

The bill states that the complainant has for many years been engaged in the manufacture of the liquid laxative medicinal preparation designated as "Syrup of Figs," and that it was the first to compound the same. It is alleged that the words "Syrup of Figs" have come to be known as a trade mark of complainant's preparation, and that, by reason of a large investment in advertising this product, the complainant has the exclusive right to the name "Syrup of Figs" in connection with the liquid laxative preparation which, it is alleged in the bill, is called by the public, indifferently, "Syrup of Figs" and "Fig Syrup." The charge against the defendants is that they are selling their own laxative preparation, prominently marked "Fig Syrup," by taking advantage of the reputation of the complainant's article.

The answer of the defendants is that they were led to believe, from the name of complainant's preparation, that it is a syrup of the fig, and contend that the complainant was not the first to manufacture a syrup of figs or to call a syrup by that name, or to discover or name the fig. It is further denied that there can be any exclusive right to the name "Syrup of Figs," which, if the article is a syrup made from figs, is a descriptive name, and, if not so made, is a deceptive name. The answer declares that the defendants put on the market a laxative fig syrup, actually made from figs, and, therefore, properly named "Fig Syrup," and that their packages are wholly unlike those of the complainant.

The testimony in the case showed that the complainant considered the use of fig juice in the compound as superfluous because of no laxative quality; that its preparation contained a very small percentage of fig syrup, and that its principal base was senna. It was shown that the defendants' fig syrup contains 9 20ths of syrup of figs, 10-20ths fluid extract of senna, and that the other 1-20th is made up Rochelle salts, aromatics, and water.

In his exhaustive opinion, Judge Swan says there are but two questions to be answered, which briefly are:

- (1) Are the words "Syrup of Figs" or "Fig Syrup" a descriptive name? and
- (2) Are they, under the proofs, deceptive?

In the answer to the first, he says it is well settled that words "which are merely descriptive of the character, qualities, or composition of an article" cannot be monopolized as a trade mark, citing a number of decisions, and then continues:

"In *Canal v. Clark* the court lay down two negative essentials of a valid trade mark, and it is then stated: 'No one can claim protection for the exclusive use of a trade mark or trade name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the public would be injured rather than protected, for competition would be destroyed.'"

After giving Webster's and Standard

dictionaries' definition of syrup, the opinion shows that the word "syrup" is necessarily qualified by that of the ingredient which is predominant in the preparation. More authorities are quoted to show that the names "fig syrup" and "syrup of figs" are not designed to indicate *per se* the owner or producer of the preparation and distinguish it from like articles made by others, but to indicate quality and composition. By their failure to distinguish them from like articles made by others, they cannot be sustained as valid trade names.

Replying to the second question, the court says that if the equities of the parties are dependent upon the quantity of fig juice which enters into their respective preparations, they largely preponderate in favor of the defendants, as shown by the testimony quoted. "It is a condition, however," continues the opinion, "of equitable relief to one who applies for the protection of his trade mark that the complainant should come into court with clean hands."

"There can be no doubt," says the court, "either that the complainant's preparation is not, in fact, compounded of the juice of the fig, but its principle is senna, or that its name was adopted and is used for the purpose of trading upon the popular fallacy that the juice of the fig in medicinal doses is an effectual remedy for constipation, or that the ordinary purchaser buys the compound as and for the fruit remedy which it is advertised and asserted to be. The law applicable to this state of facts is as clear as their purpose and effect. It will not lend its aid to foster the delusion of the public, or countenance the deceit."

#### Cinchona Gathering in Peru.

The mountains of Peru form the natural home of the cinchona tree, which is easily distinguishable from surrounding foliage by its beautiful leaves and magnificent proportions. The trees themselves frequently attain a height of eighty feet, are straight as a lance, and covered with foliage. The leaves are large and of a deep glossy green, relieved by delicate pink lines. The life of a bark-hunter is one of constant toil and incessant hardship, and his main reliance on his long and solitary journeys in search of the bark is the coca leaf, which he masticates for the strengthening and stimulating qualities it possesses. Since the days of the Incas this coca has been in common use locally, and it is said that among the mountains of Bolivia and Peru Indians using coca freely when driving pack mules over the roughest roads along the Sierras outstrip well-mounted horsemen. From thirty to fifty grammes are consumed daily, serving both as food and stimulant. The casacillero, constantly using coca, finally loses the senses of taste and smell. There are many varieties of cinchona, which the hunter learns to distinguish

through the texture and appearance of the bark. They are red, white, orange, yellow, blue, and gray; the yellow being the finest. Although the pay of the quinine-hunter is very small, it suffices to meet the simple requirements of himself and family, and as a class they are happy and contented with their lot. It is a vocation that is handed down from father to son, but despite long years of experience, coupled with an intimate knowledge of the intricate trails leading to the cinchona tree, the Indian hunters frequently lose their lives in the jungles of the wilderness. Occasionally, a number of hunters start together as a greater protection against disaster. Upon reaching a desirable spot where the signs of paying trees are considered good, preparations for camping are at once made, and from the tops of the loftiest trees the hunters scan the forest, quickly recognizing the cinchonas. The task of gathering cinchona bark occupies all the working hours between sunrise and sunset. Armed with knives and keen-edged hatchets, the tree is quickly felled and the trunk is stripped and cleared from all foreign growth. This is a task of considerable magnitude, frequently requiring days of constant labor, the sharp edges of lance-like leaves, mingled with thorns and briars, lacerating and wounding the hunter's flesh. The bark, when removed, is cut into small curling slips and piled up in a convenient spot, where they are subjected to a drying process. The thin portions of the bark curl up, drying rapidly, while the larger and thicker strips retain their shape, and are easily packed for transportation. When all is pronounced ready by the torlego, or head hunter of the party, the bark is neatly lashed together with plaited grass and bound round with broad tough leaves, as a protection to the cured bark. The Indians and peons then shoulder their burdens, often weighing as much as one hundred and fifty or two hundred pounds — these are kept in position by plaits of grass passing round the foreheads of the bearers, and are thus carried to market. — *Journ. Soc. Arts, through Pharmaceutical Journal and Transactions.*

#### Compound Syrup of Hypophosphites.

The following formula is said by a writer in the *Western Druggist* to yield a non-precipitating syrup of fine appearance: Calcium hypophosphite, 256 grs.; sodium hypophosphite, 128 grs.; potassium hypophosphite, 128 grs.; manganese hypophosphite, 16 grs.; tinct. citro-chloride of iron N.F., 1 oz.; tinct. nux vomica, 160 m.; quinine hydrochlorate, 8 grs.; sugar, 12 oz.; water to make 16 fl. oz. Dissolve the hypophosphites by trituration in 6 oz. previously boiled water, dissolve the quinine salts in  $\frac{1}{2}$  oz. of warm water, mix the two solutions and pour over the sugar. Shake well; add the tinctures and enough water to make 16 fl. oz. Again shake, until the sugar is dissolved, stand for 24 hours and filter.