

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]

20726-20750

[Approved by the Acting Secretary of Agriculture, Washington, D.C., Jan. 31, 1934]

20726. Misbranding of Anti-Phymin. U. S. v. Robert E. MacIntire (R. E. MacIntire & Co.). Tried to a jury, verdict of guilty. Fine, \$400. Placed on probation for two years under suspended sentence. (F. & D. no. 26548. I. S. nos. 6375, 012545.)

This case was based on interstate shipments of Anti-Phymin, labeled to convey the impression that it was composed of atmospheric elements that produced curative effects through the control of bacterial fermentation, and that it also possessed other healing properties. Investigation showed that the article was valueless for such purposes.

On July 1, 1931, the United States attorney for the Northern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States an information against Robert E. MacIntire, trading as R. E. MacIntire & Co., Pensacola, Fla., alleging shipment by said defendant in violation of the Food and Drugs Act, as amended, on or about June 13, 1929, and February 10, 1930, from the State of Florida into the State of Alabama, of quantities of Anti-Phymin that was misbranded. The article was labeled in part: "Anti-Phymin Is a Synthetic Compound of Essential Atmospheric Elements in the Form of Gas in Solution with Pure Water and known as 'The Healing Gas' * * * Prepared Solely by R. E. MacIntire and Co., Pensacola, Florida."

Analysis of a sample of the article by this Department showed that it consisted essentially of water (approximately 99.8 percent), sulphur dioxide (0.2 percent), and a trace of nonvolatile matter.

It was alleged in the information that the article was misbranded in that the statement, "Anti-Phymin is a * * * Compound of Essential Atmospheric Elements", borne on the label, was false and misleading, since the article was not a compound of essential atmospheric elements. Misbranding was alleged for the further reason that the statements "A * * * preparation for Internal and External use which effectively controls the bacterial fermentation of waste organic matter in or about the body. * * * 'The Healing Gas' * * * In the control of fermentation lies the secret of the control of disease For External Use Anti-Phymin should be used in any condition causing or likely to cause pain, soreness or inflammation. Apply * * * to the part affected and keep same wet with Anti-Phymin", regarding the curative and therapeutic effects of the article, were false and fraudulent, since the article was not effective as a healing gas, as a preparation for internal and external use to control the bacterial fermentation of waste organic matter in or about the body, effective in the control of disease through the control of fermentation, or effective as an external application in the treatment of any condition causing or likely to cause pain, soreness, or inflammation.

On December 5, 1932, the defendant was arraigned and entered a plea of not guilty. The case was tried to a jury which returned, on December 7, 1932, a verdict of guilty on all counts. A fine of \$400 was imposed, and the defendant was placed on probation for 2 years under a suspended sentence.

R. G. TUGWELL, *Acting Secretary of Agriculture.*