

# United States Department of Agriculture,

## OFFICE OF THE SECRETARY.

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### NOTICE OF JUDGMENT NO. 575, FOOD AND DRUGS ACT.

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#### ADULTERATION AND MISBRANDING OF "PEROXIDE OF HYDROGEN."

On or about June 5, 1908, John W. James, doing business as Towns & James, New York City, shipped from the State of New York into the State of Massachusetts a consignment of a drug product labeled: "U. S. P.  $H_2O_2$ , Peroxide of Hydrogen. 3% Hydrogen Dioxide. Aq. Hydrogenii Dioxidi. U. S. P. warranted to be of full U. S. P. strength and purity. While it is perfectly stable under ordinary conditions, it is best kept in a cool dark place at a temperature not over 65 degrees F. Towns & James, New York. Guaranteed under the Food and Drugs Act of June 30, 1906. No. 466."

A sample from this shipment was procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture. As the findings of the analyst and report thereon indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, said John W. James and the party from whom the sample was procured were afforded opportunities for hearings. As it appeared after hearings held that the shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the Circuit Court of the United States for the Eastern District of New York, charging the above shipment and alleging the product to be adulterated, in that it contained a certain percentage of acetanilid, which substance does not enter into the composition of peroxide of hydrogen, as provided in the United States Pharmacopœia, and alleging the said product to be misbranded, in that it was not stated upon the label above set forth that a substance known as "acetanilid" was a component part or ingredient of the drug product so shipped, whereas,

in truth and in fact said acetanilid was a component part of said product.

Whereupon John W. James, the defendant above named, appeared and filed a plea in bar of the above information in form and substance as follows:

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF NEW YORK.

UNITED STATES	}
vs.	
JOHN W. JAMES, doing business as Towns & James.	

The plea of John W. James, defendant, to the information of the United States filed May 24, 1909.

This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the information mentioned to be true in the manner and form as the same are thereby set forth and alleged, doth plead thereto and for plea by leave of the Court first had and obtained says, that the said United States ought not to further prosecute the information against him, the said John W. James, because the said information is fatally defective in having failed to set forth the exception of the statute as set forth in Section 9 of the Food and Drugs Act of June 30, 1906.

Section 9 states as follows: "That no dealer shall be prosecuted under the provisions of this Act when he can establish a guarantee signed by the wholesaler, jobber, manufacturer or other party residing in the United States, from whom he purchased such articles to the effect that the same is not adulterated or misbranded within the meaning of this Act."

That the defendant, John W. James, has such a guarantee, as appears by the guarantees hereto annexed.

JOHN BENE  
Manufacturing Chemist  
HYDROGEN Solution of DIOXIDE  
Hydrogen Peroxide  
641-645 DEAN ST. near Vanderbilt Ave.,  
Brooklyn, N. Y.  
April 5, 1907.

Messrs. Towns & James,  
Brooklyn, N. Y.

Gentlemen:—

Your letter of the 3rd to hand and contents noted, and in reply, I am unable to supply you the Hydrogen Dioxide at a lower price than you are now paying. If you will figure that I am selling you the gallons at 60¢, the five pounds at 50¢ inclusive, and the one pounds at \$20.00 per gross inclusive, you will readily see that it is a very low price for a strictly U. S. P. Hydrogen Dioxide, guaranteed under the Food and Drugs Act.

Regarding the serial number I made application to Washington a few months ago, but my papers were returned as I had not properly filled out the form. The new form was sent a few days ago and I am expecting a serial number every day, and as soon as it arrives will let you know, so that you can use same on the Hydrogen Dioxide if you so desire.

Hoping this satisfactory, I remain,

Yours respectfully,

(Sgd.) John Bene.

Dic.

and on April 12, 1907, the further authorization to use such guarantee of serial number if he so desired:

JOHN BENE  
 MANUFACTURING CHEMIST  
 HYDROGEN Solution DIOXIDE,  
 Hydrogen Peroxide  
 Office & Laboratory  
 641-645 Dean Str., nr. Vanderbilt Ave.  
 Brooklyn, N. Y. April 12, 1907.

Messrs. Towns & James,  
 Brooklyn, N. Y.

Gentlemen:

We received our serial number which is 8890, and will use it on all your orders for Hydrogen Dioxide in future which I trust will be satisfactory.

Yours respectfully,

(Sgd) John Bene.

Dic.

Further than that from December 7, 1906, to January 27, 1909 the defendant, John W. James, received a large number of invoices for the peroxide of Hydrogen used by them and shipped in a manner as set forth in the information, of which the following are samples:

JOHN BENE  
 Manufacturing Chemist  
 HYDROGEN SOLUTION OF DIOXIDE  
 Hydrogen Peroxide  
 Office & Laboratory  
 641-645 Dean St. near Vanderbilt Ave.  
 Brooklyn, N. Y., July 3, 1908.

Sold to Towns & James,

Terms 30 days net, 1 per cent ten days

Brooklyn, N. Y.

105 lbs. Hydrogen Dioxide, U. S. P. 3%, .05.....	5. 25
1 boxed carboy.....	1. 50
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	\$6. 75

No. 8890—Guaranteed under  
 the Food and Drugs Act,  
 June 30, 1906.

John Bene,  
 Borough of Brooklyn,  
 New York.

JOHN BENE  
 MANUFACTURING CHEMIST  
 HYDROGEN Solution of  
 Hydrogen Peroxide  
 Office & Laboratory  
 641-645 Dean St., near Vanderbilt Ave.  
 Brooklyn, N. Y. April 18, 1908

DIOXIDE

Sold to Towns & James,

Brooklyn, N. Y.

Terms 30 Days net, 1 per cent ten days.

12 gals. Hydrogen Dioxide, U. S. P. 3% .60.....	7. 20
	<hr/>
	\$7. 20

No. 8890—Guaranteed under.

That the peroxide of hydrogen mentioned in the information and above set forth was purchased from the said John Bene, whose guarantee is also set forth above; that the said John Bene is a resident of the United States; that the defendant, John W. James,

has therefore complied with all the requirements of said Food and Drugs Act and is not liable under this information, all of which matters this defendant doth aver and plead in bar, and this defendant prays judgment that the information be dismissed and that he be discharged from custody.

Dated, New York, November 11, 1909.

Watson & Kristeller,  
Solicitors and Counsel  
for the defendant, John W. James,  
100 William St.,  
Manhattan, N. Y. City.

In answer to this plea the United States attorney for the district aforesaid filed the following demurrer:

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF NEW YORK.

UNITED STATES	}
vs.	
JOHN W. JAMES, doing business	
as Towns and James.	

The United States of America by protestation and not acknowledging or admitting all or any of the matters or things set forth in the Plea in Bar filed by the defendant herein, demurs to the said Plea in Bar on the following grounds:

First: That it is not sufficient in form and contents as a Plea in Bar to the information of the United States filed herein.

Second: That the statements set forth in the said Plea in Bar are mere matters of proof, and not proper nor available as a plea to the information.

Third: That the matters set forth in the said Plea in Bar are not a good and proper defense under the statute as made and provided.

Fourth: That the matters set forth in the said Plea in Bar do not constitute a proper plea.

Fifth: That the facts as stated and alleged in the defendant's Plea in Bar, if admitted, would not constitute a defense or effective plea herein.

Sixth: Wherefore, the United States asks that the said Plea in Bar be overruled, and the defendant be required to plead over to the information.

Dated, Brooklyn, New York,  
the 17th day of November,  
nineteen hundred and nine.

(Signed) Wm. J. YOUNGS,  
United States Attorney,  
Eastern District of New York,  
Office & P. O. Address, Federal  
Building, Brooklyn, New York.

Said plea and demurrer coming up for hearing, the court, after hearing arguments of counsel, entered the following order: "This demurrer admits the allegations of the plea, which seems to be sufficient under section 9. The plea, therefore, must be sustained and the information dismissed. Thomas I. Chatfield, U. S. D. J."

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. HAYS,  
*Acting Secretary of Agriculture.*

WASHINGTON, D. C., August 20, 1910.