be misbranded "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 thereon which is false and fraudulent." The drug in this case is a drug called "Gingerole," which word appears therefrom to be a trade-mark. The carton contains the statement "Will not blister," a statement also of the place of manufacture and by whom it is manufactured. It contains directions "Do not apply to open sores;" "Apply to parts affected;" "For pneumonia or cold in chest apply to chest and cover with flannel cloth;" "For rheumatism, neuralgia, sore or stiff joints, apply by rubbing ointment in well;" and it contains in addition the words "For pneumonia, cold in chest, croup, rheumatism, sore or stiff joints, neuralgia, pleurisy, asthma." The label on the jar contains directions "Apply to parts affected. When applied to children use sparingly," and also "Do not bind." From all that appears upon the carton and jar, the drug is intended for external use only, and in order to produce a secondary irritation. I am satisfied from the evidence that it is a counterirritant, notwithstanding the testimony of certain physicians who had applied some to their hands while preparing to testify in the case. It is a matter of common knowledge that the old-fashioned mustard plaster was prepared by hand and that it took considerable time before it had produced any effect upon the more tender skin of other parts of the body. I am satisfied that the drug in question would not be of any substantial value in the cure of some of the diseases above mentioned, but I am not satisfied that the officers of the defendant company do not believe that their drug would be of benefit to a patient who was suffering from any one of the diseases mentioned. The label may be false in its suggestiveness, but in the absence of a positive statement, which would never be made without some positive belief in its truth, I can not find that there is anything on the carton or the label which is fraudulent within the meaning of the act of Congress The statement, design, or device regarding the curative therapeutic effect of the drug must be both *false and fraudulent.*

"This phrase must be taken with its accepted legal meaning, and thus it must be found that the statement contained in the package was put there to accompany the goods with actual intent to deceive—an intent which may be derived from the facts and circumstances, but which must be established." (7 Cases *v.* United States, 239 U. S. 510–517.)

I am unable to find under the evidence in this case that any such statement upon carton or jar is both false and fraudulent. It is not necessary to determine which, if any, of the various statements may be false, because that would not be sufficient to establish the guilt of the defendant.

And now, to wit, July 23, 1920, the trial judge finds the defendant not guilty, and directs judgment be entered in accordance with such finding.

E. D. BALL, *Acting Secretary of Agriculture.*

8721. Misbranding of Montauk Santal Compound. U. S. * * * v. 5 Dozen Bottles of Montauk Santal Compound. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 10672. I. S. No. 16533–r. S. No. E–1586.)

On or about June 25, 1919, the United States attorney for the Northern District of Georgia, 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 5 dozen bottles of a drug, labeled in part "Montauk Santal Compound * * * Montauk Chemical Co., Port Richmond, N. Y.," remaining unsold in the original unbroken packages at Atlanta, Ga., alleging that the article had been shipped on or about February 25, 1918, by the E. J. Dunbar Co., Inc., New York, N. Y., and transported from the State of New York into the State of Georgia, and charging misbranding in violation of the Food and Drugs Act, as amended.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the contents of the capsules consisted essentially of santal oil.

It was alleged in substance in the libel that certain statements appearing on the labels of the packages containing the drug and in the circular accompany-

ing the same, regarding the curative and therapeutic effect of said drug, were false and fraudulent in that the same were applied to the drug 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 his mind the impression and belief that said drug was in whole or in part composed of and contained ingredients and medicinal agents effective as a treatment, remedy, and cure of gonorrhea, whereas, in truth and in fact, it was not.

On June 24, 1920, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

E. D. BALL, *Acting Secretary of Agriculture.*

8722. Misbranding of Owl Brand cottonseed meal. U. S. * * * v. De Soto Cotton Oil Co., Ltd., a Corporation. Plea of guilty. Fine, $50 and costs. (F. & D. No. 10895. I. S. No. 11067-r.)

On October 16, 1919, 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 an information against the De Soto Cotton Oil Co., Ltd., a corporation, Mansfield, La., alleging shipment by said company, in violation of the Food and Drugs Act, on or about November 1, 1918, from the State of Louisiana into the State of Michigan, of a quantity of an article, labeled in part "Owl Brand F. W. Brode & Co., Memphis, Tenn. Jobbers High-Grade Cotton Seed Meal," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the presence of 7.10 per cent of ammonia, 36.6 per cent of protein, 5.85 per cent of nitrogen, and 15.97 per cent of crude fiber.

Misbranding of the article was alleged in the information for the reason that the following statements concerning the article, appearing on the tag attached to the sacks containing it, to wit, "Ammonia 8%, Nitrogen 6½%, Protein 41%, Fibre, Maximum 10%," were false and misleading in that they represented to purchasers of the article that it contained not less than 8 per cent of ammonia, 6½ per cent of nitrogen, 41 per cent of protein, and not more than 10 per cent of fiber, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 8 per cent of ammonia, 6½ per cent of nitrogen, 41 per cent of protein, and not more than 10 per cent of fiber, whereas, in truth and in fact, it contained less than 8 per cent of ammonia, less than 6½ per cent of nitrogen, less than 41 per cent of protein, and more than 10 per cent of fiber.

On March 8, 1920, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $50 and costs.

E. D. BALL, *Acting Secretary of Agriculture.*

8723. Misbranding of Vitalitas. U. S. * * * v. 240 Cases of Vitalitas. Product ordered released on bond. (F. & D. No. 11236. I. S. No. 13133-r. S. No. E-1711.)

On September 17, 1919, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel of information praying the seizure and condemnation of 240 cases of Vitalitas, at Boston, Mass., consigned August 21, 1919, by the Vital Remedies Co., Houston, Tex., alleging that the article had been transported from the State of Texas into the Commonwealth of Massachusetts, and charging misbranding in violation of the Food and Drugs Act, as amended.