

DRUGS ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS***4777. Diaplex. (Inj. No. 18.)**

INFORMATION FOR CRIMINAL CONTEMPT FILED: On or about 4-24-52, Dist. Colo., against Henry Wayne Pierce, also known as Horace Wayne Pierce, and H. W. Pierce, Wellington, Colo.

CHARGE: The information alleged that the defendant, in a decree entered on 9-14-44, had been permanently enjoined from shipping in interstate commerce the weed, saltbush (*Atriplex canescens*), for sale under the name of "Diaplex," or under any label claiming the article *Diaplex* to be of therapeutic value in the treatment of diabetes (see drugs and devices notices of judgment, No. 725); that between 6-15-51 and 9-12-51, the defendant had shipped from Carr and Wellington, Colo., to Emmett, Idaho, Clarksdale, Mo., Brooklyn, N. Y., San Angelo, Tex., and Seattle, Wash., a quantity of saltbush, some of which was unlabeled and some of which was labeled "Diaplex for Diabetics," and that, by reason of these shipments of the article "Diaplex" which was offered in its label to be of therapeutic value in the treatment of diabetes and intended for use in the treatment of diabetes, the defendant was in contempt of the permanent injunction issued against him.

DISPOSITION: The defendant filed an answer, and on 12-8-54, the matter came on for hearing before the court without a jury. On 12-23-54, the court handed down the following findings and order:

BREITENSTEIN, *District Judge*: "This matter coming on for hearing this 8th day of December, 1954, upon motion of the United States for determination of the present mental condition of the defendant, and the United States being represented by James W. Heyer, Assistant United States Attorney for the District of Colorado, and the defendant being present and represented by his counsel, Phillip G. Dufford, Esquire, and the Court having heard the testimony and evidence presented and being fully advised in the premises, DOTH FIND:

"1. That the defendant Henry Wayne Pierce is now so mentally incompetent as to be unable to understand the nature of the proceedings against him or to assist in his own defense;

"2. That the mental condition of the defendant is not of a temporary nature such as would allow disposition of this matter under the provisions of Section 4246, Title 18 U. S. C.;

"3. That the permanent injunction issued against the defendant by this Court on the 14th day of September, 1944, remains operative and in full force and effect;

"4. That in view of the foregoing findings, the Court deeming it appropriate and necessary to order as follows, IT IS, THEREFORE,

"ORDERED, that the proceedings in the above-entitled case be dismissed, that the defendant be discharged from custody, and that the bond be exonerated and surety thereon discharged.

"IT IS FURTHER ORDERED that the Clerk of this Court shall prepare and the United States Marshal for the District of Colorado shall cause to be served, together with a certified copy of this order, upon the above-named defendant a certified copy of the writ of permanent injunction issued by this Court on September 14, 1944, which remains in full force and effect, and

"IT IS FURTHER ORDERED that if this defendant persists in further violations of the aforementioned writ of permanent injunction, upon notice thereof, the United States Attorney for the District of Colorado shall take appropriate action in the County in which defendant resides to have the defendant committed to a mental institution."

*See also Nos. 4763-4765, 4768-4770, 4775, 4776.