

6623. Misbranding of mineral water. U. S. * * * v. 275 Cases of Mineral Water. Tried to the court and a jury. Verdict for the Government. Decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 8752. I. S. Nos. 8762-p, 8763-p. S. No. C-806.)

On February 1, 1918, the United States attorney for the Western District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 275 cases of mineral water, remaining unsold in the original unbroken packages at Shreveport, La., alleging that the article had been shipped by the Robinson Springs Co., Pocahontas, Miss., on or about July 7, 1917, and transported from the State of Mississippi into the State of Louisiana, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part, "Robinson Spring Water, Springs at Pocahontas, Miss. Recommended in the treatment of Bright's Disease, Diabetes, Dropsy, Cystitis, Gout, Rheumatism, Indigestion, Kidney and Bladder Troubles. Directions. * * * Robinson Springs and Sanitarium Co. Pocahontas, Miss."

It was alleged in substance in the libel that the article was misbranded for the reason that certain statements regarding the therapeutic or curative effects thereof, appearing on the label, were false and fraudulent in that they were applied to the article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchaser thereof, and create in the minds of purchasers thereof, the impression and belief that it was in whole or in part composed of, or contained ingredients or medicinal agents, effective, among other things, as a remedy for Bright's disease, diabetes, dropsy, cystitis, gout, rheumatism, indigestion, kidney and bladder troubles, when, in truth and in fact, it was not in whole or in part composed of and did not contain, ingredients nor a combination of ingredients, capable of producing the therapeutic effects claimed on the labels, and therefore not effective as a treatment for the above-named ailments.

On February 20, 1919, the case having come on for hearing, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Jack, *D. J.*):

This is a suit brought by the United States under what is known as the Pure Food and Drugs Act for the seizure, condemnation and confiscation of two hundred and seventy-five cases of Robinson Spring Water shipped from Pocahontas, Miss., to Shreveport, La.

The act makes it an offense to misbrand any drug shipped in interstate commerce. Section 8 of the act, as amended, provides:

"SEC. 8. That the term 'misbranded,' as used herein shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

"That for the purposes of this act an article shall also be deemed to be misbranded. In case of drugs:

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Third. If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent."

On the bottles of water are printed labels reading as follows:

"Robinson Spring Water. Springs at Pocahontas, Miss. Recommended in the treatment of Bright's Disease, Diabetes, Dropsy, Cystitis, Gout, Rheumatism, Indigestion, Kidney and Bladder Troubles. Directions * * *. Robinson Springs and Sanitarium Co., Pocahontas, Miss."

It is not contended that the water contains any deleterious substances, but that it contains no element of a therapeutic or curative value in the treatment of the diseases for which it is recommended on the labels, and that such statements on the labels are false and fraudulent, knowingly and recklessly made in wanton disregard of their truth or falsity, for the purpose of creating in the minds of prospective purchasers thereof, the impression and belief that the water was in whole or in part composed of ingredients effective as a remedy for Bright's disease, diabetes, dropsy, and the other diseases named, when, in truth and in fact, such water was not capable of producing the therapeutic effects claimed for it.

C. L. Bradley has made an appearance in the suit, claiming the water as his property, admitting the interstate transportation of same, but denying that the bottles are misbranded, or that the labels thereon contain false and fraudulent statements. He avers that many reputable physicians have used the water in the treatment of the diseases named on the labels, and alleges that the same was beneficial in the treatment of such diseases. He especially avers that before putting the water on the market he had it thoroughly tested and made no attempt to sell any of the water until he had been advised by reputable physicians of its therapeutical value in the treatment of the diseases for which he recommends it. He avers that in labeling the bottles he acted in entire good faith and denies that he attempted to perpetrate any fraud or deception upon the public.

Thus by the pleadings the issue is made clear and distinct, and you are to determine under the evidence, first, whether or not the water in question any more than any other pure water is of curative value in the treatment of the diseases enumerated on the label. If you determine that it is, then there is no need for any further inquiry. Defendant would be entitled to judgment rejecting the demands of the Government.

On the contrary, should you find that the water in question was not of medicinal value in the treatment of the diseases named, then your second inquiry would be whether or not the recommendation made by the owner, of the use of the water in the treatment of the diseases named, was fraudulently made. That brings up the question of good faith. Did Bradley, or did he not, knowingly recommend in the treatment of these diseases water which had no medicinal value?

If you find that the water was not of value for the purposes recommended, but that defendant acted in good faith, then there should be a verdict in his favor; but, if you find that the water was not of value for the purposes recommended, to the knowledge of the defendant, and that his purpose was to deceive and impose upon the public, then you should return a verdict for the Government.

You will bear in mind that the Government does not attack the water as bad or unfit for use, but, on the contrary, admits that it is a pure water, good for table use, but denies that it has any value in the treatment of the diseases for which it is recommended. The purpose of the suit is, therefore, not to suppress the sale of the water but to prevent the advertising and holding out of the water as of value in the treatment of diseases in which the Government claims it is of no benefit.

The Pure Food and Drugs Act is one of the best laws of its character placed on the statute books in many years. It simply means that a man shall correctly brand or label that which he ships in interstate commerce, that the purchaser must be informed of the character of the article bought, and must not be deceived as to its curative properties, in other words, that the drug must not be sold under false representations.

Barnum, the veteran showman, used to say that the American people like to be humbugged. That is, perhaps, more or less true. Consequently, a man who deliberately bets his money on a shell game, or who invests his savings in a gold brick, receives, and is entitled to, little sympathy. There is, however, a class of people, not ordinarily over credulous or gullible in ordinary matters of business, who, when stricken with a fatal malady, like drowning men, grasp at straws, and fall easy victims to quack doctors and patent medicine fakers. Such a man, when told by his physician that his case is hopeless and his days numbered, against his own better judgment, tries one nostrum after another in the desperate hope that he may find a cure. Such a man is the more easily persuaded to buy an alleged remedy whose efficacy he may doubt if he knows that it is at least perfectly harmless. These remarks are made to impress upon your minds the wisdom of the law and the importance of its strict enforcement.

If the water in question has the qualities attributed to it by the owner, it is not only his right to so advertise it but is to the interest of the public that he should do so. On the other hand, if the water has not the qualities ascribed to it, then such false advertising by labels on the bottles should be suppressed, and the deception of the public should be stopped.

These, then, are questions of disputed fact, of which you are the exclusive judges. This is not a criminal prosecution and the Government is not required to make out its case beyond a reasonable doubt. If the evidence establishes to your satisfaction the contentions of the Government, you should return a verdict for plaintiff, otherwise your finding should be for the defendant.

You may retire and consider your verdict.

The jury thereupon retired and after due deliberation returned a verdict for the Government, and thereafter, on February 25, 1919, in accordance with the said verdict, a decree of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to claimant, C. L. Bradley, Jackson, Miss., upon the execution of a bond in the sum of \$500, in conformity with section 10 of the act.

C. F. MARVIN, *Acting Secretary of Agriculture.*