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WOLHFAHRT V. BECKERT.

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the warrant ceases to be in force at the expiration of three calendar months from the date of the entry of the order for commitment, unless renewed by the judge. Mr. Dow contends that after that time the judge has no power to make an order for such renewal. Though not without doubt, I do not accede to this contention. The rule does not state, as in cases of writs of execution, that the renewal must be effected within the time limited. Notwithstanding the case of *Ex parte Dakins*, 16 C. 77. cited by Mr. Dow, I think the current of authority is against regarding these warrants as in the nature of writs of execution, but rather as process for contempt of court. The defendant, by evading service, has prevented execution of the warrant. He has not purged his contempt. I think I must over-rule all the objections, and discharge the summons.

UNITED STATES.

NEW YORK COURT OF APPEALS.

WOLHFAHRT V. BECKERT.

Negligence—Sale of poisons.

1. The sale by a druggist of a poisonous preparation without the word "poison" on the label, is not negligence when the purchaser is warned at the time of the sale of the dangerous nature of the medicine, and informed of the proper dose, notwithstanding the fact that the omission to place the word "poison" on the label constituted a misdemeanor.

2. But the sale of such a preparation without the word "poison" on the label, and without such warning is negligence both at common law and under the statute.

Appeal by defendant from an order of the General Term of the Supreme Court of the Second Department, granting a new trial and sustaining the exceptions of plaintiff taken at the trial. The jury had been directed to find a verdict for the defendant, and plaintiff's exceptions were ordered to be heard in the first instance at the General Term.

Plaintiff's intestate, being temporarily troubled with some bowel complaint, had been recommended by a peddler to take a small wine glassful of a comparatively harmless drug known as "Black Draught." The deceased, shortly after the peddler's recommendation, went to defend-

ant's drug store and obtained ten cents' worth of "Black Drops" in a small bottle, which simply had a label upon it with the words "Black Drops," but without the word "poison" and without any direction as to the dose. "Black Drops" is a deadly poison, being one of the strongest preparations of opium, ten or twelve drops constituting a dose.

At the trial the only witness who gave testimony as to the sale of the drug was the defendant's clerk, who testified that the deceased asked for ten cents' worth of "Black Drops;" that he was cautioned at the time that the drug was a poison, and that ten to twelve drops were a dose. Deceased immediately after the purchase of the medicine repaired to his home, where his wife in his presence poured out a little wine glassful of the "Black Drops," being the amount of the dose of "Black Draught" recommended by the peddler; the deceased took the dose poured out by the wife and died a few hours thereafter, despite the efforts of medical skill to save him.

The action was brought to recover \$5,000 damages for the negligence of defendant in the sale of the "Black Drops."

FINCH, J., delivered the opinion of the court:

Whether the case should have been submitted to the jury depends upon the inquiry whether the testimony of the defendant's clerk is to be taken as the truth of the transaction, or may be questioned or doubted. If he is to be believed, the druggist who sold the poison was guilty of no wrong or negligence toward the deceased, for he warned him that the "Black Drops" asked for was a strong poison, of which he should only take ten or twelve drops for a dose. Notwithstanding the warning he took probably ten times the prescribed quantity in reliance upon the previous statement of the peddler, Silberstein, that he had taken half a glass of what he called "Black Draught" and it had cured him. On such a state of facts a verdict against the defendant would not be justified. Although no label marked "poison" was put upon the phial, and granting that by such omission the defendant was guilty of misdemeanor and liable to the penalty of the criminal law, still that fact does not make him answerable to the customer injured, or to his representative in case of his death, for either a negligent or wrongful act, when toward that customer he was guilty of neither, since he fairly and fully warned him of all and more than