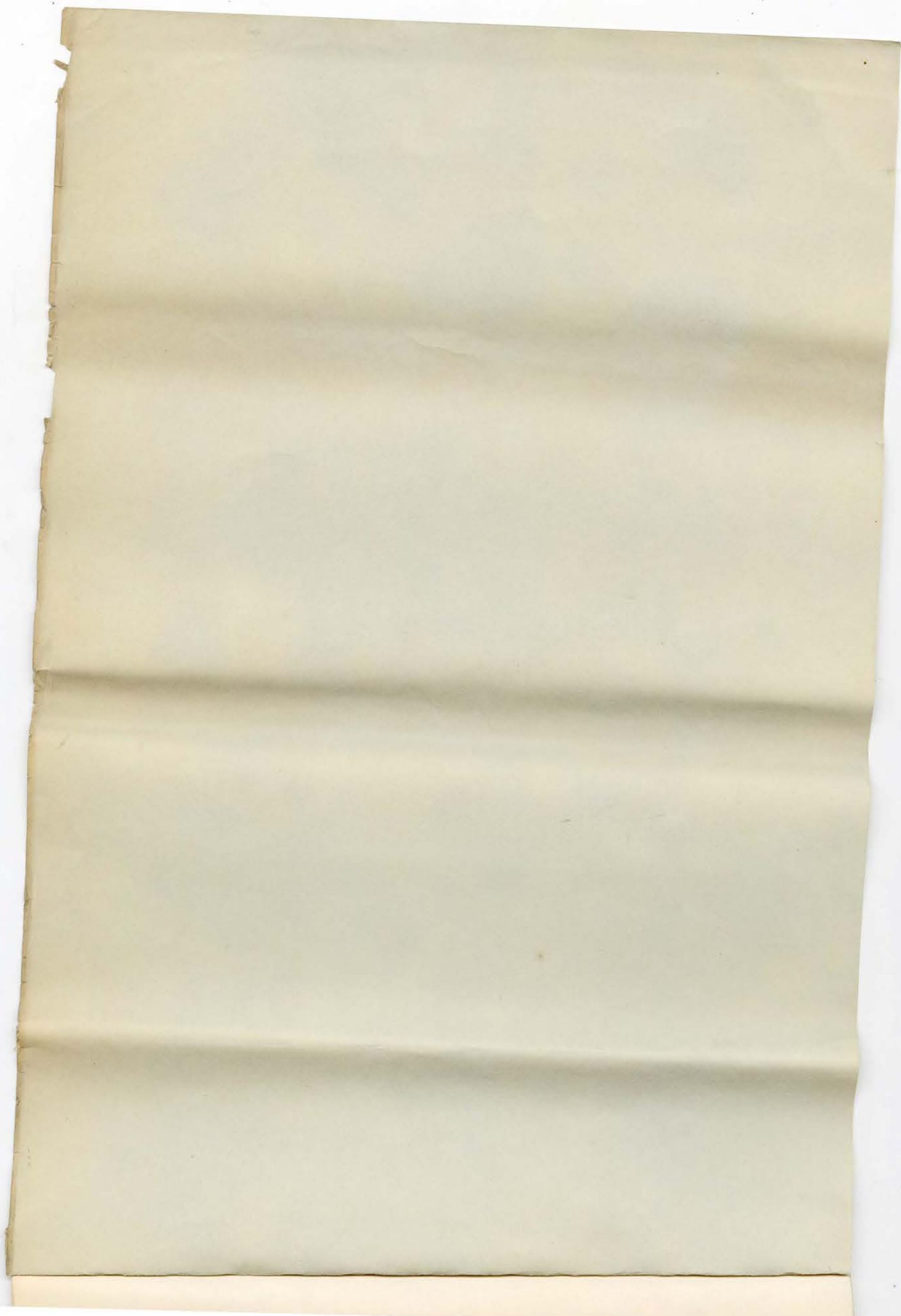
MR. HARRIS: I have no objection to a stipulation, but I doubt the advisability of letting the record show any thing more than that this evidence was taken to be read at the next term of the court.

THE COURT: I think this is a matter of misdemeanor, and that you can make almost any agreement with reference to it that you could in a civil case. The arguments will be submitted in vacation and the case is to be decided at the next term of the court on the evidence now reduced to writing, which will then be considered as produced orally in court, and there will be nothing for the court to do except to declare its judgment.

MR. CONRAD: I understand that these gentlemen have submitted a motion to strike out the evidence, and we expect you to submit arguments in writing, first, and we will reply.

MR. SIPE: Do you understand that we are to close?

MR. CONRAD: Oh, yes. That is all right.



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A. R. B.

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In the Circuit Court of Rockingham County, Va.

Commonwealth

Commonwealth

vs.)

AND

vs.)

A.D. Bertram

Thomas P. Yager.

NOTE FOR THE DEFENDANTS:

Passing for the time being the question as to whether or not under the evidence there has been any violation of the statute, it is desired to submit the following:

First: The court is moved to strike out all the evidence in the cases and dismiss the warrants on the ground that the act under which the warrants were issued is unconstitutional.

Art. 4, Sec. 52, of the Constitution of 1902, which is the same as Art. _____ Sec. 15, of the former constitution, provides that:

"No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived, etc."

The original act was passed March 3rd, 1886, and its title: "An act to incorporate the Virginia Pharmaceutical association, and to regulate the practice of pharmacy, and to guard the sale of poisons in the State of Virginia."

Here we find three distinct and separate objects embraced in the act as disclosed by its title, and these are the objects preserved in the act through all its various amendments as found in act of 1887, page 210; 1893-4, page 720; et seq.; 1897-8 p. 686; 1899-00, p. 825; and 1902-3-4, p. 71, and acts of 1894, p. 296.

So that considering the whole act with its amendments in relation to the original act of 1886, the title of the act itself discloses a clear violation of the Constitutional provision as provided in the above section.

But the act of 1886 was embodied in the Code of 1887, in the

In the Circuit Court of Rockingham County, Va.

Commonwealth
 vs.)
 AND
 vs.)
 Thomas P. Yeager.

NOTES FOR THE DEBATE:

Passing for the time being the question as to whether or not under the evidence there has been any violation of the statute, it is desired to submit the following:

First: The court is moved to strike out all the evidence in the case and dismiss the warrants on the ground that the act under which the warrants were issued is unconstitutional.

Art. 4, Sec. 52, of the Constitution of 1902, which is the same as Art. 15, of the former constitution, provides that:

"No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived, etc."

The original act was passed March 8th, 1886, and its title: "An act to incorporate the Virginia Pharmaceutical Association, and to regulate the practice of pharmacy, and to guard the sale of poisons in the State of Virginia."

Here we find three distinct and separate objects embraced in the act as disclosed by its title, and these are the objects preserved in the act through all its various amendments as found in act of 1887, page 210; 1893-4, page 720; et seq.; 1897-8 p. 686; 1899-00, p. 225; and 1902-3-4, p. 71, and acts of 1894, p. 226.

So that considering the whole act with its amendments in relation to the original act of 1886, the title of the act itself discloses a clear violation of the Constitutional provision as provided in the above section.

But the act of 1886 was embodied in the Code of 1887, in the

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sections comprising Chap. 78, under the title "Regulating the practice of Pharmacy", and all the amendments thereto are made in relation to this chapter in the Code, referring to the chapter and title as there given in each and every amendment.

Webster's definition of the word "Pharmacy" is as follows:

"The art or practice of preparing, preserving and compounding substances, whether vegetable, mineral or animal, for the purpose of medicine:"
the occupation of an apothecary."

We then have a law enacted under the title which relates only to the practice of Pharmacy, providing for the extension of the Pharmaceutical Association, defining its powers and privileges; providing for the State Board of Pharmacy and defining its powers and privileges and organization; regulating the practice of pharmacy; and prohibiting and restricting the sale of medicines and poisons.

It is submitted that here are least three distinct objects embraced in the body of an act, for the whole chapter is one act, one of which and possibly two of which, has no relation whatever to the object expressed in the title. What has the practice of pharmacy to do with the sale of medicines? What has it to do with the chartering of the Virginia Pharmaceutical Association, a corporation created by said act?

It is insisted that sections 1763 and 1764, the later embracing all that is in the former, has for its object a matter which is not expressed in the title of the act, ~~not~~ germane thereto. The object of the act is to regulate the practice of pharmacy; these two sections, either or both, relate to the sale of medicines and poisons by persons having authority to sell and dispense medicines, and in no way pertains to the compounding of medicines or substances for the purpose of medicines, which is the practice of pharmacy, which is the object of the act as expressed in the Code.

It is therefore insisted that, this provision of the Constitution being mandatory, this act so far as it concerns the matter now

sections comprising Chap. 78, under the title "Regulating the practice of Pharmacy", and all the amendments thereto are made in relation to this chapter in the Code, referring to the chapter and title as there given in each and every amendment.

Webster's definition of the word "Pharmacy" is as follows: "The art or practice of preparing, preserving and compounding substances, whether vegetable, mineral or animal, for the purpose of medicine;" the occupation of an apothecary."

We then have a law enacted under the title which relates only to the practice of Pharmacy, providing for the extension of the Pharmaceutical Association, defining its powers and privileges; providing for the State Board of Pharmacy and defining its powers and privileges and organization; regulating the practice of pharmacy; and prohibiting and restricting the sale of medicines and poisons.

It is submitted that there are here three distinct objects embraced in the body of an act, for the whole chapter is one act, one or which are possibly two of which, has no relation whatever to the object expressed in the title. What was the practice of pharmacy to do with the sale of medicines? What was it to do with the character of the Virginia Pharmaceutical Association, a corporation created by said act?

It is stated that sections 1763 and 1764, the latter embracing all that is in the former, has for its object a matter which is not expressed in the title of the act no genuine thereto. The object of the act is to regulate the practice of pharmacy; these two sections, either or both, relate to the sale of medicines and poisons by persons having authority to sell and dispense medicines, and in no way pertaining to the compounding of medicines or substances for the purpose of medicine, which is the practice of pharmacy, which is the object of the act as expressed in the Code.

It is therefore indicated that this provision of the Constitution, then being mandatory, this act so far as it concerns the matter now

in the body of the act, in the

sections comprising Chap. 78.

before the court is void because unconstitutional and the warrants should be dismissed.

See 8 Cyc., and cases cited.

Board of Supervisors of Henrico County vs. McGruder

84 Va., 828.

In the last citation, the court, quoting from Judge Cooley; "It may be assumed as settled that the purposes of these constitutional provisions is: first, to prevent log-rolling legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the title gives no information, and which may therefore be overlooked and carelessly and unintentionally adopted: and third, to fairly apprise the people of the subjects of legislation that are being considered in order that they may be heard thereon, by petition or otherwise, if they desire." And: "That the Courts cannot enlarge the scope of the title; they are invested with no dispensing power; the constitution has made the title the conclusive index to the legislative intent as to what shall have operation."

We submit right here that there seldom presents itself an occasion when this provision can be invoked for a better purpose than in the matters now before the court.

The legislation is in violation of the constitutional provision---Art. 2, Sec. 52, for the reason, that nowhere in any of the titles to any of the acts, or the amendments thereof, do the said titles give any intimation that the object thereof is to define a crime, and impose a penalty for the violation thereof. This is a fatal defect in the title of the acts.

And the act of March 14th, 1904, is palpably in violation of this provision of the constitution, in that the title gives no indication of the object of the act further than to declare, that it amends and re-enacts a certain section of the Code "relating to the practice of

before the court is void because unconstitutional and the writs should be dismissed.

See 8 Ore., and cases cited.

Board of Supervisors of Harlan County vs. McGowan

84 W., 233.

In the last citation, the court, quoting from Judge Cooley; "It may be argued as settled that the purposes of these constitutional provisions are: first, to prevent log-rolling legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the title gives no information, and which may therefore be overlooked and carelessly and unintentionally adopted; and third, to fairly apprise the people of the subjects of legislation that are being considered in order that they may be heard thereon, by petition or otherwise, if they desire." And: "That the Courts cannot enlarge the scope of the title; they are invested with no dispensing power; the constitution has made the title the conclusive index to the legislative intent as to what shall have operation."

We submit that here that there seldom presents itself an occasion when this provision can be invoked for a better purpose than in the matters now before the court.

The legislation is in violation of the constitutional provision--Art. 2, Sec. 32, for the reason, that nowhere in any of the titles to any of the acts, or the amendments thereto, do the said titles give any intimation that the object thereof is to define a crime, and impose a penalty for the violation thereof. This is a fatal defect in the title of the acts.

An act of March 14th, 1904, is palpably in violation of this provision of the constitution, in that the title gives no indication of the object of the act further than to declare, that it amends and re-enacts a certain section of the Code "relating to the practice of

Pharmacy".

There is nothing in the title of this act that gives any indication that it is designed to regulate the business of selling domestic or proprietary articles of a medicinal nature, that may or may not contain poisonous substances, or that the act is designed to protect the public health, and to impose a penalty for its violation--the object of the act expressly stating that it is designed to regulate the "practice of Pharmacy."

This is plainly apparent upon the most cursory reading of section 1764, which applies solely to persons "having authority to retail or dispense medicines, or poisons." This law has no application to any other persons than those having authority to sell or dispense medicines.

It is clear that section 1763, was designed to be merged into and be absorbed by the act of March 14th, 1904. It would be utterly impossible for any court to enforce section 1763, as a now present and operative law, and at the same time enforce section 1764, as a present and operative law. They are in hopeless and irreconcilable conflict, and to pretend that these acts can be construed as defining a crime and fixing the penalty for the punishment and violation thereof, seems preposterous. No mortal man can read these two sections--1763 and 1764--and say that they apply by any possible construction to other than licensed and registered pharmacists, etc.

But should the court be of the opinion that the act is constitutional and that it applies to merchants as well as to registered pharmacists, there is another ground upon which it is insisted that these defendants should be found not guilty of any offence against the law, which ground is founded on the evidence itself, viz: we think there can be no contention that the evidence does not clearly establish the fact that carbolic acid is a domestic medicine, and such that is usually kept by retail dealers.

The evidence of S.B. Strickler, the main witness for the

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The evidence of G. B. Strickler, the main witness for the

State of Ohio, in the

case of Strickler vs. State of Ohio, is

commonwealth, establishes that fact, alone, when he testifies that he purchased it at more than seventy five stores in the county and several hundred in the various counties in which he operated.

The testimony of the witnesses for the defense, consisting of farmers, merchants and a blacksmith, ^{prove} that it is a domestic remedy of common and daily use for the purpose of disinfecting, treating sores on animals and other purposes.

The testimony of James L. Avis, though evidently biased, does not deny that it is a domestic remedy commonly kept by retail dealers. It is true that he insists, volunteering the statement, that it is a deadly poison, still he does not deny that it is a domestic remedy, and in fact his evidence proves the fact when he testifies as to its uses and that the grade of the acid sold in these cases is designated as "commercial carbolic acid."

It being established that carbolic acid is a domestic medicine, and usually kept by retail dealers; and it must be noted by the court that "retail dealer" must not be restricted to country merchants, or even to merchants handling general merchandise, but must be taken to mean what it says, a retail dealer, one who cuts up and sells in small quantities in contradistinction to one who wholesales, and therefore equally as applicable to a druggist as to a country merchant, or anyone handling a line of goods which he sells directly to the customers or users; we submit, since these facts have been established, that the very terms of section 1765, of the act, expressly exempts these defendants from any liability for the sale of the same, they being merchants. The very terms of sections 1763 and 1764, positively prohibit the term "retail dealer" as used in 1765, to be construed as meaning and applying to country merchants only. Both sections providing that "It shall not be lawful for any person having authority to sell or dispense medicines to retail an poisons, etc."

Section 1765 provides that, "None of the provisions of this

commonwealth, established that fact, alone, when he testified that he purchased it at more than seventy five acres in the county and several hundred in the various counties in which he operated.

The testimony of the witnesses for the defense, consisting of farmers, merchants and a physician, that it is a domestic remedy of common and daily use for the purpose of disinfecting, treating sores on animals and other purposes.

The testimony of James H. Davis, though evidently biased, does not deny that it is a domestic remedy commonly kept by retail dealers. It is true that the instant, volunteering the statement, that it is a deadly poison, still he does not deny that it is a domestic remedy, and in fact his evidence proves the fact when he testified as to its use and that the grade of the acid sold in these cases is designated as "commercial carbolic acid."

It being established that carbolic acid is a domestic medicine, and usually kept by retail dealers; and it must be noted by the court that "retail dealer" must not be restricted to country merchants, or even to merchants handling general merchandise, but must be taken to mean what it says, a retail dealer, one who cuts up and sells in small quantities in contradistinction to one who wholesales, and therefore equally as applicable to a druggist as to a country merchant, or anyone handling a line of goods which he sells directly to the consumers or users; we submit, since these facts have been established, that the very terms of section 1763, of the act, expressly exempt these defendants from any liability for the sale of the same, they being merchants. The very terms of sections 1763 and 1764, positively prohibit the term "retail dealer" as used in 1763, to be construed as meaning and applying to country merchants only. Both sections providing that "it shall not be lawful for any person having authority to sell or dispense medicines to retail on poisons, etc."

Section 1763 provides that, "None of the provisions of this

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chapter, except those contained in sections 1763 and 1764, shall prevent the sale by merchants of quinine, epsom salts, castor oil, essence of peppermint and other flavoring preparations, calomel, camphor, iodide, bromide and chlorate of potassa, opium, paragoric, and sweet oil, and such other domestic and proprietary medicines as are usually kept by dealers; but, etc.,"

Then since under this section none of the provisions of the chapter applies to the sale of this article by merchants or prohibits the sale thereof by merchants, except sections 1763 and 1764, granting for the sake of argument that these sections do apply to merchants, if the requirements of said sections have been complied with in the sale of the carbolic acid by these defendants, there has been no offence committed against the statute.

From the evidence it will appear that in the case of A.D. Bertram the provisions of said two sections have been complied with in all respects except as to the naming of the antidotes.

But it is insisted that sections 1763 and 1764 have no reference whatever to merchants, that the provisions and restrictions therein contained refer only to those who under the act have authority to sell and dispense medicines or poisons, which, taking the act as a whole and construing all its parts together, can only mean and refer to registered pharmacists; so that there is absolutely nothing in the act prohibiting the sale of carbolic acid and other medicines mentioned in 1765 by merchants.

And in ^{this} connection the court's attention is called to the fact that the section, "1764", referred to in this section 1765, so far as to the subject matter therein contained is no longer in existence, having been superseded by the present section 1764.

Section 1765, was enacted March 5, 1894, and section 1764, in the same act prohibited ~~and~~ the manufacture and sale of "adulterated drugs". Section 1764, as it now stands, was approved March 14th, 1904, and by its terms amended and re-enacted section 1764, as it then stood, but in amending the same it was made to cover everything in section 1763,

chapter, except those contained in sections 1763 and 1764, shall prevent the sale by merchants of quinine, quinine salts, quinine oil, essence of pepper and other flavoring preparations, calomel, camphor, iodide, bromide and chloride of potassium, opium, paraffin, and sweet oil, and such other domestic and proprietary medicines as are usually kept by druggists, but, etc.,"

Then since under this section none of the provisions of the chapter applies to the sale of this article by merchants or prohibits the sale thereof by merchants, except sections 1763 and 1764, granting for the sake of argument that these sections do apply to merchants, if the requirements of said sections have been complied with in the sale of the carbolic acid by these defendants, there has been no offense committed against the statute.

From the evidence it will appear that in the case of A. D. Bertram the provisions of said two sections have been complied with in all respects except as to the naming of the antiseptics.

But it is insisted that sections 1763 and 1764 have no reference whatever to merchants, but to the provisions and restrictions therein contained refer only to those who under the act have authority to sell and dispense medicines or poisons, which, taking the act as a whole and construing all its parts together, can only mean and refer to registered pharmacists; so that there is absolutely nothing in the act prohibiting the sale of carbolic acid and other medicines mentioned in 1763 by merchants.

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Section 1763, was enacted March 5, 1894, and section 1764, in the same act prohibited the manufacture and sale of "adulterated drugs". Section 1764, as it now stands, was approved March 14th, 1904, and by its terms amended and re-enacted section 1764, as it then stood, but in amending the same it was made to cover everything in section 1763,

in almost the exact words of said section and omitted every thing contained in section 1764, as it then stood, thereby repealing the same, and in addition attached a clause prohibiting the sale of cocaine and the furnishing of morphia or other drug to a person who is a habitue.

So that it would seem to be the intention of the legislature by its act of March 14th, 1904, to repeal section 1763 by embodying all its provisions in the act and to repeal section 1764, as it then stood by excluding from the amendment everything contained therein.

Now section 1766, which fixes the penalties for 1763 and 1764, was also passed in its present form, March 5th, 1894, and was not amended or referred to by the act of March, 1904; so that the penalty therein fixed for any violation of section 1764, does not and cannot apply to a violation of the present section 1764, and this is made conclusive by the very clause fixing the penalty applying to section 1764, viz: "Any person violating 1764, or refuses to comply on demand with the requirements thereof, shall, etc., " Now this has no meaning applied to the present section 1764, but is clear when applied to section 1764, as it then stood.

Now section 1763, as well as section 1764, having been both repealed by the act of March, 1904, and no penalty having been provided in the repealing and amendatory act for any violation thereof, except as to a druggist, selling cocaine in certain cases, and except as to persons furnishing morphia or other drugs to an habitue, none is provided for the violation of Sec. 1764, so far as it pertains to the sale of carbolic acid by anyone, much less by a merchant.

There is mere fact that section 1763 appears in the Code of 1904, does not make it a law, because it must be remembered that this Code has never been adopted by the legislature.

Again as to section 1766, under which it seems the justice of the peace may impose a fine of \$10.00 against the offender, it will appear, first, that this section declares that any person violating

in almost the exact words of said section and omitted every thing contained in section 1764, as it then stood, thereby repealing the same, and in addition attached a clause prohibiting the sale of cocaine and the furnishing of morphine or other drugs to a person who is a habitue. No doubt it would seem to be the intention of the legislature by its act of March 14th, 1904, to repeal section 1764, as it then stood its provisions in the act and to repeal section 1764, as it then stood by excluding from the amendment everything contained therein.

Now section 1765, which fixes the penalties for 1763 and 1764, was also passed in the present form, March 23rd, 1904, and was not amended or referred to by the act of March, 1904; so that the penalty therein fixed for any violation of section 1764, does not and cannot apply to a violation of the present section 1764, and this is made conclusive by the very clause fixing the penalty applying to section 1764, viz: "Any person violating 1764, or refusing to comply on demand with the requirements thereof, shall, etc.,". Now this has no meaning applied to a present section 1764, as it is clear what is applied to section 1764, as it then stood.

Now section 1763, as well as section 1764, having been both repealed by the act of March, 1904, and no penalty having been provided in the repealing and amendatory act for any violation thereof, except as to a drugist, selling cocaine in certain cases, and except as to persons furnishing morphine or other drugs to an habitue, none is provided for the violation of Sec. 1764, so far as it pertains to the sale of narcotic acid by anyone, much less by a merchant.

There is one fact that section 1763 appears in the Code of 1904, does not make it a law, because it must be remembered that this Code has never been adopted by the legislature.

As in as to section 1765, under which it seems the justice of the peace may impose a fine of \$10.00 against the offender, it will appear, first, that this section declares that any person violating section 1763, shall be liable to a fine of \$10.00, and in section 1765, it is provided that any person violating section 1763, shall be liable to a fine of \$10.00.

section 1759, of the chapter shall be guilty of misdemeanor.

Let us examine the provisions of section 1759. It is ~~not~~ clear that this section has no application to the facts disclosed by the testimony in this case? It declares that it shall be unlawful for any person, not a registered pharmacist to run a drug store, or a chemical store, unless he has in his employ a registered pharmacist; and it also inhibits any person from engaging in the business of compounding medicines, unless he shall be a registered pharmacist.

By an examination of the acts of 1902-3-4, p. 71, it will be seen that the title of this act is defective and unconstitutional, in so far as it seeks to define a crime and impose a penalty for the punishment thereof. Its title as in the former act is "in relation to the practice of pharmacy", and plainly shows that it is intended to regulate and control the business of pharmacy, and to define the qualifications of members, that is members either of the Board of Pharmacy or those persons who are licensed pharmacists.

There is no penalty fixed for the violation of this section 1759. It is true it declares that it shall not be lawful for any person to engage, etc., but no penalty is fixed thereto, because under section 1766, it is declared that any person violating section 1759, shall be fined not less than \$10.00 nor more than \$100.00 "for each day that the said provisions or any of them are violated, etc.", showing that this penalty was intended to apply to persons in the business inhibited under section 1759.

This section 1759, is open to the same constitutional objections as are hereinbefore pointed out touching the entire act, and especially sections, 1763 and 1764.

The next penalty imposed under section 1766, applies specifically to registered pharmacists, who violate the section referred to in that paragraph.

And the next penalty imposed in the third paragraph of section 1766, specifically applies to a registered assistant pharmacist, and

section 1759, of the chapter shall be guilty of misdemeanor.

Let us examine the provisions of section 1759. It is not clear that this section has no application to the facts disclosed by the testimony in this case. It declares that it shall be unlawful for any person, not a registered pharmacist to run a drug store, or a chemical store, unless he has in his employ a registered pharmacist; and it also prohibits any person from engaging in the business of compounding medicines, unless he shall be a registered pharmacist.

By an examination of the acts of 1902-3-4, p. 71, it will be seen that the title of this act is defective and unconstitutional, in so far as it seeks to define a crime and impose a penalty for the punishment thereof. Its title as in the former act is "in relation to the practice of pharmacy," and plainly shows that it is intended to regulate and control the business of pharmacy, and to define the qualifications of members, that its members either of the Board of Pharmacy or those persons who are licensed pharmacists.

There is no penalty fixed for the violation of this section 1759. It is true it declares that it shall not be lawful for any person to engage, etc., but no penalty is fixed therefor, because under section 1760, it is declared that any person violating section 1759, shall be fined not less than \$10.00 nor more than \$100.00 "for each day that the said provisions or any of them are violated, etc.," showing that the penalty was intended to apply to persons in the business prohibited under section 1759.

This section 1759, is open to the same constitutional objections as are heretofore pointed out touching the entire act, and especially sections 1763 and 1764.

The next penalty imposed under section 1760, applies specifically to registered pharmacists, who violate the section referred to in that paragraph.

And the next penalty imposed in the third paragraph of section 1760, specifically applies to a registered assistant pharmacist, and

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has no application to the public generally.

So too is the penalty imposed in the next paragraph, section 1766.

As to the penalty imposed in the fifth paragraph of section 1766, it expressly applies to section 1763, which as we have already shown has been merged into section 1764, and if not so merged is so absolutely contradictory and inconsistent therewith, ^{as} and to render both sections inoperative, and void for uncertainty.

And the penalty imposed in the sixth and last paragraph of section 1766, specifically applies to section 1764, which section even if it be admitted to be avlid and operative as amended by the act of March 14th, 1904, in express terms only applies to persons "having authority to sell or dispense medicines or poisons."

It is not pretended in this case that there was any sale of any of the poisons mentioned in Schedule 'A', or Schedule 'B', in section 1764, to persons not aware of its poisonous nature, or that the purchaser was under sixteen years of age, it being the plain intent of this paragraph to prescribe the duty of a registered pharmacist in the handling of these poisons.

Finally it is respectfully submitted that all of the legislation is unconstitutional and void, because it is plainly "class legislation", and designed to restrict the sale of all drugs and proprietary articles allied therewith to registered pharmacists.

It is plain from the testimony of the president of the Board of Pharmacy, himself, that though a registered pharmacist and conducting a regular drug store, there was sold and dispensed the very same quality of carbolic acid for the very same purposes as that sold by the defendants, under substantially the same circumstances, without in any respect complying with any of the provisions of chapter 78, further than being a registered pharmacist.

It will hardly be contended that the defendant violated the

has no application to the public generally.
So too is the penalty imposed in the next paragraph, section

1780.

As to the penalty imposed in the fifth paragraph of section 1780, it expressly applies to section 1783, which as we have already shown has been merged into section 1784, and it not so merged in as to render both absolutely contradictory and inconsistent therewith, and to render both sections inoperative, and void for uncertainty.

And the penalty imposed in the sixth and last paragraph of section 1780, specifically applies to section 1784, which section even it is admitted to be valid and operative as amended by the act of March 1st, 1904, in express terms only applies to persons "having authority to sell or dispense medicines or poisons."

It is not pretended in this case that there was any sale of

any of the poisons mentioned in Schedule 'A', or Schedule 'B', in section 1784, to persons not aware of the poisonous nature, or that the person or persons under sixteen years of age, it being the plain intent of this paragraph to prescribe the duty of a registered pharmacist in the handling of these poisons.

Finally it is respectfully submitted that all of the legislation is unconstitutional and void, because it is plainly "class legislation," and is aimed to restrict the sale of all drugs and proprietary articles allied therewith to registered pharmacists.

It is plain from the testimony of the president of the Board of Pharmacy, himself, that though a registered pharmacist and conducting a regular drug store, there was sold and dispensed the very same quality of carboic acid for the very same purposes as that sold by the defendant under substantially the same circumstances, without in any respect complying with any of the provisions of chapter 78, further than being a registered pharmacist.

It will hardly be contended that the defendant violated the

provisions of section 1759, prohibiting any person "to sell at retail any drugs, chemicals, poisons, etc., without obtaining a certificate, etc., from the Board of Pharmacy", because this section 1759, was re-enacted on March 5th, 1903, Acts 1903, p. 71, after the present constitution went into effect which prohibits by Section 63, thereof, the enactment of any local, special or private law "for the punishment of crime; and this section 1759, if it defines a crime, the penalty for the commission of which is contained in the first paragraph of section 1756, is palpably a special or private law for the punishment of crime, because under the ~~expression~~ provisions of the concluding paragraph of this section 1766, it is provided "in all prosecutions under this chapter, the Board of Pharmacy of the State of Virginia shall be constituted the informer, and onehalf of the fines imposed by this section shall go to the Board of Pharmacy, and the other half to the commonwealth."

No separate, special set of men, still less a corporation, can be constituted the sole prosecutors in any special or particular class of offences under a special law to the exclusion of the general police power of the state and the public generally. The last enactment of section 1766, is found in the acts of 1893-4, page 715, the title to which act is in itself unconstitutional, because it is entitled an act to create a corporation "to regulate the practice of pharmacy", and to guard the sale of poisons in the State of Virginia," without further providing in said title that penalties are fixed for the violation of the said act, and indicate that a criminal statute is being enacted.

While the legislature may confer the exercise of the police power on municipal corporations and other subdivisions of the state in certain cases, no authority can be found in support of the proposition that exclusive power to initiate and prosecute crimes may be vested in a corporation such as the Board of Pharmacy.

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provisions of section 1752, prohibiting any person "to sell at retail any drugs, chemicals, poisons, etc., without obtaining a certificate, etc., from the Board of Pharmacy", because this section 1752, was re-enacted on March 5th, 1903, Acts 1903, p. 71, after the present constitution went into effect which prohibits by Section 65, thereof, the enactment of any local, special or private law "for the punishment of crime; and this section 1752, it is defined as crime, the penalty for the commission of which is contained in the first paragraph of section 1756, is palpably a special or private law for the punishment of crime, because under the expressed provisions of the concluding paragraph of this section 1756, it is provided "in all prosecutions under this chapter, the Board of Pharmacy of the State of Virginia shall be constituted the former, and one-half of the times hereafter this section shall be to the Board of Pharmacy, and the other half to the commonwealth." No separate, special act of men, still less a corporation, can be constituted the sole prosecutors in any special or particular class of offences under a special law to the exclusion of the general police power of the state and the public generally. The last enactment of section 1756, is found in the acts of 1893-4, page 715, the title to which act is in itself unconstitutional, because it is entitled an act to create a corporation "to regulate the practice of pharmacy", and to guard the sale of poisons in the State of Virginia," without further provision in said title that penalties are fixed for the violation of the said act, and indicate that a criminal statute is being enacted. While the Legislature may confer the exercise of the police power on municipal corporations and other subdivisions of the state in certain cases, no authority can be found in support of the proposition that exclusive power to initiate and prosecute crimes may be vested in a corporation such as the Board of Pharmacy.

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COMMONWEALTH

VS.)

A.D. Bertram.

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COMMONWEALTH

VS.)

T.P. Yager.

NOTE ON BEHALF OF THE

DEFENDANTS.