

Issued October 31, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2554.

(Given pursuant to section 4 of the Food and Drugs Act.)

**United States v. William N. Richie and Grant N. Richie. Plea of guilty.
Sentence suspended.**

MISBRANDING OF DRUG HABIT CURE.

On March 14, 1911, the United States Attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the Circuit Court of the United States for said district an information against William N. Richie and Grant N. Richie, copartners, doing business under the firm name and style of Richie Co., Brooklyn, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, on January 5, 1909, June 5, 1909, and March 2, 1910, from the State of New York into the District of Columbia, of quantities of a drug product which was misbranded. The product was labeled: "Prepared expressly for L. F. Kay. Directions. Vial full four times daily, half hour before meals and retiring. This bottle of remedy is 12½% alcoholic solution, compounded from the following ingredients: Pepsin, Morphina, Atropia and Salicylic Acid. Ingredients and amounts used vary with the needs of each patient, but the proportion of any ingredient is less than 4%." "Richie Company, Brooklyn, N. Y."

Analyses of samples from the different consignments made by the Bureau of Chemistry of this Department showed the product to consist of a hydro-alcoholic solution of morphine sulphate, glycerin, pepsin, salicylic acid, and undetermined matter.

The bottles in shipment No. 1 (I. S. No. 16556-a) contained:

	Morphin sulphate. <i>Grains per fluid ounce.</i>	Alcohol. <i>Per cent by volume.</i>
1-----	14.20-----	11.09-----
2-----	12.65-----	11.41-----
3-----	11.90-----	11.73-----
4-----	11.00-----	11.01-----
5-----	9.20-----	11.30-----

The bottles in shipment No. 2 (I. S. No. 31603-a) showed the following:

	Morphin sulphate. <i>Grains per fluid ounce.</i>
1-----	12.35-----
2-----	9.38-----
3-----	9.84-----
4-----	9.15-----
5-----	8.47-----
6-----	8.19-----
7-----	8.89-----
8-----	8.24-----
9-----	7.66-----
10-----	7.21-----

The 10 bottles in shipment No. 3 (I. S. No. 12-b) contained the following proportions of morphin sulphate and alcohol by volume:

	Morphin sulphate. <i>Grains per fluid ounce.</i>	Alcohol. <i>Per cent by volume.</i>
1-----	15.85-----	10.75-----
2-----	14.31-----	11.75-----
3-----	13.00-----	11.00-----
4-----	12.09-----	11.75-----
5-----	10.95-----	11.37-----
6-----	10.60-----	11.00-----
7-----	16.00-----	12.50-----
8-----	10.77-----	11.90-----
9-----	9.84-----	10.88-----
10-----	8.22-----	10.70-----

Misbranding of the product was alleged in the information for the reason that the bottles and packages containing it did not bear a statement on the label thereof of the quantity and proportion of any morphine or any derivative or proportion of any such substance contained therein.

On March 18, 1911, defendants entered a plea of not guilty, and on June 7, 1911, filed their demurrer to the information, which was

overruled, as will more fully appear from the following memorandum opinion delivered by the court (Veeder, J.) :

The defendants demur to an information charging them with a violation of Section 2 of the Food and Drugs Act of June 30, 1906. The drug product alleged to be misbranded bears the following statement on the label :

"This bottle of remedy is 12½% alcoholic solution, compounded from the following ingredients: Pepsin, Morphina, Atropia and Salicylic Acid. Ingredients and amounts used vary with the needs of each patient, but the proportion of any ingredient is less than 4%."

Section 8, Sub-division Second, of the Act specifies that a drug shall be deemed to be misbranded if it fail to bear a statement on the label of the quantity or proportion of morphine contained therein. It is plain that this label does not state the quantity or proportion of morphine contained in the preparation. But the defendants claim that it complies with Regulation 28, Sub-division D, which reads:

"A statement of the maximum quantity or proportion of any such substance present will meet the requirements, provided the maximum stated does not vary materially from the average quantity or proportion."

A short answer to this contention is that even if the statement on the label that "the proportion of any ingredient is less than 4%" be taken as a statement of the maximum quantity or proportion of morphine contained in the preparation, still, as the label states, the amount varies, and it may appear from the evidence that the maximum stated varies materially from the average quantity or proportion.

The demurrer is overruled, with leave to plead over.

On April 2, 1913, defendants withdrew their former plea of not guilty and entered a plea of guilty to the information and the court suspended sentence.

B. T. GALLOWAY,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *June 3, 1913.*