

HIGH COURT OF JUSTICE.

KING'S BENCH DIVISION.

(From the "Times" of Thursday, April 13, 1905.)

(Before the LORD CHIEF JUSTICE OF ENGLAND, MR. JUSTICE KENNEDY, and MR. JUSTICE RIDLEY.)

SMITH v. SAVAGE.

THIS was a case stated by the justices of Wiltshire sitting at Marlborough, and raised a question under the Food and Drugs Act.

The respondent, Henry Edward Savage, a grocer, was charged at the instance of the appellant, an inspector under the Food and Drugs Act, with having, on August 9, 1904, unlawfully sold to the appellant, to his prejudice as the purchaser thereof, four penny packets of cream of tartar, which were not of the nature, substance, and quality of the article demanded, such cream of tartar containing lead in the proportion of $\frac{3}{4}$ grain per pound, contrary to Section 6 of the Food and Drugs Act. On August 9, 1904, the appellant visited the respondent's shop, and saw there some packets of cream of tartar. He asked the respondent if he sold cream of tartar, whereupon the respondent produced a box containing packets labelled "Finest cream of tartar, 98 per cent. bitartrate of potassium, B.P., 1898." The appellant asked for four packets, which were all similar in size and outward appearance and label, and were taken from the same box. He paid fourpence for them, and told the respondent that the purchase had been made for the purpose of analysis. The appellant emptied the contents of the four packets into one place, and then divided the whole of the contents or matter into three parts, and sealed them up. One of these three packets was sent to the county analyst, another handed to the respondent, and the third packet was retained and produced to the justices by the appellant. The appellant said that cream of tartar mixed with bicarbonate of soda was used in baking-powder, and also in the preparation of cakes, etc. The result of the analysis as above stated was proved, whereupon the appellant asked for a conviction. The respondent's solicitor contended that the appellant made four separate purchases, each packet being an article, and that the appellant did not by mixing together the contents of the four packets, and then dividing the substance so mixed into three parts, comply with Section 14 of the Food and Drugs Act, 1875, and, in support of this argument, the case of *Mason v. Cowdary* (16 *The Times* L.R., 434; 1900, 2 Q.B., 419) was cited. For the appellant it was contended that the facts were not similar to those in *Mason v. Cowdary*, and that Section 14 had been properly complied with, inasmuch as the entire purchase had been properly divided into three parts as the Act directed. It was also pointed out that in *Mason v. Cowdary* there was no mixing and division of the entire purchase. The justices dismissed the summons, and the question for the opinion of the Court was whether they were right in so doing.

Mr. HOLMAN GREGORY, for the appellant, submitted that the justices were wrong in dismissing the summons. All the packets were labelled in the same manner, and given to the appellant as cream of tartar, not as four packets. Making up the article in packets was only a means of measuring the quantity. No question could have arisen if the appellant had asked for fourpennyworth of cream of tartar. The case of *Mason v. Cowdary* was not in point. That was a case in which six bottles of camphorated oil were bought; there was no division of the contents of any one bottle, but two bottles were sent to the analyst, two given back to the seller, and two retained by the inspector. That was held not to be a compliance with Section 14, but it was obvious that the oil might be of quite different quality in the different bottles. That was not the case as to the packets of cream of tartar, which were all labelled in the same way and taken from the same box.

Mr. BONSEY, for the respondent, contended that the justices were right. There had been four separate purchases, and not one purchase. Suppose a person were to purchase several loaves of bread, one of the loaves would have to be divided into three parts in order to comply with the Act. *Mason v. Cowdary* was directly in point; in that case Mr. Justice Darling said that "six bottles are six articles." In that case it might, with equal force, have been contended that oil, and not six bottles of oil, had been asked for by the inspector; so here it could not be said that merely cream of tartar was demanded; the request was for four packets of it. There was no reason why one of the packets should not have been divided into three parts. It had been suggested that one packet was too small to permit this being done; that was not so, and, moreover, whatever the quantity might be could make no difference, as the Act, which required division into three parts, must be complied with.

The LORD CHIEF JUSTICE, in giving judgment, said that on the whole he thought the appeal must succeed. Some question, he thought, might arise in the case of different articles not of a similar name or articles coming from different people being mixed together in the shop; that, however, was not the case with which they had to deal. In the case before them the appellant asked for cream of tartar, which, for the purpose of measurement, was put up in penny packets. He said he would take four packets, and they had to say whether because four packets of the same article, labelled in the same way, and sold at the same time as cream of tartar, were mixed together and then divided into three parts was a good objection to the analysis that followed. He was of opinion that it was not a good objection. The case was different from *Mason v. Cowdary*; it must, therefore, go back to the justices to proceed in the matter.

Mr. JUSTICE KENNEDY and Mr. JUSTICE RIDLEY concurred.

INSTITUTE OF CHEMISTRY OF GREAT BRITAIN AND IRELAND.

PASS LIST OF THE APRIL EXAMINATIONS.

OF six candidates who entered for the Intermediate Examination, three passed: J. D. Kettle, B.Sc. (Lond.), Elison A. Macadam, and R. Simmons. In the Final Examination for the Associateship (A.I.C.), of seven examined in the branch of Mineral Chemistry, three passed: J. Alexander, B. O'Shaughnessy, Assoc.R.C.Sc. (Lond.), and E. Rhodes, B.Sc. (Vict.); of five in Organic Chemistry, three passed: S. J. M. Auld, Ph.D. (Würzburg), H. W. Goodwin, and R. Robison; and of eight who entered in the branch of the Analysis of Food and Drugs and of Water, including an examination in Therapeutics, Pharmacology, and Microscopy, the following six passed: J. H. Barnes, B.Sc. (Birm.), J. W. Brisbane, D. Gair, B.Sc. (Lond.), H. G. Harrison, B.A. (Cantab.), R. Park, and J. Race. One candidate passed an examination for the Fellowship (F.I.C.): A. E. Brown, B.Sc. (Lond.). The examiners in chemistry were Mr. W. W. Fisher, M.A. (Oxon.), F.I.C., and Dr. G. G. Henderson, M.A., F.I.C. The examination in Therapeutics, Pharmacology, and Microscopy was conducted by Dr. F. Gowland Hopkins, M.A., F.I.C.



THE LATE PROFESSOR TICHBORNE.

WITH regret we have to announce the death of an old and distinguished member of the Society, Professor C. B. C. Tichborne, which took place on May 1. A full notice of his scientific career will appear in our next issue.