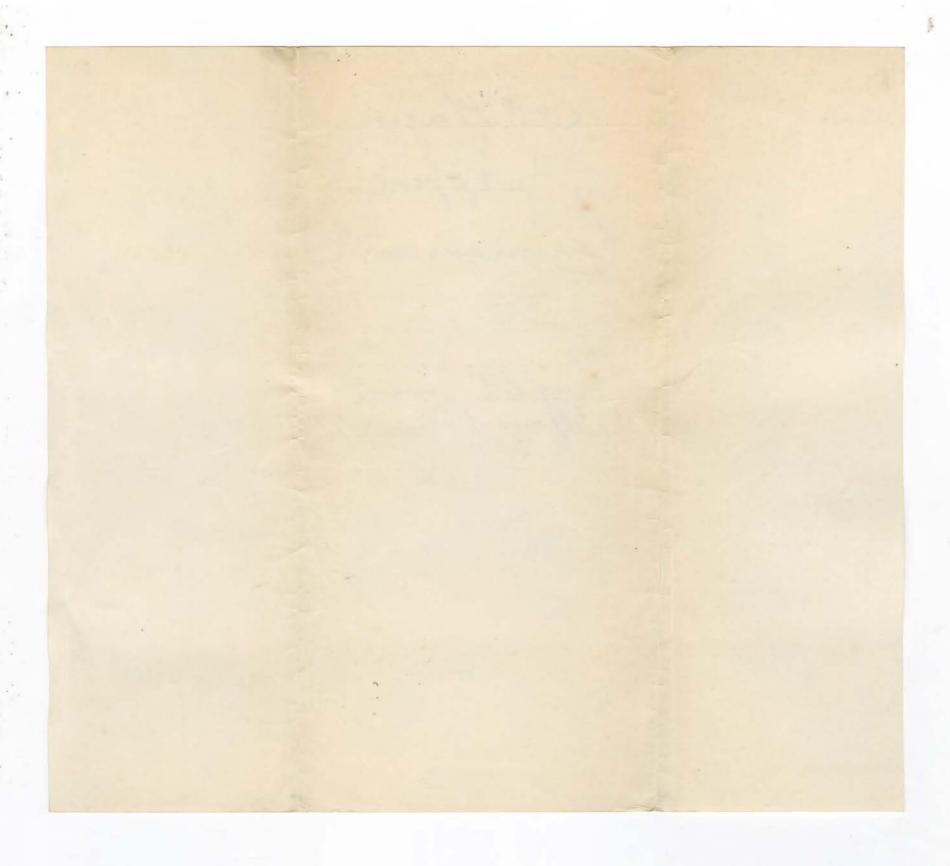
. L. P. Jager Lanman suith 1901 July Centr May Cl. Julyt of Mayerhale aff. The spec



To the Sheriff or any Constable of said County:

WHEREAS, SN Strickler	of the said county, has this day made
complaint and information on oath before me, P. Buyun	a Justice of the said county, that
of the said county, on the 14h day of May	1906, at Penn Land
in the said county, in his being a much to said S. V. Strickly a cularin chay carbolic acid his said J. P. Yazar be to sell and dispure his said chay and	ant, milawfully dis selo
Carbolic acid the said I P. Yager be	ing that without authority
to sell and dispure the said along and	e 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 s	aid J.P. Yaga at Itaris only
to appear before me, or some other Justice of the said County, the said County, the said county of the said County, the said to answer the said complaint, and to be farther dealt with according to	ay of July 1906
To another the said company, and to be invested about the said according to	and the second s
to appear and give evidence in behalf of the Commonwealth, on the	evanination touching the said offence
Given under my hand and seal this 28 1 day of	in the year 1906.
Given under my hand and seal this 28 Wo day of Puullel	on Bujun J. P. [SEAL.]
NEWS-REGISTER PRINT HARRISONBURG VA	

Mis can was heard before me on the 2 day of July 1906 and on 3. day of July 1906 independent was under trapped ging the West-Marger and a fine of July 1906 and whom the with find from my saw holders said Joseph horring nearly an appeala, and appeal from my saw manners in granted to the Said J. Janger to the Crient-Colus- of Rockingham. Imme man my hand this 9th day of July 1906 Andlew Bryan J.G. 1907 Jung Jang L Son of Salamina Section of the sold of the . 16 Leewil X W meaut Executed grant 29 1914 wyou I thank the hingest of the derneture

COMMONWEALTH OF VIRGINIA,	1	MO TITEM
ROCKINGHAM COUNTY.	1	TO-WIT

. To the Sheriff or any Constable of said County:

WHEREAS, S. V. Stucklus of the said count	y, has this day made
complaint and information on oath before me, P. Buyww a Justice of	
a DBertram	
of the said county, on the 1415 day of May 1906, at Hu	eletown
in the said county in he isome being Ca. What che county MAN & CANA	Three do sele
in the said county, and he thin being a shurch and my which shirts shirt shirts and in the said county. The said county of the said county, and he said county.	The state of the s
Observit soust of color of coid the deid of	3 ct sur les
Arsnie and Carbolis acid mo said a D. I	il drug com
boion	- 0
4 11	
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	a
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 County,	
mi faid county on Monday the & day of	
to answer the said complaint, and to be farther dealt with according to law. And you ar	
to appear and give evidence in behalf of the Commonwealth, on the examination touchi	
Given under my hand and seal this. 2816 day of Summers Register Print HARRISONBURG VA	in the year 1906.
Pougliton Bureau	T. D. 5 2
A W MANAGEMENT AND THE	L LOTS AT L
NEWS-REGISTER PRINT HARRISONBURG VA	J. 1. [SEAL.]

On the 3° day of July 1906, however hear white case on the 2° day of July 1906) I adjudged the Defencember a. D. Berliam guilly of the offence Chared mitin (ful-not char of selling armie) and imposed a fine of the dollars and \$150 costs and the said a. B. Berliam having rayed an appear from my said jud must in this case and under of the said judgment and are costs in cose this said judgment and are costs in case this same shall be affirm an appear from my said judgment is grand the said and are costs in a B. Bullatin to the Circuit-Comp of Posekingham County. Imin under myhand this git day of July 1906 Bendleton Bryan J.O. JE. 9 Flowinger SRC. To Lateral 208. Executed grow 29 1906 Tyen a, is Borboun 18mg Reding and Expounting to him the harpers of the Done in French

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 Teste: alex. Mullay

Ellerk. law directs.

To the clerk of the circuit (court of Rockingham Co. Va. 1

Superior Court of Appends of Blagista,
Astronom way, com.
Standon, Se.

Movember 21, 1907.

The Late of Agreed of Agreeds of Virginia has mended a writ of Agreeds of Agr

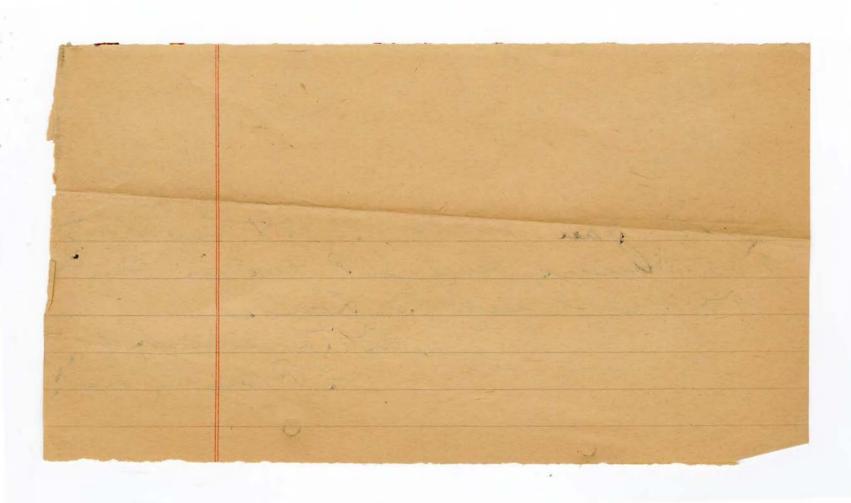
charte and to sarle and an



SHERIFF OF ROCKINGHAM COUNTY, Received Payment. J. A. SWITZER, Sheriff Rockingham County.



Reed Jan. 22/08 of D. H. Lee Harty Two Dollars, being J. D. Jue in Couch 199, yager med et. E. Long. W. V. Decherh ast of RBrigan, seed



Communalles Commune alla
03
Thomas P. Yoger a. D. Belrain The Court is of opinion that the Objec. tim to the Constitutionality of the acts huder which this from cubin is consuled Lis with well taken. The original ach, forus mich 3.856. " An ach to incorporate The Virginia Pharmacentical Associa. him, and to regulate the practice of phormacy, and to grow the sale of Poroms in the State of Virginia. The Objects herein states are germane to each other and his hills is broad lumph to cever all had is embodied his the Statutes as they Hand boday. This ach was used poraled in the Code of 1887 as chapter 98, the Chapter totte heading being Regulating the fractice of Phermacy - and In Choples falls bundes tille 24 of the Code, his tille heading of which is "The Public Health". The ach y March 3. 1894 (acts 1893.94, gr. 715' amendo the Code of 1867 from section 1756 to 1766 inclusive, the amend. ment being made by reference to the new bers ythe sections and the number and subject your Chapter, the subject of

If the Chapter being described by the words in velation tothe practice of there acy, which is substandially the Chafter heading of chapter 78 ylu Care of 1887 - The Couch Considers his amendment, and hur others like it, as valid amendments under his Case of Iverson Bonn, 91 Va, 762. It may be said in possing had if her are not valid amendments, him reclins 1764 & 1766 as Tryappear in the Code of 1887 and the existing law on the dut. piet, and the result 25 for on his core except his to eminim mandly beraviolation yets, is the Darrely beraviolation yets, is the Darrely the act of high. 5. 1894, lost be ferred to, changes the num. ber of section 1764 year Code of 1867 so has it appears in the new act as section 1763 (acts 1893-94, p. 719), and This Change is manifestly he Cause of lover of description Contained in as ach 1. 296 A The latter ach was manin feetly intended to arnews section 1763 of the each of month 5'. 1894, but section 1763 y hu ach of Inch. 5: 1894 is an awwell. ment of see. 1764 of he code of 1887, 20 has the ced of meh. 14, 1904 is truly an amendment of see. 1794 of he Code of 1887 as amended by his ach of morch 5:

1594, one feature of which last ment? amendment was a change y the reclin necesses from 1294, as it was in he was of 1867, to 1793, as it appears in his ach en 1894. The section should now opport in the Code as section 1793 (that being the number given its by his ack of 1894), but The act of march 14, 1904 is truly "an ach to amend and reclused section 1764 of the Code of Verginia, as amended by an ach approved march 5', 1894, relating to In Isachie of the harmany. There is an ever, however, in the act of Morch 14. 1904 in hat in the margin of the body of his each (not in the title or in he enacting past) The section amended is numbered 1764 (ballowing he Corde of 1887) malead of 1763 Which was the line number by writing of he act of mach 5: 1894. This con praise in numbers, however, even if It tota the error existed in the little or he enacting clause, loved not what' the manifest purpose of the General Ussembly to armend the seating which was 1794 in the Code of 1887 and 1743 in the act of 1894. The case falls under The influence of the formaille expressed in the maxima " Frales demondrated my nocet cum corpore constat. This is

the law applicable to such a case as declared by Mr. Black in his Inter . protation of Laws," Where he mentions the Exact case saying; and ig a later Statute expressly refers to a disign naled section of an lorder ach, to Which it can have no application, but their is another reclaim of her prior Statute to which, and to which alone, in trew of the In bject malles, he later ach can froferly refer, it will be bead according to the manifest purpose of the Legislature, and the misdescription well not vehale, The false other thin Colaired Black cululestrelation of Laws, pages & 0 +81, sec. 38 Her The profosition graded above her anker All four decisions, as falls: People o King, 28 Cal. 266 Almerian v Whally, 9 Iowa, 390 Reville v Hell, 3 Wah, 334 Comm. v Marshall, 69 Pa. M. 328 Afflying this principle, he lover in the marginal section humber Contained in the act of hich. 14, 1904, should be befield, and The see. would bemain ho. 1763 as fixed & hi ach y 1894, and see. 1764 could be main as fixed by had ach. If for any house the act of mak. 14, 1904 is not a valid accused. ment of see, 1963 of the act of 1894, min her latter ach bemains the last today. The constitutionally office saw and the status of sec. 1963 being disposed of hermains to be considered whether the defendant as according merchant comes within the opera-

3 him of the law, and whether he is pully of wolding it . It is claimed on behalf of the defendant that me thanks see. 1763 applies only to herous having arthory To sell or dispense medicines or possens, to wit, as asperd, Inquito, and had mer-Charles, such being herous having author. ily Dell, do not fall lender hus prohibition or requirements against section. The argument is a little paradoxical A topic, to that it It assets that only hersons an Monged to sell are prohibited to do the things specified from selling he The way condemned by the statute, and that all other persons, not being authorized Vell at all, may sell any way hig please. It seems tome had it would be a singular sort of lave with respect to The sale of possions that evaned throw armad druggists, as twhen the law makes special formains traceure reliability & skill, hi Rafe guesds treacribed by Rec. 1763, and at the same line perish his free and huregulated sales of the same cristes by herous without ofecial training or

Skill Reither do I think I do 20 th hinte The language of the section will bear this testricted construction. It is moreover maintest from the lesses of sec. 1765" that see. 1763 was calended to offly bo and govern merchants, celainly as to The Dale of dimentie medicines, hader which head, it is centeraled by crusel for off, Carbolic acid should be clossed. When Dec. 1765 sogs had have of the frieins of this chapter except his contained in sees, 1763 & 1764 Phale frevent me sale by mer chants de, it is Egravalent To declaring that sees. 1763 & 1764 shall govern merchants, ah hast the extent of the articles ment in see. 1765, wichen Dring domestie medicines , and therefore in that conduction were never and this section also, of that construction were needed, authorizes muchants tell the designated orticles, and by hat means also brings him lunder the an fluence of sec. 1763 as herams having an thing totall. The defludant sold Cartolie acid islum Cesson

Z is und 20 ceraing on whe hat The 2 s allached The Halile, meter ancedes the has dices Hauran d'in has 6' ind. 6 me chants i 4 here M had as y hon 9 7her Innestic ac. 175.9. danustic Spane Inca いれ 6 we. Dr. custime M brain ecc. 1966 9.0 Reen A ance a as The has medicines, depen meda 为江后 muchie his elach, inas as again. deni 6. Da ases which M mas which dep seed. alad, home c. 1763. used 2:43 クルへ may 000 000 acid 0

condined trucan a hereof er medicine which Can be out Commonly is were I for The breatment of besily desiase in the cordimany administration of demedie offairs wither the cule vention of medical or others professional skill I air. In fact had Carbolie acid is commenty used do as a disentedant does not make it a demestic medanis. All medanies vall hermolies are dimedia in the sense that they are used in the family & he hand, but I limed consider that only those which can be used in the form in which they are brugat, and which are Commonly used without the aid of professional ada beel, can be considered domestic medicines within the meaning your last . I do not thruk Carbolic acid can come arthui his closer probin, and an of opinion here. five that it can with he sold by my. chants. The Court fruits the defendant fully (is such ease) and ascertains his primehenent at a frie of 1000.

J.n. H.

IN VACATION:

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

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 November, 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 rendered 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 session 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 forthwith certified zextifizatextogether 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: alux munay, 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: aly unmay duch

Silver 150 Same 4500 Same 1179 Same 16103 1. D. Bestrain 1 3 20 B

A. D. Bortram

vs Appel from Jo. Commonwante John June 1 of May June affect of



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 register d 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 overrulling 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. N. Haas (seal.)

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AND WARREN THE

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 the to constitut the properties and agree to the delication of the price, alter astronom of occurat, the conductor to be THE RESIDENCE OF THE PARTY OF T ON SECURE AND ASSESSMENT AND ADDRESS OF STREET ACTO, NO SEE OF SECURITY, NO PROPERTY THE PROPERTY OF SECURITY. (Here invest tentillogy trees Theoremselve"s treesmortple,) ATTOMICAL - IN SECURITION TO A THAT IS PRODUCTION OF THE PARTY OF THE PARTY. the limit to it. In the property of the choose property in the party of In the directly fourt of heatington county.

the rate defendant, by daminal, expended ages for pageing that the

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 day of June, 1907.

J.n. Haas seal.)

ACCOUNTS OF THE WALL OF LAND TO THE WALL OF THE PARTY OF AL CLUM AND PROPERTY OF THE PARTY OF THE PAR The state of the s

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 classic court of Postanghas Courty.

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Thon appeal from a Justice of the Patch.

A. D. Bertmus.

Transcript of two testimony offered before Judge 7. E. Hear, Judge of Friday, February 18th, 1967.

AFERANCES: Geo. M. Corvad, Haq., Attorney for the Control of the Capt. A. B. Guigon, Attorney or the Virginia Pharmacentical Abordoletion.

APPLANATE: T. T. Berger, But., and Memoria Line Land Land.

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c. n. srendente, boing daily suden, on executantion for the

Q Your much in .. B. Iteriotron?

A Yen, air.

Q I believe you are at premipt a student of the Britgownlor College, in sain county?

A Your sire with the state of t

of I wich you would state whatever, on the little day of last
liny, you bought compoils sold from Mr. a. D. Bertman's store, at
Keeslebown, in this committ

A Yes, air, 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?

O Maye you the package or bottle vita your A Year wir, (Production, votile.)

o Here is a small bottle, nucked A. D. Bertran, Foorletown, and labeled "day. Acid, poleon."

A Carbolic acid, poleon, simply. I bought that of the clerk, Lowis Staling, and Inpeled it.

or this one label which has the red border was put on by you after you purchased the earboile acid?

A Yes, alr.

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THE SOURT: Do you want that the these was on when the bettle was delivered to your

A The nottle was labeled when it was delivered to me.
THI COURT: Did you one two label put on the cottle:

A We, sir, I did not see it put on the bettle.

O It was on the bottle when it ease into your possession?

Q Was it on the Pottle when it was taken down from the mail??

Q It was put on the bettle after it was taken from but anelf?

Q The took it from the smalf, Mr. Bertres or the clerk?

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 ornot.

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.

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A Pac olork.

o bid it pass through ir. Bertran's mands from the time it was taken from the shelf until it was delivered to you?

A I do not know.

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Thought the and bus old too the real party of the fill out

A Yes, sing I saw him got the copyry bottle.

O No you seconded once you paid aim for his

A Michol, I tuinis.

CROSE-EXAMINATION BY MR. SIPE.

XQ You stated the date of this purchase from Mr. Bertran'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; suatained, 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.

OFFICE AND INTERNATIONAL BOTTOM

store, did you, Mr. Stricklert

A The lath of May, 1900.

9 For what pumpones all you make this pumpones of carbolle

A I was none there by the Board of Pharmacy of The

IR And who was noting for the Board of Pharmacy in sending

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Lobel; was that megalical to you by the foard of Pharmacy?

A Thich, the Label?

Ad You, sir.

A You, sir.

NO What were your directions from the Roses of Frankansys-

Olfsetad to an Levalevant; engineed, and excep-

In You did have instructions from the Board of Framesey Board you also sumplied the the board of Framesey?

A YOU, MIE.

You have near totalon were remarked when the Sarteklerr

A I don't remarked how many there were. I don't know
whether they were counted or not. Sayeral dosen.

(S.B.Strickler.)

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.

To Mr. Strickler, is it not a fact that you are community unit of the country to obtain information of themselved to fraction of the country to obtain information of the law by going to merchants in different information of this commonwealth and anking to purchase carboile and and other drugs?

A No, elr, not permanently emuloyed.

XQ How long mave you been in this emuloyeest of the month

SYOMETOW?

A I was only employed by them a comple of menting. I am not employed by them now.

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The fild you not keep a recerd of the stores you visited? A Caly those that I nurchased goods from.

YO How many works thores of those stories at anica you made purchases of this coursestory

A Botwood Fifty and neverty-five. I don't know the

XQ Es It a fact that you wore sagared in osaer counties, in

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A Augusta, Lacenardonh, Loudoun, Frince Viller, Alexan-

To How range old you report 10 Augusta country

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.

XO 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? No wall, him many did you remort altogether, in washington

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A I sannot tell you shout how many. Several nundred.

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And Your componention, there, with regard to convictions, and the time result of pending proceedings; that is a rest, in it noty

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.

MQ 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?

A Yen, sir,

Double the state of the state and design that the particular of the state of the st

Objection; matained; exception for defendant.

IQ Wall, what did you do with the carbolic seld which you may you purchased in this bottle from ir. Bertran's store?

A T kept it in a box here at ice. Aviota.

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A Kept it in a box nere in let. Avis's shows.

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

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A Yes, siz.

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A In the year part of he. Bertrants more.

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A No, siz.

You may tank you were non?

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

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 XO Non dend some who part 14 one
XO Non dends some who part 14 one
XO Non dends some since part 15 one

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(S.B.Strickler.)

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

porcess in the poteto, and that you this not see that him of the label put in a potetio, now, I want you teld the court how you know, in a call the proceeding against thio cash, whether that you saw the clock take to the back part of the stock part of the stock of the stock of the cash bottle of not.

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TOUBLETTON EXAMINATION BY MR. COURAD.

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A You, sir.

The witness was told to stand amide.

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

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

THE COUPT: 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:

A 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.

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MR. COMBAD: WE will put Mr. Avin on the stand, and prove it

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(Jas. L. Avis.)

Q State, if you know, whether Mr. A. D. Bertram, of Keezletown, 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.

GROSS-EXAMINATION BY MR. HARRIS:

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

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Q Carbollo sold in not a propriatery medicine, Captain 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 inflamation 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 same to senous term to this visit of benindage of blos offodess

a very good grade. This is what is known as commercial carbolic acid.

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A Well, it is really -- That grade of sold, if it is wint I beldeve it is, an ordinary carbolic sold, it is not fit for any thing encept 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 orbolic sold; it might set up infine-tion in a cound and cause serious injury to man or boset.

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XO (Interposing) I am not balking about him public, I am suking you if it is not a fact that there is much a grade of one-bolic acid which is known as corrected carbolic sold for distin-

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

Xe Mr. Avis, now did it some to be called commontal acid?
A That is just an ordinary name given to a cheaper:

Ag Is it not a fact, im, Avis, that it is conied "Commerce olais" boomune it is prevalent in commerce; that it is pought 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 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.

noid in two stores? In not that the manning of conservator.

ing it has someworked a would down by that I what I amped a change or grade; if I wanted pure carbolic sold I would designate it as

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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 thingsof 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

NO I am not setting you new it is generally known, but I am andther you new it got that tout is tender and if, as a matter of foot, it is not note in in commercial trade?

A Well, it is a tone concretly used in the trade to designate a chear grade. And it applies to other goods bosides carbolic sold.

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No Mr. Avis, if a pareon would send to you for none ordening acid to sprinkle around hen nouses or cess-pools as a disinfoctant

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.

NQ 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

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A Well, I don't know that I don't amove that queetlon exactly. They are all considered deadly poisons.

Now that your correctly anth is a more concentrated and dougly

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

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or and you say that has ordinary grades as cardella gold are

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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.

IQ 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 coppers 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

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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 disinfectent 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.

MQ 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

smooth of solution of sopperss or give enough to make a fatal

now, is it not a fact, that it has recently been discovered that a great many proprietary and patent medicines are deadly poleoner

A wall, they are not supposed to be.

xq Is it not a fact, Mr. Avis, that they have been demonstarted to be palsons -- proprietery medicines and d now out of the stores and drug stores in Rockingham county and siscember

A No, air to the I am that I am aware of that Fact, exactly, strictly speaking, as deadly poisons.

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A Not necessarily so.

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In Suppose you wanted to use it for spainfalling around hen houses, oses-pools, stainles, hog pons, and things of that most.

A very there is a grade of embella acid that is sold very amens, but it is not supposed to possess as great disinfectant properties as a cure grade of soid.

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A Yes, sir.

you if I cant to you for some or both, a grade of that nort for a distributint, would you require me to register it?

A so, sir, I do not require you to register it. I would

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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 incarbolic 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 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?

APPLIED TO THE MEDICAL WEST TO BE THE THE

MR. HARRIES We submit the motion, if your Monor playes,

to exclude all of the testimony of Mr. Strickler and so much of that of Mr. Ayis as relates to the contents of the notice being derivated of Mr. Ayis as being desirable, it newing been shown by the derivation that the defendant is not a registered preparately. Shore is no pennity imposed upon him by the statute as he has violetes none of the provisions of and set.

THE COURT: Your motion is, that one who is not a realis-

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Ha. Harris our motion does not meen with at all.

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that the no penalty attached to the proministion, but it there is the the state of the state of

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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 cesspools, and, also, for veterinary purposes, that is, cleasing 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?

The motion speaks for itself; it is mention falmon in our postaton.

THANKINGE OF BEHALF OF DEPENDANT.

WILLIAM N. SIPE, first duly swarn, testified as follows:

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A About twenty-fixe years.

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the generally considered that I have a good business. I think it

on the de charge the question a little. Do you conduct, and have you conducted for a manher of years, or not, a large country store in Rockingham country?

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C dan you saw whether the people of the commutty in which you have conducted brillness, and classings in the county, make frequent use of carpolic sold for domestic prepared in instance of distinfectant, in the vay of sprinkling of her houses and cosepodle, and, also, for veterinary purposes, that is, classing the source on horses, etc.?

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

The roll and the tennential and the ten best of your knowledge, on farmer

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 NR. GUIGON.

Mr. Sipe, you say that you sold it very generally. Did

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?

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A May, I have noneldered that, it was a very dependent

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

MQ 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.

X0 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 prosecu-

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, when it was been not so the atomes, generally.

A Year, etc.

EQ Have you been passented, in. Hiper

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MR. HARAIS; You cannot tell what you beard.

THE COURT: Her our us to that. They want to show that How

MR. SIPK: If he con't know it himself he cannot state hearsy.

URA, CONDAD: If hr. Em. H. Sipe is interested in the outcome of this case, we would have a right to whow his interest.

HA. HARRIES You semmet go take the greetten of his prosson-

THE COURT: NO. I don't with this fould be propored on a show him takenest. It'll adulable for that purposes.

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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 --

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

Objection; overmuled; 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

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A You, alte, I have,

Fig. Have you contributed towards the defence of this case
which is being tried, here now?

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that one traces you can the general good, a is in not a space that one traces which indices you to contribute torages the experse of this one in that you can advised that we satisfied, at the set that he was purchashing expected and from other serious and a guardian of your stories; and are you not, in that way, note three directly interested in that question?

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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 some 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.

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S You have been asked, Hr. Sipe, with regard to your inter-

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- 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 roug. I also used it in the house as a disinfectant, in hot dry weather. I live on the creek, here, and it in 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?

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o Hr. Monther, you are it termes of teaching country?

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

A Yes, size I have been forming in this county for the last thirty years.

g Will you state whether or not carbolle sold has been for a monthly a wears as years and the remove a removed to your borner.

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q Has it been your habit to keep it on your premines?
A Year aim; alsee to been it pretty near all the time.

Q will you describe to the court has verteen used to relate the verteen to relate to the court hours.

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or the state of the series and the series of the state of the series of

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 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?

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 sholders, 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.

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H. F. FLORY, Sulparsons for defendant, tartified as Collows;

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- 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.

GROSS-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, SWOTH ON Debalf of def mounts, tratified an

C Squire Roleton, you are a ferrer of noulingham openty are

restricted the short from the late of the property of the second of the A Yes, sir,

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A Yea, sir; rarely without it.

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A We regard it as a roundy for sores, especially another stock. If any stock gets burt -- stock or any thing like that -when the veterinary comes to see us that in one of the first things the wants. He tells us to make a solution of garbolic orid.

My The veterings makes a solution of outholts ands. Do you apply it externally?

A Yes, six. And we use it some as a disinfectant. IQ You have mend it as a remody for hog classines ind about chinical homeon, se. ?

A Tilly is one of the things that my wife thinks we .twentir ob you blues.

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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-

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A I think so. I hear my neighbors speak of it; and in cases where block gots hurt, one of the right things the veterinary aparts of deling is to make a solution of associated acid.

NO Telt not a fact, squire noiston, that there are many neighborhoods in Rockingham county wence from drug storage.

A Yes, cir, a number of them.

Mr. Obloom: They ever new communities in the county of the county of the first pay of the county of

HR. COLUMN: A Year, 100 pl. series are removed from party operation.

TOHN W. BISERY, sworn on behalf of defendant, quetified as

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premises as a combon horizonal researcy, and you delight it is a com-

mon household remedy amongst farmers in Rockingham county; generally?

A Yes, sir.

Witness was told to stand aside.

MR. GUIGON: If your Monor 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 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

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Mil. Siris: Next we not better have a tittle outston etigeletion in regard to this trial of the orne.

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M. GIPE: That is it.

I dod ,nottelingles a of meldeardo on even I : Elimination, but I done the stoke make the falling the remain whose any taking more Munt that this evidence was taken to be good at the next team of the court.

THE COURT: I think this is a matter of misdomernor, and that you out rake almost are agreement with reference to it that you could in a civil occes. The arguments vill me wouldten in versfind out to over tree out to believe to or at erro are torn not -modified and rent file white, paleing of bearing won committee off no ed as produced erally in court, and there will be nothing for the court to do except to declare its judgment.

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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 dependant desiring further line to submit argument, it was later agreed that the judgment of the Court showed be remoted at the many term 1907. A which his case was continued.

districtly and whole the part to the profession. her larger average of the course true to an above a literature set I thrown of no. Longer by One product House sugar trees of destroy of a regarding to expense, where we will every MR. SIPS: Do you understand that we are to close? BH. CORRESD: On, year fine is all right.

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 overrulling 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. Haar (Seal.)

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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 Common-wealth, 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

A T A TO BE A personnel and the contract of the contract of the contract the date defendant, or demand, expected the contract the consame 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 Amay be signed, sealed and enrolled and made a part of the record, which is is accordingly done this 15 day of June, 1907.

J. n. Haar seal.)

In the Circuit Court of Hockingham 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.

Attended to the state of the st

Val. Upon append from a Justian of the Pende.

Thomas R. Yager.

Approximation of the contract of the contract

APPEARABITED: H. W. Bertman, Sec., and Mesers. Sign of Marches, Attentions for the defendant.

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Branch Comment

(S.B.Strickler.)

- 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

Thou of because of bedring but the series of the series of

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

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of this label on home was a label attached by you after the

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and the fire you the same found and no potation and but a

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.

GROSS-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.

MQ Did you see him get the empty bottle?

A I gave it to him.

XQ You supplied the bottle yourself?

A Yes, sir.

Portion of Disserting new office

A Yes, all.

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A REAL PARTS

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 out on it?

A No, sir.

XQ Was any thing said at all about the label?

A No, sir.

NQ 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.

NQ 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.

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

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(S.B. Strickler.)

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?

MQ Yes, sir?

A Yes, sir.

NQ 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.

NQ 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.

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

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A Yes, sir,

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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.

MQ What counties, sir?

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

MQ 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.

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A Ho, oly, not permanently employed.

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A I desired tell you shout how many. Severel Supplied.

XQ Several hundred?

A Between two and three hundred, I would say.

NQ 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.

- NQ Have you received any thing on account of convictions?

 A No, sir.
- MQ 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 Photograph and the Photograph Browners DX ... A Begggerie and burgered burgered, I would no.

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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.

NQ 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-twe.

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.

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A Kept it in a box here in ur, avis's store.

No Mr. Avid is a druggist here in Herrisonburg?

A Mr. dames L. Aving yes, sir.

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A Yes, sir,

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A Twenty-two.

The witness was told to stand neite.

PRE COMMAD: The fact of Hr. Yager's not being a registered

MR. MARKER: You own offer proof, and we will not object to it.

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THE COURT: You could write out the question and forward it to the State heart of Pharmacy and have his graver to the time for the next term of court.

" MR. COMMAN: We will get Mr. Avis on the other on prove it

(Jas.L.Avis.)

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. AVIE, being dely sworn on behalf of the Commonwealth,

Q You are a drugglet and a registered papersoist of the

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A All my life.

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Laird, in this country, in a registered pheroactet or not?

A He is not.

g carbolis and is not a properly red to the captain Avis,

A HO, PIE.

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 onor 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?

2 18 15 a demontto remody -- demontto medicine?

A It is elessed in pharmacy lev as a deadly polyon, and the mane appealed label that is directed to be put on all deadly polsons is required to be put on embolic soid.

Anguer is objected to, becomes a statement of law and not a statement of Fust.

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CROSS-EXAMINATION BY MIL, MARKETS:

No You are not propercy to may what sclutton of so-called agrhous said is contained in this visit, or what amount of pure carboile sold in in it?

A Mo, sir; but I would not take it to be a very pure grade of exrbolic acid. Its offer sould indicate that it is not of a very good grade. This is what is known as consercial earbolic gold. 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 inflamation 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 woll, it is really -- That grade of sold, if it is what I believe it is, an ordinary carbolic sold, it is not fit for any taing except disinfectant purposes. It would not do to make a solution of it and put on wounds. That is why restractions are thrown around a solution of carbolic sold; it might set up inflamation in a wound and cause serious injury to men or beaut.

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XQ Mr. Avis, how did it some to be delied commercial acid?

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grade of carboile soid.

"In it not a fast, Mr. Avis, that it is omiled "Comperent" becomes it is prevalent in commerce; that it is bought and sold in the stores? Is not that the mountag of commercial?

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Ed and I ask you, how ald that grade you speak of come to be termed "Commercial" if it were not for the fact that it in in comment 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

-venuet we that may be termed "domest A

The many territory to week to warm to a war to late No But are they not in common commercial use, and so are feeberg "felowermon" belled

A I don't understand it that way. The word "domestcial" is simply used by the dealers. The public are not supposed to know any thing about it so commonwist. What I mean by that in, that it is not my understanding that the word "Comperculai" is used by the public; it is one used by those who are familiar with the .di to soldelmay

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at east notice of the extraction liest mast ent ten al pr compane of this grade, or those grades, and, in it in the first chief they are more commanded the communication that the process of the communication of the Thing

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MR I dee not asking you how it is governally known, but I am don't now it got that term in trade, and if, as a matter of fact, Tobers Information of Mos see at th

A weal, it is a term garacally used in the trade to designate a diesper grade. And it applies to other goods besides onrholic acid.

My Sat do you know whether for years it has been commanly bought and only in the stores of this dominionalth, and in this (Jas.L.Avis.)

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 county particularly, as carbolic acid, that gradu of it, by the merchants, I mean, adia or the merchants to demosts for demostic purposes? Is not that a fact, Mr. Avis?

A Well, I have known from nearest that merchants cell onerpolic acid; but me to what they sell it for -- what grade they sell it for -- I do, not know any thing about that.

XQ For what gargose would you sail that grade of sarbolis

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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.

MQ 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 abut it ought to be used for.

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persons who hay it, in it not?

A That would make me make h statement that I would not like to make. In the first place, it is rather combined short the average purchaser of carbolic acid would know any thing about it. It But he is sending to you -- the provident of the board of

Pharmacy, an expert druggies skilled in your profession - for some carbolic soid to sprinkle around his hen house or dets-pool, or to be used generally as a disinfectant, would you send him that grade to apprec that purpose?

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be as deadly poleon because it is used medicinally, and the pure grade only should be used medicinally.

Mr. Avis, no a modicine?
A Well, I suppose, ordinarily, one drop of pure carbolic

gold 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.

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

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RE-DIRECT EXAMINATE OF RESURES.

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

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No. 31FE: (Enterposing) Test if the imparity with white the carpolic care out to the second than the carpolic acid, it would not be so reisonant as the part articles. I will charge the word "important to "alluved."

A That would nepend upon what it was diluted with, It

might be diluted with some thing that was as great a poison.

IQ 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-

pict, be diluted with some thing that was as group a poison.

We flow you have not understood my question. The question in,

if it were dilutes with a best poisonous embetages, wouldn't the

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IQ In making a volution of ourboild and and vater for ain-

(Jas.L.Avis.)

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 incarbolic 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-

infortent purposes, in the same quantity of unter, used for the same purpose, would you place more of the purpose, would you place more of the purpose, would not the infortent grade or less?

A Mot necessarily so.

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A That would depend a little upon the propose for thick the solution was intended and the grade of the moid I man uning.

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A Well, there is a grade of autholic actd that is nold year cheep, but it is not supposed to present as great disinfortant properties as a name grade of actd.

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A Yes, etc.

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The witness was tell to stone assists.

MR. HARRIES We embed the contents of year Momon panter, to exclude all of the testimony of year Strickler and so much of the said of the testimony of year Strickler and so much of that of year of the contents of the contents of the contents of the content of the first of the defendant is not a registered plantanists, there is no pentity imposed upon him by the statute as we has vil violated none of the provisions of math wat.

THE COURT: Your motion in, that one who is not a negle-

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 an 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

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Mil. GONRAD: You do not demy, then, that this is ourboild

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is generally considered that I have a good business.

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 backness.

not us shange the question a little. Do you conduct, and have you conducted for a number of years, or not, a large country store in hookinghen country?

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Q Do you know whether this is generally true of the form

(Wm.H.Sipe.)

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.

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

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Mi. HARTIS: You cannot tell was you hourd.

THE COURT: He can we to that They want to show that Hr.

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Mr. SIPE, To don't know it his saif he assoc 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 prosecu-

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

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ARE CORRAD: If Mr. work of Sign to interpose in the correction of this case, we would have a right to show his interpose.

Mi. MARRIE: You cannot to the che diestion of his prosecu-

THE COURT: No. I don't think that would be proper, but you den more near many near this seek that for that purpose.

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of the expense for the general good, I consider.

MR. HARRIS: For the general good?

A Yes, sir.

MQ 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; eception 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.

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q Rvon if there had not been any promountion against your-

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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

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A Yes, wir, it had been on my place. As fur as a

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

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A In this matter and in other metters of general interont to the merchants -- whatever my come up. ollogene time of regit one even of these por abree weathe mi g .and over your country althout regionshing it, just like captain Thent we empture when you of the their omnies on their

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A Year, with, it had been on my place. As for 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 try 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 --

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

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A I used it for gailer shouldes of heres, or somen of any kind about homes. I used it as a remedy for sidesens in case of roug. I also used it in the house as a disjustering, in he test any weather. I live on the orest, here, and it is very ofteneave, and I have put the noid in the case to use it that war. I have eften used it in smill-tuby for hoge when cholers was in the sountary, so a preventative. I believe that it should in the accust it should be should be

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revolted as received duly every on behalf of defendant, testified as

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A May ath.

on, yes, I believe you are not. What is your socuestion?

o 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 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.

XQ How do you use it?

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there list alght and for the lest 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

fur as I know, and I resonant it for different things -- for

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would recommend to get that and wash with it, it would be good.

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A As far at I know it is; you, air.

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E. C. ROESTON, duly sworm on bonalf of defendant, testified as collown:-

o Squire Holston, you are a Carner of Rockinghale county and

A You, sir,

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o be you keep carbolle and on your premises and use it as a nousehold remember.

A. Yes, siz; rarely without it.

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A Barely without it.

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Eq How do you use lt?

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 burst :-- stock or any thing like that .-- when the weteringry somes to see us that is one of the first things he wants. He tells us to make a solution of carpolic acid.

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No Do Pou, or not, know that it is a request in very country as about the farmers of Rockingham country?

A I think so. I hear my neighbors apeak of it; and in cases where steek gets hert, one of the first usings the veterinery special to the contract of the collection of deposite order.

X? In it not a fast, Squire Relaton, that there are anny many ments from drug stores?

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Wil. donnam: And a good many are remote from bar-roomey

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(John W.Liskey.)

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

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July 10, illegit, sworm on honoir of the Asternant, testified

Q You are a farmer of Nockingham county?

A Yes, sir.

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A Yes, sir.

Q Do you know whather it is a common namework framedy in

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q How, Mr. Lisker, you may that you do keep it on your propiess

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Mic. HIP: Had we not petter have a little spitter ntipulation in regard to the trial of this eros.

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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.

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 prother time tosouthern't argument, it was later agreed that The pirgment of the Court showed be rendered at the many Term 1907, Kerthick the case was

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Mi. COMMAD: I understand that these gentlemen have submitted a motion to expect you to entents a motion to expect you to entents a superior to expect you to entents.

Mi. SIPT: no you understand tons we are to stone?

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Continued

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA.

COMMONWEALTH

A. D. BERTRAM

and

COMMONWEALTH

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 1837, 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."

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biete 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.)

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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."

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.

the amendments had, of necessary, 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 4802 and 4005.)

THE TOO:

March Std., 1896, Acta 1898-06, p. 715.

"An Act to amond and re-emmat Sections
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but to guard the sale of passacy,
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late of Virginia."

This act contains ratical changes in the plantacy law as originally enacted, March Srd, 1998, (No. I sute), andaka transparatements and the transp

BOURTH:

March 2, 1898, Acts of 1897-98, p. 865,
"An Act to amond and re-emact Decilor
ly59 of the Code of Virginia, in deletion to the prectice of pharmacy, as
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This is not simply amonds Section 1759 as to the registration of physicians practicing in rural districts. So., removing the regularment of five years experience, and adding the provision that such registration shall se offertive only so long as there is no registered pharmacist in such town.

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to the late day of March, lust, who not imported in the code FOR FEELBERTLOOM. The americante sentation in this at said attenty extend the bire

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 relation to the practice of pharmacy, as amended and re-onacted by an Act approved 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 reenacted 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 "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.

> February 16th, 1901, Acts of Extra Session SIXTH: 1901, p. 338, "An Act to require 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 1902-3-4, p.71, "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 approv ed March 5th, 1900, entitled an act to amend & re-enact Section 1759 of the Code of Virginia in relation to the practice of

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Pebruary 18th, 1901, Acts of Extre Sension *6 *106 of Virginia to register as pharmacists cortain parties who failed to swall themselves of the requirements of the act
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March 5th, 1903. Acts of 1902-3-4, p. 71, "An Act to smend and re-onact Bootlen lyae of the Code of Virginia, in relation to the practice of chargacy, so emerided and re-enacted by an act approvod March Sth. 1900, entitled as not to amend & re-conot Montion 1758 of the Code of To solitoring end of moideler of sinigniv

March Sth, 1900, Acts of 1899-1900, p. 886.
"An Act to smend and re-emact Section
1750 of the Code of Virginia, in relation to the practice of phermacy, as

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.

BIRDH:

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 asseds 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 chall be regularly licensed, in place of the section as previously essented, March 5, 1900, that such physicians shall be recognized by the Wedlesl Society of Virginia. It also again removes the requirement of five years experience as practicing physician.

EIGHTH: Warob 14th, 1904, Acts of Extra Section 1904, p. 298, "An Act to seend and re-enget Section 1764 of the Good of Virginia, as amended by an act approved March 5th, 1994,

relating to the practice of guifalen.

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pharmacy, as amended and re-enacted by ant approved March E, 1898, entitled an act to accord and re-enact Section 1759 of the Code of Virginia, in relation to the

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

whether the original Section 1764, pertaining to adulterations has been repealed by the unfortunate mudgle brought about by the manifest mismomer of the section sought to be emended.

All the Acts hereinbefore referred to may be dismissed from consideration as immaterial in this case, except the original Act of March Srd, 1886 (No. 1 ante); chapter 78 of the Code, in which the various provisions of this hot are embedied; the general amending Act of March Sth, last (No. 5 ante); the Act of March Sth, 1805 (No. 7 ante) and the Act of March 18th, 1864, 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 1785 and 1746, seither of which has been amended aimos the Act of March Sth, 1894.

Are the original Act, Chapter 78 of the Gods, the meveral amendatory Acts, or either of them repugnant to Article 4, Section 59 of the Committation?

It will be observed that the original Act was ontitled "An Act to incorporate the Virginia Fairmaceutical Association, and to regulate the practice of phermacy, and to guard the sale of poleone in the State of Virginia"; that the general amending Act of March Dth, 1894, was entitled question whether the original poleon section (No. 1762) repains in full force and virtue, or whether it has been superseded by Section 1766, as asseds in this Act of March 1868,

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 let 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 in and the body of the Act are irreconcilable conflict; the title being "An Act to allow further time for the treasurer

Sections 1759 of the Code.

The purpose of all those Acts is manifest. It was to regulate the compounding, dispensing and sale of drugs and medicines, and sepecially of poleons, the use of which is particularly dangerous to the health of the public, and at ound! . bred ancistvone suctrav esend to ils bon Jand of no incompretty in the objects sought to be accomplished by this Statute; they very in detail, but the general purpose -sidingray we ench od of besitending and the the to be done or prohibitod may be fairly remarded as in furtherance of the object expressed in the title. The subjects exbraced in the Statute. Interior from edit over . Jon to elili edi ni bellicega tenjena and intimute compection and correlation with each other, and are all germano to the general purpose of the legislature. where this is the case, the sutherities in Virginia, and aledd fant werge , meltolbalunt ynave ni moligeone Juodilw Jaom probabilition 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.

"The late tressurer of Henrico County be sale bis until the let day of Pebruary, 1685, to make his supplementary returns of delinquent taxes for the years" &c.,

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an Act to amond and re-coact certain sections by number of "Chapter 78 of the Gode of Virginia in relation to the praction of pharmacy as amended" Ac.; that Chapter 78 of the

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:

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.,
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See also Powell vu. Supervicore of Brunswick County. 88 Va. pp. 713 and 714, in which the court uses the following emphatic language:

"To require every and 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 to it.

The congrueus in itself, and which, by no fair intendment, day be considered as naving a necessary or proper connection."

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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 numbrous cases.

In the syllabus on pp. 762 and 763 will be found a condendation 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

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> 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 persumed 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."

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 Asso., 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

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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 Ganeral 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

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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 construeing 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 know-ledge upon which others must rely, then legislation property 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.

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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 Virginia, is shown to be completely without foundation, and must be disregarded.

THE FACTS.

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-cus 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 whatever was affixed to the bottle by the seller.

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long experience, testified that neither defendant was registered 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, mot 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 necessary 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-enactment of the old, leaving the adulteration section as before,

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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."

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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 spparate chapters conerning 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 reaminder 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.

It is too monstrous for serious consideration. ion would be to adatter death and sorrow throughout the land. posed as well as to the pradent and kindly. Such constructas well as by the cautious and trained, and to the svil distrammelled sale by all others, - the ignorant and inexperience the sale of polsons, and yet would permit their free and unthe meny and rigid defo-guards thrown by this Section around ponce medicines or poisons" the strictors observance of all an would exact of persons "hawing authority to sell or disthat commed would seriously contend for such construction without any qualification whatever. It is hard to believe reaminder of the section are invariably to "any person", but it is worthy of note that the problettions throughout the disperse medicines or polsons, to retail, except" to., do., not be lawful for any paraon, having suthority to soll or It is true that the section begins, "It shall those having authority to sell or dispense "This law (Section 1764) has no application to any other letteral Counsel are likewise in error in saying that contains at the bead the words "Public Westth" in capital and each of the fifty-two pages comprised under that title sick, the practice of dentistry, and the producing and disof medicine and surgery, the professional muraing of the contagious or infectious diseasess, regulating the practice Health", which also includes appenate chapters concraing enined under "Title 24" of the Code, entitled "The Fublic manter 78 "Regulating the practice of Pharmacy; in conindeed, to have left such impressions, for the entire ly and to Section 1766 in particular, must have been opreory The Imspection given by counsel to the act general-

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.

DEFENDANTS HAVE ALSO VIOL

Tuesta delendants have wold established established the labels sequired by the first peragraph of the potent section; and thus they have violated the law and incurred herstoly only even your line . Jesundaling believeneng off the Courth paragraph of the same Heetlon, for they have -erg add front tw "E" elepenes at beforemme mouleg a blos ast to every one the purchaser was neare of the ed of new it imit communes will imonify has cruten amonosloq used for a legitimate purpose. There is no dispute about the facts, - they are uncontradicted; the exemptions to mermoslog edf of giggs for ob day! molfoed al benishmos admado section, whether it be Mo. 1765 or No. 1764, nor whether desirate of the seid be or be not a dementic medicine. He strained to willidened a move not of bolacque of man moltowitumon disregarded and the penalty has been incurred. That populty se affixed by Section 1986 to-

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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 reatil 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.

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 this sale, and the testimony introduced by the defendants themselves as to the general practice of retail dealers in their neighborhood, would seem

new and the Act of March S, 1908, as accorded by the Act of March S, 1908, (No. 7 auto.)

the the cases at left to as follows:

"And it shall not be lawful for any person to ungage in the business or occupation of compounding or dispension medicines on presently tions of physicians or otherwise, or to sell at restil any drugs, chemicals, poisons, or pharmaceutical preparation within this State, without first obtaining a certificate of registry as provided in this chapter."

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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 "tis a domestic medicine, and they have appealed for confirmation of that dictum to the testimony of the merchants,

mi beanance vilantos over ajmebreleb edi sudi evisulones modicines on prescriptions of physicians or otherwise". stood and to bein but at topob you ed steds bluede full resided, at least it is undisputable that the testimony -lacto that the defendants did sell at retail a drug design -ath end to moissloty at blue offcores boffeo mestod to fee lutual od Jon Ilada di" Judi ojujaja odi le notalvore Jonis for any person to engage int, do., do. a a a a a or to sell at retail any drugs, obsided, poleons or phermacoutioal preparations within this State, without first obtaining a contillented to. The violation, therefore, of come at least of the probabilitions of this section, if not both, is cortains, and it only remains to enquire it the defendants provides that "mone of the provisions of this chapter, except those contained in Section: 1764 Ithe original polici need avad dolaw zmottoes noltareflubs tas montou considered hereinbefore) shall prevent the sale by merchants of quining" &c. s s s s s s and such other domestic and proprietary medicines as are usually kept by retail deslers". If carbollo acid comes properly and truly within the terms "such other dementic and proprietary edd . "quelles flater yd iged yllemny era as cenicibem defondants have not violated Section 1750.

It is urged by the learned counsel for the defendants that 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 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 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 andxdangerous poiston, 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

Is remarkable fact that not one single withous testified one single time that fact that not one single withous testified one single time that date derecte modicine. The extract extent to which they went in their testimony was to easy that it was a demonstic remedy. It is confidently suggested to the Court, that even if this testimony was true, the test "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 not bath, the application of electricity, the taking of physical culture and deep breathfully, the taking of physical culture and deep breatherm, the facilitation of electricity, the taking of physical culture and deep breatherm the facilitational supposes to be effications in the treatment of steepers, but curely it would not be contended that much remedical dual to seriously considered, or even termed, and remedical within the qualitations and parties of this Election.

The Procident of the Board of Pharmany, an expert, -atuger bedalmeldan to meatite a bae tennelrogue and to mam a at bios obloduss Jads vileolisadque Jeon belilians and , wold in for . whemen olieumob a neve to emistem olieumob a wine for bears of fight il .mostog without a vilsoovispens at it Jadi that by a preponderance in number of mitnesses at least the disswrommon of the defendance outweighed that of the Commonwesith on this mount, but, fortunately, the very Statute itself nt bebulont at it wor .at bios offedues tedw iduob on asvest the list of poisons in Schedule "S", Section 1765 age 1764. philosover may be considered as now valid. So clearly did the law making power consider carbolic soid to be a poison, and a deadly semindangeress poletion, that it was incorporated it among the list of such polsons in the section filled by the most bus agard and to eas end bosons awould abrang-else taggitude to tewoo gailing was emerges off . mierent hemoline amoslog 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 provision, or any of them, are violated, shall constitute a separate and distinct offence." This language may be crude and awkard 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 extend the punishment prescribed is clear and definite.

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 bhe Board of Pharmacy, and the other half to the Commonwealth". It is surprising that immediately

the State has declared that carbolic acid to a polenn, and is not a decestic medicine, and no tentimenty however strong will be heard to contradict that declaration.

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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 83 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 occursed urge in support of this contention the immunacy of the concluding paragraph of Section 1785 that "in all promeoutions 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 bime 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.

tollowing the year plain language quoted from the Statute, counced about suggest that this "Dourd of Phermacy of the State of Virginia", as it is tensed throughout the Statute. It a "separate, special set of nem", "a comporation", and that they are "constituted the sole prosecutors in any special or perticular class of offences 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

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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,

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investigation to the many countituational questions twised in the county as for an possible, to mid the county as for an possible, to mid the county as the proper the anticoccept of which so largely depends the series of the from the blandarm of the ignorant, as said as from the crimes of the lawless.

Respectfully submitted,

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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.

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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.

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H. W. Sartram, Req., and Meerrs. Stee & Harris,, for Defat.

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

A Yes, sir.

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 dismile court of seekingham county.

Upon appeal from a Justice of the Penge. -Cav

Thomas E. Yager.

Etanbanathy of the testimony offers before during files 2. 1. Hairs, Judge of meld court, at the hearing on Pricey, Pelminy late, . TOUL

APPEARANCES!

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ARCEALANGER: H. V. Bortrom, Mac., and Research, 11ou to Harring, Attorneys for the cofemdant.

2. B. STREETERS, Deing Tilly enorm on behalf of the Compountation, parofici on religions

Q VOIR NAME IS S. R. STELLINGY D

A Yes, sir.

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O Mr. Stricklory white whether or not you precioused from Mr. T. P. Yugen's stone, or of Mr. T. P. Yager, on the Lath one of Thing billody a chief wild

.bib I A

- 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

bottle was dalivered to your

A BEN, LIV.

Q And there is no other label on the botale's

A No, ultr.

Q Was there amy other land on the bottle when it was deliver-

A Nor otte.

o must in the identical bottle which was delivered to your

A YOU, BIN.

q And the same contained that was datawards in you at that

A Yes, sir.

OMESS-STAMINATION BY MR. SIPA.

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was delibered to your

Eq. Did you request this the bottle should be dollwered to

A No. ales

NO BIG NOT HAVE DAME DODGED LETTERS!

A Yes, sir.

Eq. bid you see Mr. Suber, nor, your the contents into the

A I did,

No his you see him get the supty bottle?

A I MAY AS TO NAME.

X6 You supplied the bobile yourself?

A Yea, 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 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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And there is no other libel on the bottler

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Q Was thore any other lakel on the bottle when it was deliver-

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ng hid you see him got the sapty bottler

A I gave it to him.

to You supplied the bottle commenter

A You, RIF.

(S.B.Strickler.)

--4--

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.

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Water parties on their sections.

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pad not produced the vial year journal which you drived him to fill fre

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authty bottle.

XQ What was the size of the wessel out of which the carbolic

noid was poured into your wish.

(S.B.Strickler.)

--5---

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

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XQ And also was not ing For the Hours of Pharmach in During

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* You have stated that you place on this bottle this battle was label;

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Mg what were rest directions from the board of Philipse ---

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IQ Mr. Strickies, in 1: not a first that you are normaneally employed by the Board of Phermacy to obtain information of these alleged infraortions of the law by going to merchants in different nexts of this commonwealth and adding to purchase ortholic neighbors and adding to purchase ortholic neighbors.

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, Loudonn, 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.

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A now mir, not permanently employed.

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A I was only employed by them a comple of monthus. I am not amployed by them a comple of monthus.

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A Augusta, Shenendoen, Loudoun, Prince William, Alexanderia, and Weigfax.

TO Now many did you support in Augusta County?

A I ton't remember, at all.

neighbour it the case of the mentioned the case the months and the case to countie mentioned?

A L don't remember that.

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A I samet tell you spout how many. Several hundred: .

XQ Several hundred?

A Between two and three hundred, I would say.

MQ 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

EN PROPERT MENT NO.

A Belwoon two and throw burning, I would say.

IC ADM, Mr. Strickler, what armingment his you have with the Board of Pharmacy with regard to your compensation for this nervice?

A Twenty-Tive dollary a month salary and two dollars

not with cents for each convlocion.

And first sents dig outs convictation, were you to remake my non-

A Ye is sing all of my unpowerer were gold .

EQ this was to pay this naivey, your expenses and this sp. To

A The Board of Flammer.

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objection; such these pertonetor, for defendant.

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A I don't know that, at aid.

To have you received any thing on account of convictions?

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AQ Your companyation, then, will regard to convictions, aunits the result of passing proceedings; that is a fact, is it not?

A Yen, nur.

Ag what ald you do with the warlows drugs that you purchased from the merchante?

objection; mustained; exception for defendant.

My Wall, what did you do with the embolic sold which you

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-twe.

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.

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Ad out the you do with the

A Kept it in a box here in Hr. Avia's store.

XG Mr. Avis is a druggist bore in Harmisonburg?

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

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A I will in the Magishrate's court.

XO What is your age?

A Twenty-two.

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HR. COURSE The fact of Mr. Yegon's not being a registered standard to a matter of prior --

Mic. He Males: You can offer proof, and we will not object to Mi.

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THE COURT: You could write out the question and forward it to the Secretary of the Chara Board of Physical and have his process here in the for the next term of court.

MR. COMMAR: We will mit him. Avin on the stand and grove it in two ways.

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 dell evere on behalf of the Cornenwealth, tentified as follows:

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A Yell Min.

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

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A I am In my sixty-second year.

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A On, no, but while I was nice enough -- about forth

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A Year, olde.

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A He is not.

q carbolle noid is not a proprietary medicine, duptain avia,

A Mo, 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 onor 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 sold, if it is what I believe it is, an ordinary carbolic acid, it is not fit for anke 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 inflamtion in a wound and cause serious injury to man or beaut.

Equ use for domestic purposes in the way of a disinferent, is it not?

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

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

A Treere is such a grade known, and it is regarded as a very dengerous grade of soid.

No Mr. Avis, how did it come to be called compared a land a cheaper of carbolic acid.

"Left not a fact, hit. Avis, that it is called "domnardial" 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 wanted it I would mean by that I wanted a cheaper grade; if I wanted pure carbolic acid I would designate it as chemically pure.

IQ And I ask you, how did that grade you apond of come to be termed "commercial" if it were not for the fact that it is in once men 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

-remote become at the first orders freeze exe exell A

In But are they not in common commercial use, and so are on onlied "formercial" grades?

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

In the stores of this commonwealth, and in this commonwealth, and in 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 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?

domnouser the and in this county particularly, as carbollo mold, that grade of it, by the merchants, I mean, and by the merchants to farment for comestic ourgones? Is not that a fact, he welst

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

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mont been tagin I no then them that, or I might send thom some other grade. I have several grades.

No But would that grane of darbolis wild amover that purpose?
A Yes, air.

No And would that he the purpose for which that grade of acid

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.

Eq. What is the purpose to which it in percentity sut by persons who but it, in it not?

A That would make a state a state I would not a sale to make I that I would not all the to make. In the first place, it is rather doubtful whether the gravege surchases of carbolic and would know any thing about it.

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

(Jes. L. AVIn.)

(Jas.L.Avis.)

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

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.

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

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DR. SIPH; (Interposing) from if the impurity with which the carbolic carbolic and was impregnated wit less relections than the carbolic acid, it rould not be so pelsonous as the pure articles? I will charge the word "impregnated" to willufed."

A First 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-

might be diluted with some thing that was as great a poison.

. AQ Then you have not understood up question. The question is, if it were diluxed with a less poleonous substance, wouldn't the compound be less poleonous than the earboile acids

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(Jas.L.Avis.)

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 incarbolic 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-

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No which would you do, Mr. Avier

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MM. MARKES: We substitute the motion, if your Honor places, to exclude all of the testimony of Mr. Strickler and so miss of the tof Mr. Avis as relates to the contents of the bottle being darbolic sold, as being admissible, it having been shown by the commonwealth that the defendant is not a registered grammatet, there is no penalty imposed moon with by the statists as he has the violated nown of the provisions of said sot.

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 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.

tion -- 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 <u>brutum fulmen</u> 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

The mains that the transfers to the provisions of the main and franchist the set the main provisions of the materials

NR. SIPT: We have to move to strike out that of the pridering Hr. evidence the dominorwealth has introduced, exampt that shorting Hr. Yeger is not a registered pharmacist.

MH. COMPAN: You do not demy, that this is carbolic

HR. SIRVI It mound that the evidence which the top come waith and the country on those points in involvent and involvent.

THE COURT: As I understand you resilence, your dontent.

if the -- your motion -- in broad upon the idea that the prolific to the first of the the prolific to the sale of embelie and by a moreolast -- that there is no possibly attended to the prolificion, but if there is, then it does not apply to mereolasts who are not sectionary of their applys?

Mo. 11PE; Yor, sir; it is british to any position. The metion opened for it to be notion opened.

THEY INCHES ON THEATHER OF PROPERTY.

. Thorew M. Hirs, being thest only more, testified as follows:

ATTEMPTON P MF I A

Q How long have you been in the meremantile business in

A About twenty-five years.

O Maye you conducted a basiness that is rather larger than is usually conducted in stores in this country?

A I have conducted a good sized business. I think it

is generally considered that I have a good business.

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

(wm.H.sipe.)

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in generally considered that I have a good bieldess.

R Lif no obings the partion a little. No you combons, and have you conducted for a number of years, or not, a large country store in Rockingham country?

A Yes, siz.

to dan you state who her the people of the committy in which you have constructed such as in chaesters in the county, rate frequent use of earboile and for tomestic purposes in matters of distancetant, in the very of application of he houses and core-posite, and, also, for voterisary purposes, that in, cheanaing the mores on hersel, ato,

A You, wir. It to generally seed, to the best of my knowledge.

Q And you may it is generally used, to the best of your browletch, on furner

A Yess, wir.

A what has been your observation, Hr. Sipe, with regard to the man of diriductio sold for domestic persons around the farm houses in this country.

A Way, I have constituted that is in wery important remody.

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o no you know whather thin is generally true of the farm

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. 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

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A I describ the the say that I know positively from my own obnorm-

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GROSS-KINATION BY MR. GUIGON.

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MR. SIPS: Did you wall my yourself to Mr. Stricklery

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

MR. SIPE: IE 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

hours a .

MR. COMMAN: If Mr. W. H. Sine is interested in the outcomes of this case, we would have a right to show his interest.

Mit. Harde: You cannot go into the question of his prosecut-

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Eq. Have you contributed towards the expense of defeating this case?

A Must I answer as to whother 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 beam av proportional part

of the expense for the general good, I consider.

MR. HARRIS: For the general good?

A Yes, sir.

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; eception 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? And the Half-lat was the general goods

A You willy

AQ Since you may "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 are, strickler, at the time he was gracinaling embedde and from other navehants, made a particular at one of your stores; and are you not, in that say, directly interested in that gracinar

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RE-DIRECT CYCLLIANTECS SCREEN BY MR. 21PQ.

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

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(Wm.H.Sipe.)

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1 1

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

extm may A

of it not of that the community of that took of this demonstrate of their states of their to the community and their to the drugglets, sense of their to the drugglets, association in this states

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of in other words, you want to have the might to mail carbollo and over your conntous without registring it, from into their layer and other drugglers, sell it over their constant, by tests aleres, without registering it?

A Yen, sir.

THE AVIS: I did not say now once bring.

- A. N. BRODES, duly every on beault of defendant, testified at follows:-
 - Q Mr. Rhades, you are a farmer of Receingtain country?
 - d where to you live?

A Bridgerater at present, and have been for the last,

- Q But you have been farming to this county?

 A Yes, also have been farming in this county for the last thirty years.
 - Q will you state whether or not carbolle acid his been for a spriber 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?

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 in concerned, I have used it is verticed mayny entry as an

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

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

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- In we promy, dult stoum on behalf of definition, Ynorthing or
 - Q You are a farmer, are you?
 - A NO. MIE.
- Q Oh, yet, I believe you are not. What is your coougation?
 A Blacksmithing.
- Q Will you state to the court whether or not you use carbolle

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?

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A I do, yes, sir. I keep it there at hope. I used it there last night and for the last neveral 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 about the shop — horses that I would see about the shop — horses that I would see about the shop — horses that I would see about the shop — horses that I would see about the shop below.

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

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R. C. RODSTON, duly sworm on behalf of defendant, testified as follows:-

Q Squire Wolston, you are a farmer of Rockingham county are

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o no you keep carbolic acid on your premises and use it as a horsehold remove?

Al front to wind you are never without it?

A Horolly without it.

CHOSS-ELANIMATION.

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?

A Put it in the water to wash the chickens.

NQ 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 Ve regard it is a runsdy for sores, depositive sund stock. If any stock pate hart :-- stock or any which like one; -- when the voterinary comes to see us that is one of the first silings he wants. He tells us to make a solution of carbolic acid.

AQ The veterinary mixes a solution of earbolic word. Do you apply it externally?

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er exhibs of the things that by wife thinks re-

THE COUNT: You got it in whiteward to whitewest obtains cooper A Put it in the water to want the obtains.

No now you or not, know that It is a remorp in very companies among the firmers of Rockingian companies

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A Yes, sir, a number of them.

wante of al neithmenos was term a great as an acoust the county transferred and the county transferred

A Yes, sir.

MH. CONHAD: And a good many are remote from ber-roomer A Yes, air.

witness was told to stand saids.

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. MINKEY, SWOWN ON DETRIE OF the deflucted, tentified

- Q You are a fermer of Rockinghan country A Yes, sir.
- SIN REY A

A Yes, sig.

Q How, Mrs. Edakey, you say that you do keep it on your pengines nomics a mi of everies int him , wheney historical nomics a we household remedy amongst formand in Rockingham country, goner blocksport

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MH. GUIGON: If your Monor mlease, we except to all of the tending of survive of even bur , treesures and you beautite to much an .trovelerni bus Islandismit.

MM. COMMERCE IT the court planes, we would like to be at nome absolute and definite understanding as to -- as Mr. Onigon has essentive and tail at mathematership and ". An era or orange" -- bles is now eleged, and that the case will be argued by briefs between this and the next term of the cent.

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ed Liefs medat wen comebive out that the colors and taken I :THICO ERF read to friet no beteviler sometive leve se must tren ent to beer 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.

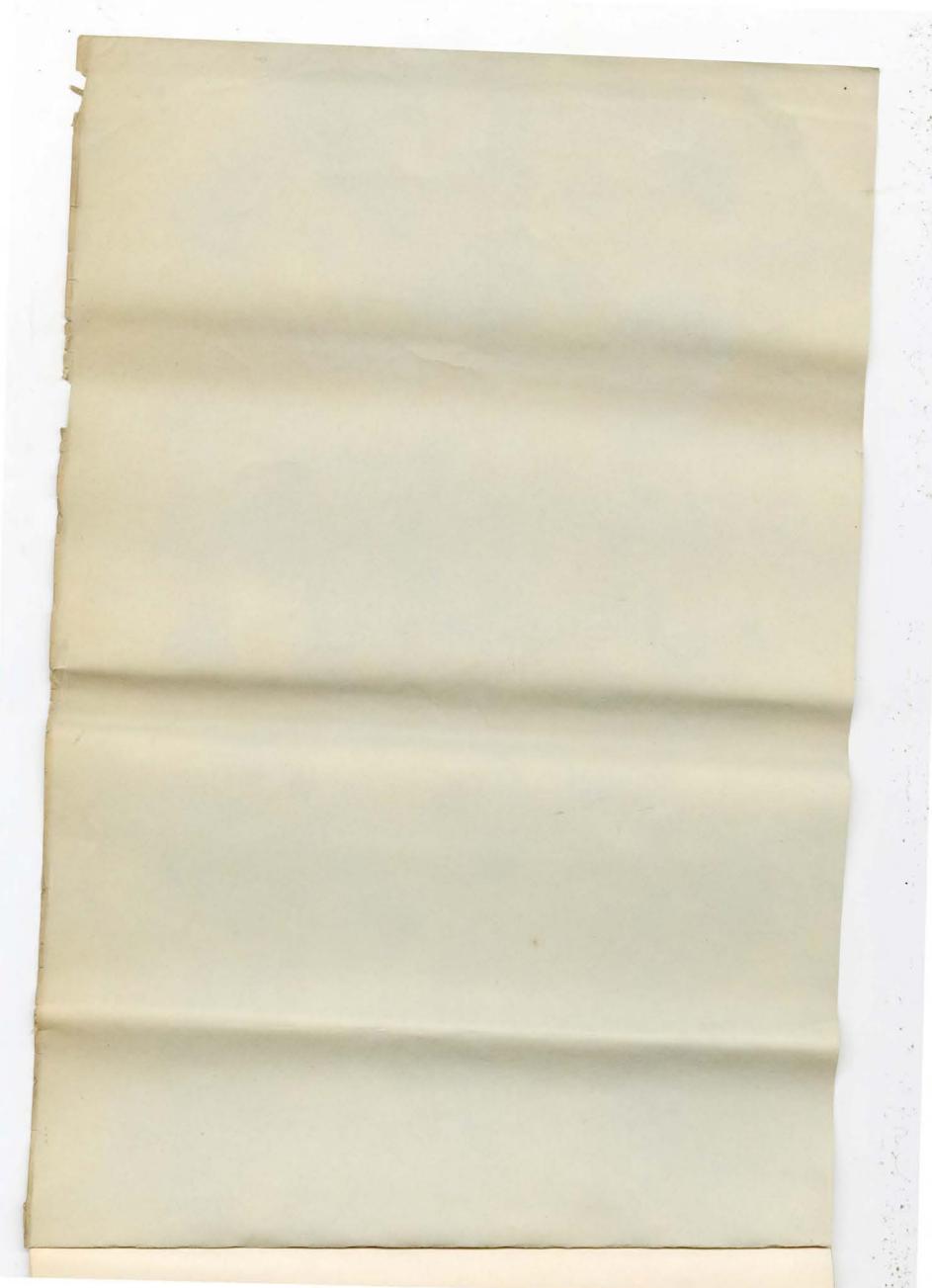
Mr. 5192: That to St.

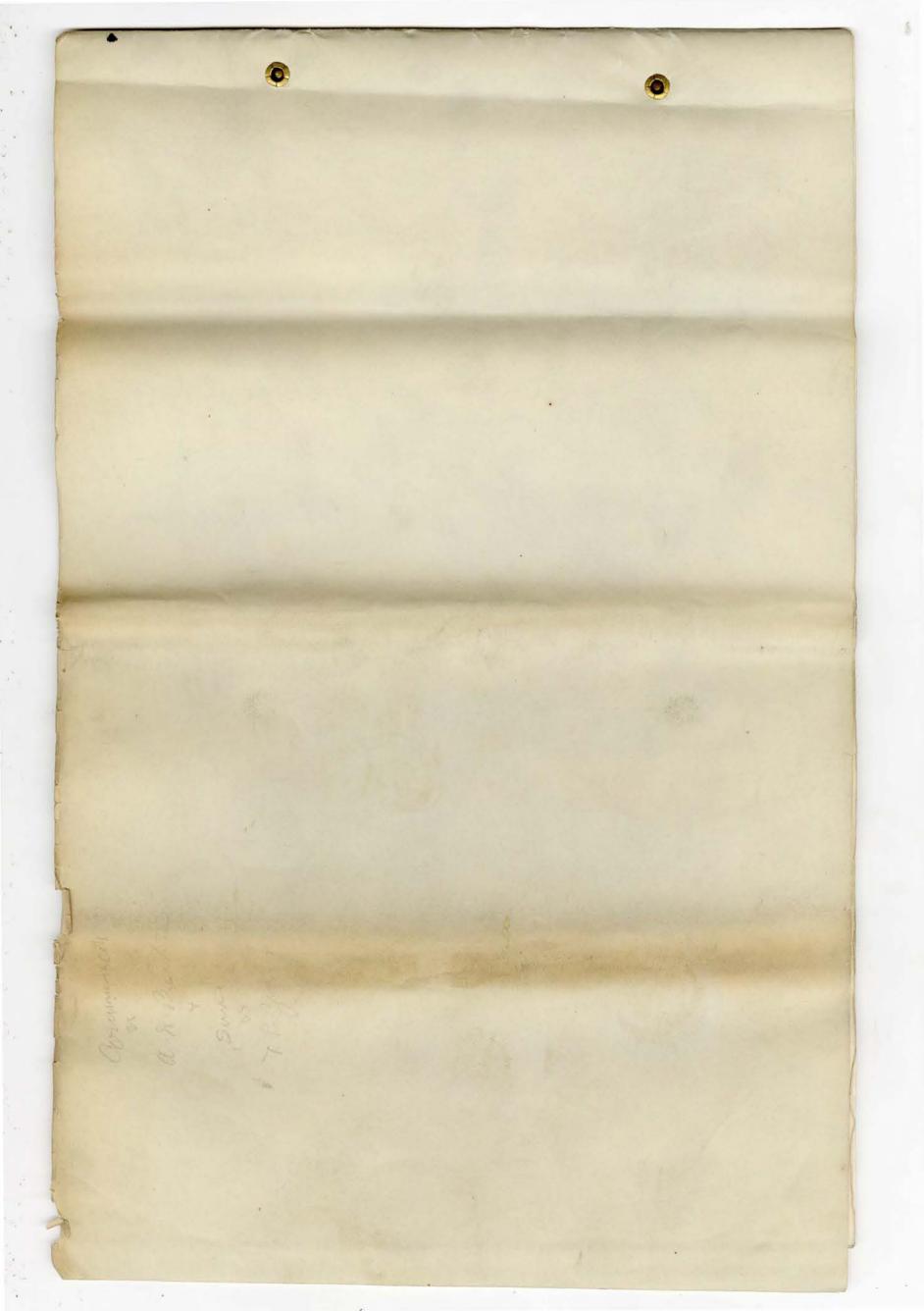
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Ms. dokketo; I under that there goatheren have extentated a motion to stalk out the evidence, the we expect you to subtite string and the evidence, the we expect you to subtite who, stalks the continuous transfers, and to till right.

MH. COMBAD: Oh, yes. That is all right.





In the Circuit Court of Rockingham County, Va.

Commonwealth

Commonwealth

vs.)

AND

vs.)

A.D. Bertram

Thomas P. Yager.

NOTEFOR 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 8rd, 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 diclosed 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 discoloses a clear violation of the Constitutional provision as provided in the above section.

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But the act of 1886 was embodied in the Code of 1887, in the

In the Circuit Court of Rockingham County, 'a.

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COMPANIES I CHENDRE DE MESTERE

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So that considering the whole set with the 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.

Part tie det of less was empodied in the Code of 1887, in the

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 vegatable, 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, no 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 the chapter in the Code, referring to the chapter and state as there exists and every amendment.

Webstor's definition of the word "Pharmacy" is as follows: "The sit or practice of preparing, prenerving and compounding substances, whether vegetable, mineral ar animal, for the purpose of medicine:" the occupation of an apolicetry."

We then have law enacted under the title which relates only to the practice of Pherman-ceution! Association, derining its powers and privileges; providing for the State Board of Phermacy and defining its powers and privileges and privileges and organization; regulating the practice of pharmacy; and prohibiting and restriction the sale of medicines and poisons.

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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

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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 proved that these acts can be construted 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 usally kept by retail dealers.

The evidence of S.B. Strickler, the main witness for the

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The evidence of g. . Strickler, the main witness for the

commonwealth, establishes that fact, alone, when he testifies that he purchased it at more than seventy five stoes 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, 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 me rehants handling general me rehandise, 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 The very terms of sections 1763 and 1764, positively merch ants. prohibit the term "retail dealer" as used in 1765, to be constructed 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."

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Section 1765 provides that, "Mone of the provisions of this

chapter, except those contained in sections 1763 and 1764, shall prevent the sale by merchants of quinine, epsom salts, castor oil, essence of pepermint and other flavoring preparations, calomel, camphor, iodide, bromide and clorate of patassa, 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 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 merch mits of quintne, epson salts, easter oil, essence of pepermint and other flavoring preparations, calomel, camphor, icdide, branide and clorate of patassa, opium, paragoric, and sweet oil, and each other domestic and proprietary medicines as are usually kept by dealers; but, etc.,"

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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, 1898, 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, doesnot 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 perhalty 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 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 sole of cocales and the furnishing of morphia or other drug to a person who das habitace.

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in almost the exact words of said section and omitted every thing in almost the exact words of said section and omitted same, the same,

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, etd.*, 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, or the chapter shall be guilty of middementor.

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To some to the second to the stand of this section 1759, It is true it declares that it shall not be lawful for any person to eager, out no penalty is fixed thereto, because under section 1766, it is declared that any person viciating section 1769, shall be fined not less than \$10.00 nor more than \$200.00 "for each day that the said spovisions or any of them are viciated, etd.", showing that this penalty was intended to apply to persons in the business inhibited under section 1769.

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Let us an wine the provisions of section 1759. It is need

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, and to render both sections inoperative, and void for uncertainty.

And the penalty imposed in the sixthand last paragraph of section 1766, specifically applies to section 1764, which section even if it be admitted to be avaid 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 poistnous 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 propretary 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 ponelty imposed in the next paragraph, section

1786.

As to the penalty imposed in the rifth puragraph of section 1906, it expressly applies to section 1905, bick as we have already shown has been serged into section 1964, and if not no merged is searched; contradictory and inconsist at therewith, and to render both sections inoperative, and void for encertainty.

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and betaloiv teaches tent 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 reenacted 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 conducting 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.

Sipre & Harris Jally

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