

Men, women and even children, whose energy has been sapped and their life almost wrecked, who were troubled with festering sores or tortured with rheumatic pains, have been relieved from the grip of these diseases, after the continued use of or treatment with Prescription C-2223. \* \* \* for any trouble due to poisoned or tainted blood, get you a bottle of Prescription C-2223. \* \* \* 'In \* \* \* conditions due to tainted blood, it acts as a specific.' \* \* \* 'the most valuable remedy known in the treatment of rheumatism; it eases the pain, diminishes the fever—results are almost certain in acute \* \* \* cases.' \* \* \* Prescription C-2223 has relieved \* \* \* many thousands, suffering from Rheumatism, \* \* \* Lumbago, Sciatica, diseases due to tainted or impure blood, evidenced by chronic Sores, Scrofula, Eczema and other similar conditions of the skin," (carton, 75-cent and \$1 sizes) "Rheumatism \* \* \* Sciatica, Lumbago, Lane Back, Uric and Lactic Acid Conditions Blood Disorders Eczema, Chronic Sores and similar affections arising from bad blood," were false and fraudulent in that the said statements 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 purchasers thereof and create in the minds of such purchasers the impression and belief that the article was composed of or contained ingredients or medicinal agents capable of producing the therapeutic effects claimed, when, in truth and in fact, it contained no ingredients or combination of ingredients capable of producing such effects.

On June 18, 1923, 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.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

**11679. Adulteration and misbranding of canned oysters. U. S. v. 471 Cases and 602 Cases of Oysters. Consent decree of condemnation and forfeiture. Product released under bond.** (F. & D. No. 17433. I. S. Nos. 5310-v, 5311-v. S. No. C-2950.)

On March 31, 1923, 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 a libel praying the seizure and condemnation of 471 cases, containing 10-ounce cans, and 602 cases, containing 5-ounce cans, of oysters at Atchison, Kans., alleging that the article had been shipped by the Shelmore Oyster Products Co., from Charleston, S. C., on or about January 20, 1923, and transported from the State of South Carolina into the State of Kansas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Crown Brand \* \* \* Oysters All Goods Under Crown Brand Are Fully Guaranteed Contents 10 Ozs." (or "Contents 5 Ozs.").

Adulteration of the article was alleged in the libel for the reason that excessive brine had been mixed and packed with the said article so as to injure, lower, and affect its quality, purity, and strength.

Misbranding was alleged for the reason that the statements, "Contents 10 Ozs." and "Contents 5 Ozs.," appearing on the respective-sized cans containing the article, were false and misleading. Misbranding was alleged for the further reason that the article was [food] in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On April 27, 1923, the Dolan Mercantile Co., Atchison, Kans., having appeared as claimant for the property and consented to the entry of a decree, judgment of condemnation was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$500, in conformity with section 10 of the act, conditioned in part that it be rebranded to show the true contents of the said cans.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

**11680. Misbranding of Wesson oil. U. S. v. Southern Cotton Oil Co., a Corporation. Tried to the court and a jury. Verdict for the Government. Motion for new trial and in arrest of judgment overruled. Fine, \$600 and costs.** (F. & D. No. 10764. I. S. Nos. 7059-r, 7061-r, 8809-r.)

On December 31, 1919, the United States attorney for the Northern District of Illinois, 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 Southern Cotton Oil Co., trading at Chicago, Ill., alleging shipment by

said company, in violation of the Food and Drugs Act, as amended, in various consignments, namely, on or about May 7, May 13, and September 9, 1918, respectively, from the State of Illinois in part into the State of Wisconsin and in part into the State of Indiana, of quantities of Wesson oil which was misbranded. The article was labeled in part: (Cans) "Wesson Oil \* \* \* 1 pint and 3 fluid ounces" (or "1 Quart And 8 Fluid Ounces") "The Southern Cotton Oil Co. New York, Savannah, New Orleans, Chicago."

Examination by the Bureau of Chemistry of this department of 30 cans and 40 cans of the product, respectively, taken from each of the two consignments of the alleged 1-pint and 3-fluid-ounce cans showed an average volume of 1 pint 2.3 fluid ounces and 1 pint 2.4 fluid ounces, respectively. Examination by said bureau of 11 of the alleged 1-quart and 8-fluid-ounce cans showed an average volume of 1 quart 7.38 fluid ounces.

Misbranding of the article was alleged in the information for the reason that the statements on the labels of the respective-sized cans containing the article, concerning the said article, to wit, "1 pint and 3 fluid ounces" and "1 Quart And 8 Fluid Ounces," were false and misleading in that the said statements represented to purchasers that each can of the said article contained not less than 1 pint and 3 fluid ounces, or 1 quart and 8 fluid ounces, as the case might be, of the article, whereas, in fact and in truth, each of the said cans contained less than 1 pint and 3 fluid ounces, or 1 quart and 8 fluid ounces, as the case might be. Misbranding was alleged for the further reason that the article was food in package form, and the quantity of the contents of the said packages was not plainly or conspicuously marked on the outside thereof in terms of weight, measure, or numerical count.

On March 6, 1923, the case came on for trial before the court and a jury. After the submission of evidence and arguments by counsel the court charged the jury as follows (Cliff, J.) :

"Gentlemen of the jury, it now becomes your province at this time to consider this case under the instructions of the court, and I want to say to you that the information preferring this charge against the defendant is no evidence of guilt; it is simply an accusation or charge. No juror should suffer himself to be influenced in the slightest degree by the fact that this information has been returned against the defendant.

"As I said, and as you have been told, this is a proceeding brought by the United States Government under an information. In that information there are six counts.

"Count 1 charges a violation of the Food and Drugs Act, under which this prosecution is started and upon which it is based. It is based on a consignment of Wesson oil to A. H. Perfect & Co., city of Fort Wayne, State of Indiana, by the Pennsylvania Railroad Co., which is a common carrier, and the labeling, marking, and branding on the cases in cans expressing said shipment as set out in the information. The information charges that this shipment and the specific cans therein were misbranded within the meaning of the act of Congress, and that such labeling, marking, and branding were false and misleading.

"Count 2 charges shipment by the Southern Cotton Oil Co., of Chicago, Illinois, by way of the Pennsylvania Railroad, a common carrier, to A. H. Perfect & Co., city of Fort Wayne, State of Indiana, containing cases of cans containing an article of food designated and intended to be used as an article of food, that is, Wesson oil, and it is alleged that is misbranded.

"Count number 3 charges an offense which was committed by the shipment through the Grand Trunk Railroad Co., a common carrier, to the city of South Bend, Indiana, and to the South Bend Wholesale Grocery Co., which was mentioned in the evidence.

"Count 4 is also in regard to that shipment.

"Count 5 charges a violation in regard to a shipment of Wesson oil mentioned in the information to E. R. Godfrey & Sons Co., Milwaukee, in the State of Wisconsin.

"The question for you to determine is whether this law has been violated by the defendant. The various counts in the information state specific offenses, and if you find from the evidence beyond a reasonable doubt that the defendant was guilty of violation of any or all of the counts in the information, you should find accordingly.

"There are two questions, as I see it, gentlemen, for you to determine in your consideration of this case. First, were the shipments referred to in the information interstate shipments? And in determining this question, you are to take into consideration all the books, papers, receipts, invoices, freight bills,

documentary and other evidence—and I might say, which seems to me to be conclusive of the interstate shipment—but which is a question of fact to be determined by you beyond a reasonable doubt as to whether or not there was an interstate shipment from all the evidence in the case.

“The second proposition is whether a violation of the law under the acts of Congress known as the Food and Drugs Act and which has been set out in the counts of the information.

“Now, I want at this time to give you this instruction, that this case must be decided by you on the evidence under the instructions of the court and not upon the statements of counsel outside of the evidence, unsupported by the evidence, if any such statements had been made. The evidence and law alone must govern your verdict. No question as to the result of the arraignment or anything of that kind should deter you in considering this case, or who is involved, or any of the parties therein, simply whether there was a violation of this law under the evidence proven in this case.

“The court instructs the jury that by the statute of the United States under which this prosecution is brought, providing in the case of food in package form, that it shall be deemed misbranded if the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, and numerical count. It is also provided that reasonable variations shall be permitted and the court further instructs the jury that these variations if any shown by the evidence in this case were reasonable, is a question of fact to be determined by the jury on the evidence in the case.

“The court instructs you that the act of Congress approved March 3rd, 1913, provides that a food, if it be packed or contained in packages, that the quantity of the contents be plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count, provided however, that a reasonable variation shall be permitted by rules and regulations made in accordance with this section of this act.

“The court instructs you that the regulations made under this act of Congress, and bearing date May 11th, 1914, are within the terms of this act of Congress and are as binding as the act of Congress under which they were issued.

“The court further instructs you that the parts of these regulations applicable to the case on trial are as follows: ‘Discrepancies due’ [reads]. These discrepancies however, to be lawful, ‘shall be as often above as below’ the contents as marked on the package.

“The court further instructs you that the cans in question in this case are not small packages under the terms of the regulations.

“The court instructs you as a matter of law, that in considering the case you are not to go beyond the evidence to hunt up doubts, nor must you entertain doubts that are merely chimerical or conjectural. A doubt to justify an acquittal must be reasonable and must arise from a candid, impersonal investigation of all the evidence in the case, and unless it is such that were the same kind of doubt interposed in the ordinary transactions of life it would cause a reasonable and prudent man to hesitate because of doubts, it is sufficient to warrant a verdict. If on considering all the evidence, you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

“I instruct you that if you find from the evidence beyond a reasonable doubt that because cans containing the food product mentioned in the information bore any statement, design, or device regarding such articles or the ingredients or substance contained therein, which you would find to be false or misleading in any particular, then you should find the defendant guilty.

“I also instruct you as to the law in this case, gentlemen, and I wish to say to you that you have nothing to do with the penalty. You are to pass upon the facts, as given you, bring in your verdict accordingly; the penalty is for the court.

“Under the section of the Food and Drugs Act, so-called, the term ‘misbranded’ as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, designated or labeled food, shall bear any statement, design, or device regarding such article, or ingredients or substance contained therein which shall be false or misleading in any particular, and any drug, food, or product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced; then again, bearing on this section of the statute, if in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the

package in terms of weight, measure, or numerical count, provided, however, that reasonable variation shall be permitted [reads].

"Are there any suggestions?"

"Mr. PRATT. I have two. These should be made out of the presence of the jury, additional suggestions.

"The COURT. I can not take that up now.

"Mr. PRATT. I thought your honor asked for suggestions.

"The COURT. As to these regulations of the department, as I charged you, these regulations have the same effect as law and are binding just the same under the regulations, rules and regulations for the enforcement of the Food and Drugs Act on which this prosecution is based. There are certain regulations that are laid down by the heads of department, by the Secretary of Agriculture and the subordinate officers, for the conduct and regulation of these prosecutions. That is the method by which the evidence may be obtained, and among the other regulations I am now reading from Regulation 3: 'A sample for examination by or under the direction and supervision of the Bureau of Chemistry shall be collected,' first, by an authorized agent of the Department of Agriculture; second, a sample of food or drug [reads].

"Then again, referring to paragraph (d): 'At the time of the collection, all marks, brands or tags' [reads].

"I read that to you, gentlemen, to explain to you why these officers, these analysts and chemists and inspectors have proceeded according to the law and to the regulations of their department in getting these samples for inspection and examination and they are entitled to that consideration and not to criticism. 'Statement of weights shall be in terms' [reads].

"I think that is sufficient to govern you in this regard in your consideration of this case.

"As to the form of your verdict, gentlemen, if you find the defendant, the Southern Cotton Oil Co., guilty, the form of your verdict will be: 'We, the jury, find the defendant, Southern Cotton Oil Co., guilty as charged in the information.' (Signed by all the jurors.) If, on the other hand, you find them guilty on some counts and not guilty on others, the form of your verdict will be accordingly, only designating on what counts you find them guilty and on what counts you find them not guilty. If, on the other hand, you find the defendant, Southern Cotton Oil Co., not guilty, your verdict will be: 'We, the jury, find the defendant not guilty.'

"You will now return in charge of the sworn officer of this court to consider your verdict.

"Mr. PRATT. There are one or two suggestions; I think, your honor, that these regulations have been modified since this offense is alleged to have been committed. There is a very substantial modification.

"The COURT. I do not think that is material.

"Mr. PRATT. I should like to have the record show that I point that out.

"The COURT. All right.

"Mr. PRATT. And also the statement in the charge in regard to the proof of interstate commerce shipments. I should like to except to that.

"The COURT. All right."

The jury then retired and after due deliberation returned a verdict of guilty on March 9, 1923. On March 17, 1923, a motion for a new trial and in arrest of judgment was heard and overruled, and the court imposed a fine of \$600 and costs.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

**11681. Adulteration and misbranding of cider vinegar. U. S. v. Knight Packing Co., a Corporation. Plea of guilty. Fine, \$10. (F. & D. No. 14355. I. S. No. 3506-r.)**

On August 11, 1922, the United States attorney for the District of Oregon, 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 Knight Packing Co., a corporation, Portland, Oreg., alleging shipment by said company, in violation of the Food and Drugs Act, on or about March 28, 1920, from the State of Oregon into the State of Washington, of a quantity of cider vinegar which was adulterated and misbranded. The article was labeled in part: "Knight's Cider Vinegar Knight Packing Co. Portland, Ore."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was cider vinegar diluted with water.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed therewith so as to lower