

Mr. MCGOVERN. It was sinister. We would have just pulled the wool over the jury's eyes on that.

"In the examination of Irish, a chemist employed by the United States Department of Agriculture for over 7 years, the court stated:

What is the use of quibbling over this? The witness impresses me as a man that knows what he is talking about, and I don't think he is giving us any idle gossip. He knows what he is talking about.

"And in the course of a colloquy, the court said:

Government experts are well qualified, and you (defendant's counsel) should be the last man to criticize those excellent men who have been up on this witness stand, and have told of their long years of preparation and their very fine service to protect the public from fraudulent drugs.

"In the examination of the defendant he was asked if he had ever had an analysis made of Catalyn and after he had answered 'No,' the following occurred:

THE COURT. Then how can you tell us what these two drugs are?

A. An analysis does not tell anything about the properties of the physical—or therapeutic properties of a—

DISTRICT ATTORNEY. This man is not competent to testify as to the therapeutic qualities.

THE COURT. No.

Mr. MCGOVERN. He is an expert on vitamins, and he knows, and your witnesses have said that a chemical analysis is of no use.

THE COURT. That is what you say, that he is an expert on vitamins. It is for the jury to determine how much of an expert he is. We don't want any more reference to that.

"The trial judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law. *Quercia v. United States*, 289 U. S. 466, 469; *Pfaff v. United States*, 85 F. (2) 309, 311, and it is his duty to see that all the truth is brought out so that the jury can arrive at a true verdict. While he has a right to ask questions of witnesses in order to ascertain the facts and elicit the truth as to the points in issue, he must not forget the functions of the judge and assume that of the advocate, lest he give the jury the impression that he favors one side or the other, and the extent to which he participates in the examination of a witness must depend largely upon the circumstances of the particular case and the conditions which arise during the trial. He should also be ever mindful that one of the most important essentials to the performance of the exalted task of upholding the majesty of the law is dignity and decorum.

"It is regrettable that the court indulged in some of the remarks appearing in the record, but defendant's counsel is not without fault—he was sarcastic, and some of his remarks were improper and impertinent. Viewing the acts and statements of the court above set out, as well as others complained of, in their relation to the record as a whole, and the convincing nature of the evidence to support the verdict, we would not be warranted in concluding that defendant's cause was prejudiced.

"The defendant's guilt was amply proved, and there is no reason why the judgment should not be affirmed."

Judgment affirmed.

On February 5, 1940, the Supreme Court denied the defendant's petition for writ of certiorari.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31000. Adulteration and misbranding of citrate of magnesia. U. S. v. Certified Magnesia Co., Inc., Henry T. Gran, and William Wohlers. Pleas of guilty by Certified Magnesia Co., Inc., and Henry T. Gran. Each defendant fined \$100. Case pending as to William Wohlers. (F. & D. No. 39729. Sample Nos. 9343-C, 17394-C, 17546-C, 26587-C.)

This product contained a smaller amount of citric acid than that required by the United States Pharmacopoeia; and the bottles contained less than the volume declared on the label.

At the August term, 1937, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Certified Magnesia Co., Inc., New York, N. Y., Henry T. Gran, and William Wohlers, officers of the corporation, alleging shipment by said defendants in violation of the Food and Drugs Act, within the period from on or about October 8, 1936, to on or about

January 20, 1937, from the State of New York into the State of New Jersey, of quantities of citrate of magnesia, that was adulterated and misbranded.

The article was alleged to be adulterated in that it was sold under and by a name recognized in the United States Pharmacopoeia but differed from the standard of strength, quality, and purity as determined by the test laid down therein, in that the article contained in each 10 cubic centimeters total citric acid equivalent to less than 26 cubic centimeters of half-normal hydrochloric acid, i. e., samples taken from each of the four shipments were found to contain total citric acid equivalent to not more than 24.7, 24.3, 24.04, and 23.9 cubic centimeters, respectively, of half-normal hydrochloric acid; whereas the pharmacopoeia provides that each 10 cubic centimeters of citrate of magnesia, i. e., solution of magnesium citrate shall contain total citric acid equivalent to not less than 26 cubic centimeters of half-normal hydrochloric acid, and the standard of strength, quality, and purity of the article was not declared on the container thereof.

It was alleged to be misbranded in that the statements, (bottle label) "Citrate Magnesia * * * U. S. P. * * * Made according to the laws of the United States" and "Net Contents * * * 11½ ounces," and (bottle cap) "Cont. Approx. 11 Fl. Oz.," were false and misleading since it was not citrate of magnesia which conformed to the standard laid down in the pharmacopoeia, and the bottles did not contain 11½ ounces net of the article but did contain a smaller amount, and a number of the bottles contained less than 11 fluid ounces of the article.

On August 12, 1937, pleas of guilty were entered on behalf of the Certified Magnesia Co., Inc. and Henry T. Gran, and fines of \$100 were imposed against each. The case is still pending as to William Wohlers.

GROVER B. HILL, *Acting Secretary of Agriculture.*

INDEX TO NOTICES OF JUDGMENT 30951-31000

	N. J. No.		N. J. No.
Acetodyne Tablets:		Bichloride tablets:	
Comstock, F. T.-----	30979	Cahill, W. E.-----	30989
Glens Falls Pharmacal Co.,		Haver, C. V.-----	30989
Inc-----	30979	Haver-Glover Laboratories-----	30989
Acid Eliminating Powder:		Haver, M. M.-----	30989
Myra Deane Co-----	30964	Merillat, L. A.-----	30989
Richardson, Helen-----	30964		
Richardson, M. D.-----	30964	Cal-co-cin:	
Richardson, R. A.-----	30964	Crescent-Kelvan Co.-----	30985
Adrenapit:		Lambert, G. D.-----	30985
Harvey-Pittenger Co-----	30976	Lambert, G. T.-----	30985
Agalax:		Periera, David-----	30985
Agalax Co-----	30960	Calcigol With Iodine Tablets:	
Associated Laboratories, Inc-----	30960	Crescent-Kelvan Co.-----	30990
Bair, J. M.-----	30960	Lambert, G. D.-----	30990
Tuvin, J. H.-----	30960	Lambert, G. T.-----	30990
Tuvin, L. A.-----	30960	Periera, David-----	30990
Alkaline laxative:		Calcium chloride ampuls:	
Modern Drugs, Inc-----	30978	American Medical Specialties	
Alterative Compound:		Co., Inc-----	30987
Modern Drugs, Inc-----	30978	Camfo-Phenol Lotion:	
Antacid Tablets:		Modern Drugs, Inc-----	30978
Modern Drugs, Inc-----	30978	Carbolic ointment:	
Anti-Firin. <i>See</i> Veterinary remedies		Fox, G., & Co., Inc-----	30955
Anti-Rheumatic Fever Compound:		Sexton Drug Store-----	30955
Rheumatic Ointment:		Cascara Compound Tablets:	
Modern Drugs, Inc-----	30978	Sagrada, Aromatic:	
Argenoid Ophthalmic Ointment:		Modern Drugs, Inc-----	30978
National Drug Co-----	30992	Catalyn:	
Astringent Compound:		Lee, Dr. Royal----- ²	30999
Mouth Wash and Gargle:		Vitamin Products Co----- ²	30999
Modern Drugs, Inc-----	30978	Causalin:	
Bateman's Pectoral Drops:		Amfre Drug Co., Inc-----	30996
Kent Drug Co-----	30958	Stern, Lewis-----	30996
McNeal, H. B.-----	30958	Chippewa Genuine Guaranteed Old In-	
Belladonna ointment:		dian Medicine:	
National Drug Co-----	30992	Lucky Heart Laboratories, Inc-----	30965
tincture:		Shapiro, Morris-----	30965
National Pharmaceutical Man-		Spears, B. M.-----	30965
ufacturing Co-----	30969	Chloral hydrate compound:	
Ulman, Bernard-----	30969	Cahill, W. E.-----	30989
Bewino Beef Wine & Iron Tonic &		Haver, C. V.-----	30989
Bullder:		Haver-Glover Laboratories-----	30989
Lucky Heart Laboratories, Inc-----	30965	Haver, M. M.-----	30989
Shapiro, Morris-----	30965	Merillat, L. A.-----	30989
Spears, B. M.-----	30965		

¹ Prosecution contested.

² Contains an opinion of the court.