

4380. Misbranding of "Vegetable Pulmonary Balsam." U. S. * * * v. Cutler Bros. & Co. Plea of nolo contendere. Fine, \$100. (F. & D. No. 6058. I. S. No. 1502-h.)

On May 18, 1915, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Cutler Bros. & Co., Boston, Mass., alleging the sale by said defendant firm, on or about January 4, 1913, under a guaranty that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act, of a quantity of "Vegetable Pulmonary Balsam," which was a misbranded article within the meaning of said act, as amended, and which said article was shipped by the purchaser thereof, on or about January 4, 1913, in the identical condition in which the same had been received, from the State of Massachusetts into the State of New York, in violation of the said Food and Drugs Act, as amended. The article was labeled: (On carton) "For coughs, colds, and consumption, Vegetable Pulmonary Balsam Established 1826 Contains 18% of Alcohol and one and one-half grs. Powdered Opium per fluid ounce. For Consumption, Coughs, Colds, Asthma, Bronchitis, Influenza, Hoarseness, Whooping Cough and Pulmonary Affections of every kind. Call for the article by its whole name Vegetable Pulmonary Balsam Guaranteed by Cutler Bros. & Co. under the Food and Drugs Act, June 30, 1906, No. 158. Wm. Cutler Cutler Bros. & Co. Successors to Rood, Cutler & Co. Proprietors, Boston, Mass. Price 50 Cents." Additional statements in foreign languages. (On bottle) "Vegetable Pulmonary Balsam Contains 18% of Alcohol and one and one-half grains powdered opium to the fluid ounce. Guaranteed by Cutler Bros & Co. under Food and Drugs Act, June 30, 1906. No. 158. Directions for use: Dose for an adult, Sixty drops or a common teaspoonful; for a child a year old; Five drops; ten years old, thirty drops; the intermediate ages in proportion. With an adult this dose may in severe cases be gradually increased to a hundred drops. It may be taken in the morning and evening. In ordinary colds this will be sufficient but in severe affections it may be taken in sixty drop doses more frequently. Should the patient be troubled with costiveness, some mild purgative should be used. Hearty eating about the time of taking it should be avoided. Shake bottle before using. Cutler Bros & Co., Boston, Proprietors." (Blown in bottle) "Vegetable Pulmonary Balsam, Cutler Bros. & Co. Boston, Mass. Proprietors." The circular or pamphlet accompanying the article included, among other things, the following statements: "For Coughs, Colds, Consumption, Asthma, Pleurisy, Phthisic, Influenza, Hoarseness, Spitting of Blood, Whooping-Cough, Bronchitis, and all Pulmonary Affections and Diseases of the Lungs and Chest."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Powdered opium (grains per fluid ounce)-----	1. 47
Alcohol (per cent by volume)-----	8. 8
Solids (per cent)-----	61. 4
Ash (per cent)-----	0. 11
Sucrose (per cent)-----	35. 9
Invert sugar (per cent)-----	24. 3
Antimony and ammonium chlorid-----	Absent
Tolu-----	Present

Sample is a sugar sirup flavored with spearmint and sassafras.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof,

appearing on the label aforesaid, to wit, (On carton) “* * * Vegetable Pulmonary Balsam * * * For Consumption * * * and Pulmonary Affections of every kind. * * * (Translated from German, French, and Spanish) * * * remedy * * * for consumption, * * * spitting of blood, * * * and * * * every variety of lung troubles,” and included in the circular or pamphlet aforesaid, to wit, * * * For * * * Consumption, * * * Phthisic, * * * Spitting of Blood, * * * and all Pulmonary Affections and Diseases of the Lungs and Chest,” were false and fraudulent in that the same were applied to said article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medical agents effective, among other things, as a remedy for consumption and pulmonary affections of every kind and phthisic, spitting of blood, and diseases of the lungs and chest, when, in truth and in fact, it was not so composed, and did not contain such ingredients or medicinal agents.

On September 21, 1915, a plea of nolo contendere was entered on behalf of the defendant firm, and the court imposed a fine of \$100.

C. F. MARVIN, *Acting Secretary of Agriculture.*