

On October 18, 1920, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$75 on count one and \$25 on count two, together with the costs.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

9614. Misbranding of kidney and bladder remedy. U. S. * * * v. William T. Long (William T. Long Medicine Co.). Tried to the court and jury. Verdict of guilty. Fine, \$200 and costs. (F. & D. No. 12328. I. S. No. 7225-r.)

On May 19, 1920, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against William T. Long, trading as the William T. Long Medicine Co., Oklahoma City, Okla., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about May 27, 1919, from the State of Oklahoma into the State of Iowa, of a quantity of an article labeled in part "The World's Greatest Kidney and Bladder Remedy," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted of an aqueous solution of acetic acid and tannin-bearing plant material.

Misbranding of the article was alleged in substance in the information for the reason that certain statements, designs, and devices regarding the therapeutic and curative effects thereof, appearing on the label of the bottles containing the said article and in an accompanying circular, falsely and fraudulently represented it to be effective as a treatment, remedy, and cure for kidney and bladder trouble, gravel, Bright's disease, diabetes, bed wetting, female weakness, sugared urine, rheumatism, all uric acid troubles, and pellagra, and to be effective to remove all impurities and to destroy infections from bad blood in a few days, when, in truth and in fact, it was not.

On February 1, 1921, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel the court delivered the following charge to the jury (Wade, D. J.):

Gentlemen of the jury, this is a simple case. I don't want you to become confused and wander off into fields of speculation suggested by counsel in the arguments or in the opening statements, including Christian Science, prejudice of doctors, the origin of the medical profession, and all that sort of thing. Get down to the thing to be tried. What is it?

This man here is sending out some medicine which he solemnly represents will do certain things. The question here is whether it is true. If not true, it was sent out with the purpose to defraud.

Don't get a notion that this law was made by somebody to do something to help somebody that is not entitled to help, because this law was made by the people of the United States. They make the laws in this country. And this law was made in the same spirit in which they have here in Oklahoma, and in every other State in the Union, a law providing that no man can practice medicine unless he has taken a certain course of study or is a graduate from certain institutions, and in the same spirit in which the people of every State spend thousands of dollars every year to enable men to become qualified to practice medicine for us, because it is the only source of aid which we have when sickness comes.

Now, let's get away from some of these suggestions that have been made.

In addition to providing a bar against the attempted practice of medicine by persons who know nothing about the human body or its elements, they passed a law providing that if persons are selling food, it shall not be adulterated; if they are selling drugs or medicine, they shall not misbrand it. That is all. No law prohibits a man from making any medicine he wants to and selling it to the people if he tells the truth about it. Anybody in this country has the right to buy any medicine that he wants to buy if he knows what it is.

The law which punishes men for misbranding drugs and medicines is the same law which is enforced every term of court for misbranding food, for shipping eggs that are rotten when they are represented to be fresh, all of those things for the protection of the people against things which would defraud them or endanger their lives or health, or get their money for something without getting value received.

What is charged here? It is charged here that this product made of vinegar and berries—and there is no dispute upon that point—was sent out under a certain brand and a certain label. Now, in order that we may thoroughly understand what is before the jury, let us look at this label: "World's Greatest Kidney and Bladder Remedy. The greatest discovery of medical science for Kidney and Bladder Trouble. Removes Gravel, dissolves and passes it away without the aid of the knife. Speedy relief for Bright's Disease, Diabetes, Bed Wetting, Female Weakness, Sugared Urine, Rheumatism, and all Uric Acid Troubles. Removes all impurities and infections from bad blood in a few days after Doctors give you up. Don't let them use the knife, come and get well. Don't take poisonous drugs and opiates, when nature, in her great laboratory, in the forest, has prepared the remedy. The Almighty saw clear down to the end of time and provided a remedy for all diseases. The Medicine Man of the wild tribes handed down these formulas from father to son and never used the surgeon's knife or poisons, but dug the roots and herbs nature provided, and kept the secret, but of late a few of these formulas have been obtained at a high price to be kept inviolate, and we are able to-day to compound and distribute to suffering humanity, the World's Greatest Kidney and Bladder Remedy. We have living testimonials that foiled the Medical Profession that are now well. This remedy has been used successfully in Pellagra cases. Directions: Adults, one tablespoonful before meals, three times a day. Children, teaspoonful three times a day. Guaranteed Under Pure Food and Drugs Act, June 30, 1906. Price \$2.00 per bottle. William T. Long Medicine Co., 208 West Washington Street, Oklahoma City, Okla. Trial Package, Three bottles for \$5.00."

The Government charges that those representations were false. The defendant denies the charge that they were false, and denies the charge that there was any fraud in the label.

In this case, as in every case, the burden is upon the Government to prove beyond a reasonable doubt the charge it makes, that this medicine was falsely and fraudulently labeled, and unless it is established here beyond a reasonable doubt that that is true, of course you must acquit.

What is a reasonable doubt? I have explained it to you so often you thoroughly understand it now. It means a doubt which naturally arises in your minds, not being sought after or conjured up, but one which naturally arises in your minds after a full, fair, and honest consideration of all of the evidence. If your mind wavers and oscillates, so to speak, between guilt and innocence, then the law requires you to give the benefit of that state of mind to the defendant. But if there is no reasonable doubt in your mind as to the truth of the charge made, you will convict.

Now, then, does this proof require that the Government prove that all of the representations were untrue? Not at all. Not at all. If any one of them is untrue and fraudulent, that is sufficient. In other words, if the representation as to the effect of this medicine on Bright's disease is false and fraudulent, the defendant is guilty. If the representation is untrue and fraudulent as to diabetes, he is guilty. If the charge is true as to any of them, he is guilty.

In other words, you can plainly see that the defendant has the right to make any representations he wants to so long as they are true. A man might represent that a certain medicine would cure coughs and colds, and that might be substantially true, but if he went further and said coughs and colds and tuberculosis, you know that the representation is false because humanity has not yet found a drug that is a cure for tuberculosis. Therefore, if he had stopped at the coughs and colds he might be within the proper bounds, but he steps outside when he represents that it will cure something that is incurable through any drug medium.

So in this case if the representation here had been that it would cure frequent urination, and stopped at that, then we would have some evidence here to which he could point as establishing the proof of the thing that he represented. But, of course, under the uncontradicted evidence here, frequent urination is not proof of Bright's disease, nor of diabetes. If he had represented

that it aided painful menstruation there might be some proof here that it had afforded some relief in such cases. If he had stopped with saying that it would cure bed wetting, there might be proof here upon which he could rely and ask you to believe that the representation was true.

But, of course, under the uncontradicted evidence in this case, there is no case of Bright's disease or diabetes before this jury where any witness testified that the medicine was taken and that it effected in any manner a cure. Nobody claims that there is any such proof. Both sides have been heard and outside of gossip or suggestions of persons suffering from something of the kind above stated, nobody could tell—from the description and from the method of determining diseases of that type—no one could tell you that we have any proof with reference to any Bright's disease or diabetes in this case—under the uncontradicted evidence in this case. You are the final judges of the evidence. Nobody claims in this case that this medicine would cure Bright's disease or diabetes, and we are dealing in scientific matters about which the average man has no knowledge. When it comes to finding the truth, we can not set up our judgment without experience and education against the statements of men who devote their lives to these studies. We must accept the word of science in these things, except in so far as we, with our limited vision, can see and thus judge what the truth is. The uniform testimony in this case is that in a case of Bright's disease there is no drug cure at all, that the thing here before the court would not affect it in any way. That in diabetes there is no drug cure, and that this remedy would not cure it. There is no evidence to the contrary so far as Bright's disease and diabetes is concerned. If the representations were false as to these and fraudulent, he is guilty.

Now, I think it is perfectly safe to say that, under the uncontradicted evidence in this case, while you are the judges of the matter finally and of this man's guilt, I can see no possible conflict in the evidence here that these representations were false. There don't seem to be any evidence to the contrary. But you are the judges of that matter. I can recall no evidence in conflict in the case.

Several witnesses testify that this thing is not a cure for Bright's disease or diabetes. Nobody claims that it is, the defendant's claim being that he knew nothing about what these persons were suffering from except what they told him, and those people probably knew no more about it than the average person who, when he gets sick, often imagines a name for the disease which he has. But what the people told this defendant would be hearsay. It would not be competent proof that the person had such a disease.

So, gentlemen, if these representations are false, there is only one other thing to consider in this case, and that is whether they were fraudulent, the statute providing that the branding must be false and fraudulent before you can convict.

Well, what does fraudulent mean? A representation is fraudulent, of course, when a man knows that it is not true. Nobody would dispute that. Fraudulent means, with reference to representations, things that are said or represented to somebody when the person making the representation knows that that representation is not true. It don't make so much difference what his purpose is providing it is a serious purpose of getting one to part with his money or property, or something of that kind. That, of course, would be fraudulent. But other things are fraudulent besides that. The man who has no knowledge of a thing, and knowing that he has no knowledge, represents as a fact that a certain thing is true, in the hope that the person to whom the representations are made will rely upon it and accept his statement, that man is committing a fraud. His representation is fraudulent. If he knows, now, that he doesn't know, and he represents to a man a fact which he knows he doesn't know expecting the other man to rely upon it, that is a fraud because there is fraud in the assumption of knowledge when he knows he hasn't got it. It is generally true that any representation which is made in reckless and wanton disregard of whether it is true or false constitutes a fraudulent intent and purpose.

So, gentlemen, taking these things and these definitions into consideration, if you determine beyond a reasonable doubt that the evidence here establishes that these representations, or some of these representations, were false, were they fraudulent within the meaning of the rule I have stated?

Now, it is not a question, gentlemen, of how much money he was making. I think counsel suggested something about those coming to him and having

treatment, whether they had money or not. There isn't any evidence of that in this case. Just stick to the evidence, gentlemen.

Now, don't be misled or carried away by the suggestions that this wouldn't hurt anybody. The people when they enacted this law didn't say, "If a person misrepresents a medicine or drug which hurt somebody." They said that anybody who misrepresented any drug, medicine, anything of that kind, and sends it through interstate commerce, should be punished. A person should not thus be induced to part with his money, no matter how small it may be, nor should a person be thus led to believe and rely upon a certain thing as a cure for a dangerous and deadly disease, and thus perhaps be led to defer consultation or inquiry which might help him if taken in time, and which might not help him later. I only refer to those things because of the things suggested here in the argument of the case.

It is a question of whether or not this man has sent misbranded medicine through interstate commerce, that is what gives this court jurisdiction. If it didn't get out of the state it would have to be tried in the state court. But where a man falsely represents in the label statements in connection with medicine, and that false statement is made fraudulently within the meaning of what I have said to you, the man is guilty, even though the price is made low and it would harm no one.

So, gentlemen, taking all these considerations together, look at the evidence in this case frankly without any feeling of prejudice, and determine whether or not, beyond a reasonable doubt, any of the representations on this label were false, and if so, if they were also fraudulent, and shipped into Iowa, and if you find beyond a reasonable doubt that they were, you will find this man guilty. If you do not find they were false and fraudulent, either in whole or in part, you will find a verdict of not guilty.

On February 2, 1921, the jury returned a verdict of guilty, and the court imposed a fine of \$200 and costs.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

9615. Alleged adulteration of eggs. U. S. * * * v. Wilson & Co., a Corporation. Tried to the court and a jury. Verdict of acquittal. (F. & D. No. 13080. I. S. No. 5778-r.)

On November 19, 1920, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Wilson & Co., a corporation, Kansas City, Kans., alleging shipment by said company, in violation of the Food and Drugs Act, on or about October 23, 1919, from the State of Kansas into the State of Missouri, of a quantity of shell eggs which were alleged to have been adulterated.

Examination of 540 eggs from the consignment by the Bureau of Chemistry of this department showed that 76 were absolutely rotten and unfit for food, of which one-half were black rots and the balance moldy and spot rots.

Adulteration of the article was alleged in the information for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid animal substance.

On April 13, 1921, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel the court delivered the following charge to the jury (Pollock, *D. J.*):

In this case Wilson & Co. are charged on the information of the Government, prepared by the district attorney, with the offense of violating what is known as the Pure Food or Drug Act of the country. The precise offense that is charged against Wilson & Co. is that they shipped in interstate commerce (and you understand, gentlemen of the jury, it is only because these eggs were carried in interstate commerce here that the Government has any control of the matter at all), but that Wilson & Co., the defendant in that case, shipped in interstate commerce, that is, from Kansas City, Kans., into Kansas City, in the State of Missouri, 10 dozen of eggs; that these eggs were spoiled or decayed at the time they were shipped to such an extent that they were unfit for human use or food.