CHAPTER 151

PHARMACY

151.01 DEFINITIONS.

The business of pharmacy is a proper subject for legislative supervision under the police power and is not unconstitutional, either as depriving persons licensed under prior statutes of vested rights, or otherwise obnoxious to the principles of fundamental law. The license fee imposed for issuance or renewal of license is not a tax upon the business of pharmacy but a charge upon those engaged in that occupation for the support and maintenance of the machinery provided for its regulation. State v Hovorka, 100 M 249, 110 NW 870.

When the defense was that the goods sold were drugs and the sale illegal, the fact issues should be determinable by a jury. Rawleigh v Shogren, 192 M 483, 257 NW 102.

151.13 ANNUAL RENEWAL FEES.

See, State v Hovorka, 100 M 249, 110 NW 870, noted in section 151.01.

151.15 COMPOUNDING DRUGS UNLAWFUL UNDER CERTAIN CONDITIONS.

Restricting sale of drugs to pharmacists and those employing pharmacists. State v Robinson, 55 M 169, 56 NW 594; State v Currie, 72 M 403, 75 NW 742; State v Mayo, 118 M 336, 136 NW 849; State v Fjolander, 125 M 529, 147 NW 273; State v Zotalis, 172 M 132, 214 NW 766; State v Levine, 173 M 322, 217 NW 342.

A druggist, even though not a licensed pharmacist, may be granted a permit and may fill prescriptions calling for intoxicating liquor. 1944 OAG 200, June 15, 1943 (218-J-17).

151.19 PHARMACIES SHALL BE REGISTERED.

Based upon the history of law relating to registration of pharmacies and pharmacists, beginning with the original act, L. 1885, c. 147, and tracing through the several amendments and revisions, L. 1907, c. 346, is constitutional, and the provision that pharmacists registered prior to the effective date of the act who made application within ten days were entitled to registration, and providing that those who did not so apply must submit to examination, was a valid provision. Minn. Pharmaceutical Assn. v State Board, 103 M 21, 114 NW 245.

151.22 LIABILITY FOR QUALITY OF DRUGS.

Decedent's death resulted from an operation on tonsils. The ether used was manufactured by the appellant corporation. Judgment against the appellant and the two doctors who performed the operation was sustained. Appellant did not show that negligence of the doctors was the sole cause of death. Moehlenbrock v Parke, Davis Co., 141 M 154, 169 NW 541.

In the absence of some statutory obligation, a vendor of another's proprietary compound owes no duty to the purchaser or the public to ascertain whether it contains ingredients that may be harmful or dangerous if the compound be used for purposes other than those for which it was designed. McCrossin v Noyes Bros. & Cutler, 143 M 181, 173 NW 566.

Manufacturer of an article or compound imminently dangerous in kind owes to the public a positive and active duty to limit the danger by labeling or otherwise

conveying knowledge of the danger. A like duty rests upon a vendor who knows of the dangerous qualities of the article sold by him and knows that its label or name does not adequately convey knowledge to the purchaser or public of such danger. McCrossin v Noyes Bros. & Cutler, 143 M 181, 173 NW 566.

The evidence sustains the finding of the jury that the defendant wholesale drug company was negligent in sending a barrel of raw linseed oil to a retail druggist in response to an order for a barrel of cod liver oil. The evidence sustains a finding that defendant retail druggist, who sold to the plaintiff poultry raiser raw linseed oil as cod liver oil, was negligent. Damages were properly allowed. Ellis v Lindmark, 177 M 390, 225 NW 395.

The pharmacy law applies to medicines prepared, sold, and used solely or principally for medicinal purposes, which are not patent or proprietary medicines. That such medicine, properly prepared, is harmless and that it is sold in the original package of the manufacturer does not except its sale from the restrictions placed thereon by that section. Milk of magnesia, manufactured, distributed, and sold in the manner shown, was not a proprietary medicine. State v Woolworth Co., 184 M 51, 237 NW 817.

G.S. 1923, s. 5813, does not relieve a druggist of all care relative to the sale of proprietary medicines. It makes a druggist responsible for quality in the sale of nonproprietary drugs and leaves the measure of his liability for proprietary medicines as before. Tiedje v Haney, 184 M 569, 239 NW 611.

The jury's verdict for the plaintiff is supported by evidence tending to prove that mineral oil contaminated with formalin or formaldehyde in deleterious quantity was sold to plaintiff for family use and that it caused the death of his child. Berry v Daniels, 195 M 366, 263 NW 115.

Plaintiff alleged that the corporate defendant by its agents and servants undertook the job of vaccinating his hogs, the purpose being to immunize the animals against the malady known as hog cholera. The technique is first to inject into the animal the virus of such cholera and to inject simultaneously a specially and scientifically prepared serum, the purpose of the latter being to counteract the virus thereby creating immunity to that form of disease. The finding that there was either an insufficient amount of serum used, or that the serum had lost its potency, is sustained by the evidence and judgment properly taken against the corporation and its agent. Ziegler v Denver Hog Serum Co., 204 M 156, 283 NW 134.

151.23 POISONS MUST BE LABELED.

A manufacturer of an article or compound imminently dangerous in kind owes the public a positive and active duty to limit the danger by labeling or otherwise conveying knowledge of the danger. A like duty rests upon a vendor who knows of the dangerous qualities of the article sold by him and knows that its label or name does not adequately convey knowledge to the purchaser or public of such danger. Osborne v McMasters, 40 M 103, 41 NW 543; McCrossin v Noyes Bros. & Cutler, 143 M 181, 173 NW 566.

The manufacturing, wholesaling, or retailing of cosmetics, flavoring extracts, or similar, or of non-habit forming, harmless, proprietary medicines labeled in accordance with state or federal pure food and drug requirements is not limited or interfered with by the provisions of sections 151.23 to 151.26. OAG Sept. 27, 1945 (135-B-5).

151.26 EXCEPTIONS.

Vitamins are drugs and their sale in pure or concentrated form is restricted to licensed pharmacies under the supervision of registered pharmacists. 1944 OAG 256, April 17, 1944 (337-C-3).

Sections 151.23 to 151.26 do not affect the right of a manufacturer to sell to other manufacturers concentrates to be diluted and packaged for sale to the public. OAG Sept. 27, 1945 (135-b-5).