Legal Notes.

Under this heading will be published notes on cases in which points of special legal or chemical interest arise. The Editor would be glad to receive particulars of such cases.

SALE OF SPIRITS WITH NOTICE OF DILUTION.

PRESTON *v.* GRANT.

ON November 4 an appeal from a decision of Warwickshire justices was heard in the High Court before the Lord Chief Justice and Justices Shearman and Salter.

The appellant, an inspector under the Food and Drugs Acts, had bought half a pint of whiskey from the respondent, the licensee of a publichouse, and the sample, upon analysis, had been found to be 42·26 deg. under proof.

When the sale was made there was a notice in the bar, and a similar notice in a room at the back of the bar, which read: "All spirits sold on this establishment are diluted, and no alcoholic strength is guaranteed." The appellant had not seen this notice, nor had his attention been directed to it.

The Warwickshire justices considered that the printed notice was a sufficient notification to the appellant, and that, accordingly, even though he had not seen it, he had not been prejudiced by the sale.

The Lord Chief Justice, after hearing the arguments of counsel on each side, said that the question turned upon the opinion expressed by the justices that the notice was a sufficient notice where it was found, as a fact, that the purchaser did not see the notice and had not been told of it. In other words, was a constructive notice sufficient?

In the present case, it was obvious that the sale was to the prejudice of the purchaser, unless one took the view, disregarding the Sale of Food and Drugs Acts, that the weaker the mixture, the less the purchaser was prejudiced. The seller must show that the purchaser was not prejudiced, and an inspector must not be attributed with more knowledge than an ordinary purchaser. If the article was not of the nature, substance and quality demanded he was prejudiced.

A practice had grown up of exhibiting notices intended to serve as an answer to Sec. 6 of the Sale of Food and Drugs Act, 1875, and the use to which these notices were put was that the seller claimed that the purchaser was not prejudiced because he had had notice of the difference between that which he demanded and that which he received.

So far as he was aware, there was no case which said that it was a good answer for the seller to say that he exhibited a notice which the purchaser did not see, to which his attention was not called, and of the existence of which he did not know. The case of *Pearks, Gunston & Tee, Ltd.* v. *Houghton* (1902) was a very different case from this one. In that case the purchaser got what he demanded, whereas the present appellant got something very different.

There was no such thing as a constructive notice in a case of this kind, and, in his opinion, the respondent was not protected. He did not think that the presumption that the purchaser had been prejudiced was in the smallest degree rebutted by the existence of a notice which he had not seen and to which his attention had not been called. In his opinion the appeal must be allowed, and the case remitted to the Warwickshire justices to convict.

Judgments to the same effect were given by the other Justices.

RODBOURN *v.* HUDSON.

ON November 19th the decision was given in an appeal heard in the King's Bench Division (the Lord Chief Justice and Justices Avory and Salter) from a decision of the Hampstead justices convicting the appellant of having sold, to the prejudice of the purchaser, rum diluted to 41½ deg. U.P. (*cf.* ANALYST, 1924, **49**, 229). For the defence it had been urged that the vendor was protected by a notice displayed on his premises, which notice, it was admitted, had been seen and read by the purchaser and by his agent who actually made the purchase. This notice read:—"All spirits sold in this establishment are of the same superior quality as heretofore, but, to meet the requirements of the Food and Drugs Acts, they are now sold as diluted spirits; no alcoholic strength guaranteed."

The Lord Chief Justice, in a written judgment, said that the justices had given their reasons why the sale was to the prejudice of the purchaser, and unless the Court could say that there was no evidence upon which such a decision could be based, they could not disturb the justices' decision.

Reviewing the decisions in previous cases, he pointed out that the decision in *Sandys* v. *Small* (1878; 3 Q.B.D., 449) was based upon the fact that the purchaser was fully aware of the nature of the article supplied to him, and the question of what was "due and sufficient" notice was not raised. In *Gage* v. *Elsey* (1883; 10 Q.B.D., 518) there had been a notice substantially in the same terms as in this case, and the conviction was quashed. But in that case the only point raised was whether Sec. 6 of the Sale of Food and Drugs (Amendment) Act, 1879, deprived the seller of a defence, in view of the decision in *Sandys* v. *Small*. It was assumed that knowledge had been brought home to the purchaser that the spirits were diluted, and the sufficiency of the notice was not discussed. Hence the decision in that case could not be regarded as an authority on the sufficiency of the notice.

In the case of *Morris* v. *Johnson* (1890; 57 J.P., 612) the question as to the knowledge of the purchaser was regarded as one of fact for the justices; and in *Morris* v. *Askew* (1893; 57 J.P., 724) it was held that mere notice was not sufficient, and that it was for the justices to decide whether the necessary information had, in fact, been conveyed to the purchaser.

In *Palmer* v. *Tyler* (1897; 61 J.P., 389) the justices had found that the sale was not to the prejudice of the purchaser, and it was held that, as this finding of fact was conclusive, the conviction could not be upheld. In *Dawes* v. *Wilkinson* it was held that, to obtain protection, the seller must give such notice to the purchaser as will inform him that there has been such tampering with the spirit as is expressed by the word "dilution."

In the case of *Taylor* v. *Elder* (1923) he (the Lord Chief Justice) had expressed the opinion that the notice (which was in practically the same terms as in the present case) was a notice of grave and calculated ambiguity, and to that opinion he still held. In the present case the notice was both ambiguous and misleading. "Superior quality" was a misleading term to apply to spirits which had been reduced below the statutory minimum, and there was no provision in the Sale of Foods and Drugs Acts requiring any one to sell spirits, whether of superior or inferior quality, as diluted spirits. The words "no alcoholic strength guaranteed" might well be understood to mean no alcoholic strength above the statutory minimum. It rested with the seller to prove that such notice had been given as would ensure that the sale was not to the prejudice of the purchaser. The two questions to be decided, therefore, were (1) What was the substance of the information which must be given? (2) Were the steps taken sufficient, in all the circumstances, to convey this information to the average purchaser? (If the

purchaser did not see and was not made aware of the notice the question of its sufficiency did not arise (*cf. Preston* v. *Grant, supra*). With regard to (1) the purchaser must be told in substance that what he is getting is not what he asked for. As to (2) the actual sufficiency of the notice was a question for the justices. There was evidence here on which the justices could find that this notice would not convey the information.

The saying that "everyone is supposed to know the law" was too general; the maxim *ignorantia legis neminem excusat* could not be accepted as a defence against a breach of the law; but in considering this notice the justices would properly remember that the average customer knows nothing of the Food and Drugs Acts. For the Courts to "hall-mark" a notice, so that anyone by hanging it up could evade the Acts, would be unfortunate. The sufficiency of the notice was for the justices to decide in each case. The appeal must therfore be dismissed, and this judgment, if truly analysed, was, in his opinion, not in conflict with any of the authorities.

Mr. Justice Avory agreed with the judgment, subject to the reservation that he had grave doubts whether it could be reconciled with that in *Gage* v. *Elsey*, which had been acted on since 1883; also, he was not prepared to assent to what he understood to be the effect of the Scottish judgments (*Brander* v. *Kinnear*, *Kelso* v. *Soutar*, and *Williamson* v. *Soutar*; 1923, S.C.(J.), 42), *viz.* that the seller was not protected unless he specified in the notice the actual extent of dilution.

Mr. Justice Salter concurred with the judgment.

NEW NOTICES IN PUBLIC BARS.

According to *The Times* (Nov. 22, 1924) the licensed victuallers' associations have taken legal advice on the position created by the judgment of the High Court in the case of *Rodbourn* v. *Hudson*, and are of opinion that an amended form of notice will meet the requirements. They point out that, for many years past, it has been the custom to sell spirits for immediate consumption, diluted with water so as to be weaker than 35 degrees U.P., and a printed notice has been exhibited to the effect that the spirits sold are diluted and that no alcoholic strength is guaranteed.

In view of the decision in the case mentioned above, the printed notice affords no defence if the customer has not seen, or had his attention directed to the notice; and, even then, it is open to the magistrates to find that the notice would not convey adequate information to an average purchaser, and the High Court would not disturb a conviction based on this finding. It is not practicable, say the victuallers' associations, to sell all spirits not weaker than the statutory limit and to let the customer do his own dilution, since every customer cannot afford, and does not expect, to receive the full strength of spirit, the degree of dilution before sale being indicated more or less by the price charged. The situation will be met by changing the form of notice, and taking further steps to draw the attention of the customer to its existence, so that in no case can he plead ignorance of the fact that diluted spirits are being sold.

The notice in the case of *Rodbourn* v. *Hudson* is an obsolete one, and in later forms of notice there is no reference to the "superior quality of the spirits." Several summonses in different parts of London are pending, but all refer to the later form of notice, which reads:—"Notice to purchasers of spirits.—All spirits sold in this establishment are sold as diluted spirits, no alcoholic strength being guaranteed." It is proposed to fight these cases as being in a different category from that decided in the High Court.

PAREGORIC WITHOUT OPIUM.

On October 6, a herbalist was summoned at Blackburn for applying a false trade description to a certain mixture, contrary to Sec. 2 of the Merchandise Marks Act, 1887, and for selling a mixture to which a false trade description had been applied.

Evidence was given that the defendant had been asked for half an ounce of paregoric, and had supplied a mixture contained in a small bottle which was labelled

in writing "paregoric," without qualification of any sort. Prior to the analysis it was thought that the defendant was selling a poison, and was therefore offending against the Pharmacy Acts, but, when written to upon the subject, he replied that the mixture sold by him was "paregoric" which was "free from opium," and that he had put this upon the label.

Mr. F. Wokes, B.Sc., for the prosecution, said that he had analysed the sample, and had found that it did not comply with the accepted standard of the British Pharmacopoeia, according to which paregoric must contain a considerable proportion of tincture of opium. In cross-examination, he agreed that the other ingredients of paregoric were present, and had an antiseptic property, but said that these alone would not constitute paregoric. He did not agree that the mixture could be sold as "paregoric essence"; in his opinion the essence of paregoric was the opium tincture.

Mr. Linsey, for the defence, submitted that the offence, if any, was a highly technical one. He produced the catalogue of a wholesale firm to show that paregoric was sold both with and without the addition of opium. "Paregoric essence" had been used as a favourite remedy in Lancashire for generations, and it was usually procured from herbalists. Had the defendant sold a mixture containing opium, he would have been liable to a heavy penalty, but there was a notice in his shop to the effect that no dangerous or poisonous drugs were sold there. The Merchandise Marks Act was not intended to apply to a case like this, where there was no intention to deceive or to make a profit out of the deception. The bottle and the preparation had been sold for 3½d. with the dangerous element removed.

The Bench held that while the defendant was perfectly innocent of any intention to break the law, there had been an offence. Fines of 40s. for the first case, and 20s. for the second, were imposed, and defendant was required to pay the costs of the witnesses.