

On July 6, 1932, no claimant having appeared for the property, judgment was entered, ordering that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19476. Alleged misbranding of Dr. M. Hermance's asthma and hay fever medicine. U. S. v. 60 Bottles of Dr. M. Hermance's Asthma and Hay Fever Medicine. Tried to the court and a jury. Verdict for the claimant. Decree ordering libel dismissed and product restored to claimant. U. S. v. 27 Bottles of Dr. M. Hermance's Asthma and Hay Fever Medicine. Default decree of condemnation, forfeiture, and destruction. (F. & D. Nos. 24777, 27701. I. S. Nos. 027648, 42754. S. Nos. 3135, 5769.)

These cases involved the seizure of two lots of a drug product represented to be a treatment for various ailments, particularly asthma and hay fever. Since asthma is a symptom of several unrelated ailments resulting from widely differing causes and no drug or combination of drugs could reasonably be deemed a curative agent in all such dissimilar ailments, and since the advice of experts was that the article would be ineffective in the treatment of hay fever, and in view of the presence in the medicine of potassium iodide, a drug which aggravates tubercular tendencies, both active and latent, the Secretary of Agriculture reported to the United States attorneys for the Southern District of New York and the Eastern District of New York that quantities of the product were located in their respective districts and recommended seizure under the food and drugs act.

Analysis of a sample of Dr. M. Hermance's asthma and hay fever medicine by this department showed that the article consisted essentially of potassium iodide, extracts of plant drugs including licorice and lobelia, alcohol, and water.

On May 24, 1930, a libel was filed in the Southern District of New York praying seizure and condemnation of 60 bottles of the said Dr. M. Hermance's asthma and hay fever medicine, and on February 3, 1932, a libel was filed in the Eastern District of New York against 27 bottles of the products. The libels charged that the article had been shipped by Claude A. Bell from Lowell, Mass., in interstate commerce into the State of New York, the former on or about March 13, 1930, and the latter on or about October 23, 1931; that it remained in the original unbroken packages at New York and Brooklyn, N.Y., respectively, and that it was misbranded in violation of the food and drugs act as amended. Both libels contained substantially the same misbranding charges.

It was alleged in the libel filed in the Southern District of New York that the article was misbranded in that the following statements regarding the curative and therapeutic effects of the said article were false and fraudulent, since it contained no ingredient or combination of ingredients capable of producing the effects claimed: (Bottle label) "Asthma And Hay Fever Medicine * * * Used in Asthma and Hay Fever for almost a century * * * This medicine should be taken in doses sufficiently large to arrest the paroxysm and help the person to breathe more freely. * * * 'This medicine has been found helpful in catarrhal conditions * * * It cuts the phlegm and helps to clear the bronchial tubes.' * * * Directions * * * For Asthma, * * * Use Hermance's Asthma & Hay Fever Medicine as directed, otherwise the good effects of a good medicine may be lost;" (carton) "Asthma And Hay Fever Medicine * * * Used in Asthma and Hay Fever for almost a century * * * Used by Three Generations In Asthma and Hay Fever For Nearly A Century This Medicine Has Been Found Helpful In Asthma, Hay Fever, Catarrhal Conditions;" (circular) "That Terrible Disease Asthma * * * Dr. M. Hermance's Asthma and Hay Fever Medicine. A medical compound which, when properly and perseveringly used, has been found helpful in the treatment of Asthma and Hay Fever. As these disorders are of a persistent nature, a person suffering from them must be equally persistent. * * * The best evidence of the real worth of this medicine is found in the fact that it has been on the market for more than 82 years. * * * Prescribed by many prominent physicians. * * * Dose for Adult—For Asthma, * * * If you have a bad attack, take the medicine every twenty minutes, increasing each dose up to two teaspoonfuls. Until relieved. * * * Hay Fever— * * * For Catarrhal Conditions * * * This medicine should be taken in doses sufficiently large to arrest the paroxysm and help the person to breathe more freely. * * * 'This medicine has been found helpful in Catarrhal Conditions and * * * It cuts the phlegm and helps to clear the Bronchial tubes.' Use Hermance's Asthma & Hay Fever Medicine as directed, otherwise the good effects of a good medicine may be lost."

On June 27, 1930, Claude A. Bell, Lowell, Mass., entered an appearance and filed a claim and answer to the libel, and subsequently filed an amended answer nunc pro tunc as of June 28, 1930. The answer as amended admitted the interstate shipment of the product, that the article was labeled as alleged but denied expressly that the article was misbranded in violation of the law.

The claimant having moved that the issues be tried to a jury the case came on for trial on May 16, 1932. Evidence, expert and lay, was introduced by the Government and claimant at considerable length and the case was thoroughly argued by counsel, the case being submitted to the jury on June 19, 1932, with the following charge (Knox, *D. J.*):

"Years ago, when I was a good deal younger than I am now, newspapers, as I recall them, sometimes carried advertisements of various patent medicines, setting forth lists of symptoms of this, that or the other disease, and stating that the particular medicine advertised would cure all of them. As I say, I occasionally read these advertisements and imagined that I had all the diseases there listed, or symptoms of them.

"The world, as time went on, came to know that many of the patent medicine advertisements and representations concerning the therapeutic or curative effects of medicine were fraudulent. It came to understand that many of the medicines were mere nostrums that were put upon the market to deceive the gullible, and to separate such persons from their money, and to place it in the pocket of the producer or manufacturer of the so-called medicine. I think all of us are quite old enough to remember those days.

"The Constitution of the United States gave the Congress of the country power to regulate interstate commerce. The patent and proprietary medicine evil became so great that, acting under the power to regulate interstate commerce, the Congress said that medicines and drugs which are misbranded shall not pass across State lines, and that, if they be so passed, certain steps might be taken by the Government to put to an end drug and medicines which are falsely represented as being capable of curing or alleviating disease. That legislation has come to be known as the food and drugs act, and it is under that act and some of its sections, that this case comes into this court for determination.

"None can deny that that act has been extremely beneficial. The ordinary channels of trade, so far as they cross State lines, have been closed to misbranded articles, and all of us, I take it, are the beneficiaries of that act. So you should start your consideration of this case, I think, with no prejudice against the food and drugs act.

"At the same time, Congress, by allowing a jury trial in cases of this character, had in mind the feeling, I take it, of the great mass of the country that its membership would practice, to some extent at any rate, self-medication, in an endeavor to alleviate and cure some of the ailments and diseases to which all of us are subject. It was recognized that we have had various medicines and various treatments handed down to us from one generation to another, and that the privilege of self-medication should not be taken away from the public. All of us, I take it, at times in our lives, have doctored ourselves, and it may have been wise or unwise to do it. All of us, I take it, have assumed from time to time to give advice to members of our family, or to our friends, as to what they should do in certain instances, and in most such instances where we, as laymen, attempt to treat ourselves or to treat members of our families or our friends, we ordinarily use what are known as homely and common remedies or medicines.

"In the country, where I was born and raised, we made medicines ourselves. Some old woman, perhaps, would gather the herbs and barks from the various fields, and make up a concoction which she and perhaps some of her neighbors thought was good for certain types of disease. She made salve and what-not. So Congress, having that in mind, said that, in cases such as this, 12 men should pass upon the character of the representations that are made concerning the curative or therapeutic qualities of drugs and medicines which cross State lines before condemnation should rest upon a particular product. That is why you are in the box. In this case, the Government as it had a right to do, believing, and, undoubtedly sincerely, that this medicine of Mr. Bell was false and fraudulent in character, resorted to the provisions of what is known as the Sherley amendment of the food and drugs act, which is in these terms: 'For the purpose of this act, an article shall be deemed to be misbranded, in the case of drugs, if its package or label shall bear or contain any statement, design,

or device regarding the curative and therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent.'

"Relying upon that provision of law, the United States filed a libel against this shipment of this medicine, and seized it, and charged that the representations appearing upon the circular contained in the carton, and which accompanies the bottle of medicine, are false and fraudulent. The task that devolves upon you will be to say whether, under the evidence in this case, these representations are false and fraudulent. The Government charges substantially all of the printed matter contained upon the circular, and upon the bottle, and upon the carton, to be untruthful in that this medicine is not of curative or therapeutic value in the treatment of asthma or hay fever.

"The claimant, Mr. Bell, came along and said, when he got notice of this seizure, 'This is my product. I deny that what I have said as to the curative and therapeutic qualities of this medicine is false and fraudulent.' So the issue between the two parties is joined: one claiming that the statute is violated, the other claiming that it is not. In order to enable you to decide which of the contending parties is right, you have heard this evidence for the past four days; and, on the defense, Mr. Bell introduces proof from which he asks you to say that his representations were founded on facts, and that he acted in good faith in making them, even though you should, as a matter of scientific inquiry, reach the conclusion that they are false.

"The Government charges, and has sought to establish by its proof, not only that the statements are false, but that they were made by Mr. Bell with an intent to deceive the public.

"With that outline of what the issue is, as a preliminary, it is necessary to go a step farther and to speak of what constitutes a therapeutic quality and what constitutes a curative quality; but before I do that, and in order to allow you fairly and properly to consider the case, I desire to make some general observations upon various matters that you should take into consideration.

"This is a civil case. The burden of proving its allegations rests upon the Government, and the extent of its burden is that it shall prove, by a fair preponderance of the credible evidence in the case, that its allegations, as contained in the libel, are correct, and that the representations of Mr. Bell are not only false but that they are fraudulent as well.

"The Government does not have to prove the case beyond a reasonable doubt, as in a criminal trial, but it does have to produce evidence which, when it is placed in the scale, or the pan of the scale, which represents the Government's side of the case, will outweigh the evidence which is to be placed in the pan of the scale which represents Mr. Bell's side of the case; and a preponderance of evidence is made out if the weight of the Government's case is such as to make its pan of the scale descend below that of Mr. Bell by even a hair's breadth. If it should be that you think the evidence is evenly balanced, upon the contentions that are here made by the parties, then the Government can not win, and a verdict should be returned for the claimant; or if, perchance, you conclude that Mr. Bell's testimony—speaking of the witnesses who have been brought here to justify his side of the case—outweighs the Government's evidence, then, of course, the Government can not have a fair preponderance of the evidence, and Mr. Bell is entitled to win.

"We have had an interesting lot of testimony, both upon behalf of the Government and upon behalf of Mr. Bell, and you are the judges of the weight to be given the testimony of each and every witness who has testified. You are to say whether they were telling the truth, whether they were competent to speak of the matters concerning which they gave testimony, whether they were ignorant and themselves gullible, or whether what they said was accurate and trustworthy.

"If you feel and conclude that any witness in the case falsely testified as to any material matter, you may, if you desire, throw aside the entire testimony of any such witness as being unworthy of belief, or you may give credence to such part of any testimony of any witness, whom you believe to have testified falsely, as you think is true, and cast aside that which you think is false.

"You can apply your own tests in passing upon the testimony of the several witnesses, and reach such a conclusion in connection therewith as you think all the facts and circumstances warrant you in doing.

"It is needless to tell you, I think—but I shall do so—that this is a case which is entitled to careful attention both from the standpoint of the Government and the claimant.

"If this medicine be a mere nostrum, it can do no good to those who, it is hoped, will provide a market for it. The Government, in seeking to protect the public from such products, is entitled to prevail if what has been said about this medicine is, as a matter of fact, false and fraudulent. On the other hand, Mr. Bell, if he has not offended against the statute in putting out this medicine, and if his representations are not false and fraudulent, is entitled under the law to continue to send this medicine across State lines and supply whatever market there is for it. Do not decide the case upon the mere assumption that here is a dozen bottles of cheap medicine, to sell for the sum of not more than \$12, perhaps, but consider where the right is under the law, as I have so far spoken of it, and as I shall endeavor, in the next few minutes, to speak of it.

"When a man puts medicine into the market and asserts that it has certain qualities, the public has a right to expect that he shall know something about it, and that he shall not make any false statements concerning its qualities, and also that he will not make reckless statements concerning its qualities.

"I may have no intention in the world—certainly I have none now—to kill anybody who may be walking down Broadway. Ordinarily a person has an intent when he shoots a particular person; but if I were to shoot a gun out of this window over towards Broadway, and someone there were to be killed by it, the law would infer me to have had an intent to kill that person, because as a reasonably intelligent man, I did a thing which might be calculated to kill someone out there on the street. So, if a man willfully and recklessly makes statements without knowing anything about their truth, and those statements are not justified by actualities, he may be charged with intent to deceive those to whom the statements are made.

"If Mr. Bell made statements that this medicine would cure chilblains and ague and scarlet fever, and diseases of that nature—take an extreme case—obviously, from the testimony that has been here adduced, his claims would be false and fraudulent. He is charged, as an intelligent person who is asking people to accept his representations, with some knowledge of the disease which he undertakes to provide for, and with the effects of the constituents of the medicine which he offers to the public for the treatment of that disease. So, when you come to hold him to his responsibility, or lack of it, you may take that into account, and, after taking it into account, consider what he has said and then decide, first, if he has made any false statements in these papers which accompany this medicine. If he has made no false statement and everything is the truth, and you are unable to conclude that he has said anything that does not represent the facts, that is the end of the case, and you should come back with a verdict for the claimant.

"If you decide that he has made a false statement; that the picture is painted too rosily, and that what he has suggested, if not definitely represented, that this medicine will do, is not justified by the facts as you have heard them, you may conclude that he has made a false statement. But that will not be enough to warrant you in bringing in a verdict for the Government. It will be necessary for you to go farther and consider whether, in making a false statement, there was an intent to deceive. Then, if you find that he has made a false statement, and that he made it for the purpose of mulcting people of their money, and that he made it in order to sell this medicine, where otherwise he would not have been able to sell it, by practicing a deception upon those who read what he had said, and you find that by a fair preponderance of evidence, then the Government is entitled to a verdict and you should return a verdict in its favor.

"The language upon the carton, and the bottle and the circular, is simple, and you are entitled to construe that language as you believe it would be construed by a person who wanted some relief from asthma, and saw this bottle, and the circular, and this carton with its representations. What is the natural construction to be placed upon this language? It is conceded here that there is no out-and-out claim that this medicine will cure asthma. The contention of the defense by Mr. Johnson on behalf of Mr. Bell, is that it is helpful, and it will tend to alleviate some of the attendant physical conditions that accompany asthma and bronchitis. Now does the language in the aggregate, constitute a representation that the medicine will cure asthma and hay fever? Does the language used falsely represent any therapeutic value that the medicine may have, and were the representations, if they falsely represent

the real qualities of this medicine, fraudulent, as having been made with intent to deceive? That is the basic question which you shall determine.

"Now we get down to a feature of the case which is not quite so simple, perhaps, and that is as to the testimony of the experts and the testimony of the claimant's witnesses, as to what constitutes asthma.

"We have heard from the pharmacist, or the analyst from the department in Washington, his version as to what the contents of this medicine are—and the man who gave the testimony has no reason to be ashamed of it. He made his analysis and it seems to me, from the developments in the case, his analysis was pretty accurate. He found a quantity of water, got some lobelia, some potassium iodide, some licorice, some alcohol—I guess that is about all, with the exception of this much-discussed rosinweed.

"The Government's witnesses could not tell us much about rosinweed. Certainly the claimant's witnesses told us nothing about it, or what its curative effects may be. Juror No. 5 contributed the most information we have as to the characteristics of rosinweed. This morning one of the scientists from the department said that when tincture of rosinweed was injected into the veins of a cat it did not increase its blood pressure; thus tending, I take it, to prove that the substance was inert.

"We have heard a good deal as to the therapeutic effect of potassium iodide and lobelia. The licorice seems to have been forgotten, save as it may tend, perhaps, to make the concoction palatable, or halfway so, if you like licorice.

"Alcohol is one of the constituents of most medicines that we get, or a great many of them. I suppose it tends to preserve, perhaps, some of the ingredients that may be in the medicine—I do not know, but it is there—not enough of it to cause intoxication, I suppose, in small doses, at any rate; but it is there; and so far as asthma goes, standing alone, there has been no testimony that alcohol would have much effect upon the treatment for that ailment.

"Potassium iodide, it is admitted by the very learned experts who testified on behalf of the Government, will tend to liquefy the heavy mucus that sometimes characterizes the bronchial tubes, both in asthma I suppose, or certainly in bronchitis, and in that sense this ingredient may be of aid in allowing a patient, who has experienced difficulty in breathing, to raise and expectorate this mucus, and thus allow the bronchial tubes to function, and to have air pass through them.

"Lobelia, it seems, from the medical testimony, has from time to time been used by the medical profession in treating or prescribing for those suffering from asthma. I do not recall specifically what it was said that lobelia would do but, as I do remember, it has some therapeutic value in treating some of the ailments which manifest themselves by clogging up of the bronchial tubes, and which make it difficult for one to breathe.

"It seems also to be a part of the medical testimony that certain types of heart disease will produce a pressure on the bronchus that will occasion shortness of breath in the individual who thus suffers. I take it that all of us will probably conclude that a condition of this kind is not real asthma. Some of us have irritation of the bronchial tubes which occasions mucus to be produced, and sometimes the tubes clog up, and it is difficult to remove the mucus. So when we begin to discuss this feature of the case, we get into a good deal of confusion of thought, particularly upon the part of the layman, and possibly upon the part of some physicians, as to the classification of ailments and diseases into which asthma should be placed and you must have that in mind in considering this case, and as bearing upon the truth or falsity of the representations that were made.

"Medicine advances as the years go by, and we owe much to the medical profession. Certainly it has done enough for me that I take off my hat to it most of the time. I have great respect for it. I was much impressed by the learning of the two expert witnesses who were called here yesterday or the day before, and who testified concerning asthma. But we must also understand, as these gentlemen admit, that medicine is far from being an exact science. The views of the medical profession change from time to time, and it has come, apparently, to give rather a narrow definition to asthma, particularly, the allergic type of asthma, as being that condition which grows out of the action upon the human system of certain proteins, which will bring about a congestion of the bronchial tubes, and produce shortness of breath.

"I think I speak a truism when I say the public does not ordinarily keep fully abreast of the advances of medical science. It is very natural that it

should not do so, because we lack the opportunity and inclination to do so. We follow along like a wagon behind a tractor. So, most of us, perhaps, as members of the public, will have a wider impression of what constitutes asthma than will the skilled scientist. We speak in looser terms, more generic terms; and, in considering these representations of Mr. Bell, you should bear that in mind.

"Some of the witnesses yesterday who were called by the claimant said they were suffering from bronchial asthma congestion, perhaps an irritation of the bronchial tubes which may have been occasioned by some other cause than that of proteins. They said they got relief, were able to raise mucus, and felt better after taking this medicine.

"When you come to reach a decision as to what asthma is, it is only right and proper that you should consider not only what the physicians said in connection therewith, but as to what the public believes asthma to be, because those who get relief from this medicine, if they do, take it for the condition which they describe or which they think is asthma, although it may not be true asthma within the definition of these physicians.

"Was there an intent to deceive? Has this medicine any therapeutic effect which would justify these representations, or were they false and fraudulent?

"'Curative' is itself not easy to define. Funk & Wagnalls Dictionary defines it as an agency possessing power or the tendency to cure. 'Therapeutic' is defined as an agency having healing qualities, as an alleviator of a diseased condition.

"When one suffers from a disease and has physical distress as a result of it, one of the things, naturally and humanly, that that person wants to accomplish is to relieve his physical distress and, if there is something which will enable the distress to be relieved, and if it does so without harming him, and brings about a beneficial and therapeutic effect, that person is entitled to the relief he may thus obtain. He is also entitled not to be deceived as to the quality of some agency which he would like to use to relieve him of his physical distress. I may go over to a druggist, if I have a cavity of the tooth or an exposure of the nerve, which occasions pain. I will tell the drug store man, 'I have a toothache,' or perhaps I have some remedy in mind, and I ask him if [he] has it in stock. If so, I will purchase it and put it in my tooth. Perhaps it will deaden the pain so as to enable me to get a dentist, and have the toothache cured by removing its cause. If the remedy does that and gives me a bit of ease, and it does not injure me otherwise and destroy the gums in my mouth, or the structure of the tooth, it is a therapeutic agent, and I am entitled to use it.

"This brings me to another feature of this case. It is said that potassium iodide, in some cases of tuberculosis, may break down the inclosing structure of tubercular sections of one's lungs and enable a latent case of tuberculosis to become active. Is that true? Is the quantity of potassium iodide that one is likely to get in treating himself with this medicine of sufficient size and power to make that a real risk? If it is a real risk, has the claimant fraudulently put this destructive agent on the market without notifying people of the danger that may follow from its use? What I mean to say is that if potassium iodide is a dangerous element and agency, then this medicine is not, without more than appears upon this carton and advertising matter, may not be benign and helpful product for the use of those who may be suffering not only from latent tuberculosis, but also from asthma and hay fever. In that respect, a statement that this concoction is an appropriate medicine for asthma, hay fever, catarrhal conditions, and head colds, may be said to be false. If it is false in that respect, was the false statement made by Mr. Bell with an intent to deceive? We have here also 'catarrhal conditions and head colds.' Is there anything beneficial in this medicine and of therapeutic value for the treatment of those ailments?

"It will be necessary, as I have indicated several times, for you to consider the falsity or the alleged falsity of the statements. If you find there are false statements, or even one, then you should go farther and consider whether there was an intent to deceive. If Mr. Bell acted in good faith, if he had a desire to be of service to his fellow man, and honestly believing these statements, made them, then, even though the statements are false, the Government should not prevail.

"As bearing upon his good faith, you make take into consideration what he has heard from his father and mother about this medicine, about its reputation, if

it has any. He has a right to his ideas as they may be formed from what the users of the medicine have said to him. He says that his wife takes it, and if she does, and he knows it, that is entitled to be considered by you as bearing upon his own good faith in the matter.

"When you have given thought to all of these questions, it will be your duty to find a verdict which shall be fair to Mr. Bell and to the Government. He has a right to express his honest opinion. His opinion may be erroneous; it may even be false; but if he honestly and sincerely entertains his opinion, even though based upon insufficient evidence, he has a right to express it, just the same as you and I and all of us, about important matters from time to time, form our judgment upon what we see, upon our personal experiences and upon what people tell us; and it is no different with him in connection with this medicine.

"A person can tell half-truths; what he says may be true in every syllable but his statement, nevertheless will convey a false impression. If he does this, deliberately tells half-truths, which, even though literally true, are false, in that they engender wrong inferences, he may be charged with falsity in that respect. A person making or dealing in substances, alleging them to have therapeutic or curative value, should be in a position to have superior knowledge of what he has said. Otherwise, his statements may be considered to have been recklessly and inconsiderately made. You may consider whether he has done all that a reasonably prudent man, desiring to act in good faith, would have done in the way of acquainting himself with the effect of this medicine—his education, his training, all those are matters to be considered.

"I think I have charged you, in substance, that if you find from the evidence that this preparation is dangerous to entrust in the hands of a layman, without medical supervision, and if the label bears no adequate statements as to such danger, then you may find that the statements as to the therapeutic value of the medicine are false. But even if you find that, you should go farther and consider whether they were made with an intent to deceive.

"I think I have substantially covered the various requests to charge that have been made by the parties, although I have not done so in the language of the requests."

JUROR No. 5. Would you kindly state, sir, in what form you would wish the verdict announced?

THE COURT. Either in favor of the Government or in favor of the claimant.

JUROR No. 5. Suppose, on the other hand, there are certain qualifications. Do you wish them—as, for instance, you announced that we must consider whether the statement is true; but suppose we conclude that it is not true but that, as far as we know, he thought it was true, I am taking a suppositious case.

THE COURT. Well, then, if you find that any particular statement is false, you may state separately what statement or statements you believe to be false; but if you do not find that a statement was made fraudulently, that is with intent to deceive, your verdict nevertheless should be for the claimant.

JUROR No. 5. Then it is proper, if we so see fit, to announce a verdict in favor of either one of the parties, but make certain additional statements?

THE COURT. You may make a statement, you may make a special finding, if you desire to, upon any particular part of the matter which is false. Is there anything else?

MR. JOHNSON. Will your honor look at requests 8, 9, and 10 of mine, and see if you think you have given them fully?

THE COURT. I think I have covered them substantially.

MR. JOHNSON. I am inclined to think you have.

THE COURT. Any special requests that you have, Mr. De Koven?

MR. DE KOVEN. I was considering whether No. 8 of our requests to charge was covered.

THE COURT. I think I have covered that. All right, gentlemen, you may take this [indicating Government's exhibit 1] with you, if you want to.

The following verdict was returned by the jury: "We find for the claimant. We recommend that the claimant insert in his literature a warning against its use by persons having tubercular tendencies." The Government's motion to set aside the verdict and for a new trial was denied.

On June 3, 1932, a decree was entered by the court dismissing the libel and ordering the product restored to the claimant.

No appearance was entered in the case instituted in the Eastern District of New York. On March 17, 1932, judgment of condemnation and forfeiture was entered and it was ordered by the court that the 21 bottles of the product seized in the said district be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19477. Misbranding of Urodonal. U. S. v. 34 Packages of Urodonal. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27944. I. S. No. 48038. S. No. 5914.)

Examination of a sample of a drug product, known as Urodonal, from the shipment herein described showed that the circular shipped with the article contained statements representing that it possessed curative and therapeutic properties which, in fact, it did not possess.

On March 24, 1932, the United States attorney for the District of Massachusetts, acting upon a report of the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 34 packages of Urodonal, remaining in the original unbroken packages at Boston, Mass., alleging that the article had been shipped by George J. Wallau (Inc.), from New York, N. Y., on or about February 24, 1932, and had been transported from the State of New York into the State of Massachusetts, and charging misbranding in violation of the food and drugs act as amended.

Analysis of a sample of Urodonal by this department showed that the article consisted essentially of methenamine (4 per cent), sodium phosphate (18 per cent), sodium bicarbonate, tartaric acid, citric acid, and a small proportion of sugar.

It was alleged in the libel that the article was misbranded in that the following statements appearing in the circular accompanying the said article, regarding its curative or therapeutic effects, were false and fraudulent, since it contained no ingredient or combination of ingredients capable of producing the effects claimed: (Circular) "Arthritism-Rheumatism-Arterio-sclerosis-Obesity-Gout-Gravel-Uricemia-Sciatica. Urodonal dissolves uric acid as hot water dissolves sugar. It cleans the liver and kidneys, purifies the blood and all the tissues, softens the arteries and reduces obesity by oxydising the fats. It cleanses the kidneys by removing uric acid crystals, and all the poisonous substances and impurities which kill the renal-tissue. Uric acid, a chemical deposit of nitrogenized substances, constitutes a most formidable poison for the organism. Arthritism, Gout, Rheumatism, Gravel, Eczema, Asthma, Sciatica, Headaches and Neuralgia—such are the principal diseases produced or maintained by an excess of uric acid in the blood. Urodonal eliminates this acid. It is a curative agent as reliable as it is prompt in its action. It presents no danger, even when taken in large doses, and may be continued for any length of time without incurring intolerance * * * Urodonal is the most active remedy against acute and chronic Rheumatism, or in the articular, muscular, or visceral forms. It dissolves the obstructions and the articular nodosities of those suffering from Rheumatism and Gout and is the best preventive against complications of Diabetes, Albuminuria, Weakness of the Kidneys, and Uremia. Persons who are threatened with stones in the bladder—those whose urine is thick, sandy or fetid—those who suffer from renal impermeability (various forms of Nephritis, Bright's disease) should undergo the Urodonal treatment. One Is Old As One's Arteries—Urodonal keeps the arteries young and reduces the incrustations. It eliminates the chalk salts which coat the arterial walls, thus preventing arterio-sclerosis. * * * Urodonal should be recommended and given to children, whose parents are arthritic, diabetic, corpulent or hypersthenic, as a preventive measure. Directions For Use * * * Urodonal should be taken for, at least, ten consecutive days each month. Its continued use is absolutely harmless. Arthritic subjects should take it regularly. It is recommended to everyone—whether arthritic or not—to take regularly a teaspoonful of Urodonal in a glassful of water at night before retiring, for cleansing the kidneys during sleep. * * * Acute stages: Dose: three tablespoonfuls per day, during the whole duration of the illness. Children: One teaspoonful daily. To be taken regularly in case of hereditary arthritism. Acute stages: Two teaspoonfuls daily. * * * Urodonal Is Absolutely Harmless. [Similar statements are made in foreign languages.]"