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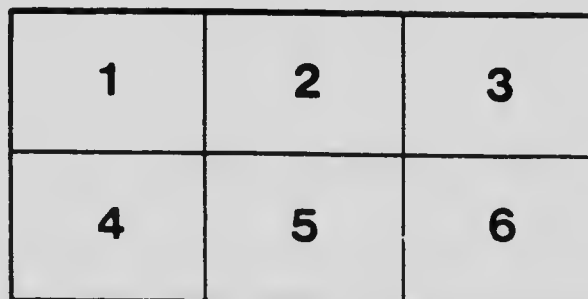
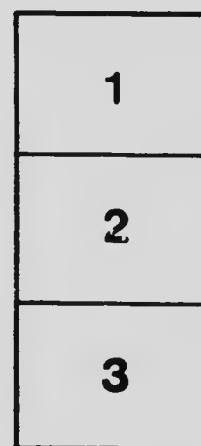
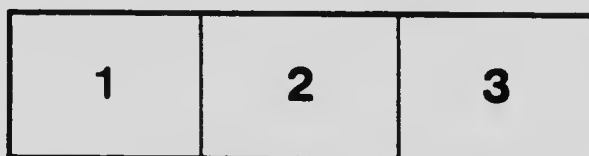
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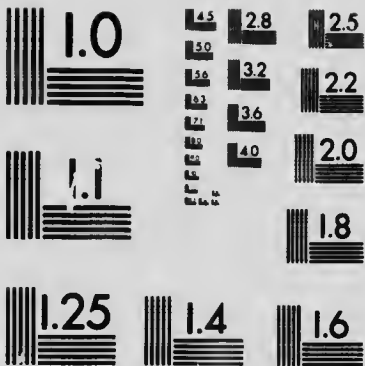
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A Plot Against The People

**An Attempt to Pervert the
Pure Food Law**

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A Plot Against the People

A history of the audacious attempt by
Certain Kentucky "Straight Whisky" Interests

to pervert the

Pure Food Law

in order to create a monopoly for their

Fusel Oil Whiskies

and to outlaw all

Refined Whiskies

With an account of
the suddenly-adopted and preposterous theories of

Dr. Harvey W. Wiley

Chief Government Chemist

His complete, but wholly unexplained, abandonment of views
long previously professed and promulgated
and his arrogant attitude as
Chief Food Official

Of great interest to all who have the success of the Pure Food
Movement at heart, regardless of the Whisky
question altogether

THIRD EDITION

March, 1911

Issued by

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Walkerville, Ontario, Canada

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Mexico City

Edited by WILLIAM ROBINS

7

To the American patrons of
"Canadian Club" Whisky

whose approval long ago made it one of the most popular brands in the United States, in spite of an always very heavily adverse tariff; and who have continued so loyal to it during the past four years, in the face of the grave suspicion cast upon it by its extraordinary and wholly unwarranted condemnation by Doctor Wiley, which has been made the most of by envious and conscienceless competitors

**we inscribe this story
of bitter fight and complete victory**

in token of our gratitude, and with the assurance of our unalterable determination always to maintain the high quality of our brand, and to defend its reputation, at any cost, against all assailants.



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APPRECIATION BY DOCTOR WILEY

Hiram Walker & Sons, Limited
Walkerville, Canada

Washington, February 10, 1911

Gentlemen :

I acknowledge with thanks the receipt of the very interesting publication entitled "A PLOT AGAINST THE PEOPLE." I may say frankly that I find it very amusing, and with equal frankness that the "plot against the people" is not that headed by Dr. Wiley. I consider that a work of this kind will do much to commend me to the people of the United States, and for this reason I thank you very kindly for your effort in my behalf. Attacks of this kind only strengthen a man who stands on the truth as a platform, and whose endeavors are, in so far as he knows, in the interests of the American people.

Respectfully,

(Signed) H. W. WILEY

Walkerville, February 13, 1911

Dr. Harvey W. Wiley,
Bureau of Chemistry, Washington, D. C.

Dear Sir:

We are truly delighted to learn from yours of the 10th that you like our pamphlet and expect its circulation to commend you to the people of the United States. That being the case, you will, of course, be glad to aid us in giving it the widest possible distribution: we, therefore, invite you to send us extensive lists of names and addresses. The pamphlet is in very active demand, but the field is large, and while we are about it we wish you to get all the credit to which you are entitled; and we do not mind the expense, considerable though it is.

It is true that the numerous letters we have received from readers of the book do not altogether bear out your expectations: they indicate that the average man has intelligence enough to judge for himself what the facts of the Whisky Controversy show. We have never agreed with those who say that the public are "mostly fools," but that has seemed to us to be your estimate of them for a very long time.

Awaiting your hearty co-operation as suggested, we are,

Yours truly,

(Signed) HIRAM WALKER & SONS, Limited
By William Robins, Director

Preface

We hope no one will be deterred from turning these pages because of their number. The subject is a very large and important one. The numerous and varied questions suggested by the applicants for this pamphlet, prove the need and desire for much information.

Those, however, who wish merely a brief account of the facts will find them in the first thirteen pages.

Special information is clearly desirable for the vast number of people who lack even rudimentary knowledge of the Trade terms and customs involved in the controversy of which this is a history.

Moreover, many of the facts, unless supported, might well be received with incredulity:—Dr. Wiley's astounding change of position; his fantastic propositions; his amazing inconsistencies; his want of knowledge; his contempt for established facts:—the self-sufficiency and ignorance of the "scientific" witnesses who supported Dr. Wiley's new-born theories; their contradiction of him, of each other, and of themselves:—the impudent and dishonest claims advanced by these Kentucky "Straight Whisky" men; their base return for the magnanimous help they received from the "Refined Whisky" interests in 1880. (See Chapter XI—remarks of Mr. Willis.)

Consequently, we quote somewhat extensively, though much more sparingly than we wish space would permit, from the Official Report of the Enquiry conducted by Solicitor-General Bowers by order of President Taft.

The Appendix, therefore, is for the benefit of those who desire enlightenment on technical questions, or to judge for themselves whether our criticism of Dr. Wiley and others is warranted by the evidence.

We particularly draw attention to Chapters XII and XIII, devoted to the testimony of Dr. Wiley and other chemists. They

show more forcibly than anything we could say how unwise the public will be if they blindly follow such men in the making and administering of Pure Food Laws.

Our merely personal interests do not require the exposure of all of Doctor Wiley's *many* vagaries on the question of WHISKY; but we feel that the public should know the *full extent* of his amazing absurdities and self-contradictions in this connection.

Moreover, we are very glad that the record of our own triumph should be equally the vindication of *all* REFINED WHISKIES.

Introduction

The WHISKY WAR meant far more to the people of the United States than they have ever realized. It was a question of whether there should be a monopoly more complete than any now existing.

In the House of Representatives, June 23, 1906, discussing a proposed amendment to the PURE FOOD LAW, Mr. Sherley, son of a prominent, old-time Kentucky distiller, said:

"There has been a persistent attempt on the part of certain members in the Whisky Trade to use the Congress of the United States to legislate them into prosperity and their competitors out of prosperity—to make legal their particular method of manufacture, and to make illegal other particular methods of manufacture. * * * The gentleman would have Congress legislate the *exclusive* use of the word WHISKY to a process that has not been in existence much more than fifty years, and it would put out of existence and deny the use of the word WHISKY to the makers of Whisky by processes that have existed over one hundred and fifty years."

With an entirely different story and object, the Kentucky "Straight Whisky" interests were before Congress in 1880. Then, in the clearest possible terms, they acknowledged the "Refined Whisky," and, solely upon the ground that it *was* WHISKY, they sought and obtained concessions for their own product, which they declared to be foul with Fusel Oil, and not WHISKY in the commercial sense until the Fusel Oil had been eliminated by age—as they then *supposed* it was, but now *know* it was *not*. (See the Congressional debate—Chapter XI.)

Nearly thirty years later, there was sprung upon the country the diametrically opposite doctrine that WHISKY *must* contain *all* the "congeners"—a name invented by Dr. Wiley for the impurities always previously called "Fusel Oil." The public, of course, failed to recognize their old and avoided acquaintance, FUSEL OIL, under its new and attractive name: and, as a consequence, they failed also to grasp the *real issue* of the controversy.

At the Investigation before Solicitor-General Bowers, in April, 1909, Mr. John M. Atherton, himself one of the best known old-time Kentucky distillers, who testified against his neighbors in the interests of truth, said:

"I have had a feeling that under previous rulings an
"immense injustice has been done to an immense branch
"of the business in the United States, without any possi-
"ble good to result from it, giving old words new mean-
"ings, and revolutionizing a business that men had con-
"ducted under the law ever since the Internal Revenue
"Laws were established. I have no other reason for being
"here."

In order to justify this controversy, and Dr. Wiley's part therein, the people have been persistently and most falsely told that the Whisky Trade was a national scandal: that nine-tenths or more of all the Whisky sold in the country was "faked" and unwholesome. What brought forth Mr. Sherley's remarks, above-quoted, was the ridiculous assertion that during the preceding year more than 105,000,000 gallons of *imitation* whisky, and only about 2,000,000 gallons of *genuine* whisky, were sold in the United States.

In his report to Congress, the Chairman of the Board of Judges on Whisky at The World's Columbian Exposition, 1893, said:

"No other department of industry supplying public wants
"in the line of food and drink, wearing apparel, or for
"any other purpose, can show a better record for purity
"and genuineness of material in use."

At the enquiry ordered by President Taft, herein referred to, the frauds testified to consisted wholly in misrepresentation as to the *age* or *variety* of the article—practices reprehensible enough, but in no sense justifying the accusations made, nor shown or supposed to be more general in the Whisky Trade than in others. And they would have been in no way corrected by the theories Dr. Wiley contended for.

The public have also been grossly misled by the deliberate use of purely technical names, in terms designed to create false impressions: for example, the statement that REFINED WHISKIES contain "Neutral Spirit"—the fact being that *all* Whiskies contain Spirit, the *purest* variety of which is "Neutral Spirit;" the statement that "Neutral Spirit" is a *poison*—the truth being that *every* Alcoholic Liquor

and many foods are *poisons in the scientific sense*. (See Chapter IX: also, Chapter XII—questions 69 to 75.)

Immense mischief has been done by the impression, (cultivated by men who draw official salaries), that Chemists are the one and infallible test of Food Products.

“What is WHISKY?” is no more a question for *Chemists* than for *Clairvoyants*. Dr. Wiley and his Chemists have been compelled to admit that it is impossible to distinguish chemically between WHISKY, BRANDY and RUM. They confess that the *only* tests are taste and smell. They acknowledge their own inability to apply these tests with any confidence. (See Chapters XII and XIII.)

They admitted, further, that by *chemical* test Butter cannot be distinguished from Oleomargarine, or a peach from a pear—which proves that Whisky is not the *only* food which chemists are not specially qualified to pass judgment on

Nevertheless, the WHISKY WAR, with its enormous loss and expense, could never have existed but for the pretensions of Official Chemists to be the *sole* judges of what is and what is not WHISKY; and the only one of them who had influence enough to create a disturbance was Dr. H. W. Wiley, Chief Government Chemist.

Since Dr. Wiley was overruled by President Taft's decision, great efforts have been made to mislead the public as to the merits and consequences of that decision, which, without an atom of truth, is alleged to be destructive of the PURE FOOD LAW. The fact is that the greatest menace to the PURE FOOD LAW has been Dr. Wiley's grotesque interpretation of it.

This costly controversy was purely *manufactured* and void of any possible public good. Reduced to simplicity, the question was solely whether or not the public taste should be officially guided—whether consumers should or should not continue to select their Whiskies as they select other things. This great agitation narrowed itself down into nothing more than a matter of *taste and odor*.

It was conclusively proved that from its earliest history to the present time Whisky has been flavored and colored in many different ways.

Perennially, we have never used “added flavoring” of any kind, by which is meant flavorings other than those inherent in the spirit, or acquired from the cask; but we have always maintained that, (pro-

vided the materials are harmless and warranted by the name under which the product is sold), manufacturers should be free to employ such methods as they deem best to meet the various and variable tastes of consumers.

With Whisky, as with many other foods, the color means nothing more than time-honored custom.¹ All the coloring agents are perfectly harmless: and they are all alike artificial, because Whisky is naturally colorless.

It is not our purpose to discuss the relative merits of the many types of Whisky: the object of this pamphlet is to show the public how narrowly they have escaped the creation of a huge monopoly, through a perverted use of the Pure Food Law; and to give them a correct conception of Dr. Wiley, whom they have been taught for years to regard as their extremely able, zealous and trustworthy protector against impure foods detrimental to their stomachs, and misbranded foods detrimental to their pockets. *Leslie's Weekly*, May 14, 1908, said: "It is high time that Dr. Wiley should be taken at his real rather than his face value." (See Article in full—Chapter XVI.)

While this is the story of WHISKY, it involves the whole subject of PURE FOOD. The best Laws are valueless unless properly administered. As long as the people put their confidence in idols, they will be misled. Everyone who has the welfare of the Pure Food Movement at heart should carefully read this book, and pass it on to a neighbor, or get his neighbor to send for a copy.

In concluding these introductory remarks, we wish to state that we have always had the utmost contempt for disparagement, direct or implied, of any honorable competitor or his product.

If, for the moment, this declaration should appear inconsistent with our expressions regarding the personnel and product of the Kentucky "Straight Whisky" interest herein referred to, we venture the confident opinion that the succeeding pages will dispel that impression.

Should this exposure of their nefarious scheme, and of the facts developed by the investigation which it necessitated, prove distasteful to these plotters, they will have only themselves to blame for the fair consequences of their unprovoked attack upon their more successful rivals.

¹See President Taft's Decision—Chapter VI.

CHAPTER I

Synopsis of the Controversy

All WHISKY is grain spirit made potable by the addition of water. When the percentage of alcohol is too high for beverage purposes, the spirit is not WHISKY, but is known to manufacturers by some name expressive of its alcoholic strength, or its degree of purity, or both.¹

The *purest* spirit is called NEUTRAL SPIRIT: the Whisky made therefrom is technically known as "Rectified" or "Redistilled" Whisky, and contains practically no Fusel Oil.²

The least pure spirit is called HIGH WINES: the Whisky made therefrom is technically known as "Straight" Whisky, and contains a *considerable amount* of Fusel Oil, which gives the Whisky a flavor and odor *so objectionable* that it is *never sold for consumption* until it has been aged in a charred barrel for some years—usually at least four.³

"Blended" Whisky, according to usage in the United States, is a mixture of "Straight" Whisky (*after it has been thus aged*), with *new* "Rectified" or "Redistilled" Whisky.⁴

"CANADIAN CLUB WHISKY" IS OF A DIFFERENT TYPE FROM ANY WHISKY MADE IN THE UNITED STATES. IT IS FULLY DESCRIBED IN THE EARLY PART OF CHAPTER VIII. IT CONTAINS PRACTICALLY *no Fusel Oil*: THERE IS *no added flavoring*: IT IS ALWAYS *aged in oak barrels* FOR AT LEAST FIVE YEARS *before being put upon the market*.

Doctor Wiley was well aware what the term "Blended Whisky" meant *previous to* the passage of the Pure Food Law. (See his testimony—Chapter XII—question 129.)

Doctor Wiley wrote a letter, *after* the passage of the Pure Food Law, which conclusively proves that, *at that time*, he did not consider the meaning of the term "Blended Whisky" *in any way changed* by that law.

From time immemorial, the public have regarded *Fusel Oil* with the utmost aversion; medical men have carefully avoided it when

1, 2, 3, 4 See also Chapter IX.

prescribing stimulants; the Pharmacopœias have prohibited more than a "trace" of it in Whisky, Brandy, and other ardent spirits.

For many years previous to the passage of the Pure Food Law (June 30, 1906), Doctor Wiley was in full accord with the popular objection, the medical attitude, and the Pharmacopœial requirements. Doctor Wiley officially declared that Whisky to be *good for consumption*, must have the Fusel Oil *eliminated*.

The makers of "Straight Whisky" always admitted, until quite recently, that their product was *utterly unfit for use* while the Fusel Oil remained in it.

While the Pure Food Law was before Congress, Doctor Wiley assured a Committee of the House of his desire that *all kinds of Whisky* should be placed upon an equal footing. (Chapter XII—questions 46, 47)

Early in 1907, Doctor Wiley *completely reversed* all the previous statements about Whisky. He insisted that nothing was Whisky which *did not contain all the Fusel Oil*. He maintained that the refined article, (made from "Neutral Spirit"), never had been Whisky. He utterly denied that "Blended Whisky" was a Whisky at all. He declared that there were no *different kinds of Whisky* such as he had referred to when before the Congressional Committee, but *one kind of Whisky only*—the so-called "Straight Whisky," from which Fusel Oil is *not* removed.

As stated, "Straight Whisky" is a rank, unpurified spirit aged in charred barrels. Its makers and Doctor Wiley were of the opinion, until a very few years ago, that age *did* eliminate the Fusel Oil from this Whisky. It was discovered that they were entirely mistaken. *The extracts from the charred barrel "drown" the smell of the Fusel Oil, but nothing more.*¹

This was, naturally, a most alarming revelation for the "Straight Whisky" people. They well knew the public abhorrence of Fusel Oil. They knew what the Chief Government Chemist had always said about it.

But it so happened that, in place of their product being *irreparably discredited* as a beverage by the Chief Government Chemist's disapproval of Fusel Oil, *his change of mind* gave these Kentucky "Straight Whisky" people visions of a complete monopoly of the Whisky Trade of the United States: for the logical and inevitable

¹See President Taft's Decision—Chapter VI.

result of Dr. Wiley's new-born doctrine would be to make "Straight Whisky" the only *legal* Whisky: and they set about to accomplish this.

Doctor Wiley, though challenged to do so, has never offered any explanation for his amazing change of attitude.

Addressing the Solicitor-General, the Hon. Joseph H. Choate said:

"One of the questions I want Mr. Carlisle to answer is, "*What* has changed Dr. Wiley's mind? *Why* was it "that in 1893 he swore by all that was great and good, "for the information of this nation and all other nations, "that these were all Whisky, and *now* he takes the position that he does?"

Mr. Carlisle answered:

"I think *he* is the one who ought to answer that."

Mr. Carlisle was right. Dr. Wiley *ought* to have answered long before. As a public servant he should not have waited to be asked: he should have volunteered a *full explanation* of so extraordinary a change of mind the moment it took place.

But Dr. Wiley has not explained *yet*.

Doctor Wiley, as Chairman of the Board of Food and Drug Inspection, promptly proceeded to enforce his new-fangled theories. Without waiting for a judicial interpretation of the Pure Food Law, and in spite of petitions and protests, Doctor Wiley caused seizures to be made of American "Refined" Whiskies, and had foreign "Refined" Whiskies, including "Canadian Club," stopped at the ports of entry.

In May, 1908, an English ROYAL COMMISSION, composed of a number of eminent men, after a searching investigation of the subject, defined WHISKY in terms absolutely contrary to Doctor Wiley's contentions. But the definition of the *English* name of an article of *English* origin, by a body of learned *Englishmen*, made no impression on the learned Doctor Wiley, who calmly pursued his autocratic way.

In April, 1909, President Taft was appealed to. He ordered an enquiry by Solicitor-General Bowers, which at once followed. The various Whisky interests were represented by counsel; the Department of Agriculture, (of which Doctor Wiley is an employee), was officially and impartially represented by its Solicitor. Doctor Wiley,

however, fought *independently* for his newly-adopted theories; and the Solicitor-General very wisely allowed him such ample latitude that he could not possibly plead any lack of opportunity. (See Chapter V.)

The Kentucky "Straight Whisky" group evidently pinned their faith to *chemical* proofs, for the witnesses in support of their contentions were almost all chemists or pharmacists. It is hardly possible that *fimsier* testimony was ever offered. It was worse than *weak*—it was positively *puerile*. To read it, is to rank it as ridiculous. (See Chapters XII and XIII).

It is little wonder that in the light of this travesty on "expert" and "scientific" evidence, the counsel for the Kentucky "Straight Whisky" people dared not found any argument upon it. He could hardly repudiate it *openly*; but he fought very shy of it. This is what he said:

"I shall not discuss the chemical question myself. *All the bearing, or the principal bearing, it has on this question is the fact that the composition of an article can be ascertained, and the quantity of these so-called 'congeneric' substances can be ascertained. Now, as to what the effect of the presence of these substances in the products shall have is another question, which is not a chemical question, I suppose, except in so far as they speak of it giving a certain distinctive odor itself to the products.*"

and

"I do not think *any chemist* can take this article and ascertain precisely *how much or how little* of these 'congeneric' substances should remain in it in order to constitute "WHISKY."

Inasmuch as the *whole contention* of Doctor Wiley, and of the Kentucky people, *originally* was that chemists *could* tell exactly how much or how little of the "congeners," (always called FUSEL OIL until Doctor Wiley invented this euphemism), there should be to constitute WHISKY, Mr. Carlisle's admissions were an abandonment of his clients' basic position.

President Taft decided against Doctor Wiley and the "Straight Whisky" interests on every point; and, as the President said, upon the "overwhelming" evidence. (See Chapter VI).

This, in the barest outline only, is the story of the Whisky Controversy; which was not merely on the question, "What is Whisky?", but involved the infinitely more important question—WHETHER THE PURE FOOD LAW SHOULD BECOME THE MACHINERY FOR CREATING A GOVERNMENT-MADE AND GOVERNMENT-SUPPORTED MONOPOLY.

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CHAPTER II

False Pretensions of the Kentucky "Straight Whisky" Group

Certain Kentucky "Straight Whisky" people sought to secure a monopoly beside which the most execrated Trust in the world would seem benevolent.

Even the largest and most powerful Trust has competitors; and laws exist for the express purpose of preventing the crushing out of competition.

But these Kentucky "Straight Whisky" men tried to use the **PURE FOOD LAW** to make their product the only *legal* Whisky in the United States.

To this end, they set up three most mendacious contentions:—

1. That the only real Whisky must contain all the **Fusel Oil**: and that spirit free from Fusel Oil had never been regarded as Whisky, even by its makers.

The Kentucky "Straight Whisky" distillers *themselves* thoroughly established the *reverse* of this in Congress in 1880. (See Chapter XI).

2. That the color of "Straight Whisky," derived from charred barrels, was a true indication of age.

A very large proportion of Kentucky Whisky, (estimated at 50 per cent. or more), has for years been colored in a few days.

3. That the coloring of Whisky by means of caramel is an imitation of charred barrel coloring.

Caramel was used a hundred years, or more, before charred barrels; and there can be no question that the latter were adopted to imitate the color long previously obtained from caramel. (See President Taft's Decision—Chapter VI).

These Kentucky "Straight Whisky" distillers did not, of course, openly announce their purpose. Mr. Sherley had thrown the light

upon their scheme in the House of Representatives,¹ but they kept up their affectation of deep concern for the welfare of the public; so they had the insolence to charge the "Refined Whisky" interests with deception of the people: they said—"Consumers always *expected* to get Fusel Oil, and you have taken their Fusel Oil away from them without their knowledge."

Think of it! Deception charged by the men who had for years assured the public that the Fusel Oil *was removed from their whisky*, but who, since learning that *it is not removed*, have done nothing whatever to undeceive the people!

We promise these gentlemen that *we* will do our best hereafter to repair both omissions, if *it was an omission* to refrain from telling consumers when they were *not* getting Fusel Oil: and *we only hope that these Kentucky distillers will follow our example.*

But for Dr. Wiley's abandonment of his previous views, their scheme would have been stillborn; their impudent and dishonest claims would have been received by the public as mere "clap trap" advertising. Dr. Wiley's position as Chief Administrator of the PURE FOOD LAW, his prestige throughout the country as the supposed champion of Pure Food, and the action he took in pursuance of his newly-adopted theories, made the attempt possible and, at first, partially successful.

We much regret that the membership of this group of distillers was not revealed: but its spokesman was Mr. Edmund W. Taylor, of E. H. Taylor, Jr. & Sons, Frankfort, proprietors of "OLD TAYLOR" whisky, which, it is fair to assume, will satisfy the requirements of consumers who may desire whisky *from which the Fusel Oil is not removed.*

While not a lawyer, and although these distillers were represented by counsel, Mr. Taylor addressed the President at both hearings, and throughout the Official Enquiry examined and cross-examined witnesses and made arguments. The opposing interests acted wholly through their lawyers.

To the keen disappointment of the other side, Mr. Taylor did not offer *himself* as a witness; but we give an interesting colloquy in which he took part.

¹ See page 5.

Addressing the President, Mr. Taylor said: All we are asking for is, that if these gentlemen or their clients are making a product which has all these virtues that they are claiming for it, they put it upon the market *so as to give the consumer a chance to select it in preference to our goods.*¹

Hon. Jos. H. Choate: To end the discussion, would you be content to have *your* whisky branded "Straight" whisky, and blends branded "Blends," and the neutral spirits whisky branded "Refined?"

Mr. Taylor: *My answer would be that I have not the power of Congress.*² Congress has already indicated just how these shall be branded.³

Mr. Choate: That would be your *only* objection?

Mr. Taylor: A "blend" is the mixing of like substances, and a "compound" is a mixing of unlike substances, and an "imitation" is an imitation of something. That would apply to food as well as to drinks.⁴

Mr. Choate: That would be your *only* objection?

Mr. Taylor: *I simply want the law enforced; that is all.*⁵

The same single eye to the sanctity of the law was expressed by Doctor Wiley: though one captiously inclined might suggest some *slight disparity* between protestation and performance, in view of the Doctor's contempt for interpretations of the law by *lawyers*, recorded in Chapter VIII.

Mr. Hough: Am I correct in thinking that you do not think the *great object to be attained* by pure-food legislation would be accomplished by marking those *so that the public could understand* that one was *one kind* of whisky and the other *another kind* of whisky?

Doctor Wiley: *That is all I claim; that one should be marked "spurious," "imitation," or "compound," AS THE LAW REQUIRES IT TO BE.* (See Chapter XII—question 47.)

¹The *whole trouble* was that consumers *had been* selecting REFINED WHISKY in preference to STRAIGHT WHISKY, to such an extent that Doctor Wiley estimated the latter at only 5% of the consumption. That was the whole reason for this controversy.

^{2, 4, 5}The evasiveness of these answers is characteristic of much of the testimony given in Chapters XII and XIII.

³President Taft, who has something of a reputation as a lawyer, did not agree with Mr. Edmund W. Taylor, distiller, who so kindly *explained the law* to the Hon. Joseph H. Choate.

Lofty insistence upon the *letter of the law*, regardless of such petty considerations as *public good* or *private injury*, is usually indulged in by those who expect to escape personal inconvenience, and to benefit at the expense of those less fortunate.

Literature furnishes an example; of which, however, we cannot make use without due apologies to the shade of the Venetian: for, after all, *he* demanded but his legal rights—*he* had his bond. Mr. Edmund W. Taylor and his associates had only their amazing assurance, and their trust in the weight of Dr. Wiley's name.

"The pound of flesh, which I demand of him,
Is dearly bought; 'tis mine and I will have it.

If you deny me, *fie upon your law!*

There is no *force* in the decrees of Venice.

* * * I STAND HERE FOR LAW."

And we hazard the opinion that Mr. Edmund W. Taylor and his clique of "Straight Whisky" distillers will be painfully reminded of the retribution which overtook their prototype, when the *people learn* that the Fusel Oil is *not* removed from *their* whisky.

They wanted no *trade advantage*—these public-spirited gentlemen; *they said so*: the enforcement of the law was their sole desire; *they said so*: therefore, any suggestion of the *monopoly* which *their* interpretation of the law would inevitably create was unwelcome to them, naturally.

Mr. Maxwell: What would be the *result* if that trade designation of WHISKY were to be confined now to so-called "Straight Whisky?"

Mr. Carlisle: *I object to that*. I do not think *that* is a matter that the Solicitor-General wants to consider.

CHAPTER III

Doctor Wiley versus Doctor Wiley

Dr. Wiley's abandonment of his former views involved him in many formidable difficulties, but he boldly faced them all. No self-contradiction appalled him: no argument to meet the emergency of the moment was too fantastic: no statement was too absurd: the modesty which is usually begotten of sudden and radical changes of doctrine did not for a moment deter him from still posing as an oracle: the fate of those who had enormous sums of money invested in what he had for years called the only GOOD Whisky, and now said was not Whisky of any sort, gave him no concern.

Before the Pure Food Law was passed, Dr. Wiley *officially* described Fusel Oil as an *injurious substance*: he *officially* declared that it *must* be removed to make Whisky "*good for consumption*:" he *officially* stated that the Fusel Oil *should not exceed* one-quarter of one per cent.

After the Law was passed, Dr. Wiley insisted that *none* of the Fusel Oil must be removed: he insisted that the removal of *any part of it* destroyed the Whisky: he calmly asserted that what was meant was that the *smell* of Fusel Oil should be removed.

When did a *smell* become a *substance*? When was a *smell* a thing that could be *weighed* or *measured*? How much of a *smell* is one-quarter of one per cent?

Dr. Wiley told the Solicitor-General that most consumers had no idea as to what FUSEL OIL was or where it existed.

But when a member of the Congressional Committee, in 1906, said, "I have always understood that FUSEL OIL was a terrible thing." Dr. Wiley replied, "So have I. I was going to say that I was brought up to believe that FUSEL OIL was a veritable *bete noir*." "It was a thing you ought not to meet in the dark, at least."

The public will, we think, conclude that in the *latter* case the Doctor spoke the truth.

Before the Congressional Committee on the PURE FOOD LAW, Dr. Wiley fully recognized the REFINED WHISKIES, and testified to their excellent quality. He assured the Committee of his sole desire that the different kinds of Whisky should be placed upon an equal footing.

When the Law had been passed, he insisted that there was but one kind of Whisky—the kind made by these Kentucky Fusel-Oil-Whisky interests.

Dr. Wiley said before the Solicitor-General, that REFINED WHISKY had always been known, even in the debates in Congress, as “spurious or imitation Whisky.”

This was absolutely untrue. For complete refutation from the Congressional Records, see Chapter XI.

Dr. Wiley formulated certain chemical “Standards” for Whisky, for the consideration of the Association of Official Chemists and Food Officials, (a body in which he was for a time apparently the guiding spirit). He did not attend the meeting at which these “Standards” were adopted *without change*: but when these identical “Standards” proved embarrassing, Dr. Wiley had the assurance to say that he would have voted against them if present at the meeting. His answers when questioned on the subject before the Solicitor-General are so amazing that we quote them below.

Mr. Hough: You participated in the adoption of the Jamestown standards, did you?

Dr. Wiley: No, sir, I was not in this country.

Mr. Hough: You were a member of the committee?

Dr. Wiley: Yes, but I was absent.

Mr. Hough: You recommended the adoption, did you not?

Dr. Wiley: I did not.

Mr. Hough: You had nothing to do with the adoption of those standards?

Dr. Wiley: *Nothing whatever. Had I been there I should have voted against it.*

Mr. Hough: *The standards which were adopted were those which were originally suggested by your committee—BY YOU?*

Dr. Wiley: *I think they were, yes, sir; but that original suggestion was never meant for adoption. It was merely put out to invite discussion.*

On November 14, 1906, (four months and a half after the passage of the PURE FOOD LAW), Dr. Wiley stated in writing his opinion that a mixture of "Straight Whisky" and "Neutral Spirits" should, under the Law, be labeled as a "Blend." And he called the mixture WHISKY.

He subsequently stated that "Neutral Spirits" is ALCOHOL, and maintained that to add a single drop of Alcohol to Whisky was adulteration which made the article no longer WHISKY.

The PURE FOOD LAW distinctly stipulates that only mixtures of "like substances" may be called "Blends;" consequently, Dr. Wiley regarded "Straight Whisky" and "Neutral Spirits" as "like substances" on November 14, 1906.

A few weeks later he maintained that they were not "like substances."

Dr. Wiley stated before a Congressional Committee in 1904, that Bottled-in-Bond Whiskies, (which are all "Straight Whiskies"), afforded no guarantee of *purity*, but might, on the contrary, be very unwholesome.

Before the Solicitor-General in 1909, he was forced to admit that he had frequently made the statement that the only way the purchaser could be sure of getting *pure* Whisky was by buying Bottled-in-Bond Whisky.

In February, 1906, Dr. Wiley testified before a Congressional Committee, as follows: "Suppose I do not know anything about Whisky, practically, *as I do not*. "I am glad to say. * * * I am not a connoisseur. " * * * My opinion would not be worth anything "because I am not an expert."

A little later, he had a much better opinion of himself; for before the Solicitor-General he stated his qualifications in characteristically modest language, thus:

Dr. Wiley: You can so imitate a Whisky that even the elect would be deceived.

Mr. Hough: Who are the elect?

Dr. Wiley: Well, *I am one of them.*

Mr. Hough: It has been suggested that you name the other.

Dr. Wiley: President Roosevelt.

Dr. Wiley advanced the astounding doctrine that Whisky is a *natural product*, although its manufacture involves the conversion of Barley into Malt, of Grain into Meal, of Starch into Sugar, of Sugar into Alcohol; all by methods invented and controlled by man. His testimony on this point, which is a wonderful contribution to the sum of human knowledge, and too good to be lost, was as follows:

"Mr. Solicitor-General, I would like to say just a word
"on the question of putting Alcohol in Whisky. * * *

"I take it that Whisky is just as much a natural product
"as Honey. Nature does not *make* Honey. The bees
"*manufacture* Honey. * * * Honey is a manufac-
"tured article just as much as Whisky is. Whisky is
"an absolutely *natural* article, *made* by nature and *dis-*
"*tilled* by man. Honey is an absolutely natural article,
"*made* by nature and *gathered* by the bee."

Note the Doctor's beautiful consistency. He says Nature does not *make* honey, and then he says honey *is made* by Nature. He says bees *gather* the honey, and that man *distils* the whisky—not that man *gathers* the whisky. And, according to the Doctor, to *gather* a thing already made is to *manufacture* it, and to *distil* a thing is not to *make* it. We will leave the Doctor to fight it out with himself and the dictionary.

At the investigation by the Solicitor-General, Dr. Wiley declared time and again that the addition of a refined grain spirit to an unrefined grain spirit was an

adulteration of the latter exactly similar to the addition of Oleomargarine to Butter, or of Cotton Seed Oil to Olive Oil.

If the Doctor is correct, the addition of high-grade Butter to low-grade Butter would be an adulteration of the latter *exactly similar* to the addition of Oleomargarine to Butter!

Dr. Wiley said before the Solicitor-General that the color of Whisky kept in a charred barrel "comes by long "age, and *only* long age."

At the same hearing it was conclusively proved that a very large proportion of the Kentucky "Straight Whisky," all of which is stored in charred barrels, is given a deeper color *in a few days* than it would naturally get *in several years*.

And Doctor Wiley had the hardihood to make his inaccurate statement *after* the uncontradicted evidence to the contrary had been given, by witnesses whom he *personally* cross-examined. To call such conduct "sheer recklessness" seems unnecessary forbearance.

Before the Congressional Committee, in 1906, Dr. Wiley said: "I went to Ireland, and I found that Whisky was made there *exactly* as it is in this country in "Kentucky, * * * *in a pot still.*"

Before the Solicitor-General he had to admit that when he made the above-quoted statement he had never been in a Kentucky distillery, and that he was wrong about the pot still.

Dr. Wiley represented to the Solicitor-General that WHISKY could be made *only* from *sound* grain, but NEUTRAL SPIRIT could be made from *rotten* grain; and he deliberately implied that NEUTRAL SPIRIT *was* so made.

Just *one* witness was produced to say that on just *one* occasion he had made NEUTRAL SPIRIT from unsound grain: and counsel for the REFINED WHISKY interest made the same witness admit that he had also known what his party called WHISKY to be made from unsound grain.

The statement about WHISKY we may pass over: it was only one of Dr. Wiley's many wild assertions. But the suggestion regarding NEUTRAL SPIRITS was contemptible. Americans who remember the Spanish-American war do not need to be told that other *rotten* things besides grain may enter into the food supply. But nobody suggested that tinned beef was *always* rotten, or that *all* tinned beef should be outlawed because *some* tinned beef was rotten.

Throughout the Investigation by the Solicitor-General, the Department of Agriculture, of which Dr. Wiley is an official, was represented by its Solicitor, and declared to be impartial, as, of course, it should be.

Nevertheless, Dr. Wiley took a most active part therein. At great length he examined and re-examined the witnesses who favored his position, and at greater length cross-examined the opposing witnesses.

At the close of the case he made an address to the Solicitor-General, and attempted to alarm him, as he had already attempted to alarm the country, by the utterly unwarranted assertion that the whole PURE FOOD LAW would be rendered worthless if his new theories on Whisky were rejected.

Dr. Wiley so eagerly advocated his own theories that he was not, and could not be, impartial in this investigation,¹ as the Department of which he is a servant was declared to be, and, as represented by its Solicitor, certainly was.

He should have been impartial. His value as a public officer depends on his impartiality.

Surely LESLIE'S WEEKLY is right—"It is high time that Dr. Wiley "should be taken at his real rather than his face value."

¹A perusal of his testimony—Chapter XII—will leave no doubt as to the truth of this statement.

CHAPTER IV

Dr. Wiley—"The Autocrat of the Breakfast Table"

This bitter fight, which has cost the nation much money, and innocent manufacturers vastly more, has been carried on with an arrogance and disregard for private interests almost passing description or belief.

Well knowing, before the Act came into force, that several lawyers of repute, and the enormously preponderating section of the Whisky Trade, dissented absolutely from his construction of the Law and his newly-adopted theories on Whisky, Dr. Wiley's clear duty was to get the Law and the Facts authoritatively defined before taking any drastic action. This he was urged to do, but would not.

No proper enquiry, if any, was instituted to ascertain from manufacturers, dealers and consumers what the name WHISKY meant to those who made it, dealt in it, and drank it. (See President Taft's Decision—Chapter VI).

Attorney-General Bonaparte *was* asked for his opinion on the question, "What is Whisky?" which he should *not* have been asked as it is a question of fact; but important questions of Law which had been raised, and which were *proper* questions for his consideration were not laid before him.

Seizures were made, and the owners were put to enormous losses and expenses as the result of Dr. Wiley's fallacious theories, which were acted on without any authoritative decision as to their correctness.

Foreign Whiskies, both SCOTCH and CANADIAN, which had long enjoyed a high reputation and large sale in the United States, were arbitrarily refused passage through the Customs, without warning for no better reason than Dr. Wiley's new doctrines, and while the Court had passed upon the questions involved.

This threatened destruction of valuable businesses was prevented only by the intervention of the Courts.

Although the Law created no Food "Standards," and Congress, as Dr. Wiley was well aware, had refused to pass a clause authorizing any officials to make such "Standards," Dr. Wiley practically *defied* Congress, for he *did* create "Standards" for Whisky, inasmuch as he condemned any Whiskies which did not conform to "Standards" formulated by certain Associations in which he had great influence: which "Standards," by the way, were adopted in gross ignorance of the facts, and upon the recommendation of Committees as incompetent for the work as the man in the moon. (See Chapter XIV).

Dr. Wiley's subordinate Chemists who condemned certain Whiskies, refused to give the results of their analyses to the manufacturers concerned, and they stated that they were acting upon instructions from Washington.

This intolerable situation continued until the inauguration of Mr. Taft, who at once saw the gross injustice of it. His ability as a lawyer, together with his practical knowledge of the Whisky Trade¹, entirely qualified him to settle the whole dispute off-hand. But he took the wiser course of ordering a full enquiry by the Solicitor-General; which completely demouished every one of Dr. Wiley's contentions and, so far as *this* question is concerned, proved him and the chemists who supported him to be the veriest incompetents—as, we are sure, all will agree who read their evidence in Chapters XII and XIII.

¹Mr. Taft had been Collector of Internal Revenue at Cincinnati—long the largest whisky market of the world.

CHAPTER V

Doctor Wiley is "Tried and Found Wanting"

The enquiry by the Solicitor-General occupied nearly three weeks and each side was given ample opportunity for evidence and argument. There was a remarkable difference in the character of evidence offered for and against Dr. Wiley's theories.

Dr. Wiley's views were supported by a lot of Chemists and Pharmacists, including himself, whose sorry exhibition of ignorance, presumption and prejudice is recorded in Chapters XII and XIII: and to whom were three Distillers, who declared that NEUTRAL SPIRITS made potable had never been WHISKY. Unfortunately for them, however, two of these had to confess that *they had sold large quantities of the article under the name which they alleged to be fraudulent*; and the third admitted that *his dead father had done the same thing*.

The witnesses against Dr. Wiley's views were a number of Distillers, Blenders, Rectifiers, Wholesale Liquor Dealers and Licenses Salesmen, of high standing and long experience. Several of them had been in the business *over fifty years*, and the average experience was thirty-four years.

And there were also called, (solely to show the hollowness of Dr. Wiley's pretensions that the question was one of chemistry), Chemists far outranking Dr. Wiley or any of his followers, namely, Professor Charles F. Chandler, the Dean of the profession in the United States; Mr. Philip Schidrowitz, one of the leading Chemists of England; with Dr. F. L. Dunlap, Chemist of the Department of Agriculture, and Prof. S. P. Sadtler, of Philadelphia. If the testimony of Dr. Wiley and the "scientific" gentlemen who supported him should fail to convince any reader of their utter incapacity to decide WHAT IS WHISKY, even if it *were* a question of chemistry, we direct his attention to the opinions of opposing chemists—Chapter XV.

ALL THE WILEY CLAIMS DISPROVED

Dr. Wiley claimed—That the only genuine WHISKY contains *all* the FUSEL OIL of the original distillate, and that is the so-called "Straight Whisky."

It was proved—

That it was represented to Congress in 1880 *on behalf of the Kentucky "Straight Whisky" interest itself*, that the removal of FUSEL OIL was *absolutely essential*.¹

That the "Straight Whisky" Distillers always believed and *claimed*, until some three or four years ago, that the FUSEL OIL was eliminated from their product by ageing in charred barrels: but, on the contrary, only the obnoxious odor of the FUSEL OIL is so removed.²

That by almost every known process of making WHISKY, ancient or modern, *some* portion of the FUSEL OIL in the original distillate has been removed by *some* form of "rectification."

That manufacturers of WHISKY generally have always endeavoured to remove a *large* proportion of the FUSEL OIL, and that the tendency has been steadily in that direction.³

That "Straight Whisky" was unknown until some fifty years ago⁴: previous to which the *only* WHISKY made in America was made by rectification and redistillation.

That the WHISKY which preceded "Straight Whisky" was practically *identical* with what is now referred to as "Neutral Spirit Whisky," the only difference being that the latter is a trifle more pure.

*Dr. Wiley claimed—*That the liquor made by diluting NEUTRAL SPIRIT, (so called because of its freedom from FUSEL OIL), had never been regarded as WHISKY by Distillers and Dealers.

It was proved—

That it *had* been so regarded *always*, and so recognized in the largest Whisky market of the world.

That it *had been* recognized by the Kentucky "Straight Whisky" interest itself, in the most *emphatic* and *public* manner possible, as far back as 1880. (See Chapter XI).

¹See Chapter XI.

^{2, 3, 4}See President Taft's Decision—Chapter VI.

Dr. Wiley claimed—That the sale of diluted NEUTRAL SPIRIT under the name of WHISKY had been a fraud on consumers, who, he alleged, bought it believing it to be his "Natural Whisky"¹ full of FUSEL OIL.

BUT NOT EVEN ONE SOLITARY CONSUMER WAS PRODUCED TO SUPPORT THIS PREPOSTEROUS CLAIM. SURELY, THEY SHOULD HAVE HAD ONE, AT LEAST, IF THEY KNEW WHERE TO FIND HIM.

Dr. Wiley claimed—That WHISKY and NEUTRAL SPIRIT are not "like substances;" but that all "Straight Whiskies" are "like substances."

It was proved—

That, when new and of equal alcoholic strength, the chemical differences between all grain spirits are solely in the quantity of FUSEL OIL.

That "Straight Whiskies" differ from one another in this respect much more widely than many "Straight Whiskies" differ from "Neutral Spirit."

Dr. Wiley claimed—That there is a definite "Whisky flavor."

It was proved—

That there is no such thing as a "Whisky flavor" which is common to all Whiskies.

That some Whiskies are more like Brandy than like some other Whiskies.

It was shown that a sample of American "Straight" Whisky submitted to the English Royal Commission On Whisky was not recognized as WHISKY by any member of that body.

Dr. Wiley claimed—That WHISKY must have what is now the flavor of FUSEL OIL.

It was proved—

That such a proposition was utterly opposed to all the written history of the Whisky Trade, running back to the seventeenth century.

¹See page 21.

That such a proposition had never previously been heard of by the witnesses who had been in the business fifty years or more.

That the only *new* Whisky which is drinkable is that which is *free from Fusel Oil*.

That the *characteristic and preponderating* flavor of "Straight Whisky," *when fit for consumption*, is derived from the charred barrels in which it is aged, and is *entirely different* from its *original* flavor.

Dr. Wiley claimed—That WHISKY is a *natural product*; wherefore, to take anything from it, however nasty or injurious, or to add anything, however pleasant and harmless, is adulteration.

It was not necessary to prove—

That WHISKY is *not* a natural product, because the claim was too absurd, and the Solicitor-General summarily disposed of it.

Dr. Wiley claimed—That unless a *grain* spirit, when *new*, can be identified as a *grain* spirit by taste or smell, it is as much BRANDY or RUM as it is WHISKY.

It was proved—

That the name WHISKY implies *only origin*, not flavor or any other characteristic except alcoholic character.

That the "Straight Whisky" people, whose interest this claim would advance, are the people who most completely "swamp" the original flavor of their spirit.

Dr. Wiley claimed—That the color given to WHISKY by charred barrels is a true indication of age.¹

It was proved—

That a very large proportion of the "Straight Whiskies" made in Kentucky are rapidly colored, by heating the WHISKY so that it extracts more color in a *few days* than it would naturally get in *several years*.

Dr. Wiley claimed—That the color given to WHISKY by the addition of Caramel, (harmless burnt sugar), is an imitation of the charred barrel color, and a deception of the public.

¹See page 22.

It was proved—

That Caramel was used a hundred years or more before charred barrels: wherefore, charred barrel coloring was really an imitation of Caramel coloring.¹

That Caramel coloring is still extensively used in the United States: that it is used in Great Britain, where charred barrels are unknown: that it is the coloring exclusively used for Brandy in France.

¹President Taft's Decision—Chapter VI.

CHAPTER VI

President Taft's Decision

Upon what he described as the "overwhelming" evidence, (and it was truly overwhelming), President Taft decided wholly and completely against Dr. Wiley's claims.

The President could have done nothing else. The evidence only confirmed what he already knew from his experience years ago as Collector of Internal Revenue in the great Whisky centre of the United States: and his decision accords absolutely with the conclusions of the English ROYAL COMMISSION ON WHISKY, a body of eminent scientific and practical men, presided over by Lord James of Hereford, one of the greatest Jurists of the day.

President Taft did much more than terminate an intolerable injustice: he saved the people of the United States from a monopoly in favor of THE WHISKY WHICH IS THE LEAST PURE, as it is also THE LEAST POPULAR.

Yet, the President has been roundly abused by a multitude of newspapers, upon no better ground than that he has reversed what it suits certain people to call the "ROOSEVELT-BONAPARTE-WILEY WHISKY DECISION."

That is a misnomer. It was purely "The Wiley 1907 Decision." Dr. Wiley persuaded Mr. Bonaparte that Dr. Wiley knew all about Whisky: Mr. Bonaparte wrote an opinion based upon a wrong statement of facts: and as he was the Attorney-General, Mr. Roosevelt accepted it.

What the papers and the people ought to understand is, that the so-called "Roosevelt-Bonaparte-Wiley Decision" of 1907 *reversed the Wiley Decision of 1906 and earlier years.*

Had the question arisen in 1906, President Taft would never have been troubled with it, *for Dr. Wiley's position in that year was precisely what President Taft's Decision establishes.*

President Taft has, fortunately, insured the public against the perils of Dr. Wiley's too impressionable mind.

It is a singular thing, that the great Whisky Controversy which has raged on both sides of the Atlantic during the past four years, was started in each case by a Chemist—Dr. Wiley, on this side; Dr. Teed, on the other. And both have been shown to be utterly wrong.

EXTRACTS FROM THE PRESIDENT'S DECISION

"In Internal Revenue Order No. 723 (April, 1907) directions were given as to how certain distilled spirits should be branded. The effect of this order was to deny the right to the use of the brand WHISKY to any distilled liquor except that which is known to the trade as STRAIGHT WHISKY. * * *

"The Pure Food Act does not mention the term WHISKY; it does not authorize any officers to fix a standard in respect to any article of food or liquor. * * *

"Attorney-General Bonaparte was asked to pass upon the question of what properly might be included under the brand of WHISKY * * * he had not the benefit of any *evidence* as to the meaning or scope of the term, *acquired from manufacturers, dealers or consumers in the trade.*

"Internal Revenue Order 723 was founded on Mr. Bonaparte's opinions.

"A petition was filed * * * asking that the issue passed upon by Mr. Bonaparte * * * be reheard, on the ground that the meaning of the term WHISKY *is one of fact*, and is to be properly determined only after consideration of *competent evidence drawn from those familiar with the trade in which liquors are manufactured and sold.*

"The rehearing was granted, and the matter was referred to Hon. Lloyd Bowers, Solicitor-General * * *

"A very full hearing was had before the Solicitor-General * * * He found from the evidence that WHISKY, as a term of the trade for many years, included *much more* than STRAIGHT WHISKY; that it included RECTIFIED WHISKY, REDISTILLED WHISKY * * *

"Because of the importance of the case, I have thought it necessary to read with care the entire evidence adduced * * *

"WHISKY, for more than one hundred years, has been the most *general and comprehensive* term applied to liquor distilled from grain * * * Its flavor and color have varied with the changes in the process of its manufacture in the United States. Ireland, Scot-

land and England * * * The efforts of those engaged in the manufacture were directed toward the reduction of the amount of FUSEL OIL in the product. * * * This was effected for a great many years by passing the distilled spirit through leaching tubs of charcoal * * * and subsequently, rectification was followed by another step— i. e. redistillation. * * *

“Though there was some American *white* Whisky, the *conventional* amber or brown color * * * was that produced by a mixture of the raw Whisky, with its FUSEL OIL reduced as much as possible, and of *burnt sugar or caramel*.

“Some time during the Civil War, it was discovered that if *raw* Whisky as it came from the still, *unrectified and without redistillation*, * * * was kept in oak barrels, the inside of the staves of which were charred, the tannic acid of the charred oak which found its way from the wood into the distilled spirits *would color the raw white Whisky to the conventional color of American Whisky* * * * The Whisky thus made * * * came to be known as STRAIGHT WHISKY. * * *

“It was supposed for a long time that by the ageing of STRAIGHT WHISKY in the charred wood a chemical change took place which rid the liquor of FUSEL OIL * * * It *now* appears by chemical analysis that *this is untrue*; that the effect of the ageing is *only* to dissipate the *odor*, and to modify the raw, unpleasant flavor, *but to leave the FUSEL OIL still in the STRAIGHT WHISKY* * * *

“After an examination of all the evidence, it seems to me overwhelmingly established that for a hundred years the term WHISKY, in the trade and among the customers, has included *all potable liquor distilled from grain*. * * *

“Exactly the same question has arisen in England, and has been determined by a Royal Commission of eminent lawyers and scientific men in the same way * * *

“The use of burnt sugar to color and flavor spirits as Whisky is *much older* than the coloring and flavoring by the tannin of the charred oak.”

CHAPTER VII

Attorney-General Wickersham Sustains the Interpretation of the Law which We Submitted to Doctor Wiley Four Years Before

(Extracts from Opinion to the Hon. the Secretary of Agriculture.)

"CANADIAN CLUB WHISKY is, y^e say, entirely 'a mixture of grain distillates, duly aged *after* mixing, without *further* admixture.' It is therefore, *a mixture of two whiskies*, as, under the President's decision, the term WHISKY in the trade and among customers includes *all potable liquor distilled from grain.* * * *

"'CANADIAN CLUB WHISKY' is a trade or arbitrary name which clearly distinguishes the particular mixture of whiskies so designated from any other whisky or mixture of whiskies.

"This distinctive name, 'CANADIAN CLUB WHISKY,' is not one representing any *single constituent* of the mixture, because the word WHISKY applies to *both* of the component elements of the mixture, and to *each* of them.

"The name 'CANADIAN CLUB WHISKY' does not misrepresent any property or quality of the mixture, because, within the President's definition, *each of the elements* of the mixture is WHISKY, and the *resultant mixture* is WHISKY.

"The name, 'CANADIAN CLUB WHISKY' gives no false indication of the origin, character, or place of manufacture. * * *

"The brief of the Solicitor of the Department of Agriculture contends that the Distinctive Name under which a mixture or compound may be sold must, in its entirety, be purely arbitrary or fanciful, and must not contain the name of the component elements of the compound. *A mixture of wheat and barley, he concedes, might be sold as 'FORCE' or 'VITA,' without stating of what elements it was composed, but a mixture of two kinds of barley could not be sold as 'MELROSE BARLEY' without stating that it was 'a blend of barleys.'*

"*It seems to me that such a construction of the term 'Distinctive Name' is not only unwarranted, but undesirable.*"

THE ABOVE ABSOLUTELY ACCORDS WITH THE OPINIONS OF OUR LAWYERS, WHICH WERE PLACED IN DOCTOR WILEY'S HANDS *before* THE PURE FOOD LAW CAME INTO EFFECT, BUT WHICH *he* DID NOT CONSIDER IT NECESSARY TO SUBMIT TO THE *legal* ADVISER OF THE GOVERNMENT—THE CONSEQUENCE BEING THAT WE WERE FOR NEARLY FOUR YEARS MOST UNJUSTLY PLACED IN THE PREJUDICIAL POSITION OF *presumed* LAW-BREAKERS, WITH EXPENSE AND LOSS RUNNING INTO HUNDREDS OF THOUSANDS OF DOLLARS.

NOTE.

We always denied that CANADIAN CLUB was a "mixture" in the eyes of the law; and it was *assumed* to be so *only* for the purposes of the argument before the Attorney-General—our contention being that, even if CANADIAN CLUB *was* a "mixture" within the meaning of the Pure Food Law, its *Distinctive Name* was all the description required.

Whisky plus Whisky cannot be anything but WHISKY: and if *it* must be sold as a "mixture," nothing is more sure than that the combined milk of two or more cows, the combined wheat of two or more farms, the combined coffee of two or more plantations, must also be sold as "mixtures."¹

Congress cannot be presumed to have attempted the impossible—to say nothing of what would be utterly senseless.

When it can be said that *any possible good* could result from calling combinations of milk, wheat and coffee "mixtures," it may be claimed that Congress intended combinations of Whisky to be called "mixtures:" *but it would still remain to be shown how effect could be given to that intention.*

¹See page 45—first paragraph.

CHAPTER VIII

The Attempt to Oust "Canadian Club Whisky" from the United States

At the World's Columbian Exposition in 1893, Doctor Wiley was the analyst of Whiskies. He reported CANADIAN CLUB WHISKY to be

"pure and fully up to the examination required" and, by authority of Congress, it received an award for "fine aroma, very pleasant taste, thorough maturity, "purity and absence of alien matter."

This whisky has always been made with an eye to uniform flavor with the *minimum* of fusel oil.

We retain certain of the grain flavors, and there is no method known to distillers by which these can be got without at least a small amount of fusel oil.

It follows, that the total elimination of fusel oil means also the total elimination of grain flavors.

A distillate practically free from both, (and consequently known by the technical name of NEUTRAL SPIRIT), can be produced with practically absolute uniformity; *but a distillate having grain flavor never runs uniform.*

Therefore, we pursue the *only* course by which the *most* uniform product can be got: we make two distillates of opposite character—one, having the grain flavors and a very small amount of fusel oil; another, having practically neither.

When these two distillates are combined in such proportions as give the desired flavor, the small amount of fusel oil in the one is so distributed that it becomes a negligible quantity: the mixture is reduced to the proper strength with water, and put away in oak casks to mature for at least five years.

When matured, *and not before*, it is CANADIAN CLUB WHISKY as known in the market, for we have never sold a barrel of it until thoroughly aged and ready for consumption.

CANADIAN CLUB WHISKY was introduced into the United States some twenty-five years ago, in the face of great tariff obstacles, which have continued to this day.¹

By sheer merit it slowly, but steadily, made headway, until about fifteen years ago it had become so extremely popular that the market was flooded with imitations of its label, owing to which our trade dropped thirty per cent in a single year.

There was then no PURE FOOD LAW to protect us; and the Courts were too slow and too lenient to intimidate the rascals who were selling a new, and therefore cheap, Whisky at the price of a fine, old, and therefore expensive, Whisky which had paid a heavy tax for the privilege of entering the country.

For several years, and at enormous cost, we fought this piracy single-handed, and at last suppressed the worst of it: but it was not entirely destroyed, and we were able to keep it down only by constantly maintaining an expensive detective system.

Naturally, then, we hailed the PURE FOOD LAW as a blessing, little suspecting that what was intended by Congress as a protection for honest manufacturers as well as for the public, would at once be made the pretext for an invasion of our rights and an attack upon our reputation, more damaging and more difficult to meet than the work of the thieves we had previously encountered.

The "Fake" Whisky fellows simply stole our trade. The success of the attempt to pervert the Pure Food Law would have destroyed both our trade and our good name.

THE INSIDIOUS ATTACK

The PURE FOOD LAW was passed June 30, 1906, to become effective January 1, 1907.

In November, 1906, while we were pleasantly anticipating the reformations intended by the excellent PURE FOOD LAW, we heard the first rumours of Dr. Wiley's extraordinary change of views, and what it was suspected he purposed doing.

The thing seemed unbelievable; but one of our Directors went to Washington to investigate, and in Dr. Wiley's absence, had an interview with his Deputy, Dr. Bigelow, which confirmed what we had

¹A bottle of Canadian Club Whisky pays the American Government, at present, 48 $\frac{1}{4}$ cents: under the previous tariff it paid 42 cents. Its equivalent in American Whisky pays now, as before, only 18 cents.

been told. Dr. Bigelow was shown a very strong opinion by Mr. Alfred Lucking, our Detroit lawyer, to the effect that the law required no change whatever in our label: but Dr. Bigelow seemed to care nothing about a mere Lawyer's interpretation of the law.

Thinking that there might be lawyers whose opinions the Official Chemists *would* respect, or that would at least cause them to pause before pursuing a high-handed course, we obtained an opinion from the Hon. Joseph H. Choate, which reviewed the entire Act, clause by clause, and emphatically confirmed the conclusions of Mr. Lucking.

Mr. Choate's opinion was promptly placed in Dr. Wiley's hands; but it made no more impression upon *that* autocratic gentleman than Mr. Lucking's opinion had made upon Dr. Bigelow.

Then followed a correspondence with Dr. Wiley and his Department. We argued the disputed points from the practical standpoint, based upon our life-long and world-wide knowledge of the Whisky Trade, and urged that articles and reputations which had never before been questioned anywhere in the world, should not be hastily impeached before the PURE FOOD LAW had been *judicially* interpreted.

No attempt was made to meet our arguments; but we were repeatedly assured that there was no desire to injure any legitimate interest. *What these assurances were worth will appear from what follows.*

About April 1, 1908, without a *word* of warning; without any *reply* to our arguments; without any *trial* before Judge or Jury; without even a *hearing* by the officials administering the PURE FOOD LAW; and, most unbelievable of all, without our being *requested* to change the labelling of our Whisky in *any* particular—and, therefore, without any refusal or failure *on our part*: "Canadian Club Whisky" *was peremptorily refused admission into the United States.*

Pending a hearing at Washington, we asked to be allowed to take in from day to day enough Whisky to fill our normal orders, pledging ourselves not to stimulate sales in any way in the meantime. This was refused. *To save our American trade from prompt extinction,* we appealed to the Courts, which granted us a temporary injunction.

That resulted in our being promised all we had ever asked for, namely, that the United States Courts should decide whether we were offending against United States Laws.

The way to bring the case before the Courts was to make a seizure of "Canadian Club."

Inasmuch as the Whisky is the same always and everywhere, the seizure of a *single bottle* would have been enough.

Inasmuch as the Government of the United States is everywhere in the United States, and seeing that our American headquarters are in Detroit, close to our Canadian headquarters, we might have expected that the seizure would be made there, and *only* there. Inasmuch as it cannot be supposed that Congress intended that the *same* question as to the *same* article should be tried in several places at once, much less that it intended *persecution before trial*, we did not expect duplicate seizures all over the country.

But practically concurrent seizures *were* made in New York, Newark, Philadelphia, Pittsburg, Jacksonville, Milwaukee, St. Paul and Minneapolis, in such lots as could be found, totalling 493 cases; and in Detroit 5405 cases were seized in one lot: making in all 5898 cases, on which we had paid the United States Customs close to \$31,000 in duties.

If *one* seizure had been made in Washington *only*, it might have been defended on the ground that the seat of government was most convenient for the officials concerned: but what was done was surely not justifiable or reasonable on any ground of protecting the public interests.

As was to be expected, these large and wide-spread seizures injured us very seriously. The average man does not suppose that the Government makes wholesale seizures of well-known goods, unless there is something unquestionably and radically wrong. That it simply indicated a question raised by an official, (even so great a one as Dr. Wiley), no ordinary man would believe for a moment.

Some months later, it apparently occurred to someone that the enormous seizure in Detroit would be regarded by the Courts with disfavor, and 5300 cases were released. This was the position of affairs until President Taft's decision was rendered in December, 1909. (See Chapter VI.)

That decision should have ended everything, so far as we were concerned; but it did not.

Someone set up the contention that "Canadian Club" was a *Blended Whisky*, and was required under the Law to be so described.

We objected, for two reasons: Firstly, "Canadian Club" was never what is called "Blended Whisky" anywhere in the world¹: therefore, although the name is, in itself, irreproachable, for many of the very finest Whiskies are "Blends," we naturally declined to misbrand our product. Secondly, we were not willing that anyone should be able to insinuate that a PURE FOOD LAW had compelled us to change our label. And that there were those who would so insinuate, we had the best of reason for believing, from the fact that certain unknown parties had flooded the country with anonymous notices to dealers that they incurred great danger of prosecution if they carried our Whisky in stock.

Thus, after another ten months' waiting, with further heavy loss and expense to us, the interpretation of the Law by Attorney-General Wickersham made our vindication complete;² the seizures were released; and CANADIAN CLUB stands to-day unchallenged and unchallengeable as having always been a PURE WHISKY TRUTHFULLY LABELLED.

We trust we have not wearied our readers by this personal narrative: and we feel sure that every fair-minded American will agree with us that it is a story of almost unimaginable outrage.

Our last word as to our private interests, however, is that we do not in the least reflect upon the Government itself. We know that for what we and so many other innocent persons have suffered, Dr. Wiley's instability of mind and autocratic methods are solely to blame.

¹"Blended Whisky" has never meant a mixture of the distillates of the *one* distiller, put together by himself before ageing—which describes *Canadian Club Whisky*. (See earlier part of this chapter.)

²See Chapter VII.

CHAPTER IX

The Language of Distilling

(*Note.*—This refers to *grain* distilling only: it being agreed that WHISKY must be produced from grain.)

Distillers, like most manufacturers, use names which the public do not use, particularly for articles only partially manufactured. The public are interested only in the names given to articles ready for use.

The names used for *unfinished* grain distillates are:

HIGH WINES—raw, unpurified, unpotable spirits, of no fixed strength, except that they are *not* below "proof."¹

LOW WINES—raw, unpurified, unpotable spirits, of no fixed strength, except that they *are* below "proof."

The names used for *finished* grain distillates are:

ALCOHOL—spirits of very high strength, but no fixed purity: produced by re-distilling HIGH WINES to higher strength.

NEUTRAL SPIRIT—spirits of very high strength and purity: produced by re-distilling HIGH WINES to both higher strength and purity. (Also called COLOGNE SPIRIT, SILENT SPIRIT and VELVET SPIRIT: and formerly TRENCH SPIRIT.)

WHISKY—spirits as a beverage, about half the strength of ALCOHOL, but of no fixed purity: produced by diluting either ALCOHOL, HIGH WINES or NEUTRAL SPIRIT by the addition of water.

The only difference between HIGH WINES and WHISKY, or ALCOHOL and WHISKY, or NEUTRAL SPIRIT and WHISKY, is water. In other words, *any* GRAIN SPIRIT OF PROPER STRENGTH FOR *drinking* is *Whisky*.²

The only *chemical* difference between original Whiskies, (before color or flavor has been added, or extracted from the cask), is in

¹"Proof," by the Standard in use in the United States, is equal parts of Alcohol and water.

²See President Taft's Decision—Chapter VI.

the proportions of Alcohol, Water and Fusel Oil; i. e. the degree of strength and purity.

The difference between *WHISKY when first made* and *WHISKY as known to the public*, lies in color, or flavor, or both, added to it, or extracted by it from the cask.¹

In former days distillers made no *WHISKY*. All the whisky was made by "Rectifiers," who bought their raw material from the distillers. An editorial in the *Cincinnati Times-Chronicle* of April 12, 1872, contained the following:

"Before the war, a distiller never dreamed of selling his
"raw material save to the rectifier."

That raw material was *High Wines*, which the "Rectifiers" subjected to such purification as they saw fit, by varying methods, and colored, or colored and flavored, to meet the public taste.

By improved apparatus, the distiller was able later to purify his *High Wines*. The fine spirit thus produced was given the name of *NEUTRAL SPIRIT*, and was practically identical with the fine spirit formerly produced by "Rectifiers" for making *WHISKY*.

Therefore, the *Whisky* made for the last forty years or so from *Neutral Spirit* was not a new departure in character, but only in process: it is really the most ancient style of *Whisky* made in America.

"*Straight Whisky*," on the contrary, was a distinctly *new type* of *Whisky*, and is of comparatively recent origin. It is unpurified *High Wines*, diluted and aged in a charred barrel.²

"*Blended Whisky*," as always understood in the United States, is a mixture of the two *Whiskies* above mentioned, in such proportions as the Blender chooses, but the "*Straight Whisky*" *always already fully aged*, and the "*Refined Whisky*" *new*.

Before the passage of the *PURE FOOD LAW*, *Whiskies* were rarely branded either "*Straight*" or "*Blended*." The Law does not *now* require that they *shall* be so branded.

"*Straight Whisky*" has never been largely popular in the United States, except in limited localities. Dr. Wiley estimates that in the country at large it is but five per cent of the consumption.

1. See President Taft's Decision—Chapter VI.

The *only* names used by, or known to, the general public are:
WHISKY— which they buy to drink.

ALCOHOL—which they buy to burn, for bathing invalids, for numerous other purposes; but never to drink.

Just as the general public know that CHEESE is made from milk, but not that it is made from the curds without the whey, so do they know that WHISKY is made from grain, but not that *before it becomes WHISKY* it is some form of SPIRIT which distillers call by another name.

Concerning Flavor.

As far back as the history of WHISKY goes, added flavorings have been extensively used. They have varied from spices and other aromatics long ago in Ireland, to burnt peaches, dried apples, and many other things, in Kentucky and elsewhere. But when nothing is added, WHISKY aged in casks, whether charred or uncharred, acquires some flavor as well as color from the wood.

It follows that there is no definite "Whisky Flavor." Indeed, some Whiskies are more like Brandy than like other Whiskies.

Concerning Fusel Oil.

Fusel Oil is the name by which all the impurities of Grain Spirits have been universally known for a very long time. It is an evil-smelling, evil-tasting substance, which consumers have generally regarded as a rank poison, to be carefully avoided.

Manufacturers of *Whisky* have always recognized the popular aversion to *Fusel Oil*, and have always aimed at its practical elimination before the *Whisky* went into consumption.¹

Of late the word "Congeners" has been much substituted for "Fusel Oil." The *new name* is Doctor Wiley's invention: and it is surmised that he adopted it with his *new theories*—as an alias by which a thing in bad repute might escape public recognition.

Many manufacturers have practically eliminated the *Fusel Oil* by mechanical means, and before ageing the whisky. Others have relied upon ageing in charred barrels: which was long *thought* to be effective, but is now *known* to be useless.²

¹ See President Taft's Decision—Chapter VI.

CHAPTER X

The Pure Food Law—Its Objects and Requirements

Its objects are: "To preserve the health of the people; to "prevent their being deceived by label or brand."—(President Taft). "The primary purpose is to protect against fraud."—(Attorney-General Bonaparte).

It does not say that articles *must be* branded or labelled in some way, but only that they must *not be falsely* branded or labelled.

It does not say to what extent brands or labels shall be descriptive: consequently, if any one of the many kinds of Cheese is branded simply CHEESE, the law is satisfied.

It neither establishes nor refers to any FOOD STANDARDS.

President Taft says: "It does not authorize any officers to fix a STANDARD in respect to *any* article of food."

It gives no officials, (chemists or others), power to *decide* what is illegal. It provides that when chemists *consider* an article to be adulterated or misbranded, the party interested shall be entitled to a hearing by the Secretary of Agriculture. If, after that, the article is *still* considered to be adulterated or misbranded, the proper District Attorney shall take action *in the Courts* to determine the question.

As the means of bringing the article before the courts, a "seizure" of it is to be made. It is obvious that a *single* "seizure" of the same article, and of a *single* package of it, is sufficient; as it would be absurd to suppose that Congress intended there should be *numerous* suits in *numerous* courts at the *one* time on the *one* question.

It does not suggest the changing of old names. It is obvious that to deceive the public by the improper use of a name, it must be a name which they *already know*.

The Law embraces Liquors under the head of FOODS.

The Act does not once mention WHISKY. Its provisions apply generally, and to one food equally with any other. Therefore, it requires in regard to WHISKY no more and no less than in regard to BUTTER, or SUGAR, or COFFEE, or TEA.

The interpretation of the Act is a matter for Lawyers. A judge always *instructs* a jury as to what the law is: they never decide *that*.

The proper name for any Food is a question of fact, to be decided by evidence. A Judge always leaves the Jury to decide what the facts are. The question is—"What article and what name go together in the minds of the public?"

CHAPTER XI

Congressional Debate on Whisky

HIGHLY-REFINED WHISKY, TECHNICALLY KNOWN AS "CONTINUOUS WHISKY," BEING THE WHISKY MADE FROM "NEUTRAL SPIRIT," RECOGNIZED AS "WHISKY" BY CONGRESS AND BY THE KENTUCKY "STRAIGHT WHISKY" DISTILLERS, MORE THAN THIRTY YEARS AGO.

The Kentucky "Straight Whisky" interest, taking their cue from Dr. Wiley's new doctrines, contended that the *only* spirit entitled to be called WHISKY, is the spirit which *contains all the Fusel Oil*.

They declared that the spirit free from Fusel Oil, which has long been sold in enormous quantities as WHISKY, was a *mere imitation*: that not even its *makers* regarded it as *real* WHISKY: that the public had accepted it under the belief that it contained the Fusel Oil, and would have refused it had they known otherwise.

Speaking of this "Refined Whisky," before the Solicitor-General Dr. Wiley said:

"It has always been known, from the earliest times in this country, *in the earliest debates in Congress*, as far back as 1860, as *spurious or imitation whisky*."

Their cardinal contention, and every allegation above-mentioned, is torn to rags by the Congressional Record.

In 1880, Mr. J. G. Carlisle, then a member of the House of Representatives, introduced a Bill for the relief of "Straight Whisky" distillers, which was passed and has been known as the "Carlisle Bill."

The following extracts from the debate thereon show that the claims to have the Bill passed were based upon the argument that "Continuous Whisky," (the name then given to the most refined Whisky), had advantages over the "Straight Whisky."

Yet this same Mr. Carlisle was counsel for these Kentucky "Straight Whisky" distillers in this controversy, and he took the ground that "Continuous Whisky" had never really been entitled to the name WHISKY.

Mr. Garfield: In order to enable the gentlemen who have not paid special attention to this to vote intelligently, they ought to know that *there are two kinds of Whisky produced. Much the larger part of all the Whisky produced in the world is now made and rectified by what is called the "process of continuous distillation"*—that is, after the Whisky is manufactured from the *first* process of distillation, it is put through a rectifying process by *mechanical* means, so that when it is finished and brought out from that process, it is as perfect as it will ever be, and may be called "the Whisky produced by the process of continuous distillation *until it is perfectly rectified.*" When *that* Whisky is manufactured, *the last step in the process is ended.*

It is said in the course of the manufacture of *that* Whisky, in the course of its rectification, about five per cent is wasted. That is, *in extracting the fusel oil and other deleterious elements*, about five per cent of the actual bulk of the distilled Whisky is taken away, *leaving the finished article for the trade.*

There is another class of Whisky produced, known by the various names of "Bourbon Whisky," "Family Whiskies," "Table Whiskies;" but, *by whatever name known*, it is a Whisky that does not pass through this process of a special continuous distillation, *so as to become pure and perfect* at the time of its first manufacture. *But it is carried up to a certain stage and stopped*, and at that time it is unfit for use; it needs from two to three years of time to ripen. But by simply lying in casks the natural process of purification brings that Whisky up at the end of three years to a very high degree of perfection. *It has done for it by time what the other has done for it by mechanical appliances.*

They say that this manufacturer who has to wait three years *for time to rectify and purify his whisky* ought not to be taxed on the 15 per cent, or 10 per cent, or whatever it is that nature

does for him in the way of purifying, any more than the other on the 5 per cent *that the machinery does in the way of purifying.*

Mr. Barber: How does the gentleman reconcile the inconsistency involved in the levying of the tax on the distilled spirit in its *perfected form*, and the levying of the tax upon the other Whiskies in an *unperfected form*?

Mr. Willis: The force of these suggestions, Mr. Chairman, is fully recognized by the Rectifiers themselves. They make no resistance to this bill. On the contrary, they admit that it is just in all its provisions and urge its passage. I hold in my hand a petition which I find on my desk. This petition is from Rectifiers, Wholesale Liquor Dealers, as well as Distillers, and calls attention to the law and respectfully asks for action. *If the sharp rivalry of business, nowhere more prompt or active than in this line of business, has been laid aside before the sense of right, and all these conflicting interests agree upon this bill, is it not in evidence that there is no just complaint that can be made against it?*

Mr. Butterworth: There is the same reason for taxing the fusel oils and foreign substances in one kind of Whisky as in another. How is it with the "Bourbon" distillers? When *their product comes from the still it is only in the process of manufacture; it is not then completed; it is never used in that condition, and we all know it. It still contains the fusel oil and other elements which are poisons as deadly as prussic acid.* What I insist upon as justice to them is that *until their product is completely manufactured* the tax shall not attach to it.

What else do you propose? You say to one class of distillers that they shall not be assessed except upon their finished product. Formerly, as our friend from Kentucky (Mr. Carlisle) knows, this redistillation was never allowed in distilleries. Distillers had to turn out their *raw* product and pay tax upon it. Now, by the law they are permitted to *redistill* their product, and they are enabled by the practice of redistillation to *remove* from the spirit *the fusel oil* and foreign and hurtful substances which the "Bourbon" distillers *can remove from their spirit only by permitting it to ripen by age,*¹ and they—that is those who redistill—pay the tax on the balance—that is, the *fin-*

¹This does not mean that these distillers were *not at liberty* to refine in the same way as the others, but only that they *chose* to adopt another method.

ished article. Now, how is it with men engaged in the *other* branch of this industry. When *their* spirit in process of manufacture runs from the still it is utterly unfit for use. The poisonous oils and other deleterious elements *must be first expelled*. It contains then all the hurtful oils which *must be expelled* or separated from it *by some process*. And the only process by which they *can be* expelled from *this particular* article is by ripening. When the *manufacture* of *this* article is *completed*, then the revenue tax should attach to it, and not until then.

The "Bourbon" distillers have been freighted down, simply because you have discriminated against them.¹ All I ask is that they be put upon the same plane with others *in the same line of business*. It does not rob the revenue; it is equal and exact justice between *different branches of this industry*.

This debate, in the nation's forum, thirty years ago, reduces to shreds every contention of Doctor Wiley and the Kentucky "Straight Whisky" people. And the situation was not then presented by the "Straight Whisky" advocates as something *new*, but as a condition *well-established and well-understood*.

The very axioms and postulates of the Bill for the relief of the "Straight Whisky" distillers were:—

- A. That the "continuous" distillate, (the purest spirit that could be made), *was* WHISKY from the moment it left the still.
- B. That the distillate made by the "Straight Whisky" distillers *was not* WHISKY in the commercial sense until long after it left the still.
- C. That the difference between the two was the *fusel oil*, and other possible impurities which were unnamed.
- D. That the fusel oil *must be* removed by *some* process in order to make commercial WHISKY.
- E. That the fusel oil could be removed from "Straight Whisky" *only by age*.
- F. That the removal effected by *mechanical means* in the one case was *precisely* the same as the removal effected by *age* in the other case.

¹This does not mean that these distillers were *not at liberty* to refine in the same way as the others, but only that they *chose* to adopt another method.

- G. That WHISKY was considered "pure and perfect" *only* when the fusel oil had been removed.
- H. That it was unfair to tax the impurities which must be removed before the article could be fit for use.

Yet, *in the face of this record*, these "Straight Whisky" people in 1909 had the amazing effrontery to assert that the "Refined Whisky"—the "pure and perfect" article, as Mr. Garfield described it, was never WHISKY at all: that the only *real* WHISKY is the thing which its own friends told the people of the United States through Congress was not fit for use *until it had been brought to the condition of what they now denounce as a base imitation*.

They said to President Taft—"We admit that great quantities of this spirit have been sold as WHISKY for a long time; but it was "always a deception, *for the public did not know what it was*."

Yet, thirty years ago, the *people's representatives* knew *all* about it; and they discussed it in *the most public place* in the country, in a manner to give it the *widest possible circulation*. And neither *then*, nor until *nearly thirty years later*, did any public man question the accuracy of the statements made by Mr. Garfield, Mr. Butterworth, and others.

But Dr. Wiley dared to tell Solicitor-General Bowers that the refined WHISKY had *always* been recognized as a *fraudulent* article by Congress.

The advocates of Mr. Carlisle's bill in 1880 never hinted at anything of the kind. Their whole argument, their whole plea, was based upon the genuineness of the now *defamed* product. They said—"Put *us* on the same footing as this *other* WHISKY." How much stronger would their position have been if they could have said—"This *base imitation* is on a better footing than our *genuine* product." But that they *did not* say, because they *could not*.

And, mark the infamy of the present conduct of these Kentucky men: this attempt to outlaw the product of competitors to whose unanimous support of their appeal for relief thirty years ago Mr. Willis paid such eloquent tribute.

We do not wonder that, for the sake of the good name of Kentucky, where honor has always held high place, that prominent Kentuckian, Mr. John M. Atherton, an old-time "Straight Whisky" distiller, came forward to protest against and contradict the false claims of his neighbors. (See INTRODUCTION.)

CHAPTER XII

Doctor Wiley as a Witness at the Official Enquiry

This is a chapter which should be read with close attention. Of itself, it is convincing proof of the Doctor's utter unfitness to pronounce judgment on the subject of Whisky.

(See, also, two most interesting fragments of his testimony, and his delicious essay on "The busy bee as a manufacturer, and Whisky a natural product," Chapter III: his questioning of Prof. Remington, Prof. Ladd and Mr. Adams, Chapter XIII: his cross-examination of Prof. Sadtler and Mr. Schidrowitz, Chapter XV: extracts from his testimony in another case, Chapter XVI.)

Note the wonderful difference between Doctor Wiley's prompt and emphatic replies when expressing his antagonism to REFINED WHISKY, or his championship of STRAIGHT WHISKY, (See questions 1 to 7; 51, 52, 56 to 58, 118, 119), and his evasive answers to questions testing the soundness of his position, (See 8 to 13, 38 to 41, 60, 61, 80 to 82, 84, 85, 103 to 105, 125, 126).

Note the *obtrusion* of his opposition in answer (1): note the *vehemence* of the concluding part of answer (7).

Mark his *invincible hostility* to REFINED WHISKY under all conditions. He could not agree that every public object would be served if *his* kind of whisky was distinguished by the name STRAIGHT WHISKY—the name its own makers had chosen for it. He would not be satisfied even if *his* kind of whisky was given the *exclusive use* of the unqualified name WHISKY, and the Refined Whisky was labelled—"Whisky rectified and redistilled so as to remove all the Fusel Oil."

The removal of the Fusel Oil was his *sole objection* to REFINED WHISKY, and the name suggested would have told the public *all about it*: but Doctor Wiley would not trust the people to buy it on their own judgment, even then. He said they would understand "rectified" to mean "improved."

True, he didn't know *himself* whether it *was* improved or not: true, the word "rectified" had had *governmental* sanction for a very long time: but Doctor Wiley felt compelled to stand between the public and governmental terms. (See 51 to 58).

Contrast this with the Doctor's indifference to the public misconception regarding STRAIGHT WHISKY, which had been for many long years erroneously represented, *and by Doctor Wiley himself*, as free from Fusel Oil. He manifested no anxiety to correct *that* misinformation.

Observe the extraordinary difference between what Doctor Wiley said to the Congressional Committee and what he told the Solicitor-General. He recommended that Congress should put the different kinds of Whisky on the *same* footing: Congress was led to believe that when the Pure Food Law came to be administered Doctor Wiley would be of the *same* mind: but he insists here that the REFINED WHISKY shall be driven out of the ranks of WHISKY altogether. (See 46 to 50, 93 to 95, 130, 131).

Doctor Wiley was informed by a member of the Committee that numerous interested parties were apprehensive that the law might imply something too favorable to STRAIGHT WHISKY and damaging to REFINED WHISKY.

Did he tell the Committee that there were *good grounds* for that apprehension? Did he give that Committee the slightest intimation that all his influence and authority as Chief Government Chemist would be *for* one whisky and *against* the other? By no means; he assured the Committee that *his* attitude was that of "a fair field and no favor."

What, then, was Doctor Wiley's clear duty when he found that his theories with regard to Whisky had undergone a complete and sudden change? Should he not have soliloquized thus—

"It is not right that I should apply my *new* convictions
"to the carrying out of a law which Congress passed with
"my *former* and *entirely different* convictions in mind.
"This is a very serious matter. Tens of millions of dol-
"lars invested in Whisky *such as I approved of until now*,
"will be jeopardized if I act upon my present theories. As

"I told the Congressional Committee, *there is no question of wholesomeness*: it is, at most, only a question of name, which cannot be important enough to justify the imperiling of enormous interests until I am *quite* sure that I am *quite* right *this* time. I will do nothing before the law and the facts have been settled beyond all dispute."

And if, finally, it had been made clear that the law did *really* discriminate against REFINED WHISKY, would not one expect Doctor Wiley to have such thoughts as these—

"I am largely responsible for this unfortunate situation. As Chief Government Chemist I have insisted for many years that the Fusel Oil *must be eliminated* to make Whisky fit for consumption. The STRAIGHT WHISKY people have *not* eliminated it, though I and they thought and said that they *did*. These people *do* eliminate it, and, as we *now* know, in the only way possible.

"It is unfortunate that I, the Chief Chemist of this great nation, supposed to be deeply versed in food questions, have had to *reverse all my former ideas on Whisky* at this late day, which, however, must be endured: *but I cannot excuse myself for having all these years been under the false impression that age removed Fusel Oil, when a simple experiment would have shown me my error. I have certainly been most negligent, and I must now do all I can to avoid injury to innocent people through my carelessness.* It would be the very depth of irony if those who have immense stocks of *Whisky free from Fusel Oil* should now suffer, and those whose Whisky *I should have condemned but yesterday*, because it is *not free from Fusel Oil*, should benefit at their expense. Ample time should be given the REFINED WHISKY people to accommodate themselves to my new theories. The public are not being hurt. Ninety-five per cent of them are well satisfied with the REFINED WHISKY. It will take quite a long time to make known to them the great mistake I labored under so long. I cannot say what *they will do* when they know that the Fusel Oil is *not* removed from STRAIGHT WHISKY. I shall use my influence to prevent any legal interference with the business until the public know the truth

“and show what effect it has upon their minds. And mean-
“while both the REFINED WHISKY makers and the
“STRAIGHT WHISKY makers will have the opportunity of
“adapting themselves to the trend of public opinion.”

Mark this fact. Although it does not appear in the testimony quoted, (for space forbids the inclusion of much which we wish the public could read), Doctor Wiley insisted that the Fusel Oil must not be *put back* into the Whisky. He maintained that it made all the difference in the world *how* it got there. If the filthy stuff is allowed to come *through the still*, the Doctor says it is all right; if it *had been* taken out by *ageing*, the Doctor thought that would be proper. But to take it out by *distillation*, or to *put it back* after it has been taken out, the Doctor says is fatal. So, according to the Doctor, there is no possibility of converting the immense stocks of REFINED WHISKY into the UNREFINED WHISKY which he now approves of.

The chemists admit that *they* cannot tell whether the Fusel Oil got in through the still or was put in afterward. But a little practical difficulty of that kind doesn't affect their judgment. It would, of course, be the *simplest thing* for the Government to have an army of men watching every gallon of whisky made in the world, and through all its travels between the distiller and the consumer—for the Fusel Oil might be put in at *any* time; and *any* gallon of whisky *made abroad* may find its way into the United States.

And, to show what a *very complex matter* the Whisky trade is, consider the Doctor's views as to coloring. If you char a barrel with the express object of making *wood caramel*, and then put in the whisky, with the express object of having it extract that color, that is quite right. But if you put *sugar caramel* into the whisky, you at once destroy it as WHISKY—it straightway becomes a base imitation. (See 76 to 89).

Never having been *Chemists*, but only *practical distillers*, trying for fifty odd years to understand the tastes and prejudices of the public, *we* had supposed that if a consumer wanted Fusel Oil in his Whisky he didn't care which way it got there; that if he wanted the Fusel Oil taken out, he was content to leave the method of removing it to us. So with color: *we* supposed that consumers who expected a light color or a dark color, as the case might be, were not worrying

themselves about wood caramel or sugar caramel: and so we have gone on our way, doing our best according to our conception of the public demand, our experience and our regard for our good name.

But, *now*, of course, we see our mistake. How could we fail to see it in the light of Doctor Wiley's lucid, logical and consistent testimony?

What manufacturer would desire to do what was never done by Doctor Wiley's father or grandfather? (See 89).

We call attention to Doctor Wiley's version of the consumer's idea of whisky. (See 2). Here, again, our fifty years' experience fails us. We have talked Whisky with thousands of consumers, but never did *one* of them reveal to us any familiarity with "the distinctive properties which are produced during fermentation," with the "ordinary temperatures of distillation," with the "chemical changes in the original constituents." Which only goes to show how much less one is likely to know of the business to which he gives all his time, than can be picked up by a chemist who has a thousand and one things to think about.

And again *our* experience differs from Doctor Wiley's. *We* have found that *nearly every consumer* has an idea what Fusel Oil is: that it is very apt to exist in Whisky: that he wishes particularly to *avoid* it—wherefore, we have always been particular to *remove* it.

Doctor Wiley's superior knowledge of this matter is expressed in answers 3 to 5.

Doctor Wiley's statement to the Senate Committee in 1904 should not be overlooked—"THE MANUFACTURE OF STRAIGHT WHISKY IS *Conditioned* UPON THE OXIDATION OF THESE OILS (fusel oils) INTO THE AROMATIC SUBSTANCES OF WHICH I HAVE SPOKEN." (See 43). Mark the word "*conditioned*." If the Doctor used that word advisedly, what other interpretation of it is there than this—that if one had said to him—"Here is a spirit in which the Fusel Oil remains intact: is it WHISKY?" the Doctor would have been bound to answer—"NO?"¹

¹We simply hold Doctor Wiley to the logic of his own statement. *We* have always maintained, as President Taft finds upon the evidence, that *any* potable grain spirit is WHISKY. The Fusel Oil affects only its purity.

At the same time, Doctor Wiley said of the makers of STRAIGHT WHISKY and the makers of BLENDED WHISKY—"they use the *same* Alcohol." (See 117). He admits that by "Blended Whisky" he then meant a mixture of "Straight Whisky" and "Neutral Spirit." (See 127 to 129).

"Same" means "identical." Yet the Doctor *now* maintains that the alcohols are not even "like substances"—though "like" means only "nearly identical."

For a *scientific* man, educated to the importance of exact terms, Doctor Wiley is at times singularly loose in his language. For an example of this, see answers 63 to 65. What an immense difference there is between "imitation Whisky" and "imitation *Bourbon* Whisky" is obvious; the one is not WHISKY at all—the other may be one kind of Whisky made to appear like another kind of Whisky. "Imitation Silver" is not silver; an "imitation silver dollar" *may be* silver, and may have a metallic value greater than that of the real silver dollar.

And who but a *great scientist*, and *what* great scientist except Doctor Wiley, could have conceived the dazzlingly brilliant idea of making an *imitation* out of the *genuine* article?—which the Doctor admitted in Answer 63.

It had been commonly supposed that imitators used cheap substitutes, with the unholy purpose of making unfair profits. But that was all a mistake: for *this* is Doctor Wiley's formula:—

Take WHISKY: rectify and redistil it, at considerable expense and some loss of raw material: you then have IMITATION WHISKY. If you are extremely *clever* and extremely *lucky*, you may manage to sell it at the price of *genuine* WHISKY: in which case, you will have lost only your time and what it cost you to make the transformation.

A GREAT IDEA, ISN'T IT?

We do not wish the reader to fail to appreciate Doctor Wiley's talent for "special pleading" as evidenced in answers 63 to 75.

We think the reader will agree with us that Doctor Wiley's testimony shows a remarkable attitude on the part of a Government officer at a Governmental enquiry. His evasiveness is unmistakable. So.

also, is his scanty knowledge of the practical side of the question, as exhibited by answers 14 to 20, 55, 123 and 124. He likewise showed very defective recollection of many matters which it was reasonable to expect he would clearly remember. (See answers 28 to 30, 38 to 41).

And, finally, we draw attention to Doctor Wiley's answer to question 111. He did not know of "anything that had ever been practiced that was worse" than the sale of the purest form of grain spirits under the name WHISKY.

Is that not a remarkable statement to come from the Chief Food Official of the United States?

Had Doctor Wiley no knowledge of the contaminated milk which contributes so largely to the infant mortality of the country? Had he no knowledge of the adulteration of the necessary food supply of the poor? Was he ignorant of the putrid and poisonous substances of which so much has been heard? Where was he when the country was ringing with the story of rotten beef sent to our troops in Cuba?

What this violent language with regard to an article which Doctor Wiley knew and admitted to be "artificially wholesome, and about which he could say nothing worse" than that it was WHISKY MINUS RUSK OIL?

Is a man who can so exaggerate a safe guide for the people in framing their Food Laws: has he the judicial temperament to qualify him to deal with enormous business interests? Was not LESLIE'S WEEKLY right when it said—

"IT IS HIGH TIME THAT DOCTOR WILEY SHOULD BE TAKEN AT HIS *Real*, RATHER THAN HIS *Face*, VALUE."

A FEW EXTRACTS FROM DOCTOR WILEY'S TESTIMONY.

1. Mr. McCabe: Did you ever order neutral spirits, diluted or undiluted?

Doctor Wiley: No, sir. *I should not have ordered it for Whisky if I had.*

Mr. Maxwell: I move that that be struck out.

The Solicitor-General: *Yes; that may go out.*

2. Mr. McCabe: And what did you gather was the consumer's idea of WHISKY?

Doctor Wiley: The consumer's idea of WHISKY is a distillate of grain, which contains the distinctive properties derived from grain itself, *which are produced during fermentation, which pass over at the ordinary temperatures of distillation,* and in addition to that, *those substances which arise during storage by chemical changes in the original constituents and which are added to the whisky by the extracts coming from the package.*

3. Mr. McCabe: Did you find that the consumer believed that Whisky should *contain some fusel oil*, or that it should be *free from fusel oil*?

Doctor Wiley: *Most of them had no idea as to what fusel oil is or where it exists.*

4. Mr. McCabe: Never heard of it?

Doctor Wiley: *They may have heard of it, but they didn't know anything about it.*

5. Mr. McCabe: Did they believe it should be in Whisky?

Doctor Wiley: If it were one of those things produced in the Whisky, they did. *They believed that it should contain all those things. They didn't know anything about the name fusel oil, or the names of any of these things.*

6. Mr. Carlisle: The Doctor has been asked as to what the consumer considered WHISKY. Now, I want to ask the Doctor a question as to whether this thing which we have been talking about so much is WHISKY.

Doctor Wiley: My experience with the trade, the manufacturers, the dealers, and the consumers, leads me to the belief, with the most positive conviction, that the consumer does not consider a neutral spirit, practically as free of every foreign substance as can be made, reduced to proof, with or without coloring and flavoring, as WHISKY in any sense of that word.

7. Mr. Carlisle: I will ask him whether, as a chemist, this product is the kind of WHISKY which he says the manufacturers and the consumers regard as WHISKY.

Doctor Wiley: As a chemist, *and as expressing the consensus of opinion of chemists in general*—chemists with whom I am very familiar in large numbers—and expressing my opinion, I would say that this material which I have just described is *not Whisky and never has been and never will be Whisky.*

8. Mr. Hough: Your definition of WHISKY *excludes* any rectification which would eliminate any of these congeners, does it?

Doctor Wiley: My definition of WHISKY *includes* exactly what I said it did.

9. Mr. Hough: Does your definition of WHISKY *exclude any rectification* that would eliminate any of these congeners?

Doctor Wiley: It excludes nothing that comes in the distillate at the ordinary temperature of distillation, as practiced by Whisky Makers.

10. Mr. Hough: *Can you not answer that question?* Does it *exclude any rectification* which would have the effect of eliminating any of these congeners, or higher alcohols, or fusel oils, or whatever you wish to call them?

Doctor Wiley: I can better say what it *includes.*

The Solicitor-General: NO, HE ASKS YOU WHAT IT *Excludes.*

Doctor Wiley: It excludes nothing which is brought over at the ordinary temperatures of distillation as practiced in the manufacture of WHISKY.

The Solicitor-General: YOU HAVE NOT ANSWERED THE QUESTION . ET, I THINK.

11. Mr. Hough: Your expression, "the ordinary temperature of distillation," as I understand you to explain it, excludes the first run, which you say goes over at a different temperature from that which you have in mind, and it excludes the last run, which is at a different temperature from that which you have in mind?

Doctor Wiley: No; it does not exclude them; they are thrown back.

12. Mr. Hough: I will come to that in a moment. But they are excluded at that time?

Doctor Wiley: They are not excluded in the final product. *I cannot go into every step of distillation.*

13. Mr. Hough: *You know exactly what I am trying to get at.*
The Solicitor-General: I THINK THE QUESTION MUST BE ANSWERED, IF YOU UNDERSTAND IT.
Doctor Wiley: I UNDERSTAND IT, AND I WILL SAY THAT IT INCLUDES EVERYTHING FINALLY.
14. Mr. Hough: Well, now, how much of what has gone into vapor and has become condensed—how much expressed in percentage of the total—is first cut out to be returned to the still?
Doctor Wiley: I do not know. I am not a distiller.
15. Mr. Hough: Have you any idea as to how much?
Doctor Wiley: I have simply an idea from cursory observation; very little idea.
16. Mr. Hough: How much or what percentage is excluded in the last run which you exclude?
Doctor Wiley: I do not know.
17. Mr. Hough: What other congeners are included in the first run, other than ethyl alcohol?
Doctor Wiley: I do not know. I *assume* that they are *probably* all there.
18. Mr. Hough: What percentage of the congeners is in the last of the run?
Doctor Wiley: A very small percentage, I *think*, compared with the first of the run.
19. Mr. Hough: What *are* the congeners in there then?
Doctor Wiley: They are *probably* all there in small proportions.
20. Mr. Hough: What other congeners are there which you do not include under the term "fusel oil?"
Doctor Wiley: I *suppose* there are a few ethers there, and aldehydes and acids—especially acids.
21. The Solicitor-General: Do not "Straight Whiskies" vary in the amount of their congeners?
Doctor Wiley: Yes.

22. The Solicitor-General: Where am I to draw the line, if I have to attack that problem?

Doctor Wiley: Just here, Mr. Solicitor. Whenever Whisky is made of properly selected grain, with the precautions which a manufacturer should take, which is distilled in such a way as to retain the flavors of the grain, the substances produced during fermentation, which are congeneric with ethyl alcohol, go off at the *ordinary* temperatures of distillation—THAT IS WHISKY.

23. The Solicitor-General: Well, the "ordinary temperature of distillation" *will vary with distilleries?*

Doctor Wiley: But I include that. If one man runs it 140 and another 130, I would not deny either of them the use of the word WHISKY; or even if he runs it 150. That is the ordinary temperature.

24. The Solicitor-General: But the "ordinary temperature of distillation" *varies with different countries?*

Doctor Wiley: Yes, and I do not deny them the use of the word WHISKY.

25. The Solicitor-General: And the "ordinary temperature of distillation" *varies with the same distillery* from day to day, does it not?

Doctor Wiley: Hardly. He *usually tries* to bring them off at the *same* temperature.

26. The Solicitor-General: Well, *they vary with the same distillery, as a distiller uses varying mashes?*

Doctor Wiley: Yes. I think the rule is a perfectly easy one to find.

The Solicitor-General: I WISH YOU WOULD MAKE IT EASY TO ME.

27. Mr. Hough: When the matter of standards was first taken up, there was a *maximum* limit suggested for fusel oil, was there not, of 0.25?

Doctor Wiley: I believe there was.

28. Mr. Hough: There was no *minimum* limit?

Doctor Wiley: *I cannot remember.*

29. Mr. Hough: The standards first suggested. That was by Doctor Crampton, was it not?
Doctor Wiley: It may have been. *I do not remember that.*
30. Mr. Hough: Do you not recollect that?
Doctor Wiley: I recollect there *were* such things, but if you ask me *what* they were, *I cannot remember such things*, Mr. Solicitor.
31. Mr. Hough: Doctor Crampton was the first referee on the subject, was he not?
Doctor Wiley: I think he was.
32. Mr. Hough: And his ideas were, I presume, the basis of the statement in your suggestion to importers, of there being a *maximum* limit of 0.25 of fusel oil?
Doctor Wiley: I could not say in regard to that.
33. Mr. Hough: I will find out in a minute. I think it has already been introduced in evidence.
(Mr. Hough exhibited an article to Doctor Wiley, which Doctor Wiley glanced over.)
Mr. Hough: (Apparently reading)
Known as Food Inspection Decisions, 1 to 25, signed by Doctor Wiley, Chief of the Bureau of Chemistry, on page 14, under the head of WHISKY.
The content of fusel oils should not exceed 0.25% .
That was your statement, was it not?
Doctor Wiley: Yes, sir.
34. Mr. Hough: And *at that time* no *minimum* limit was suggested?
Doctor Wiley: There is none there.
35. Mr. Hough: Well, in any other connection did you ever suggest a *minimum* limit?
Doctor Wiley: In later—
36. Mr. Hough: (Interrupting) *At that time*?
Doctor Wiley: I *think* not at that time.

37. Mr. Hough: You have stated, have you not, in the Pure Food discussions, that the prime object of the proposed legislation was *to distinguish between the different characters of Whisky*, so that the consumer would know what he was getting?
Doctor Wiley: Yes; and I *still* think so.
38. Mr. Hough: And at that time you suggested the words "Rectified Whisky," for a distilled spirit from grain, from which practically all, or all, or as much as possible, of the congeners had been removed by distillation or rectification, did you not?
Doctor Wiley: *I could not tell without looking at the discussions.*
39. Mr. Hough: Have you no *independent* recollection as to what you said?
Doctor Wiley: *I could not recollect all the discussions I had before the committees of Congress. I have been appearing before them for twenty-five years.*
40. Mr. Hough: *Do you recollect* independently of what you may have said before the committee, *that that was your view at that time?*
Doctor Wiley: *I cannot recall.*
41. Mr. Hough: *Can you say* that it was *not* your view?
Doctor Wiley: *I would not say it was not my view; no. I HAVE CHANGED MY VIEWS A GREAT MANY TIMES IN THE PAST FEW YEARS.*
42. Mr. Hough: Did you state this before the Senate Committee on Manufactures, at the hearing of February 4, 1904?
If you take an unfractionate distillate, you find water, ethyl alcohol, and these other alcohols known as fusel oil, coming over in the distillate. * * * If a mixture of these bodies, these mixed alcohols, is subjected at a proper temperature to the action of natural oxidizing agents which are present when a proper temperature is secured in a proper package, *a change takes place in these alcohols of the fusel oil series. They become oxidized; they form what are called ethers, aromatic substances,* which give to a naturally aged whisky its aroma and mostly its flavor.
You stated that *then*, did you?
Doctor Wiley: Yes, sir.

43. Mr. Hough: Again:

It is usually supposed that with the amount of fusel oil ordinarily produced, about four years is sufficient *to convert it mostly into these aromatic ethers.* * * * You can only tell by examining it just how long it does take, AND THE MANUFACTURE OF NATURAL OR SO-CALLED "STRAIGHT WHISKY," IS *Conditioned* UPON THE OXIDATION OF THESE OILS TO THE AROMATIC SUBSTANCES OF WHICH I HAVE SPOKEN.

You stated that *then*, did you?

Doctor Wiley: Yes, sir.

44. Mr. Hough: You were, of course, a part of the whole body of the public at that time, were you not?

Doctor Wiley: Yes, sir.

45. Mr. Hough: And your views *at that time* might be regarded as fairly expressive of the general view of the public which had given any attention to the subject of WHISKY; would you not say so?

Doctor Wiley: I think so; yes, sir; just as they would be today.

46. Mr. Hough: (Reading further)

The man who makes old-fashioned Whisky shall so label and tag it *that the people may know it is that kind of Whisky*, and has been made in that way, and the man who makes a compounded or blended Whisky is willing to put on the bottles the statement that it was made in that way. *Then the men may go on to the market on equal terms.*

Then again:

When Whisky is bottled in bond there is *no guarantee* in the Government stamp *that it is wholesome.* *It may be*, as Mr. Hough says, *a very unwholesome article.* The Government *does not guarantee* the purity.

Mr. Hough: That was the statement you made *at that time*, was it not?

Doctor Wiley: That was the statement I made, but it was not quite full enough.

47. Mr. Hough: (Reading further)

Senator McCumber: How can a blend be sold any cheaper, except on account of the age, and the loss in holding the bonded goods a great length of time?

Doctor Wiley: That is the only advantage which they have.

Senator McCumber: That is the only advantage?

Doctor Wiley: They pay the same tax, exactly, to the Government. *They use the same alcohol distilled from grain.* * * * Now, *what I want*, and what I believe we all want, is that the law shall require such a distinction that the purchaser may know *which kind of whisky* he is getting, and then let each of the products stand upon its merits.

Mr. Hough: Am I correct in thinking that you do not think the great object to be attained by pure-food legislation would be accomplished by *marking* those *so that the public could understand that one was one kind of whisky and the other another kind of whisky?*

Doctor Wiley: That is all I claim; THAT ONE SHOULD BE MARKED SPURIOUS, IMITATION OR COMPOUND, as the law requires it to be.

48. Mr. Hough: But you do not regard *spurious* whisky as WHISKY?

Doctor Wiley: *I say if it is spurious it should be marked spurious.*

49. Mr. Hough: You would not say that an *imitation* is a WHISKY?

Doctor Wiley: Yes; it is an imitation. *If it is an imitation it should be marked "imitation."*

50. Mr. Hough: But you would not say a thing that had to be marked "spurious" or "imitation" was going on to the market?

Doctor Wiley: If those are proper terms under the food law to use to distinguish these different kinds of beverages, I have certainly no objection to their manufacture and sale under the term WHISKY, *if they are prefixed by the proper word.*

51. Mr. Hough: Would you not say that all the object to be obtained by the law would be accomplished if the old "Straight Whiskies" were called STRAIGHT WHISKY and the others WHISKY?

Doctor Wiley: No, sir; the *real* Whisky has the right to the name always, without any limitation.

52. Mr. Hough: Then, suppose the word WHISKY would apply only to the "Straight Whisky," and the other kind of Whisky, from which the congeners had been removed, should be "WHISKY RECTIFIED AND REDISTILLED SO AS TO REMOVE ALL THE FUSEL OIL," would that be a fair statement?

Doctor Wiley: *No, sir. The word "rectified" conveys an entirely erroneous impression to the consuming public. It would mean that something had improved the Whisky, when, in fact, it is nothing but denatured Whisky.*

53. Mr. Hough: Running it through charcoal was called "rectifying," was it not?

Doctor Wiley: That is one process of rectifying; yes, sir.

54. Mr. Hough: If they then redistilled it in a column still afterwards, it was then called "redistilled," was it not?

Doctor Wiley: Both processes are known as "rectifying."

55. Mr. Hough: *Did they make it better or worse?*

Doctor Wiley: I DO NOT KNOW ANYTHING ABOUT THAT.

56. Mr. Hough: But did you not say that you objected to the word "rectifying" because that meant it made it better?

Doctor Wiley: *I would object to the use of the word "rectified" in regard to anything that was not as good as it was before it was rectified.*

57. Mr. Hough: Even though *it had been rectified?*

Doctor Wiley: *I would object to the use of the word "rectified" because "to rectify" means to straighten or to make better.*

58. Mr. Hough: Even though *it had been rectified*, you would object to it?

Doctor Wiley: *Even though it had been rectified. The public would be deceived by it. It would not be "rectification"*

if it had not been improved in some way, in the fair sense of that word.

59. Mr. Hough: Do you not know from the literature of the subject, and from what was said by people of that time, that the article then produced was known as "Neutral Spirit?"

Doctor Wiley: No, sir.

60. Mr. Hough: Did you never hear the term used with reference to the article produced by that process?

Doctor Wiley: I have heard the term used in regard to a *real* "Neutral Spirit" from which all the congeneric substances had been removed, before the adoption of the still.

61. Mr. Hough: *I am asking you if you do not know* that the term "Neutral Spirit" applied to the product, before anything had been added to it, which was produced by *that* process?

Doctor Wiley: I do not.

62. The Solicitor-General: What process are you speaking of?

Mr. Hough: The process of taking high wines produced in one still—I am talking about the days before the continuous still—and I am speaking of taking the high wines produced in one distilling apparatus and carrying it to the premises of the rectifier, and leaching it through charcoal, and redistilling it through a column.

63. The Solicitor-General: Both leaching and redistilling?

Mr. Hough: If it was leached through charcoal, they called it sometimes "rectified," and if it was redistilled, they called it—

Doctor Wiley: I have read the debates in Congress in 1861 and 1862 on that very subject, and also the opinion of the Commissioner of Internal Revenue in 1865 on that subject. He says that *an imitation whisky* is made by taking "domestic whisky" and redistilling it, or leaching it through charcoal and redistilling it.

64. Mr. Hough: Did he not say "*imitation Bourbon whisky?*"

Dr. Wiley: Yes, he said "*imitation Bourbon whisky.*"

65. Mr. Hough: *He did not say "imitation whisky?"*
Doctor Wiley: *He said "imitation Bourbon whisky."*

66. Mr. Hough: The continuous still was merely the continuation of those two processes, which had previously been carried on on the premises of the distiller in the first place and of the rectifier in the second place, was it not?

Doctor Wiley: I am not familiar enough with the technique to say that, at that date. *I do not know anything about it.*

67. The Solicitor-General: To say that a thing is adulterated presupposes an imperative standard of production and an imperative original result. *Now, where have we got the imperative original result?*

Doctor Wiley: We have the imperative original *result* in the *manner in which this distillate is made*; and any *addition* or *subtraction* to or from the distillate *after it is made*, any manipulation of it for the purpose of *changing its character or flavor*, or diminishing it in any way, is an adulteration. If you lower or injuriously affect its flavor or strength, it is an adulteration.

68. The Solicitor-General: That is all right; *but it does not tell you what is in there first.*

Doctor Wiley: But *whatever* is in there *first*, IF YOU DIMINISH ITS STRENGTH OR ADD TO IT, IT IS AN ADULTERATION.

69. The Solicitor-General: It says if you *lower the quality* it is an adulteration. Now, before you can tell whether *there is* a lowering or not, you have to find out what the standard is—what *it had to be* at the *start*.

Doctor Wiley: Yes; and we do find that out. I do not think there is any trouble to find that out. *Suppose you take a whisky and by analysis we find its strength, in all of its congeners, so far as we can, and we add alcohol to that whisky and diminish that strength. That is adulterating it. If you add a single drop you adulterate it, and you violate the Food and Drugs Act. And more than that, you adulterate it with a poisonous body, which is forbidden to be added—because alcohol is a poison; it is universally recognized as such.*

70. Mr. Hough: You say alcohol is a poison. Did you not testify that you agreed with Doctor Atwater that alcohol was a food up to certain limitations?

Doctor Wiley: Yes, sir. A lot of foods are poisons.

71. Mr. Hough: When you used the word "poison," you meant that it is no more poisonous than some other foods?

Doctor Wiley: I mean that alcohol is a poison, and is universally recognized as such by everybody.

72. Mr. Hough: Would you say that the alcohol in whisky was a poison?

Doctor Wiley: Yes, sir.

73. Mr. Hough: *Then Whisky is a poison?*

Doctor Wiley: *Yes, it is a poison; everybody knows it.*

74. The Solicitor-General: *Strychnine* is a poison, but adding *more strychnine* to it would not be considered an adulteration. *On the contrary, adding an innocuous thing would be an adulteration.*

Doctor Wiley: Adding *strychnine* to *nux vomica* would be an adulteration.

75. The Solicitor-General: *But adding milk to strychnine would be an adulteration.*

76. Mr. Lucking: I understood you that adding anything to the article you call WHISKY is an adulteration, except water?

Doctor Wiley: Yes, sir.

77. Mr. Lucking: Now, what I would like to have you explain to us in your own way is *why the adding of extracts from the barrel is not an adulteration?*

Doctor Wiley: *You do not add any extracts from the barrel.*

78. Mr. Lucking: Are they not extracts?

Doctor Wiley: Yes; but they do not *add* them. The whisky takes them out. *There is a difference in putting a thing in yourself and having the whisky put it in.*

79. The Solicitor-General: You might then take one of these things, furfural, or alcohol, or something else, and put it in a porous bag, or something of that sort, and stand that alongside of your whisky and let this process—I do not know its name—go on, *and then the whisky would be taking this thing up itself?*

Doctor Wiley: That would be adulteration. You put them there for that purpose.

80. The Solicitor-General: *Do you not put the whisky in the charred barrel?*

Doctor Wiley: Mr. Solicitor, there is no adulteration without purpose.

81. The Solicitor-General: When you put whisky into a charred barrel, is it not your *purpose* to have your whisky do just *what you know will happen* when you put it in the charred barrel?

Doctor Wiley: The purpose is to improve the quality of the whisky by ageing.

82. The Solicitor-General: But can you say your purpose is to improve the quality *any more* by possible accentuation or expedition of the whisky's own processes, *than by having it get these extracts from the wood which you know under those conditions it will derive?*

Doctor Wiley: I think there is an entirely different principle involved. There is no purpose of putting whisky aged to adulterate—absolutely none; and there could be no adulteration in the language in which we speak of it without purpose. If a man *accidentally* drops furfural into whisky or alcohol, *that is not adulteration*, because adulteration must have a purpose.

83. The Solicitor-General: Then, *if a fellow accidentally drops some furfural or alcohol into a "Straight Whisky,"* you would say that would be entitled to be called accidental?

Doctor Wiley: I SHOULD.

84. Mr. Lucking: You char the barrel on purpose to give that particular article a color and flavor, do you not?

- Doctor Wiley: I have seen the coopers, when I was a boy, make barrels, and they always charred them, no matter what the barrel was to be used for.
85. Mr. Lucking: But that is done for the very purpose—
Doctor Wiley: I think the purpose of charring the barrel is, as experience shows, that the whisky is better in a charred barrel.
86. Mr. Lucking: Do you think Scotch Whisky, not bottled in bond, which contains some caramel, is WHISKY?
Doctor Wiley: I think it is legally WHISKY in Scotland.
87. Mr. Lucking: You think, except the law allows it, it would not be WHISKY at all?
Doctor Wiley: When importing Whisky from Scotland, I SPECIFY IT SHALL HAVE NO CARAMEL IN IT.
88. Mr. Lucking: Now, Doctor, does it not affect your judgment as a public officer at all that for two hundred years whisky has always been colored with caramel?
Doctor Wiley: I do not admit that fact at all.
89. Mr. Lucking: Before the charred barrel was ever heard of, caramel or burnt sugar—
Doctor Wiley: *It never was used by my grandfather or my father.*
90. Mr. Lucking: We have books here 160 years old saying that is the way.
Doctor Wiley: And the books say it was done so as to imitate the color of French brandy.¹ I can prove it by Moorhead.
91. Mr. Lucking: Will whisky *never* obtain the right to use caramel as color?
Doctor Wiley: Not as long as age and color due to age are associated with good whisky.
92. Mr. Lucking: Is it any more artificial to put caramel or burnt sugar to color the whisky than to do it by the charred-barrel process?
Doctor Wiley: Yes, sir; *because the one comes by long age, and only long age, and the other is made directly.*

¹Doctor Wiley's original accusation was that caramel coloring was an imitation of charred barrel coloring: that being proved false, he promptly shifts his ground.

93. Mr. Hough: Then you exclude as a WHISKY, and you think the public would exclude as a WHISKY, any whisky which had a color due to added caramel?
Doctor Wiley: I should not exclude it as a WHISKY, *but I would call it a "Compound Whisky," or "Imitation Whisky," as the case might be.*
94. Mr. Hough: *Does not that exclude it?*
Doctor Wiley: *No, not as Whisky. It distinctly permits it to be called Whisky. So would I. I never denied the name Whisky to any of your products.*
95. The Solicitor-General: I DO NOT THINK "IMITATION WHISKY" IS WHISKY. IF IT IS, YOU MIGHT AS WELL LEAVE OFF THE WORD "IMITATION."
96. Mr. Hough: You are familiar with the flavor of a distilled spirit from grain which contains all the congeners, of about proof, are you not, before it is put in a charred barrel, or any kind of a barrel?
Doctor Wiley: Partly so. I am not an expert on that.
97. Mr. Hough: The flavor which it then has is a distinctive flavor, is it not?
Doctor Wiley: Yes, sir.
98. Mr. Hough: And it is a distinctive flavor due to the congeners plus the ethyl alcohol, is it not?
Doctor Wiley: It is the flavor which is due to the whole composition, no difference what it is. There may be fifty substances in there, and there probably are.
99. Mr. Hough: I am not limiting the number of substances under the term "congeners;" but I say it is a flavor that is due to the ethyl alcohol plus the congeners.
Doctor Wiley: And plus the materials derived from the grain. They are not congeners.
100. Mr. Hough: *What are they?*
Doctor Wiley: They are the original material derived from the grain.
101. Mr. Hough: *Name them.*
Doctor Wiley: *I don't know what they are.*

102. Mr. Hough: Have you ever seen any refined distilled spirit from grain, reduced to proof, if it was not reduced to proof before, and colored with caramel?
Doctor Wiley: I have done that myself frequently.
103. Mr. Hough: Then you know the *odor, aroma and flavor* from it?
Doctor Wiley: *It is just a pure spirit. It does not change it at all.*
104. Mr. Hough: The *odor, aroma and flavor* is different in one from that in the other?
Doctor Wiley: *One is alcohol and the other is whisky.*
105. Mr. Hough: Without reference to what the names are—the distinctive odor and flavor of the one is different from the distinctive odor and flavor of the other?
Doctor Wiley: Undoubtedly.
106. Mr. Hough: Now, is it not a fact that more than 90 per cent of the consumers of whisky in the United States reject that first article (meaning "Straight Whisky") as the thing which they would recognize as WHISKY?
Doctor Wiley: I do not think 90 per cent of the consumers of the United States ever had a chance to reject it.
107. Mr. Hough: Has not bottled-in-bond whisky been most extensively advertised?
Doctor Wiley: *It may have been advertised; yes, sir.*
108. Mr. Hough: Has it not been called to the attention of the consumer in every way possible?
Doctor Wiley: I think it has been advertised; yes, sir.
109. Mr. Hough: Have you ever seen a statement that bottled-in-bond whisky was the only pure whisky, and the only real whisky, published all over the land?
Doctor Wiley: I have seen this statement—that the only way the purchaser could assure himself that he was getting a whisky four years old, *pure* and unmixed, was by buying the bottled-in-bond whisky. *I have made that statement myself frequently.*

110. Mr. Hough: Has not that been published broadcast?
 Doctor Wiley: Yes, sir; it has.
111. Mr. Hough: You *do know* that fully 95 per cent of the consumers in this country drank this other substance, either alone or mixed with the "Straight Whisky," do you not?
 Doctor Wiley: *I think that is true; and I think they were deceived all the time—thought they had been drinking real whisky. I never knew one that did not think he was drinking real whisky that I have asked about it, or who has informed me about it. It is a universal deception of the meanest kind. I DO NOT KNOW ANYTHING THAT HAS EVER BEEN PRACTICED THAT IS WORSE.*
112. Mr. Hough: You said that fully 90 per cent of consumers had been drinking this, and that it was a fraud on them?
 Doctor Wiley: I think so.
113. Mr. Hough: That they drank it as WHISKY?
 Doctor Wiley: I think so.
114. Mr. Hough: They bought it time and time again as WHISKY?
 Doctor Wiley: Yes.
115. Mr. Hough: They were satisfied with it as WHISKY until somebody came and told them that *it was not WHISKY*?
 Doctor Wiley: I do not know about that.
116. Mr. Hough: When a consumer is told from *someone in authority* that what he has been consuming as WHISKY was *not WHISKY* it would be natural that he would like to try the *real* whisky, would it not?
 Doctor Wiley: *They paid a good deal of attention to what I have said, in this country—all consumers.*
117. Mr. Hough: *On whisky, too?*
 Doctor Wiley: *On every kind of foods.*
118. Mr. Hough: Do you not know of plenty of instances in which people, after they had been told what they had been drinking was not the *real* thing, would try to like the "Straight Whisky," and have changed back again?
 Doctor Wiley: *I never knew One in my life.*

119. Mr. Hough: You never knew ONE?

Doctor Wiley: *I never knew a man who had been in the habit of drinking what you call whisky, who drank a real whisky, who ever wanted to change back. On the contrary, he is a most enthusiastic drinker of the "Straight" goods. I NEVER KNEW ONE.*

120. Mr. Hough: But you say that the two are easily distinguishable according to the distinctions of taste and smell?

Doctor Wiley: *No, sir. You can so imitate a whisky that even the elect would be deceived.*¹

121. Mr. Hough: I wish to read from your statement, Doctor Wiley, before the House Committee on Interstate and Foreign Commerce, on February 26, 1906. I have here a volume of the hearings of that committee on the Pure Food Bill and I read from page 322:

*I went to Ireland, and I found that whisky was made there exactly as it is in this country in Kentucky, * * * in a pot still.*

Did you know at that time that the product you there referred to in Kentucky *was not made in a pot still?*

Doctor Wiley: *Well, I had never then visited a distillery in Kentucky, but I understood the method of distillation was essentially such as Doctor Tolman described yesterday, in a still which was essentially two pot stills put together.*

122. Mr. Hough: A chambered still?

Doctor Wiley: With two chambers; two pot stills superimposed one upon the other.

123. Mr. Hough: *Then if it has got ten, it is ten pot stills?*

Doctor Wiley: I DO NOT KNOW.

124. Mr. Hough: *If it has got thirty, it is thirty pot stills?*

Doctor Wiley: I DO NOT KNOW.

125. Mr. Hough: *You found out afterwards that that was a mistake—that they did not have that kind of stills, did you not?*

Doctor Wiley: I found out that the *temperature* at which they distilled it was essentially the same.

¹See amusing completion of this—page 21.

126. Mr. Hough: *I am asking you about the character of the still?*
Doctor Wiley: The character of the still is *not* essentially the pot still he described; that is, *a real pot still.*

127. Mr. Hough: I continue reading:
* * * and this great Blending industry was behind him.

When you said "Blending industry" there, you meant the mixing of their "silent spirits" with their "pot still spirits?"

Doctor Wiley: I used it in the sense in which it had generally been employed, and not in the sense to which it is restricted in The Food and Drugs Act.

128. Mr. Hough: This was before the passage of The Food and Drugs Act?

Doctor Wiley: Yes, sir.

129. Mr. Hough: So that you were referring to the mixing of "silent spirits" in England with the "pot still spirits," and the mixing of our "Straight whiskies" with our "neutral spirits?"

Doctor Wiley: That was commonly called "blending" at that time.

130. Mr. Hough: I continue reading:

Now, I want to say, Mr. Chairman, that I have not the least opposition to BLENDED WHISKY. * * * Now, I say that that is a business which is perfectly legitimate. I am sorry that our laws are so hard on the man who makes a STRAIGHT WHISKY, and so easy on those who make the MIXED WHISKY. * * *

Mr. Ryan: The blenders and the wholesale liquor dealers and rectifiers in New York, for instance, are very much disturbed about this. * * * They fear that this law will show to the public, or attempt to show to the public, or the public will assume, that whisky bottled in bond is the proper thing, and will injuriously affect their business, when, as a matter of fact, it is no evidence of quality or purity that it is bottled in bond, as you state now yourself.

Doctor Wiley: What I think that Congress ought to do is this: put the STRAIGHT WHISKY and the BLENDED WHISKY on the same plane. * * *

131. Mr. Hough: I continue to read from page 325, as follows:
Let me put myself in the place of a consumer. * * *
Suppose I do not know anything about whisky, practically, as I do not, I am glad to say. * * * Now, I am not a connoisseur. * * * *My opinion would not be worth anything, because I am not an expert.* * * * *It is not a question of wholesomeness.* * * * It is well known that a "Straight Whisky" has more fusel oil in it. * * *
I know most of these blenders are most honorable men and make a good article of liquor. * * * *Nobody knows anything about "Straight Whisky,"* and when a man asks another man what he likes, he finds that he likes what he is drinking.

CHAPTER XIII

Dr. Wiley's Chemist Disciples as Witnesses

THEIR SELF-CONTRADICTION: THEIR CONTRADICTION OF EACH OTHER:
THEIR PRESUMPTION: THEIR IGNORANCE: THEIR BIAS.

(Our great regret is the impossibility of giving the entire evidence of these "scientific" gentlemen. It was an astounding revelation, and we heartily wish the people could know all about it.)

PROF. JOSEPH P. REMINGTON—Editor *United States Pharmacopoeia* and *United States Dispensatory*.

He formerly prohibited Caramel color in Brandy—

In ignorance of the fact that it had never been colored with anything else.

He thought free acid in Whisky *decreased* with age.
It *increases*.

He thought *new* Whisky contained tannin.
It does *not*.

His U. S. DISPENSATORY says that Whisky should be freed from fusel oil, because it seriously contaminates the spirit.
Yet, he agreed with Dr. Wiley, that it was the *smell* of the fusel oil which was meant.

He admitted that the U. S. PHARMACOPOEIA intended to *exclude* Whisky having "an excess of fusel oil."

Yet, he appeared as a witness for those who maintain that there cannot be "an excess of fusel oil:" who maintain that Whisky *must contain all the fusel oil*.

He said he considered "Straight Whisky" the only *good* Whisky, and the only one conforming to the Pharmacopœia.

Yet, the Pharmacopœia prohibits more than "a trace" of fusel oil, and "Straight Whisky" cannot pass that test.

He said he could not say whether a thing was WHISKY or not from description: that he must see it.

Yet, he admitted that he could not be sure of telling Whisky from Brandy when he did see it; and that he could not tell "Scotch" from "Irish," or "Rye" from "Bourbon" by taste or smell.

The following gem from his testimony is a fair sample of how much Chemists *know* about WHISKY, and what would happen if they were given the authority they desire:

Dr. Wiley: If I should present to you an article and ask you to say if it *resembles* whisky, you must, *as a scientific man*, have a *real* whisky by you as a *comparison*?

Prof. Remington: Yes.

Dr. Wiley: Is not that the universal practice?

Prof. Remington: Yes.

Mr. Armstrong: If you wanted to test this substance which you sold under the name of Whisky, what else would you use than your Pharmacopœia and the article there entitled "Spiritus Frumenti"?

Prof. Remington: Weil, *if I suspected that something was wrong*, I would test it by the tests which the chemists use, *not the Pharmacopœia*. I would look at my text book, and I would look at Allen, hunt up Leach, and *if I thought* there was anything wrong about that whisky, I would run it out until I found out what was wrong with it, *if I could*.

Mr. Armstrong: Would you compare it with any other substance which you believed to be Whisky?

Prof. Remington: Yes, I would do that, too.

Mr. Armstrong: *Where would you get the other substance from?*

Prof. Remington: I would always use Whisky that I *knew* was Whisky.

Mr. Armstrong: *Suppose you had none?*

Prof. Remington: I would get some .

Mr. Armstrong: *Where?*

Prof. Remington: *From somebody that did know.*

Mr. Armstrong: *Who, for instance, would you get some from?*

Prof. Remington: Well, I think *Dr. Wiley* knows what *good Whisky* is.

Mr. Armstrong: You would get some Whisky from Dr. Wiley for comparison?

Prof. Remington: *Yes, I would get some from Dr. Wiley.*

We beg our readers to peruse this morsel attentively. Mark the hunt in the dark which this "star witness," this Editor of books which are accepted as "standards," (his Pharmacopœia is the legalized standard for Whisky in North Dakota), would have, to find out whether there was anything wrong, IF HE COULD.

He would get his *real Whisky* from Dr. Wiley, who confesses that *he* knows nothing about Whisky personally,¹ and that neither he nor any other Chemist can tell Whisky from Brandy or Rum by Chemistry: in other words, that *if* a Chemist *can* tell what is Whisky, it is only by taste and smell, just like ordinary men tell it.

Was there ever anything more farcical than the pretensions of these Chemists, which plunged the whole Whisky Trade of the country into chaos, and kept it there for three years?

There was a very funny episode connected with Prof. Remington's appearance as a witness. After a few questions, Mr. Hough, who had cross-examined him, said he had finished. With the bumptiousness which characterised so many of Dr. Wiley's disciples, Prof. Remington said: "Do not stop." So Mr. Hough resumed, with the result that the Professor got so deeply into the mire that Dr. Wiley came to his rescue with some six dozen questions, which the Professor answered like a model phonograph. Then followed a little more cross-examination, and the Professor sank still deeper in the mud. So Dr. Wiley came to his aid again; and Senator Carlisle and Mr. Taylor also tried to give him a lift. In the end, the witness who was not content to be easily dismissed left the chair as sorry a spectacle as could be imagined.

¹Chapter XII question 131.

PROF. RICHARD FISCHER—State Chemist of Wisconsin.

In December, 1906, he visited Kentucky distilleries to study the Whisky question.

In April, 1909, he could not describe the stills he had seen, how they were operated, or the process of distilling.

He thought he had never heard anything about the process of distilling in England.

He knew nothing about the coloring and flavoring of early Scotch and Irish Whiskies. But he considered Caramel color an adulteration—

He admitted having only a limited knowledge of what the Whisky Trade regards as Whisky.

He thought that until the "Column Still" came in, all Whisky was "Straight Whisky"—

Which the President found upon the evidence to be a comparatively modern product.

Here are samples of his testimony on cross-examination—
As to his official recommendation of "Straight Whisky"

Mr. Hough: Did you know at that time what were the constituents of the article, or how it was made?

Prof. Fischer: I did not have any very definite idea.

Mr. Hough: Didn't you have the impression at that time that that whisky contained no fusel oil?

Prof. Fischer: *I do not know whether I did or not.*

As to his knowledge of distilling processes

Mr. Hough: Do you know anything about sweet mash and sour mash processes?

Prof. Fischer: I think there are experts here who know more about it than I do.

Mr. Hough: I am not asking you what you do *not* know; I am asking you what you *do* know?

Prof. Fischer: I do not know very much about it.

As to his visit to Kentucky distilleries to study Whisky

Mr. Hough: What is the character of still they use?

Prof. Fischer: I do not know the names of the stills they use.

Mr. Hough: How many chambers in the beer stills you saw?

Prof. Fischer: I could not tell you any more.

Mr. Hough: Did you know there was a still having one chamber, and a still having more, at that time?

Prof. Fischer: I *presume* there is a difference.

Mr. Hough: But did you know at that time that there is a difference?

Prof. Fischer: I *think* so.

Mr. Hough: Then don't you know that it makes a difference in the character of the product produced, as to the number of chambers in a still?

Prof. Fischer: I *suppose* it has something to do with the character.

Mr. Hough: When the product ran over in the worm out of the tail box, was there any separation there that you noticed?

Prof. Fischer: I have not a distinct enough recollection of the process of distillation so that I want to go on record as describing it.

As to the chemical "standards" for which he voted

Mr. Hough: Do you know the considerations which led to the adoption of the definition for DISTILLED SPIRITS?

Prof. Fischer: I do not know *exactly*.

Mr. Hough: Who proposed it, if you know?

Prof. Fischer: No, I *do not know*.

Mr. Hough: Who prepared it?

Prof. Fischer: I *do not know that*.

Mr. Hough: Did you know when you adopted that definition for DISTILLED SPIRITS that it was contrary to the definition according to act of Congress?

Prof. Fischer: I *do not know that*.

Mr. Lucking: Now, then, did you write that standard as known by the trade into this standard, or not?

Prof. Fischer: I had nothing to do with the writing of that standard. That was in a tentative draft, *and it practically went through without criticism.*

Mr. Lucking: Did you understand when you voted for it that you were recognizing an existing kind of whisky?

Prof. Fischer: *In voting for that standard I did not know very much about it—of that particular standard, I mean.*

Mr. Lucking: You knew, then, at that time, that a very large proportion of the whisky drunk in this country previous to that time, *was not*, according to your standard, *whisky in any shape?*

Prof. Fischer: *Yes, sir.*

Mr. Lucking: Do you know whether or not substantially all whiskies were colored with sugar before 1860?

Prof. Fischer: I do not.

Mr. Lucking: Would that have made any difference to you in adopting a standard?

Prof. Fischer: I do not think I would approve of the addition of coloring.

And *this* is the man who was Chairman of the Committee of *scientific* gentlemen who made "standards" which denied the name **WHISKY** to perhaps ninety-five per cent of all the whisky drunk in the country—this "I-do-not-know" expert.

And to crown all, mark the presumption of the following—

Mr. Lucking: Have you heard the testimony here of a dozen witnesses, that the effort of distillers for fifty years, at least, has been to rectify as much as possible?

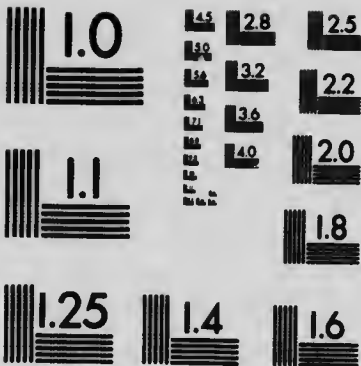
Prof. Fischer: *They may have thought they were doing that, but I do not think they were.*

PROF. EDWIN F. LADD—State Chemist and Food Commissioner of North Dakota.

He excluded Brandy because of Caramel color—

In ignorance of the fact that Brandy had never been colored with anything else.





MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

He said certain Whiskies were "of known *purity*, because Bottled-in-Bond."

There is no assurance of *purity* whatever, as Dr. Wiley himself told a Congressional Committee.

He admitted that he was not at all familiar with the process of distilling.

He said that the "Congeners", (Dr. Wiley's invented name for fusel oil), are approximately the same in all Whiskies—

The fact being that they vary as much as five to one.

He confessed his ignorance of Trade Names.

He testified that the U. S. PHARMACOPOEIA had been for years the legal standard of North Dakota, and said he would not permit the sale of anything which did not conform thereto.

But he had to admit that he had passed as legal "Straight Whiskies" containing more fusel oil than the Pharmacopœia allows.

He officially reported that from ninety to ninety-five per cent of the Whiskies sold in his State were not *true* Whisky.

The enquiry proved that they were all condemned without any justification.

He said that the purest Whisky would not conform to the Pharmacopœia if it contained Caramel color.

He was, of course, mistaken.

He agreed with Dr. Wiley and Prof. Remington that what was meant by removing fusel oil from Whisky was that the *smell* of fusel oil should be removed.

The following are examples of the ignorance and bias of this witness—

Mr. Hough: Don't you know that brandy has never at any time, in any country, been put in a charred barrel for the purpose of giving color?

Prof. Ladd: That I would not say.

Mr. Hough: Do you know anything on that subject at all?

Prof. Ladd: I have stated that I have done very little work with brandies.

Mr. Hough: *I am asking you what your knowledge is.* You do not have to have done any work on that subject to know what that fact is. Is it not a fact that they never have, at any time in any country, used charred barrels for brandy?

Prof. Ladd: That I would not say.

Mr. Hough: Would you say that they have?

Prof. Ladd: No; I say I have not done work—

Mr. Hough: You mean you do not know?

Prof. Ladd: *I do not know.*

Mr. Hough: Do you know when the process of manufacturing "Continuous Whisky" first commenced?

Prof. Ladd: I am not familiar with that. I would not attempt to say.

Mr. Hough: Do you know how Alcohol was produced forty years ago?

Prof. Ladd: I would not attempt to say. I am not familiar with the manufacturing end of it.

Mr. Hough: Do you know how it is produced to-day?

Prof. Ladd: In a general way, without being familiar with the process of manufacture.

Mr. Hough: Do you know how Gin is made?

Prof. Ladd: I do not—that is, in the distilling.

Questioned regarding the "standards" for which he voted—

Mr. Hough: And they there adopted a definition of RECTIFIED WHISKY without knowing that there was such a thing as Rectified Whisky?

Prof. Ladd: The *committee* are the ones to enquire about that—to ask about that.

Mr. Hough: I want to know what actuated *you*?

Prof. Ladd: *I voted for the report of the committee.*

Mr. Hough: Without investigating the facts?

Prof. Ladd: *I accepted the report.*

Mr. Hough: In other words, you were satisfied with their conclusions?

Prof. Ladd: I was satisfied that it was a competent committee, and that it had secured the information which was *available*.

The reader will have no difficulty in perceiving what it must be for a great industry to be at the mercy of men who would thus blindly vote for "standards" which were to condemn about 95% of all the Whisky in the United States.

Professor Ladd being in the uncomfortable position of having to admit that he had passed "Straight Whiskies" which contained more Fusel Oil than is permitted by the legal standard of the State by which he is employed—the U. S. Pharmacopœia, Doctor Wiley came to his assistance—

Dr. Wiley: Is it true that the Pharmacopœia test for fusel oil is the odor?

Prof. Ladd: Yes.

Dr. Wiley: Is it not true that when this test was written it was the opinion of all chemists that the ageing removed the fusel oil?

Prof. Ladd: Yes, sir.

Dr. Wiley. What is it that *is* removed by ageing?

Prof. Ladd: The odor.

Dr. Wiley: *And what was described here as fusel oil is removed by ageing, namely, ODOR?*

Prof. Ladd: YES, sir.

Dr. Wiley: It told you to test for *an odor that was called Fusel Oil*, and which was thought to be Fusel Oil?

Prof. Ladd: Yes.

If Doctor Wiley thought he got Prof. Ladd out of *one* difficulty, he certainly placed the Professor and himself in a *much worse* one, for,

unluckily for them, the same Pharmacopœia which makes this test for FUSEL OIL also describes what FUSEL OIL *is*, and it *doesn't* call it an ODOR by any means. The description is—

“An oil, nearly colorless, liquid, having a strong, offensive

“odor, and an acrid burning taste. Its specific gravity

“is 0.818, and its boiling point between 268° and 272°.

“It is sparingly soluble in water,” &c.

Could anything worse be imagined than this attempt of these *scientists* to explain away the difficulty they had got themselves into!

And note their determination to *uphold* “Straight Whisky” and to *condemn* “Refined Whisky”—

Dr. Wiley: Under your law a whisky which contained three times as much acid as the pharmacopœial test prescribed *would be perfectly legal* if it was labelled “Contains three times as much acid as the pharmacopœial standard?”

Prof. Ladd: Yes.

Dr. Wiley: Is there *any kind of a label* you could put on *neutral spirits* which would make it legal to be sold as Whisky?

Prof. Ladd: I know of none; not to be sold as Whisky.

Mr. Hough: You could not put *any* label on it, could you, which would permit it to be sold as Whisky?

Prof. Ladd: No, sir.

Mr. Hough: But you can put a label on Whisky *which contains every one of the ingredients prescribed in greater quantities than mentioned*, by putting that on the label?

Prof. Ladd: Yes.

Mr. Hough: It would be perfectly legal?

Prof. Ladd: Yes.

Mr. Hough: *So that there would be no danger of STRAIGHT WHISKY being driven out of your State* by any of these restrictions of the pharmacopœial standard?

Prof. Ladd: No.

Mr. Hough: Under the answers you gave to Doctor Wiley, *what would prevent* this substance which you say is not Whisky *because the Fusel Oil has been removed from it*, from being sold in your State under a label which says: “Whisky from which as much as possible of the Fusel Oil has been removed?”

Prof. Ladd: It would not be Whisky.

Mr. Hough: *Would not that be a truthful label?*

Prof. Ladd: No.

Mr. Hough: You mean if a man takes a drink of dilute alcohol it will have one effect physiologically, and if he takes a drink of the other, *which you call Whisky*, it will have a different effect physiologically?

Prof. Ladd: The principal constituent is ethyl alcohol, and that is the most active.

Mr. Hough: I will ask you if, in your opinion, there would be an effect physiologically different?

Prof. Ladd: *If you will allow me to answer in my own way, I will do so.*

Mr. Hough: So long as we are not hurried.

Prof. Ladd: I will state this, that in those places *where that kind of a DOPE* has been used, I have found that the men who become drunk are the worst kind of drunks.

The Solicitor-General: *That is not the question.*

This *scientist*, who was brought forward to assist the Solicitor-General, was so deeply interested in the public welfare that he had to call the purest Whisky by the opprobrious slang term—DOPE.

PROF. HARRY E. BARNARD—Chemist of the State Board of Health of Indiana.

It being pointed out to him that the "Standard" for Scotch Whisky adopted by his Committee, stipulates that Scotch Whisky must be made from peat-dried malt, he was asked whether he would exclude Whisky made in Scotland without the use of peat, if it were true, (as it is), that Whisky had long been so made there; his answer was: "I do not know whether I should or not."

He said: "The only Whisky *I* recognize is a Whisky matured in wood for four years."

The Solicitor-General asked him why a genuine Whisky might not be sold *new*; he answered: "Because WE have decided that to have the name WHISKY it should have a certain character."

This witness differed radically from Doctor Wiley and others as to STRAIGHT WHISKY being the *only* Whisky, and the *only one* recognized as *genuine* by the Trade.

Mr. Taylor: According to your experience, what did they regard as Whisky?

Prof. Barnard: *Some* of the wholesalers had the *ordinary* opinion held by the trade as to what a Whisky was. *Others* considered only Whisky to be that product which we now call "Straight Whisky."

The Solicitor-General: In fact, the word "Straight" rather recognizes that there may be another kind of whisky; otherwise, there would not be any necessity to use the word "Straight" as a classification?

Prof. Barnard: They found it necessary to *distinguish it from the other kinds*.

Mr. McCabe: You participated in the making of the "standards" at Mackinac?

Prof. Barnard: Yes.

Mr. McCabe: And I believe you made a standard there for Scotch Whisky?

Prof. Barnard: *I do not remember.*

Mr. McCabe: I will show it to you and let you read from it.

Prof. Barnard: (after examination) Yes, sir; we did.

Mr. McCabe: Do you happen to know how many recognized kinds of Scotch Whisky there are?

Prof. Barnard: *No.*

Mr. McCabe: Now, do you say you ruled against certain whis-
kies in your New Hampshire work because they were not gen-
uine whiskies?

Prof. Barnard: Yes.

Mr. McCabe: Do you mean by that, *because they were not "Straight Whiskies?"*

Prof. Barnard: *No*; as I said, because they were low in alcoholic strength; because they had been sweetened by the addition of sugar.

Mr. Maxwell: Then anything that had caramel present—that made it, in your opinion, not Whisky?

Prof. Barnard: It made it not Whisky.

Mr. Carlisle: Did you ever see a bottle or a barrel marked "Rectified Whisky?"

Prof. Barnard: I never did.

Mr. Carlisle: Did you ever see a bottle or a barrel marked "Continuous Distilled Whisky?"

Prof. Barnard: No, sir.

Mr. Carlisle: Did you ever see a bottle or a barrel, *in your whole experience*, marked "Neutral Spirit Whisky?"

Prof. Barnard: No, sir.

Mr. Maxwell: Did you ever see a bottle marked "Straight Whisky?"

Prof. Barnard: *I do not remember.*

The manifest object of Mr. Carlisle's questions was to imply that there had been suppression of qualifying terms on the part of the makers of the REFINED WHISKIES, and that their failure to use such qualifying terms indicated their desire to keep from the public knowledge to which the public was entitled.

This was a curious suggestion to come from the counsel of those distillers who, entering the field in *recent* times with an entirely *new variety* of Whisky, to *distinguish* which from the *much older variety* they themselves chose the qualifying term "Straight," had neglected to brand their product accordingly for the information of the public.

Doctor Wiley himself said that people knew nothing about "Straight Whisky." (See Chapter XII—question 131).

Mr. Taylor, the leader of the "Straight Whisky" party in this fight, did not take kindly to the suggestion of Mr. Choate that he

and his friends should label their product "Straight Whisky" for the public benefit. (See Chapter II)

Mr. A. J. Sunstein, a Pennsylvania distiller and Wholesale Liquor Dealer for thirty years, whose knowledge of the subject was, perhaps, *but little inferior* to the "whole experience" of Prof. Barnard, said before the Solicitor-General: "I have never seen any labels, that I can recollect, that had the word 'Straight' on them."

PROF. EDWARD H. JENKINS—Examiner of Food Products, Connecticut.

He declared Caramel coloring to be adulteration—

But he admitted that he did not know the history of coloring Whisky.

He stated that if he knew that Caramel was used in a hundred and fifty years before charred barrels, he did not think that knowledge would alter his convictions.

He did not know the meaning of HIGH WINES.

He admitted his inability to tell Whisky from Brandy.

He said the addition of a small amount of ALCOHOL to WHISKY would not deprive it of the name WHISKY—

Differing entirely from Dr. Wiley, who declared that the addition of a *single drop* of ALCOHOL would make the article no longer WHISKY.

Mr. Carlisle: Now, what have the consumers regarded as being Whisky?

Doctor Jenkins: As far as I have been able to find the opinion of consumers, their opinion of Whisky is a distillate from cereal grains *from which nothing has been abstracted in the process of distillation*, but which has been aged suitably in charred barrels. *They will not knowingly take a material called WHISKY which is not of that description.*

Mr. Lucking: Was not there a very intelligent public, that you know of or heard of, that would not consume the "Straight Whiskies" so-called, and did not like them?

Dr. Jenkins: *I never heard of such a thing.*

Mr. Lucking: Did you designedly intend to bring this about—that any article of so-called Whisky which contained caramel as coloring should not be allowed the name of WHISKY?

Dr. Jenkins: Yes; it is excluded.

Mr. Lucking: Notwithstanding that for two hundred years caramel had been used as the principal coloring matter for nearly all Whiskies?

Dr. Jenkins: *That is not within my knowledge.*

Mr. Lucking: You did not know the history of Whisky in that respect?

Dr. Jenkins: *No.*

Mr. Lucking: This caramel color was added for at least 150 years before the charred-barrel process was known, according to the evidence. *Would that have altered your convictions?*

Dr. Jenkins: *I do not think so.*

DR. L. M. TOLMAN—Chemist in the Bureau of Chemistry under Dr. Wiley.

He stated that there had been no idea in the Whisky Trade until a year or two before that NEUTRAL SPIRIT diluted to "proof" was WHISKY.

An audacious assertion, this, in view of the fact that a number of men of very long experience had already testified in his hearing that the article had *always* been known as WHISKY.

He said that the addition of Caramel color had nothing to do with whether an article was WHISKY or not—

Emphatically contradicting his fellow-witnesses—Wiley, Remington, Fischer, Ladd, Barnard and Jenkins.

This *important* witness, (Chief of the Food Inspector: Laboratory), testified that he had been studying the subject of Whisky for five or six years: that he had made many hundred analyses: that he had visited a dozen or so distilleries in Kentucky, as many in Pennsylvania, quite a number in Maryland, and others in Illinois, Tennessee and Canada.

And the sum total of his practical knowledge is well indicated by the following lucid extract from his cross-examination—

Mr. Hough: What is this little pipe running from the condenser back into the chambered still?

Mr. Tolman: I have *forgotten* what they call it. It drains the bottom of the heater.

Mr. Hough: Drains out *what*?

Mr. Tolman: *What* it condenses in there.

Mr. Hough: *What* condenses there?

Mr. Tolman: *The vapors that come over from here* (indicating).

Mr. Hough: But *which* vapors—the vapors that have the highest boiling point or the lowest boiling point?

Mr. Tolman: *I should t'ink—*

Mr. Hough: Which vapor is condensed first?

Mr. Tolman: *I do not think—*

Mr. Hough: Do you mean to say there is no difference in the vapors that are condensed?

Mr. Tolman: I DO NOT KNOW.

Mr. Hough: Then you cannot say *what* is returned there?

Mr. Tolman: NO.

And this witness, who knew nothing about one of the commonest parts of the distilling apparatus, and required all those questions to draw out the admission of his ignorance, had the assurance to suggest, on the strength of his *experience*, that practical distillers did not know what they were about. Read this—

Mr. Hough: Have you ever seen a statement in any literature, that it is the heads and tails, constituting the feints, which contain the largest amount of these “congenerics?”

Mr. Tolman: I have.

Mr. Hough: And *you* disagree with it?

Mr. Tolman: I DO.

Mr. Hough: Then all the distillery operations, where they cut out the heads and tails to exclude some of those, *were futile operations in your opinion?*

Mr. Tolman: *In my opinion* they do not cut them out to exclude anything. That is *my* experience with distillers, that they cut them out to get the proof up, and—

Mr. Hough: I am not talking—

Mr. Tolman: *I want to answer the question in my own way.* They cut them off for that, and they also cut them off to clean out the worn, when the thing starts over again, and there are a few places *have got theories as to what they do* when they cut off the heads. Some of them want to have them all in. One man makes a great specialty of putting them all in—*thinks he gets a better product.* I DO NOT THINK THEY HAVE GOT VERY MUCH IDEA WHAT THEY ARE CUTTING OFF FOR. THAT IS MY EXPERIENCE.

Moreover, this modest gentleman ventured, on the strength of his *experience*, to impugn the veracity of fourteen witnesses of *special and practical experience*, who had previously testified—

Mr. McCabe: Have you known, or do you know, that by the manufacturer or the wholesaler and the rectifier "neutral spirits," so-called, diluted to proof and colored and flavored, or simply colored, is regarded as WHISKY?

Mr. Tolman: I think that as far as my experience goes I have never met a man, *that I considered honestly to tell the truth*, that thought so.

MR. ARTHUR B. ADAMS—Government Chemist.

Said there was no difficulty in distinguishing "Straight Whisky" from Whisky made from "Neutral Spirit."

But from the analysis of a "Straight Whisky" made by Dr. L. M. Tolman, (who himself selected the Whisky), Mr. Adams said he would not consider it Whisky at all.

Mr. Carlisle: Is there any difficulty about distinguishing these articles one from the other?

Mr. Adams: No, sir. Chemically, of course, you mean.

Mr. Carlisle: Yes; between what *we* call WHISKY and what is called WHISKY on the other side, which is neutral spirits diluted to proof. There is no difficulty in distinguishing them?

Mr. Adams: No, sir; there is no difficulty in distinguishing them.

Mr. Lucking: Would you kindly tell us what this analysis which I will read you shows—whether a neutral spirit or whisky?
(reads)

Mr. Adams: (after making calculation) THAT IS NOT WHISKY, IN MY OPINION.

Mr. Lucking: Will you state whether *this* analysis shows a neutral spirit or whisky? (reads)

Mr. Adams: (after making calculation) That *might be* a whisky.

Mr. Lucking: *It might be?*

Mr. Adams: Yes, sir; *it is not neutral spirits.*

Mr. Lucking: The *first* one is sample 2689 in Doctor Tolman's book, here, WHICH HE CALLS A WHISKY—OUR mash straight whisky." HE TESTIFIED TO THAT.

And this *Expert* agreed with *Expert* Tolman as to the ignorance of *practical distilling* on the part of *practical distillers*—

Doctor Wiley: There is a common impression, is there not, *among distillers*, that the fusel oil is just in the inverse proportion to that?

Mr. Adams: Yes, sir; there is that impression.

Doctor Wiley: Your examinations, then, corroborate the results of Doctor Tolman, that the highest fusel oil content accompanies the highest ethyllic alcohol content?

Mr. Adams: Yes, sir.

Doctor Wiley: *Instead of the opposite, as has been commonly supposed?*

Mr. Adams: Yes.

Doctor Wiley: Then, if you should take a part from the middle part of the run, it would have more fusel oil in it, would it not, than a part taken from near the end of the run?

Mr. Adams: Yes, sir.

Doctor Wiley: *Is not that contrary to the usual understanding of distillers in that matter?*

Mr. Adams: Yes, sir.

Doctor Wiley: Your results corroborate the results of Doctor Tolman, that *the common acceptation on the part of the distiller, which has so often been presented here, that the lower proof contains the greater amount of fusel oil, is incorrect?*

Mr. Adams: Yes, sir.

Mr. Maxwell: Of course, this must be very valuable testimony—*a subordinate in the department just having answers put in his mouth by the chief of the department.* I just want to call attention to it.

The Solicitor-General: *I note that fact.*

CHAPTER XIV

The Inconstant Whisky "Standards" of Doctor Wiley and the Chemists who Followed His Lead

These "Standards" were adopted by two Associations composed of Official Chemists and Food Officials, but having no legal authority whatever. The "Standards" were acted upon by Dr. Wiley, in *practical defiance* of Congress, which had been asked, and had declined, to authorize the making of Food Standards.

These "Standards" were the recommendation of a Committee which included Prof. Fischer (Chairman), Dr. Wiley, Prof. Barnard and Dr. Jenkins, whose testimony herein given shows their extraordinary unfitness for the work. (See Chapters XII and XIII, and page 19).

The Associations did not appear at the first hearing by President Taft, or the investigation which he ordered. We know of no reason why they should appear at any time: but at the Presidential hearing following the Solicitor-General's Report, two gentlemen introduced themselves as representatives of the Associations, and requested leave to speak. The President heard one of them; and, as time would not permit of even all the counsel engaged in the case making oral arguments, the President requested all parties, (including the Associations), to submit Briefs.

The Brief of the Associations, and the "Standards" in support of which it was presented, were commented on by us in our Reply Brief to the President, as follows:

"Some members of these Associations, and of the Standards Committees thereof, were upon the witness stand; but, after the first one or two were cross-examined, no attempt was made to defend these 'standards.' They appeared so ludicrous, and were based upon such utter ignorance of the business and the facts, that nobody attempted to support or justify them.

"Even Dr. Wiley, who is popularly believed to be responsible for the parentage of these 'standards' and their adoption by the societies, attempted no defense of them whatever.

"And yet, these 'standards' that appear so ludicrous in the judicial enquiry, are what the Food Officials have been working to; *and they have formed the basis for outlawing and condemning ninety-five per cent of the whisky of the country, including the most popular, famous and expensive Blends.*

"'Standards' which were recommended for adoption by the Government, but which the Government *did not, and could not, adopt, have to all intents and purposes been made Government Standards, because the Government Officers have condemned everything which did not conform thereto.*

"The author of these 'standards' remains incognito, though witness after witness was asked who the real father was.

"Prof. Shepard, whose name is signed to this Brief, certainly could not have been the *author, for he is on record against the adoption of any such standards.*

"And yet, in spite of this, the name of the learned gentleman is signed to this Brief, (whose authorship is a matter of much curiosity), urging the President to give Executive endorsement to these 'standards.'

"These gentlemen say they made *investigations and analyses, and from them they framed these 'standards.'*

"But those members of the Association who have been on the witness stand, admit that they *selected certain whiskies as a criterion and made their 'standards' from them. The whiskies so selected were all bottled-in-bond, or 'Straight,' whiskies.*

"Now, of what value is their evidence, or their 'standards?' What right had they, (in almost utter ignorance of the whisky business), to *select certain brands, and these all of one type, and make them the 'standard?' And why did they select the type least popular with the public?*

"What right had they to *pick out* whiskies which only *one* consumer in *twenty* drinks, pronounce these the *only* whiskies, and thereby *utterly ignore and overrule the great popular judgment?*

"The evidence showed:

- (1) That approximately 75% of all the whisky of America is BLENDED WHISKY.
- (2) That 20% is the NEUTRAL SPIRIT WHISKY.
- (3) That 5% is STRAIGHT WHISKY.

"In forming a definition or formulating a 'standard' for WHISKY in America, what right had any *body*, or any *person*, to accept or create as a 'standard' anything but that which was accepted by the *great body of the American people*?

"What is the *real* motive? We have it revealed in this Brief. We quote:

'The addition of Neutral Spirit is for the purpose of *evading the cost of ageing*. In this addition of *new* Neutral Spirit to *aged* Whisky, *which is the only practical question at issue*,¹ there is a dilution of not only what *has been called the "congeners,"* but also a dilution of the *'coloring obtained by long standing and maturing,'*² and *'a dilution of all that goes to make up flavor in an aged 'whisky.'*

"They want a definition adopted which ignores *history*, ignores *usage*, ignores *universal practice*, and substitutes their fanciful ideas of *what ought to be* whisky.

"And what for? Why simply to compel ageing for four years. And *why* do they want it aged for four years? Is it because of public health? No. Is it because of public advantage? No. Is it to give the public a more wholesome article to drink? No.

"It is simply because that portion of the Trade which *they* favor is *obliged*, in order to make their whisky *drinkable at all*, to age it four years; and as this is very expensive, it is desired to *compel all* to conform to this rule.

"These societies *first* adopted a set of 'standards' at Jamestown in 1907, after they had been tentatively proposed some six months before at a meeting held at Louisville, Ky. *These Jamestown 'standards' were utterly repudiated in many of the most important parts by the same societies, only about ten months later, at Mackinac Island, in August, 1908.*

"For illustration: The Jamestown 'standards' established an article known as 'RECTIFIED WHISKY' and defined what it was or should be. This was *totally eliminated* at Mackinac, and the most searching examination of such members of the societies as testified before the Solicitor-General, failed to reveal *why* the article which

¹Although Dr. Wiley and the Associations *agreed* as to *what* the "Standards" should be, they are wholly at variance as to *why* there should be "Standards."

Dr. Wiley says to insure the presence of Fusel Oil.

The Associations say to prevent the mixture of *new* spirit with *old* spirit.

²The fallacy of this is exposed at page 22.

had been so solemnly and deliberately defined and standardized at Jamestown should utterly disappear in the course of ten months.

"Another illustration: The Jamestown 'standards' defined BOURBON WHISKY as a whisky made from a mash of Indian Corn and Barley and Malt, of which Indian Corn forms more than 50%. It will thus be seen that under the Jamestown 'standards' Bourbon whisky could be made *anywhere*; but, through some mysterious influence, when the *later* 'standards' were adopted at Mackinac, they provided that BOURBON WHISKY could be made *only in the State of Kentucky*.

"Another illustration: The Jamestown 'standards' provided that SCOTCH WHISKY *must have* a smoky flavor derived from burnt peat; but at Mackinac this was cut out.

"Another illustration: At Jamestown these societies adopted a fixed *maximum* of congeneric substances; thus they held that any whisky containing *more than a certain proportion* of congeneric substances *was not whisky*. At Mackinac Island these maximums were all cut out.

"Another most striking thing about the 'standards' so adopted at Mackinac is that the definition of DISTILLED SPIRITS is such that it will exclude *any* grain spirit but STRAIGHT WHISKY; so that NEUTRAL SPIRIT WHISKY could not even be called DISTILLED SPIRITS under these fantastic 'standards.'

"THESE GENTLEMEN INFORM THE PRESIDENT THAT THEIR SOCIETIES GIVE THE MOST CAREFUL STUDY TO ALL FOOD QUESTIONS WITH WHICH THEY DEAL; AND THEY STATE THAT THE SUBJECT OF SPIRITUOUS LIQUORS WAS TAKEN UP MORE THAN NINE YEARS AGO.

"Let us see what this means.

"Nine years ago would be seven years before the Jamestown 'Standards' were adopted.

"And the outcome of that seven years' study resulted in conclusions which held good for only ten months.

"This suggests a little problem in proportion, viz.: If ten months' study upset the conclusions of seven years' previous study, at what time in the future may these societies feel reasonably sure that they know what they are doing?

"EIGHT YEARS' CAREFUL AND CONSCIENTIOUS INVESTIGATION (PREVIOUS TO ADOPTING THE LATER 'STANDARDS') FORSOOTH!

"Which horn of the dilemma will they accept?"

"1. Was their investigation *really* such as the importance of the subject demanded, *or was it not?*

"2. If it was, did they try to give effect to the ascertained facts, *or did they not?*

"Such chopping and changing of 'standards' would play havoc with business of any kind, *even in articles made for immediate consumption.*

"*But what would become of manufacturers who make goods to-day for use years hence?*

"If, under the Jamestown 'standards,' one had made RECTIFIED WHISKY for ageing, the ten months later 'standards' would have thrown it out of the market.

"If, under the Jamestown 'standards,' one had made BOURBON WHISKY in Pennsylvania, as he would be at liberty to do, he would have found it outlawed a few months after.

"It is simply pitiable that a group of *chemists* should have arrogated to themselves, not only to play with enormous trade interests, which they knew little or nothing about, but also to act upon their own interpretation of a statute which, *to their knowledge*, lawyers of national reputation construed in quite a different way.

"It is explained that the 'standards' were changed at Mackinac because of 'facts developed by the *completion* of certain investigations.' These were not *new* investigations then, but *investigations current when the previous 'standards' were adopted.*

"Will these gentlemen please further explain what sort of deliberative body *would dare* to legislate in a manner *vital to enormous business interests*, before their investigations on the subject were completed?"

CHAPTER XV

Eminent Chemists Differ from Doctor Wiley

(Extracts from the testimony before the Solicitor-General.)

The frankness, clearness and saneness of these witnesses saves one's respect for "scientific" evidence after that of Doctor Wiley, Professor Remington, Professor Fischer, Professor Ladd, Professor Jenkins and Doctor Tolman.

Messrs. Chandler, Dunlap, Sadtler and Schidrowitz were not called with the object of proving what WHISKY is, because President Taft ordered the Official Enquiry upon the ground that that question "is to be properly determined only after consideration of *competent evidence* drawn from those familiar with the trade in which liquors are "manufactured and sold." (See Chapter VI.)

They were called to show the utter fallacy of the assumption that chemists are *specialty qualified* to pass judgment on almost every product, natural or artificial; to show how *radically* chemists differ on the subject of Whisky. If, however, it had been foreseen *how thoroughly Doctor Wiley and his "scientific" supporters would discredit themselves*, no professional witnesses would have been brought against them.

These gentlemen, unlike Doctor Wiley and the chemists supporting him, did not assume an *encyclopaedic attitude*, and then have to confess ignorance of the rudiments of the subject. *They* did not pretend to know more about Whisky than the men who had *made* it and *dealt* in it for long periods.

These gentlemen did not have to defend their views by grotesque inventions—such as Doctor Wiley's assertion that Whisky is a natural product as much as Honey: that what had been repeatedly described by himself as a *substance*, and expressed in *figures*, was a *smell*.

These gentlemen did not appear as *pronounced antagonists* of an article long known as WHISKY, and *pronounced partizans* of an article known for a much shorter time as WHISKY.

That Doctor Wiley understood the significance of this "professional" opposition is apparent from the fact that he and his subordinate, Doctor Tolman, cross-examined these witnesses at extraordinary length—Doctor Wiley putting over five hundred questions, and Doctor Tolman about eighty.

PROF. CHARLES F. CHANDLER—Professor of Chemistry at Columbia University for forty-five years: Chemist of the Health Department of New York City for several years, and President thereof for eleven years. Mr. Lawrence Maxwell, formerly Solicitor-General, said—"Professor Chandler is the Dean of the profession in the United States."

Professor Chandler stated that he began the investigation of food and food adulterations about 1866: that he was employed by the Metropolitan Board of Excise to investigate the liquors sold in New York City: that he had had occasion to investigate the subject of WHISKY, had a Whisky still on a small scale in his laboratory, and had made a series of experiments on making Whisky under different conditions.

Mr. Hough: What, in your opinion, is the proper definition of WHISKY?

Prof. Chandler: Any distilled spirit manufactured from grain.

The Solicitor-General: It is your opinion that pure ethyl alcohol when made from grain, if diluted to proof, but not otherwise treated, is WHISKY?

Prof. Chandler: Yes; *that represents one extreme. It is the end of the series.*

Mr. Hough: To what is the flavor of most whiskies due—the characteristic flavor?¹

Prof. Chandler: To the tar that comes out of the charred barrel.

DR. FREDK. L. DUNLAP—Associate Chemist of the Bureau of Chemistry:² formerly Professor of Chemistry at the University of Michigan.

¹This refers, of course, only to whiskies aged in charred barrels. It should be added, that it is only *deeply* charred barrels, such as are used for "Straight Whisky," which give so *pronounced* a flavor.

²His associate is Dr. Wiley.

Mr. McCabe: Were you a member of an Administrative Commission that was instructed to investigate the labelling of whisky?

Doctor Dunlap: I was.

Mr. McCabe: Have you investigated to any extent the making of whisky in countries other than the United States?

Doctor Dunlap: Yes; I spent some time in looking into the methods of manufacture of whisky in Scotland and Ireland last summer.

Mr. McCabe: Have you made a search of the literature to determine the historical usage of the name WHISKY, and the product to which it has been applied?

Doctor Dunlap: Yes; I have.

Mr. McCabe: What did that investigation show?

Doctor Dunlap: I came to the conclusion from the investigation I made of the literature, that the term WHISKY had for many years been applied to a distilled spirit from a mash of grain, which was colored and flavored—both colored and flavored.

The Solicitor-General: Do you mean *any* spirit distilled from grain?

Doctor Dunlap: From cereals.

The Solicitor-General: Including what has been here so much called NEUTRAL SPIRIT?

Doctor Dunlap: *Any* distilled spirit.

The Solicitor-General: That is practically ALCOHOL?

Doctor Dunlap: Yes.

Mr. Carlisle: So that from the literature which you have read you came to the conclusion that the term WHISKY had been applied to NEUTRAL SPIRITS diluted with water, colored and flavored?

Doctor Dunlap: Yes, sir.

Mr. Carlisle: If not colored and flavored, what was the result of your investigation?

Doctor Dunlap: If not colored and flavored, but simply diluted?

Mr. Carlisle: Yes.

Doctor Dunlap: I have seen no statements in the literature directly to that point; but I am of the opinion that a NEUTRAL SPIRIT which is diluted to a potable strength is *as much*

*entitled to the name WHISKY as STRAIGHT WHISKY is before it receives the artificial color and flavor from the charred package.*¹

The Solicitor-General: Do you insist on the charred barrel as essential to whisky?

Doctor Dunlap: By no means.

The Solicitor-General: Then, do you regard its contribution in the way of flavor as a distinctive feature of whisky?

Doctor Dunlap: *Only of American Whisky.*

The Solicitor-General: Do you regard it as *distinctive* of American Whisky?

Doctor Dunlap: Of STRAIGHT WHISKY.

The Solicitor-General: Do you regard it as distinctive of *all* American STRAIGHT WHISKIES?

Doctor Dunlap: As far as I know.

The Solicitor-General: But *only* STRAIGHT WHISKIES, you say?

Doctor Dunlap: Yes.

PROF. S. P. SADTLER—Professor of Chemistry, Philadelphia College of Pharmacy: Consulting Chemist: Teacher of Chemistry for thirty-eight years.

Mr. Hough: I will get you to state whether or not, according to your knowledge of the character and constituents of the so-called STRAIGHT WHISKIES, any one of them complies with the definition and standard in the Pharmacopœia?

Prof. Sadtler: Speaking of those which I examined, I would say that they have *more than a trace of FUSEL OIL* from grain, which is indicated as the amount allowable in the Pharmacopœia. They also—several of them, at all events—have a higher amount of free acid than is allowed in the Pharmacopœia test. In these two respects *they do not conform*, therefore, with the Pharmacopœial requirements.²

Mr. Hough: What character of distilled spirits would, in your opinion, *more nearly conform* to the Pharmacopœial standard and definition of WHISKY?

¹His associate, Dr. Wiley, says these are not artificial.

²He is a member of the Revision Committee of the U. S. Pharmacopœia, whose Editor, Professor Remington, said that "Straight Whisky," and only "Straight Whisky," would conform to its requirements. (See Chapter XIII—page 79).

Prof. Sadtler: *The distilled spirits which had been rectified sufficiently to eliminate all but a trace of FUSEL OIL would more nearly comply with what is here stated?*¹

Doctor Tolman: Do you think then that this test, as given in the Pharmacopœia, would exclude a STRAIGHT WHISKY on that account?

Prof. Sadtler: *It would exclude such samples as I examined, certainly.*

Prof. Sadtler, who is a member of the Revision Committee of the United States Pharmacopœia, having made the following statement:

"The idea was to define WHISKY so broadly as to cover "the best commercial grades of whisky, and the committee "made no investigation into the subject of the origin of "those commercial grades. They established a series of "tests which they supposed were sufficient to establish the "purity and freedom from certain ingredients which they "considered deleterious"—

Doctor Wiley was apparently not very well pleased with this testimony, and this ensued:

Doctor Wiley: You spoke about what in the minds of the committee was the best commercial grade of whisky. I ask you now whether you consider a whisky made by a whisky distiller *in the proper method*, and kept in a whisky bonded warehouse for four years, or a whisky made by taking neutral spirits, diluting them to proof, and coloring and flavoring them—which do you consider the *better grade* of commercial whisky?

Prof. Sadtler: If the whisky made, as *you* call it, "in the proper way," is high in these ingredients which *I* call deleterious, *I* would not consider that it was *improved* by the maturing and ageing, or that it complied as well with those requirements as the *other* whisky.

Doctor Wiley: Which would you consider the *better* whisky upon the whole, commercially?

The Solicitor-General: THE QUESTION REALLY IS NOT RELEVANT. THE ENQUIRY HERE IS NOT AS TO WHAT IS THE *best* WHISKY, OR THE *better* WHISKY.

¹He is a member of the Revision Committee of the U. S. Pharmacopœia, whose Editor, Professor Remington, said that "Straight Whisky," and only "Straight Whisky," would conform to its requirements. (See Chapter XIII—page 79).

Doctor Wiley: What is measured there, a *substance* or a *smell*, by your test?

Prof. Sadtler: A SUBSTANCE.¹

Doctor Wiley: *What* substance?

Prof. Sadtler: The mixture called FUSEL OIL.

MR. PHILIP SCHIDROWITZ—London: Analytical and Consulting Chemist: Member of the Chemical Society and the Society of Public Analysts: Author of "Chemistry of Whisky," "Distillation of Whisky," "Application of Science to the Manufacture of Whisky," etc.

Mr. Hough: Are you a specialist in any branch of chemistry?

Mr. Schidrowitz: Yes; I have specialized in the alcohol industries.

Mr. Hough: Have you been called to give testimony in any government enquiries over there?

Mr. Schidrowitz: Yes. I was called before the Beer Memorials Committee in 1898. I was called before the Food Preservatives Committee: and recently gave evidence before a Royal Commission On Whisky And Other Potable Spirits.²

Mr. Hough: What special researches bearing on whisky did you make?

Mr. Schidrowitz: I made special researches on the chemistry of whisky, and on the distillation of whisky, and of various important matters coming under that head.

Mr. Hough: As a result of all these investigations and hearings, what would you say is a correct definition of whisky?

Mr. Schidrowitz: I should say that WHISKY is a potable liquid distilled from grain, *obtained by any of the processes or apparatus which have ever been commercially employed for that purpose.*

The Solicitor-General: Then you base your idea that any of these substances is WHISKY upon the fact that it has been accepted as such by the public?

Mr. Schidrowitz: Yes.

¹His colleague in the editing of the Pharmacopoeia, Professor Remington, says it is a *smell*. (See Chapter XIII—page 78).

²There were no contending parties before this Commission, which *itself* selected all the witnesses. That fact establishes the professional rank of Mr. Schidrowitz in England.

The Solicitor-General: Would it make any difference in your judgment, as to whether the public had accepted it or not, that the public *did or did not know* substantially the character of the article in fact?

Mr. Schidrowitz: No; I think not. *I think the public know nothing about it.* I do not know whether you would like to have my view as to what the public generally do think, because I have been at some little trouble to try and find out, not by direct questioning, but by leading them on; and I might say, to give an illustration of that, a neighbor of mine in London, who is a lawyer and a highly educated man, when this controversy of ours was going on, and columns on the subject were appearing in the papers—had been for months, for years I might say—met me one morning, and he said: "What is this 'still' whisky I hear about?" And all he appeared to have inferred from that whole business was that there seemed to his mind to be a "still" variety of whisky and a "sparkling" variety of whisky. That was all that was conveyed to his mind by the word "still." In fact, *the only opinion the public ever have about WHISKY*, if you talk to them, is that *they jocularly refer to FUSEL OIL. That is the only definite fact I ever came across.*¹

Mr. Hough: To what would you attribute the characteristic flavors of such whiskies?

Mr. Schidrowitz: Which whiskies?

Mr. Hough: Our so-called STRAIGHT WHISKIES, aged in a charred barrel.

Mr. Schidrowitz: *The only characteristic flavor* that I have been able to ascertain is what is *due to the charred cask*—the flavor obtained from the cask; * * * To my palate, I should say practically the whole of it was due to that. That Rye Whisky that I tasted here yesterday—that *new*, white Rye Whisky—tasted to me like an Irish Whisky. When they have been in the charred cask the flavor is *entirely different*.

The Solicitor-General: It rather struck me that the flavor which I rather gathered to be characteristic of the charred barrel was so predominant as to *swamp almost everything else*.

¹Contrast this with Doctor Wiley's ridiculous version of the public conception of WHISKY (Chapter XII—question 2).

Mr. Schidrowitz: *Exactly.*

Mr. Hough: Did you hear Professor Remington state that the acidity of a spirit does not increase with age?

Mr. Schidrowitz: Yes.

Mr. Hough: What would you say as to that?

Mr. Schidrowitz: *I would say that Professor Remington is quite wrong.*

Mr. Hough: You have heard it stated that a substance cannot change its name by virtue of some treatment. What is your view?¹

Mr. Schidrowitz: I think I could produce *thousands* of examples where a substance changes its name, either by chemical treatment, or mechanical treatment, or physiological treatment.
* * * You may take, say, Liebig's Extract of Meat, and add to it hot water; you find that you produce soup or bouillon.

Mr. Hough: Doctor Wiley brought out by one witness some similes. First, he brought out the olive-oil simile. Do you think *that* applies to the issue?

Mr. Schidrowitz: *I do not.* I think that the olive-oil simile, and the maple-sugar simile, and the margarine, are *all good examples of false analogies.* Take olive-oil. *It is not a change of material.* Olive-oil is obtained by purely mechanical process from the olive by separating out the oil. In the same way, maple-syrup is obtained from the maple sap by a simple process of concentration. Now, *these are,* in my opinion, *not manufactured articles in the sense that whisky is a manufactured article.* In making whisky from grain you *convert,* first of all, *the starch into sugar.* The sugar is an entirely different product from starch. Secondly, you *convert that sugar into alcohol,* which is, again, an entirely different product.²

And I think there can be no difference of opinion in this regard; that the consumer when he asks for olive-oil, or when he asks for maple-syrup, or when he asks for butter, knows

¹Doctor Wiley said—"The addition of water to any distilled product *never changes its name* or character or classification."

²Doctor Wiley declared Whisky to be an "absolutely natural article," equally with Honey. (See Chapter III—page 21).

pretty well what he means and what he expects to get; *he really has some knowledge of it*. In regard to WHISKY, I think he has *no knowledge*.

Moreover, there is this great difference: that all the other articles referred to are foodstuffs. Olive-oil is a food. Butter is a food. Maple-syrup is a food. But WHISKY is neither a food nor is it a drug; *nor is it consumed on any other basis than that of its flavor and alcoholic strength*.¹

Mr. Hough: I think you testified something as to the opinion of the public on the whisky subject. Do you know what the opinions of the leading *chemists* are on the subject?

Mr. Schidrowitz: Well, I think that the opinion of chemists other than the *small number* who have devoted any special consideration to this matter—and *that number is a very small one*—is not worth much more than that of *any other* intelligent member of the public; but the chemists I come in contact with generally in England, (and I think I may say some chemists over here), I think a *very large* proportion of them consider merely that WHISKY is a spirit distilled from grain * * *

Mr. Hough: Are NEUTRAL SPIRITS as you have heard them described here, and WHISKY as you have heard Doctor Wiley define it, "like substances?"

Mr. Schidrowitz: *I think so, decidedly*.

Mr. Hough: Why?

Mr. Schidrowitz: They are both alcoholic spirits derived from grain, and in my opinion *there is no radical difference in principle between them*.

The Solicitor-General: Your definition of WHISKY is either confined or extended—I do not care which it is—to an article made by a process thus far used in making what is sold as WHISKY? Do I get that correctly?

Mr. Schidrowitz: Yes; I think that is accurate. What I meant by that is this: That I wished to describe WHISKY *as it is to-day, not what it may be*. I do not like to bind myself to any hard and fast definition. I have been trying to do this

¹Is not the flavor a matter which every consumer wishes to decide for himself, without assistance from Doctor Wiley or anyone else?

²Contrast with Doctor Wiley's testimony. (Chapter XII—question 7).

thing for seven or eight years, and am still trying to do it, *and I think I am just about to give it up.*

The Solicitor-General: *You give me much comfort.*

Doctor Wiley: Now, in fermentation, an ester is *never* produced directly by fermentation, is it?

Mr. Schidrowitz: I should think you get *a good deal of esters* during the fermentation.

Doctor Wiley: Then you have really no positive chemical knowledge that those esters are derived altogether from ethyl alcohol, formed through ageing?

Mr. Schidrowitz: It comes from what is called circumstantial evidence and not direct evidence.

Doctor Wiley: It seems to *me* the circumstantial evidence is *all the other way.*

Mr. Schidrowitz: *I do not agree.*

Doctor Wiley: That is a question for the Solicitor-General.

The Solicitor-General: THAT BEING SO, I WILL NOT TRY TO MAKE UP MY MIND.¹

Doctor Wiley: I am not speaking of what is *not* WHISKY. That is no concern to me at all, *because the definition* of WHISKY includes only those things which are volatile at the temperatures at which the WHISKY is made.

Mr. Schidrowitz: *Whose* definition?

Doctor Wiley: You will agree with me that the substances which are in WHISKY are *only those* which are *volatile at the temperature at which WHISKY is made*, and not at higher temperatures?

Mr. Schidrowitz: The substances *in any particular* WHISKY are obviously those which will volatilize *at the temperature used* in the manufacture of *that particular* WHISKY.²

The Solicitor-General: Is there any distinction * * * between adding *more* of something that is a *simple constituent of the article itself*, and adding something that *previously* is *not contained in the article at all?*

¹The Solicitor-General evidently had in mind—"Who shall decide when Doctors disagree?"

²See Doctor Wiley's testimony. (Chapter XII—questions 9, 22-26).

Mr. Schidrowitz: I should think there is a *very great* distinction.

The Solicitor-General: What do you consider is the test of the line beyond which the addition of pure alcohol may not go without *destroying the whisky character?*

Mr. Schidrowitz: I think there is *absolutely no test except that of flavor, or taste.*¹

The Solicitor-General: Which depends upon what the *public recognize* as the characteristic whisky flavor?

Mr. Schidrowitz: Yes.

Doctor Wiley: So far as whisky is concerned, that has no relation with it, has it?

Mr. Schidrowitz: *I do not agree with you.*

Mr. Schidrowitz: I think, from my own experience and our general knowledge, that the addition of the alcohol disturbs the equilibrium a great deal less than the addition of water.

Doctor Wiley: *I don't know; I should think not.*

Doctor Wiley: You think, then, as long as you can lead the public to believe that any *compound* of that kind is Brandy, that that is a correct test for Brandy?

Mr. Schidrowitz: *I do not think that is a compound.*

Doctor Wiley: But it is *not* Brandy in the common sense of the word, is it?

Mr. Schidrowitz: *I should think it was.*

Doctor Wiley: Is it the Brandy that is known in the region of Cognac?

Mr. Schidrowitz: I should say it was not a *Cognac* Brandy, if you like.

¹See Doctor Wiley's testimony. (Chapter XII—question 69).

CHAPTER XVI

"Leslie's Weekly" on Doctor Wiley as an "Expert" Witness

(Copied from the issue of May 14, 1908.)

AN EXPERT WHO DOES NOT QUALIFY.

The man who has been spending a good deal of the people's money in making unscientific experiments as the chief chemist of the bureau of chemistry, at Washington, has been set forth by a good many newspapers as an expert in reference to the effect of food preservatives on the human system. The notoriety which this Dr. Wiley has achieved at the public's expense has not been to the best advantage of the cause of pure food reform. The obstreperous doctor, having achieved notoriety, loves to linger in the light of publicity. In a recent trial at Washington he was a prominent witness, but he cut a sorry figure. During his cross-examination the "chief chemist of the bureau of chemistry" disclaimed qualifications as a druggist, expert in drugs, physician, and even as a food expert, although he has claimed at various hearings before congressional committees to be an expert on practically everything pertaining to medicine and chemistry.

On account of Dr. Wiley's age and the exalted governmental position he holds, one would expect that his testimony would be given with a certain degree of dignity. We append some of the answers that he gave in the case of the "United States vs. Harper." It is hard to conceive anything more flippant, we might almost say blasphemous, than the last two answers printed in the cross-examination herewith given.

Dr. Wiley cross-examined by Mr. Tucker:

Mr. Tucker: Well, you have written a book, have you not, on—
what is the title of your book, doctor?

Dr. Wiley: I cannot remember it.

Mr. Tucker: *You cannot remember the title of your book?*

Dr. Wiley: No, sir.

Mr. Tucker: Well, I will read the title to you—"Foods and
their Adulteration; Wiley: illustrated."

Dr. Wiley: I think that is it; yes, sir.

Mr. Tucker: You plead guilty of being the author of that?

Dr. Wiley: Yes, sir.

* * *

Mr. Tucker: What is the physiological effect of caffeine?

Dr. Wiley: *Well, I am not an expert pharmacologist.*

Mr. Tucker: You do not know?

Dr. Wiley: *I have an idea, but not as an expert.*

Mr. Tucker: Do I understand, then, that you disclaim any expert knowledge on the subject of the physiological effect of drugs?

Dr. Wiley: I do. *I am not a druggist.*

Mr. Tucker: You do not know, then, the physiological effect of drugs?

Dr. Wiley: Yes; I know some of them, because I am a physician. I would not qualify as an expert in drugs.

Mr. Tucker: Oh, you are a physician?

Dr. Wiley: I am trained as a physician; yes, sir.

Mr. Tucker: Have you ever practiced as a physician?

Dr. Wiley: I have never practiced, except in hospitals. I never had a private practice.

Mr. Tucker: What has been the extent of your hospital experience?

Dr. Wiley: *I will not qualify as a practicing physician; I do not propose to.*

* * *

Mr. Tucker: Doctor, you have told us that you do not know anything about, or know little about, the physiological effects of drugs.

Dr. Wiley: I said I would not qualify as an expert.

Mr. Tucker: Yes.

Dr. Wiley: *I know a good deal about it, but not as an expert.*

* * *

Mr. Tucker: What is the chemical formula of acetanilid?

Dr. Wiley: I do not remember the chemical formula. *I am not a drug expert.*

Mr. Tucker: What are the elementary constituents of acetanilid?

Dr. Wiley: It consists of carbon, hydrogen, and oxygen.

Mr. Tucker: Anything else?

Dr. Wiley: Well, I could not say. *I am not an expert in that line.*

Mr. Tucker: You are not an expert in that line?

Dr. Wiley: No, sir.

Mr. Tucker: Are not some of these elements that you have just named also elements of food?

Dr. Wiley: Not to my knowledge.

Mr. Tucker: None of them?

Dr. Wiley: Not to my knowledge.

Mr. Tucker: What is the chemical formula of starch in food?

Dr. Wiley: Starch is composed of carbon, hydrogen, and oxygen.

* * *

Mr. Tucker: How long ago was it, doctor, that you studied medicine?

Dr. Wiley: It has been thirty years ago.

Mr. Tucker: Thirty years ago you studied medicine?

Dr. Wiley: I studied *ph* utics; yes, sir.

Mr. Tucker: How long have you practiced?

Dr. Wiley: *I never practiced at all*, except during my experience in a hospital as a student or as an assistant for a short time.

Mr. Tucker: Then at least part of your knowledge of the physiological effect of caffeine is based upon what knowledge you obtained as a student in a hospital thirty years ago.

Dr. Wiley: Yes, sir.

* * *

Mr. Tucker: Did you not say, doctor, that tannin is the chief, principal ingredient of coffee?

Dr. Wiley: I did not say it was the chief; I said it was one of the principal constituents.

Mr. Tucker: Well, I only want to know why you make that statement, why it is; that is all.

Dr. Wiley: Well, I could not say why tannin is the chief constituent of coffee. *I did not create coffee.*

Mr. Tucker: No, doctor; that was not the question. The question is why is it so valuable.

Dr. Wiley: *Well, I think you must refer that to the Creator, too.*

It is high time that Dr. Wiley should be taken at his real, rather than his face, value.

