

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

27526-27575

[Approved by the Acting Secretary of Agriculture, Washington, D. C., November 24, 1937]

27526. Adulteration and misbranding of Moone's Emerald Oil. U. S. v. International Laboratories, Inc., and Frederick W. Clements. Tried to the court and a jury. Verdict of guilty. Fine, \$1,000 against each defendant of which \$500 was suspended as to each. (F. & D. No. 38975. Sample Nos. 38380-B, 38398-B, 38399-B.)

The labeling of this product bore false and misleading misrepresentations regarding its alleged effectiveness as a germicide, and circulars accompanying certain shipments bore false and fraudulent claims regarding its curative and therapeutic effects.

On May 11, 1936, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the International Laboratories, Inc., and Frederick W. Clements, president, alleging shipment by said defendants in violation of the Food and Drugs Act as amended, on or about April 15, 1935, from the State of New York into the State of Pennsylvania, and on April 19, 1935, from the State of New York into the State of New Jersey of quantities of Moone's Emerald Oil which was adulterated and misbranded. The article was labeled in part: "Moone's Emerald Oil * * * International Laboratories, Inc., Rochester, N. Y."

Analyses of samples showed that the article consisted essentially of a mixture of oil of sassafras, camphor, methyl salicylate, resorcinol, and benzoic acid, and probably oil of camphor and eucalyptol. Bacteriological tests showed that it was not a germicide.

The article was alleged to be adulterated in that its strength and purity fell below the professed standard and quality under which it was sold since it was represented to be a germicide; whereas it was not a germicide.

It was alleged to be misbranded in that the statement "Germicide," borne on all cartons and on a portion of the bottle labels, was false and misleading since said statement represented that it was a germicide, whereas it was not a germicide. Misbranding was alleged with respect to the product involved in two of the shipments for the further reason that certain statements, designs, and devices regarding its therapeutic and curative effects, appearing in a circular enclosed in the cartons, falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for transitory forms of lameness and stiffness of the joints, for muscle, joint, and nerve conditions, toe itch, and varicose or swollen veins; and effective as an antiseptic dressing for ulcerated conditions; and effective to aid nature to retract the distended tissues of the vein walls in varicose or swollen veins.

On May 18, 1937, the case came on for trial before the court and a jury. The trial was concluded on May 21, 1937, and the case was submitted to the jury with the following charge:

KNIGHT, *District Judge*: Gentlemen of the jury, you have listened with good attention to this trial which has consumed quite some length of time. It is not an easy matter for the layman to distinguish the difference or the effect of the various charges laid in this information. I want to present them to you as clearly as I can, to aid you to reach a determination under the evidence in this case.

The International Laboratories, Inc., is a corporation organized and existing under the laws of the State of New York. Its principal place of business is in Rochester, in this State. Frederick W. Clements is president of the International Laboratories, Inc. This corporation manufactures and sells a product known as Moone's Emerald Oil. This product has been manufactured and sold in interstate commerce for some years.

The Information laid against these Defendants involves the seizure of two shipments of this product by International Laboratories, Inc., from Rochester, N. Y., to Easton, Pa., under date of April 15, 1935, and a shipment of its product from Rochester, N. Y., to Trenton, N. J., under date of April 19, 1935.

This suit is instituted by Information laid against these Defendants, charging the commission of acts in violation of the Food and Drug statute of the United States. The Information itself is no evidence of the crime charged. It may be described as being in the nature of a pleading by which the Defendant, Court, and jury are informed of the charge laid.

In the instant case, as in all criminal cases, the duty rests upon the Government to establish the guilt of the Defendant beyond a reasonable doubt. Reasonable doubt means such doubt as arises in the mind of the juror after he has carefully considered all of the evidence in the case. It must be a doubt which is based upon reason, not on caprice, not on the will to acquit or convict outside of the record, not on prejudice, not on favor. If you find the evidence satisfies you beyond a reasonable doubt of the guilt of the Defendant or Defendants, it is your duty to convict; if not, it is your duty to acquit as to the count concerning which you find such reasonable doubt. On the other hand, the reverse is true if you find the Defendants guilty. If the guilt of the Defendants has not been established beyond a reasonable doubt, you will acquit. A presumption of innocence runs through the trial of a criminal charge in favor of any Defendant. This presumption must be overcome by evidence. The presumption is overcome by evidence if you find the Defendant, or Defendants, guilty of the crime charged beyond a reasonable doubt. With this understanding of certain rules of law, let us consider the charges laid and some of the evidence bearing on these charges and the method of consideration to determine whether or not the charges have been sustained.

The pertinent statutes and regulations applicable to this case are these:

"The introduction into any State * * * from any other State * * * of any article * * * or drugs which is adulterated or misbranded within the meaning of that term as defined by statute is prohibited; and any person who shall ship * * * from any State * * * to any other State * * * in original unbroken packages, for pay or otherwise, * * * any such article * * * is guilty of the offense charged. An article shall be deemed to be adulterated * * * if its strength or purity fall below the professed standard or quality under which it is sold."

Further, "the term 'drug' * * * shall include all medicines and preparations * * * and any substance or mixture or substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term 'misbranded' * * * shall apply to all drugs, * * * the package or label of which shall bear any statement, * * * regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular," and further, in case of drugs, "If its package or label shall bear or contain any statement * * * regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent."

This Information, as you are informed, is laid against the Defendant Clements who is an officer of the corporation. The statutes with respect to him provide: "When construing and enforcing the provisions of Sections 1 to 15 inclusive of this title (including the sections hereinbefore referred to), the act, omission, or failure of any officer, * * * acting for or employed by any corporation, * * * within the scope of his employment or office, shall in every case be also deemed to be the act * * * of such corporation, * * * as well as that of the person."

Eight separate counts are presented for your consideration. Each count charges a separate offense. You will consider each count separately and make your findings specifically as to each count. It is also necessary that you distinguish them clearly; I call to your mind that the Information as originally laid included thirteen counts. Five of those counts have been dismissed upon the motion of the Government and leaves for your consideration, as I have

stated, eight counts; and in the order in which they are numbered in the Information, count six is the first one for your consideration.

Count six in the Information charges shipment of Moone's Emerald Oil by the Defendants to the Mercer Wholesale Drug Company under date of April 19, 1935, and alleges adulteration in that the article shipped was represented to be a germicide, whereas in fact it was not a germicide.

Count seven charges a violation of the statute of misbranding in that the shipment under date of April 19, 1935, aforesaid bore a label attached to the bottles with the word "germicide" and represented that it was a germicide; whereas in truth and fact it was not a germicide.

Count eight charges shipment from Rochester, N. Y., to Trenton, N. J., on or about April 19, 1935, of a number of bottles containing this product and that the description on the bottles, cartons, and circulars in effect contained false statements as regards the therapeutic or curative effect of said product; and it further alleges that the statements were false and fraudulent; that they were made in reckless and wanton disregard of the truth.

Count nine charges that a shipment of April 15, 1935, contained drugs which were adulterated in that they fell below the standard and quality under which it was sold; that it was represented to be a germicide, whereas in truth and in fact it was not.

Count ten charges that the bottles of Moone's Emerald Oil in the shipment of April 15, 1935, were misbranded in that the cartons represented that the article therein was a germicide; whereas in fact it was not.

Count eleven charges that a shipment of April 15, 1935, to Easton, Pa., was misbranded in that it was represented that the article was composed of ingredients or medicinal agents effective "as a treatment, remedy, and cure for transitory forms of lameness and stiffness of the joints, muscle, joint and nerve conditions, toe itch, and varicose or swollen veins"; that it was effective as an aid and antiseptic to retract the distended tissues of the vein walls in varicose or swollen veins; whereas in truth and in fact, it did not contain ingredients effective for these purposes; that these statements were knowingly and falsely made.

Count twelve charges that the shipment of April 15, 1935, to Easton, Pa., was a shipment of adulterated drugs within the meaning of the statute, in that it fell below the professed standards; that it was represented to be a germicide; whereas in truth and in fact it was not such.

And finally, count thirteen charges in regard to a shipment of April 15, 1935, to Easton, Pa., that the drugs therein contained were misbranded in that it represented that the same was a germicide, whereas in truth and in fact they were not.

More succinctly stated, count six charges adulteration through false representation that the product was a germicide; count seven charges misbranding in stating that it was a germicide; count eight charges misbranding as regards the therapeutic or curative effect of the product in question; count nine charges adulteration in that it fell below standard, in that it was falsely represented to be a germicide; count ten charges misbranding in the use of the word "germicide"; count eleven charges false representation as regards therapeutic and curative effect of the shipment of April 15, 1935; count twelve charges adulteration as to the shipment of April 15, 1935, in that the article was represented to be a germicide; and count thirteen charges misbranding in designating the article as a germicide.

Under the Federal Food and Drugs Act, the term "drug" includes any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of mankind and animals. The act, omission or failure on the part of the Defendant Clements while acting in behalf of the defendant corporation within the scope of its employment, is deemed in law the act of the corporation, and the acts of the corporation itself as such are equally the acts of an officer who conducts the management of said corporation.

The products in question were shipped in cartons, together with certain descriptive matter. These cartons and the bottles contain, among other things, labels which describe the product in these words: "Clean, powerful, penetrating oil that promotes healing. Apply externally—full strength—two or three times a day and oftener if necessary. * * * Moone's Emerald Oil for external use, Antiseptic Germicide Deodorant." Enclosed in the cartons with the bottles were two circulars. These circulars describe the product as "an effective surgical assistant in those more serious conditions where its values are recommended.

Its deodorant character makes it valuable as a comforting analgesic in stubborn irritated conditions attended by profuse suppuration. Clean, potent, and penetrating, Emerald Oil is highly antiseptic under continued application in form of wet dressings, promoting healthful healing with rapidity even in some of the most stubborn cases. Free use of Emerald Oil upon tender, affected parts relieves pain and promotes the formation of new and healthy skin. * * * While Emerald Oil is not a cure for varicose veins, it is a strengthening help, because it is penetrating and antiseptic. * * * Varicose ulcers—when due only to enlarged veins and not to any systemic disease: Emerald Oil is antiseptic and its penetrating quality makes it of particular value in varicosities and other forms of irritation of a chronic or semi-chronic nature, as well as where the skin break is fresh. * * * As an antiseptic and deodorant in chronic disease: Thus even in conditions of incurable disease where relief is the measure sought and the most that can be expected, even under medical attention of the highest skill; the use of Emerald Oil as an antiseptic, deodorant, and cleaner, may prove a veritable godsend. * * * Because toe itch is a fungus disease rather than a germ infection, it often happens that the more common types of antiseptic do not reach and destroy the cause of the trouble. Emerald Oil appears to be particularly fitted to eliminating the trouble as is soon discovered."

Now, it may be necessary to know and it may be helpful to give some definitions of these several terms: Antiseptic, germicide, therapeutic, and curative. Antiseptic, as I understand it, is something that is used for the purpose of preventing the introduction of germs. Germicide, is something which destroys germs. It is conceded that this product is a germicide to some extent. That is, that it may destroy germs under certain conditions and after a certain length of exposure. The claim of the Government, and I so charge you, is, that the word "germicide," as used in this circular or descriptive matter, is to be construed in the light of the purpose to which this circular and this descriptive matter is directed. I mean by that, this: That a germicide, as the definition is to be placed upon it by you, is such as will kill germs sufficiently to carry out the purpose designated to be carried out by this circular. In other words, it must be a germicide under the conditions stated in the label. In connection with that, I call your attention to a particular part of the Government's testimony that this germicide will not kill certain germs described in this descriptive matter within an hour and thirty minutes, and on the other hand, this circular says it will destroy germs within ten minutes after application.

Therapeutic means having a quality tending to cure. Curative has the same meaning. You will observe that the labels and descriptive circulars contain other representations with reference to this particular product. Whether portions of such are truthful statements is immaterial, if it is found that there are other statements which are false. If you find beyond a reasonable doubt that these labels or cartons contain any statement relative to therapeutic or curative qualities which are known to be false and fraudulent, then you should find the Defendant or Defendants guilty of the charge set forth in the counts of said Information wherein said false and fraudulent statements are charged. In other words, assuming that all of the claims in these labels, cartons, and circulars are true save and except one claim, if said one claim be false and fraudulent and if you find it was made with intent to defraud, or with reckless and wanton disregard of the truth, you will find the Defendants and each of them guilty as charged, as respects such specific claim.

A distinction is to be made with reference to these various counts and the proof requisite to support them. Some of these counts charge adulteration by misbranding and some charge misbranding and others charge false and fraudulent misrepresentations made as to the therapeutic and curative powers of this product. As to the counts as to misbranding and adulteration the question of intent is immaterial. I mean by that, this: It is not necessary to find that the Defendants intended to misbrand or intended to put out an adulterated product. It is sufficient to find, that it was transported in interstate commerce, because the law prohibits the shipment in interstate commerce of misbranded products. This, of course must be found beyond a reasonable doubt.

As regards the other counts in the Information which relate to the therapeutic and curative powers of this product, the charge laid is that these Defendants, each of them, falsely and fraudulently represented that it had certain medicinal and curative properties. The charge, you will bear in mind, is fraudulent representations. In that case, intent is a necessary element in this charge.

Now, intent in itself implies knowledge. Knowledge is imputed to the corporation through the knowledge of its President. Knowledge of the Defendant Clements is to be found from the evidence in the case from his own acts, statements, and conclusions to be drawn therefrom. In this regard, it is also to be said that wanton and reckless misrepresentation with intent to defraud has the same force and effect in law as false and fraudulent representation. The thing to be borne in mind, in distinguishing this, is that one does not require you to show that the acts were done with the intent to violate the law, while the other requires acts were done falsely and fraudulently with intent. You will determine the question of intent and the question of knowledge from all of the evidence in the case. Now, we cannot look into the human mind and see just what is not or just what is the intention of an individual. It can seldom be proven by direct evidence. Intent ordinarily must be determined from the facts and circumstances in each particular case. So it is for you to say from all of the evidence in the case whether these Defendants intended falsely and fraudulently to transport or wantonly and recklessly, with knowledge of its qualities, transported this product in interstate commerce. No question is raised here but that the preparation mentioned in these counts was transported in interstate commerce. The question for your determination is whether this product, known as Moone's Emerald Oil, comes within the prohibition of the statutes heretofore mentioned.

Aside from the testimony of Mr. Clements, a large part of the testimony offered by the Government and the Defendant has come from so-called expert witnesses, and they are sometimes called opinion witnesses. They are called to give their opinion as regards certain questions based upon their own study and investigations. It is unnecessary for me to detail this testimony, but I shall call your attention only briefly to the subject of the testimony of each, leaving out reference to any witnesses concerning whose testimony there is no contradiction.

On behalf of the Government, Mr. Hart, a chemist, Mr. Brewer, bacteriologist, Professor Kutti, Assistant Professor of Bacteriology, Dr. Houghton, Dr. McKinstry, Dr. Rapp, dermatologist, and Dr. Winslow, have testified regarding the properties of the product in question and their uses and effect. Dr. Hart testified as to the chemical analysis of the component parts. Dr. Brewer testified that this product is not a germicide, in the sense that it will kill germs in a sufficiently short time. Professor Kutti, Dr. Houghton, Dr. McKinstry, Dr. Rapp and Dr. Winslow, each of them testified in substance that this product has no therapeutic or curative properties in the treatment of varicose veins, and some or all of them testified that it not only was not beneficial, but that its use was harmful.

For the Defendant, chemists Seil and Baker testified as to the chemical analysis made of the product which the Defendants claim was sold and that it is a germicide. The testimony on the part of the Government is that this product is not a germicide in the use employed and, on the other hand, Baker testified that it is. It was claimed by the Defendant that this product is useful or has therapeutic value in the treatment of varicose veins and varicose ulcers, and the Defendant testified to his own experience and its use by his sister. It is further claimed by the Defendant that it has therapeutic value in the treatment of varicosis by reason of the nature of its effect upon the vein when applied externally under bandage.

I have read to you the pertinent statements on the labels, cartons, and circulars. In construing the meaning intended to be conveyed, you are to give them the meaning which the words or language mean to you; those which you ordinarily give to such words and language. You are to determine whether these statements convey to the ordinarily intelligent mind the declaration by the Defendants that this product was a germicide within the definition of that term as you construe it when used in connection with the product and also whether this product has either therapeutic or curative value. As regards the proof that it has curative or therapeutic effects in diseases, it must be borne in mind, of course, that the Defendant or Defendants should be in a position to know what the preparation will do, and they are to be held to good faith in their statements in that regard.

The Food and Drugs Act is designed to protect the public, and so designed, such construction is to be given the phraseology and wording that the ordinary layman who purchases the article would give them, and if you find from the evidence that the Defendants intended to lead the consumer to believe the term "germicide" was used to indicate the product when applied externally in

connection with the position set forth in their advertising would act as a germicide, and if in fact you find that it is not such a product, then the Defendants shall be guilty of adulteration and misbranding. We are not concerned with the question of whether this product is harmless. It is sufficient if you find that the statements are false and fraudulent concerning its curative and therapeutic effect. You will see people may be induced to rely upon the use of it in serious cases to their detriment for lack of some other drug. The same applies to the other counts to which I have called your attention.

Some question has arisen regarding the test of this product. It seems that the Defendant Clements at different times has been in conference with the Federal authorities regarding the description of his product. It is claimed that in November 1934, he discontinued the formula theretofore used, eliminating mineral oil and possibly some other ingredient, and that he used a new formula which contained for the first time, as I understand it, benzoic acid. A Government test, as it claims, was made of five samples, including the shipment to Wilkes-Barre, Pa., and this test, as claimed, substantially conforms to the old formula. The report of the Government agency does not show from what the sample test was taken. If taken from the Wilkes-Barre sample, concededly it would show the old formula. It is the argument of Defendants that this reported test contradicts the test later made of samples included in the preparation. This question of any confusion in this sample only goes, it seems to me, to the credibility of the test itself. There seems to be little substantial difference in the analysis made by Mr. Hart and that made by Mr. Seil. Dr. Hart said the product consists essentially of a mixture of oil of sassafras, camphor, benzoic acid, and probably oil of camphor and oil of eucalyptus. As I recall the testimony of Dr. Seil, the difference is only with respect to the question of the use of oil of eucalyptus or eucalyptus, and as to the question of the oil of sassafras. It is claimed that this difference would materially affect the use or usefulness of the preparation. It is the claim of the Defendant that it is a germicide and that it is, therefore, not adulterated or misbranded. It is the claim of the Defendants, not that it is a cure for varicose veins or muscular aches, pains, and soreness, but that it has therapeutic qualities and is properly described as having such in it that it relieves pain.

The decision in this case is for you. In reaching your decision, you are to take into consideration all of the evidence in the case. And in so considering the evidence, you will take into consideration the witnesses who testified, their appearance upon the stand, their qualifications to testify to the truth, their interest in the matters at issue and any other pertinent facts which appear to you in connection with their testimony. You are to take your own recollection of the testimony, and not mine, where we do not agree. You will remember the testimony of the witnesses as clearly as I do.

No one will gainsay the necessity of laws properly regulating the transportation and sale of drugs calculated to be used for the relief of man or beast. No one questions the proper purpose of such statutes. It is important to require that one selling a drug shall honestly state its qualities. The importance of this case is not to be minimized. It is important that this law should be enforced for the protection of the public. It is also important, of course, that one who is innocent be acquitted. The law does apply to those who violate it. You are to consider this case in the light of all the evidence and without prejudice or fear or favor to anyone. You are to decide it upon your sound judgment.

Consider each of these counts separately as to each of these Defendants. You are to bear in mind these cardinal principles: That as to the question of adulteration and misbranding, the proof that the article was misbranded or adulterated is sufficient within the statute to show there was a violation, without showing intent as to the curative or therapeutic properties of this product, it is necessary to find that representations as to such properties were made knowingly, falsely, and fraudulently and with such intent and knowledge.

With the consent of Counsel, I am going to give you a statement to show what the separate counts are, and you may take them into the jury room with you.

Are there any requests?

Mr. SARACHAN. If your Honor please, the labeling as it appears in Count 1 is different from the labeling as it appeared in the counts at issue, and apparently some of the matters you read about as evidence came from Count I.

The COURT. I see your point.

Mr. WOODS. I would like to call you Honor's attention to the fact that Count 1 is incorporated in Count 6 and a material part therefore.

The COURT. I think I quoted from Count 6.

Mr. SARACHAN. No, I think you read from Count 1.

Mr. WOODS. Count 1 on labeling is incorporated in subsequent counts.

The COURT. I will go a little further in reference to that.

Mr. WOODS. I call your attention to Count 9, which said that the said bottles were labeled and more carefully described in Count 1.

The COURT. All right. I have read Count 1 in reference to Count 9, but I will read to you the descriptive matter in Count 6. The confusion arises by the dismissal of some of the counts. Count 6 charges that the label and advertising matter contained these words:

"Moone's Emerald Oil For External Use Only. Home Remedy of Great Usefulness. A clean, powerful, penetrating oil useful as a rub or local application to irritated surfaces or surface wounds. Beneficial in relieving muscular aches, pains and soreness and such common and transitory forms of lameness and stiffness of the joints as are not due to fixed organic disease. Helpful in relief of neuralgic pain, strains and sprains.

"For Bruised Or Broken Surfaces: Emerald oil is antiseptic when used as a quick application, and is highly effective when used as a wet dressing in continued contact with open wounds of minor kind.

"For Muscle, Joint and Nerve Conditions as above described, rub the affected surfaces briskly and keep the parts warm afterward.

"For Toe Itch or So-Called Athlete's Foot, cleanse the parts thoroughly at night before retiring, then apply the oil freely, rubbing it into affected areas, then cover with cloth saturated with the oil and secure in place so this wet dressing will remain in contact with the affected parts over night. Repeat day by day. Shoes and stockings carry the infection, so care must be used not to re-infect from such source. To insure permanency of effect, do not discontinue treatment at first sign of relief, but continue for two or three days.

"For Varicose or Swollen Veins: Emerald Oil is a strengthening help that quickly demonstrates its helpfulness upon use. Penetrating and stimulating, it aids nature to retract the distended tissues of the vein walls that are cause of the trouble.

"While the veins are tubes carrying venous blood back to the heart, it is little understood that the vein walls themselves have arterial circulation like other tissues of the body. These tiny vessels are the vasa vasorum which nourish the veins and strengthen the muscular walls.

"Emerald Oil applied to such surfaces brings new strengthening circulation to these vein walls where circulation has become sluggish, thus aiding toward recovery.

"Where protrusion is marked, protection should be given and this is best accomplished by supporting the parts with a bandage three inches wide and of sufficient length to thoroughly support the area when adjusted. With each turn around the leg, allow the bandage to overlap one-half its width, drawing as tightly as can be worn with comfort. Such a bandage may be worn night and day, or only through the day. In starting to bandage, proceed from below upward, which is the course the blood takes in its venous circulation. Because of the particular and penetrating stimulus possessed by Emerald Oil, its use in connection with bandaging is a strengthening help. Before bandaging, apply Emerald Oil to the skin surface, rubbing gently and upward toward the heart—as blood in the veins flows that way—and keeping the limb as nearly as possible on a level with the body. Rub continuously for several minutes. This treatment should be repeated each time the bandage is applied.

"Where ulcerated conditions exist, the oil dressing acts as an antiseptic, keeping the surface clean and sweet and assisting nature to heal the broken places. Aside from comfort and protection, bandaging as above directed, supports the enlarged vein walls while nature under the Emerald Oil treatment gives those walls new strength in direction of normal."

Now, gentlemen, I have referred to this in my charge before. I inadvertently included heretofore a statement of the descriptive matter in Count 1, which is not an issue in this case. After that, my attention was called by Counsel to the fact that Count 9, to which I have also referred, contains this statement: "Said bottles were labeled as more fully described in the first count in this Information."

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