

doctors have failed to give relief; that said drug is a miraculous and mysterious discovery revealed by Divine Providence.

V.

"That said drug does not constitute an appropriate or effective remedy for the purposes stated, recommended and suggested in said labeling; that said product and drug does not contain the ingredients it is represented to contain in said labeling; that the said product is essentially water.

VI.

"That the defendant has heretofore shipped the said product and drug with the aforesaid labeling accompanying it in interstate commerce from Seattle, Washington, to various parts of the United States.

"From the foregoing FINDINGS OF FACT, the Court makes the following:

CONCLUSIONS OF LAW

I.

"That the Court has jurisdiction of the parties to this action and of the subject matter thereof.

II.

"That the product 'Dolphin's Natural Barks' is a drug within the meaning and contemplation of the Federal Food, Drug and Cosmetic Act.

III.

"That the printed matter affixed to the bottle which contains said drug and to the carton in which said drug is packaged, and to the leaflet or circular inserted in said carton constitutes and is the labeling of said product within the meaning and contemplation of the Federal Food, Drug and Cosmetic Act.

IV.

"That the said product and drug 'Dolphin's Natural Barks' is misbranded within the meaning and contemplation of the Federal Food, Drug and Cosmetic Act.

V.

"That the defendant has heretofore violated the provisions of the Federal Food, Drug and Cosmetic Act, and that said defendant, his agents and employees and any and all persons acting in concert with said defendant or his agents or employees should be permanently restrained and enjoined from introducing or delivering for introduction in interstate commerce, or from in any manner aiding or assisting in the introduction or delivery for introduction into interstate commerce of the said product and drug 'Dolphin's Natural Barks.'

VI.

"That the plaintiff should recover judgment against the defendant for its costs herein incurred."

On the same date, March 20, 1944, a decree was entered granting a permanent injunction in accordance with the prayer of the complaint.

**928. Alleged misbranding of Dolphin's Natural Barks. U. S. v. Byron J. Dolphin (Dolphin's Natural Barks). Plea of not guilty. Tried to a jury. Verdict of guilty. Motion for new trial granted and case subsequently dismissed. (F. D. C. No. 7243. Sample No. 11343-E.)**

On July 16, 1942, the United States attorney for the Western District of Washington filed an information against Byron J. Dolphin, trading as Dolphin's Natural Barks, Seattle, Wash., alleging shipment on or about December 27, 1941, from the State of Washington into the State of Texas of a quantity of a drug, known as Dolphin's Natural Barks, which was misbranded.

Analysis of a sample of the article showed that it consisted essentially of water containing 0.0060 gram of solids per 100 cc.

It was alleged to be misbranded in that certain statements in its labeling which represented and suggested that it contained natural barks; that drops of the article, when applied to the eye, were wonderful for diseases of the eye; that it was manufactured by a new process from tamarack bark and oak bark,

and contained minerals from organic sources, that is aluminum, iron, manganese, calcium, magnesium, sodium, and potassium; that the continued use of the article would remove the sting from eyes which were in bad condition because of disease; that it would restore eyesight and prevent blindness; that it was efficacious in the cure, mitigation, treatment, or prevention of granulated lids and ulcers; that it was efficacious in the cure, mitigation, treatment or prevention of disease of the eye after doctors failed to give relief; that it was a mysterious and miraculous discovery revealed by Divine Providence; that it was a perfect eye medicine, the sole ingredients of which were natural barks; that it was a perfect, absolutely harmless eye medicine and would work miraculous cures of diseases of the eye were false and misleading since the drug was neither an article of the nature represented nor was it efficacious or wonderful for diseases of the eye as represented.

On October 29, 1942, the defendant having entered a plea of not guilty, the case come on for trial before a jury which, after deliberation, returned a verdict of guilty. Upon polling the jury, one member stated that he was not satisfied as to the defendant's guilt although he had so voted, and on this basis the court granted the defendant's motion for a new trial. On December 5, 1942, the case was dismissed. (See also notice of judgment No. 927 this issue.)

**929. Misbranding of Tritolac, Alimentone Powder, and Alimentone Tablets. U. S. v. Thomas E. Collins (Thomas E. Collins Co.). Tried to the court. Defendant adjudged guilty and fined \$200. (F. D. C. No. 6398. Sample Nos. 32623- E to 32626-E, incl.)**

On February 27, 1942, the United States attorney for the Northern District of California filed an information against Thomas E. Collins, trading as Thomas E. Collins Co., at San Francisco, Calif., alleging shipment on or about July 15, 1940, from the State of California into the State of Arizona of quantities of the above-named drugs which were misbranded.

Analysis of a sample of the Tritolac showed that it consisted essentially of embryonic tissues closely resembling wheat germ, a spray-dried product closely resembling spray-dried skim milk, and an appreciable amount of wheat bran particles. It was alleged to be misbranded in that statements in the labeling which represented that it would be efficacious in the cure, mitigation, treatment, or prevention of disease were false and misleading since they represented and suggested that the article would be efficacious in restoring vitality and in maintaining resistance; that it was an excellent tonic for the nervous person and those in a run-down condition; that it would be efficacious in the correction of functional and degenerative changes in the entire nervous system and similar changes in the organs and tissues of the body; that it was efficacious in the treatment of acidosis and other digestive disturbances; that it was a wonderful rebuilder of those who were underweight due to malassimilation or wasting diseases, and would be efficacious in producing increased growth and increased weight in children, whereas the article would not be efficacious for such purposes.

Analysis of a sample of the Alimentone Powder showed that it consisted essentially of a spray-dried product, such as spray-dried skim milk, embryonic tissues, such as wheat germ, and dried green leafy or stemmy materials such as garden vegetables. Analysis of a sample of the Alimentone Tablets showed that they consisted essentially of embryonic tissues, such as wheat germ, and dried green leafy and stemmy material, such as garden vegetables. The Alimentone Powder and Tablets were alleged to be misbranded in that the statements regarding their efficacy in the cure, mitigation, treatment, or prevention of disease, appearing in the circular which accompanied them, were false and misleading in that they represented and suggested that the articles would be efficacious in the treatment of overweight; that they would be efficacious to expel mucus and to relieve colds, nasal catarrh, asthma, bronchitis, mucus colitis, and other catarrhal conditions; that they would be efficacious in the treatment of inflammation of the mucus membranes and of congested and infected tissues; that they would maintain the normal flow of secretions from the mucus membranes and thus continuously flush away any impurities which might lodge in the cell tissues; that they would maintain the defensive reaction against impurities and bacteria in the cell tissues and would increase the discharge from the part affected and eliminate accumulated waste; that they would be efficacious in the treatment of bronchial asthma and all types of catarrhal conditions including nasal catarrh, mucus colitis, and vaginal catarrh; that they would keep the membranes in a healthy condition, and would be efficacious in the treatment of hay fever; and that they would heal inflammation and tone