

## PHARMACEUTICAL

### LIABILITY OF PHARMACISTS

It is generally known to those who engage in the selling of drugs and the compounding of physicians' subscriptions that they are liable in damages to persons who are injured by the substitution, through mistake, of a poison where a harmless article is indicated by the prescription, or asked for by the purchaser. Frequently the person who makes such a mistake may be prosecuted criminally also, but in this paper only the question of liability to pay money damages will be considered. The knowledge of the general legal principles upon which this liability rests will be useful to the druggist and the apothecary, not alone for the mere possession of the knowledge, but also from a practical standpoint. Unless one knows what are the duties which the law casts upon him under given circumstances, it is only by good fortune that he keeps clear of a failure to observe them in some particular. The necessity of knowledge by every man of the duties laid upon him by the law is increased by the fact that his ignorance of them does not relieve him from the penalty of their violation. The law requires every man, at his peril, to know what are his duties to his fellows, as well as to fulfil when he does know them; hence the maxim, "ignorance of the law excuses none."

Speaking broadly, the law takes the generally accepted notions of the community as its standard of duty, and consequently every man does know, in a general way, what his obligations are in his dealings with others. A generalization is rarely, if ever, accurate, and such is true of this statement of the standard of legal duty. The law is practical, and since it would be impossible for it to enforce all the duties which religion and ethics impose, it does not make the attempt. Human tribunals cannot compel men to observe the rule, "Do unto others as ye would be done by." Therefore, the law is narrower, not only than the highest

code of morality, but also, for the same reason, than even the ordinary standard of the community. On the other hand, the law in many instances creates duties where strict morality imposes none. It does this because in the particular instances to take into consideration the question of moral blameworthiness would open the door to evasions and fraud, or would be against public policy for some reason. Thus a carrier of freight must pay for merchandise destroyed or damaged while in his hands, whether the loss occurred through his fault or not. The law treats him as an insurer for its safe delivery. It is in this latter class of cases that the individual runs the greatest danger of failure to realize the standard of duty by which the law will judge him. Where his obligations are only such as ordinary justice dictates, he can scarcely fail to know them; but if he happens to fall in one of the classes on which a special standard, beyond that of common morality, is imposed, he may be deluded by ignorance unto lack of requisite caution.

The ground upon which rests the liability of the druggist or the apothecary to one who has been damaged by his mistake is negligence. It accords with the general notion of justice that one who negligently does damage to another should pay for it. Since the basis of the liability is negligence, it is necessary to consider somewhat the legal meaning of this term, which is much broader than the popular understanding of it. The word negligence is commonly used as referring to the actual commission of some overt act; but mere inaction may in itself constitute negligence in the legal sense. If one fails to do that which ordinary prudence dictates, the failure to do is just as much negligence as is the actual commission of a reckless act. Again, not only doing, or not doing, but the manner of doing also may constitute negligence. If a man, though in the performance of a perfectly lawful act, does it in a careless manner, this is negligence. Negligence may, therefore, arise through:—