

Is that correct?

Mr. SARACHAN. That is all, your Honor, no further requests.

Mr. WOODS. No further requests.

The COURT. Gentlemen of the jury, you will retire.

(The jury retired at 11:10 a. m.)

(The jury returned to the courtroom at 2:35 p. m. for further instructions.)

The COURT. There is something you gentlemen wanted to ask?

JURY FOREMAN. If the Court please, there is some misunderstanding and we would like it if the Court would give us the definition of the words "healing, permanency and curative."

We would also like to know, if it is found that we find the labeling false, if that is considered misbranding.

The COURT. On the last question, I would answer "Yes." I mean by that, if the label is not in accordance with the facts, you will so find.

Now, on these other definitions, I see no difficulty. You apply to the definition of these terms your common understanding of what these terms are. Curing means one thing; curative is another thing, intending to cure. And of course, curing is something more permanent than curative.

As to permanency, you will use your understanding of the terms as I state them to be.

What is the other word?

JURY FOREMAN. "Healing."

The COURT. The word "healing," I should say, would be tending to heal, something that tends to correct or change, some improvement.

JURY FOREMAN. I think it is quite clear, your Honor.

The COURT. You will apply your understanding of the ordinary meaning of these words, as limited by the charge as made.

Is there anything Counsel have to suggest further?

Mr. WHITE. No, I think you have covered it.

Mr. WOODS. I think your Honor has covered the situation.

The jury again retired and after due deliberation returned a verdict of guilty on all counts. Each defendant was sentenced to pay a fine of \$1,000, of which \$500 was suspended as to each.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

**27527. Misbranding of Hain Vegetable Accessory Reducing Food. U. S. v. Harold Hain (Hain Pure Food Co.). Plea of guilty to count 1. Remaining counts dismissed. Fine, \$75. (F. & D. No. 36990. Sample No. 26476-B.)**

This case involved, among other products, a quantity of Hain Vegetable Accessory Reducing Food the labeling of which bore false and fraudulent representations regarding its curative and therapeutic effects.

On April 29, 1936, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Harold Hain, trading as Hain Pure Food Co., Los Angeles, Calif., charging in count 1 shipment by said defendant in violation of the Food and Drugs Act as amended, on or about November 19, 1934, from the State of California into the State of Washington of a quantity of Hain Vegetable Accessory Reducing Food which was misbranded. The article was labeled in part: (Can) "Hain Pure Food Co. \* \* \* Los Angeles, Calif."

Analysis showed that the article contained an appreciable amount of seaweed material consisting of thallus tissues closely resembling those of a *Laminaria* type of alga (possibly a species of *Macrocystis*) and the Irish moss type (possibly some species of *Chondrus*), and in addition, nondescript, finely comminuted vegetable tissues, lacking in diagnostic histological elements.

The article was alleged to be misbranded in that certain statements regarding its curative and therapeutic effects, borne on the can label and contained in a circular enclosed in the cans, falsely and fraudulently represented that it would be effective as a reducing food and to supply the mineral equivalent to the requirement of the mineral-starved system; and effective as a normalizer, as a treatment for underweight and overweight, and to build up wasted or torn-down tissues.

On November 16, 1936, the defendant entered a plea of guilty to count 1, and the court imposed a fine of \$75. The information contained five other counts

alleging interstate shipment of various products. On September 14, 1937, these five counts were dismissed, on the court's own motion, in view of the prior sentence on count 1.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

**27528. Adulteration and misbranding of Solution Citrate of Magnesia. U. S. v. National Magnesia Co. of Illinois. Plea of nolo contendere. Fine, \$50. (F. & D. No. 37063. Sample No. 56477-B.)**

This product was sold under a name recognized in the United States Pharmacopoeia and differed from the standard established by that authority.

On August 10, 1936, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the National Magnesia Co. of Illinois, a corporation, Chicago, Ill., alleging shipment by said company in violation of the Food and Drugs Act, on or about December 27, 1935, from the State of Illinois into the State of Indiana of a quantity of Solution Citrate of Magnesia that was adulterated and misbranded. The article was labeled in part: "Hook's Dependable Drug Stores, Effervescing Solution Citrate of Magnesia U. S. P."

It was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia and differed from the standard of strength, quality, and purity as determined by the test laid down therein since it contained less than 1.5 grams, namely, not more than 1.27 grams of magnesium oxide per 100 cubic centimeters and the quantity of half-normal sulphuric acid required to neutralize the ash from 10 cubic centimeters of the article was less than 28 cubic centimeters, namely, not more than 25.34 cubic centimeters, whereas the pharmacopoeia provides that solution of magnesium citrate shall contain not less than 1.5 grams of magnesium oxide per 100 cubic centimeters and that 10 cubic centimeters of the solution shall require not less than 28 cubic centimeters of half-normal sulphuric acid to neutralize the ash; and the standard of strength, quality, and purity of the article was not declared on the container. The article was alleged to be adulterated further in that its strength and purity fell below the professed standard and quality under which it was sold.

It was alleged to be misbranded in that the statement on the label, "Solution Citrate of Magnesia U. S. P.," was false and misleading since it represented that the article was solution of citrate of magnesia which conformed to the standard laid down in the United States Pharmacopoeia; whereas it was not solution of citrate of magnesia which conformed to the standard laid down in that authority.

On June 28, 1937, a plea of nolo contendere was entered on behalf of the defendant and the court imposed a fine of \$50.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

**27529. Misbranding of mouthwash. U. S. v. 60 Bottles of Mouthwash. Default decree of condemnation and destruction. (F. & D. No. 37729. Sample No. 52878-B.)**

The labeling of this product bore false and misleading representations regarding its alleged antiseptic and germicidal properties, and false and fraudulent representations regarding its curative and therapeutic effects.

On May 12, 1936, the United States attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 60 bottles of mouthwash at Beebe, Ark., alleging that the article had been shipped in interstate commerce on or about January 22, 1936, by the Golden Peacock Co., from Paris, Tenn., and charging misbranding in violation of the Food and Drugs Act.

Bacteriological examination showed that it was not antiseptic.

The article was alleged to be misbranded in that the following statements, "Highly antiseptic," "A powerful germ killer," and "Ten times as strong as ordinary antiseptics," were false and misleading. It was alleged to be misbranded further in that said statements regarding its curative or therapeutic effects were false and fraudulent.

On June 29, 1936, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*