

said pills contained less than 2 grains, namely, not more than 1.769 grains, of quinine sulphate.

Adulteration of the fluidextract of ergot was alleged for the reason that it was sold under a name recognized in the United States Pharmacopoeia and differed from the standard of strength, quality, and purity as determined by the test laid down in the said pharmacopoeia official at the time of investigation in that the article, when administered by intramuscular injection to single-combed white leghorn cocks required more than 0.5 cubic centimeters for each kilogram of body weight of cock to produce a darkening of the comb corresponding in intensity to that caused by the same dose of the standard fluidextract of ergot; whereas the pharmacopoeia provides that fluidextract of ergot, when administered by intramuscular injection to single-combed, white Leghorn cocks shall require a dose not exceeding 0.5 cubic centimeter for each kilogram of body weight of cock to produce a darkening of the comb corresponding in intensity to that caused by the same dose of the standard fluidextract of ergot; and the standard of strength, quality, and purity of the article was not declared on the container. Adulteration of the fluidextract of ergot was alleged for the further reason that the strength and purity of the article fell below the professed standard of quality under which it was sold, since it was represented to be fluidextract of ergot which conformed to the pharmacopoeial standard; whereas it was not.

Misbranding of the elixir amidopyrine was alleged for the reason that the statement "20% Alcohol", borne on the label, was false and misleading since the article contained less than 20 percent of alcohol, the two shipments containing not more than 16.57 and 15.81 percent, respectively, of alcohol. Misbranding of the elixir of amidopyrine was alleged for the further reason that the article contained alcohol, and the label on the package failed to bear a statement of the quantity or proportion of alcohol contained therein.

Misbranding of the sodium phenobarbital tablets, barbitol tablets, cinchophen tablets, and quinine sulphate pills was alleged for the reason that the statements, "Tablets 1½ grains each * * * Sodium Phenobarbital", "100 Tabs. * * * 5 Grs. Each Barbitol", "7½ Gr. Cinchophen * * * Tablets", "Pills * * * Quinine Sulphate 2 Grs. * * * each", borne on the labels, were false and misleading since the tablets and pills contained smaller amounts of the said drugs than declared on the labels. Misbranding of the fluidextract of ergot was alleged for the reason that the statements, "Fluid Extract Ergot U. S. P. * * * Physiologically tested strictly according to the U. S. P. Cockscomb Method * * * The very low temperatures used throughout the process doubly insures maximum activity. Dose: 15 to 60 minims (1 to 4 cc)", borne on the label, were false and misleading, since the article was not fluidextract of ergot which conformed to the standard laid down in the United States Pharmacopoeia, it was not physiologically tested strictly according to the U. S. P. cockscomb method, and a dose of 15 to 60 minims (1 to 4 cc) of the article would not insure maximum activity.

On November 13, 1934, a plea of guilty was entered on behalf of Blackman & Blackman, Inc., and the court imposed a fine of \$350. On the same date Theodore A Blackman entered a plea of guilty and the court imposed a fine of \$350, which was suspended.

M. L. WILSON, *Acting Secretary of Agriculture.*

24033. Adulteration and misbranding of Unguentum. U. S. v. Three 1-Pound Cans and 39 Tubes of Unguentum. Tried to a jury. Verdict for the Government. Decree of condemnation and destruction.
(F. & D. no. 30870. Sample nos. 42966-A, 42967-A.)

This case involved a product sold under a name recognized in the United States Pharmacopoeia but which differed from the official product. The labels of the article contained unwarranted curative and therapeutic claims. The labeling on the 1-pound cans represented that the article was an antiseptic and germicide, whereas tests showed that it was not.

On August 8, 1933, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of three 1-pound cans and 39 tubes of Unguentum at Scranton, Pa., alleging that the article had been shipped in interstate commerce on or about April 6 and July 10, 1933, by the American Pharmaceutical Co., Inc., from New York, N. Y., and charging adulteration and misbranding in violation of the Food and Drugs Act as amended.

Analysis showed that the article consisted essentially of zinc oxide, an aluminum compound, phenols (0.7 percent), volatile oils such as eucalyptol and menthol, petrolatum (88 percent), and a fat. Bacteriological tests showed that it was neither antiseptic nor germicidal.

The article was alleged to be adulterated in that it was sold under a name recognized by the United States Pharmacopoeia, and differed from the standard of strength, quality, and purity as determined by the test laid down in the pharmacopoeia, and its own standard was not stated on the label. Adulteration was alleged with respect to the product in the 1-pound cans for the further reason that its strength fell below the professed standard or quality under which it was sold, namely, "Antiseptic", "Germicidal."

Misbranding was alleged for the reason that the statement on the label, "Unguentum" was false and misleading since it created the impression that the article was the product described in the United States Pharmacopoeia; whereas it was not. Misbranding of the 1-pound cans was alleged for the further reason that the following statements appearing on the tin container were false and misleading: "Antiseptic Surgical Dressing Germicidal. A highly effective germicide and antiseptic. The antiseptic properties of Unguentum APC are not reduced by chemical reaction with organic matter or serum and its consistency insures uninterrupted contact of the antiseptic with the injured area—an important factor in the reduction of bacteria and the prevention of secondary infection. * * * with its antiseptic properties." Misbranding of both lots was alleged for the reason that the following statements appearing in the labeling, regarding the curative or therapeutic effects of the article, were false and fraudulent: (1-pound cans) "Heals as it removes inflammation * * * with its antiseptic properties, stops and prevents infection * * * scar-free and natural * * * In the case of severe burns, incised and lacerated wounds * * * For the removal in inflammation"; (on the tubes) "* * * heals * * * as it removes inflammation."

The American Pharmaceutical Co., Inc., filed an answer admitting the interstate shipment and that the product was sold under a name recognized in the pharmacopoeia, but denying all other material allegations of the libel. On November 15, 1934, a jury having been impaneled, the case came on for trial. At the conclusion of the Government's evidence no claimant appearing, the court instructed the jury as follows (Johnson, district judge):

The COURT. "Ladies and gentlemen of the jury: The question here in this case is whether this so-called 'Unguentum' three 1-pound cans of it"—

COUNCIL FOR THE GOVERNMENT. "There is more than that, Judge, three 1-pound cans, more or less, and thirty-nine tubes, more or less."

The COURT. "Three 1-pound cans and 39 tubes, more or less, called 'Unguentum', whether it is adulterated and misbranded, contrary to the Food and Drugs Act of the United States of America. That is the question.

"Now, you have heard the evidence, all the evidence of the Government. The defendant has not appeared, although he has had knowledge and notice of the trial of this case, as well as his attorney, Perry Goldberg, of 225 Broadway, New York.

"See, the act of Congress provides that you can't ship an article like this as contended for by the Government from one State to another, and it is admitted in the pleadings—that is, in the papers filed by the defendant—that it was shipped from one State to another, that it was passed in interstate commerce; so that brings it within the jurisdiction of the United States; and the only question for you to determine is whether it is misbranded and mislabeled and described contrary to the act of Congress, and the act of Congress prevents the misbranding, misdescribing, and mislabeling of an article of this kind.

"Now, if you believe these witnesses that took the stand here, you would be warranted in finding a verdict in favor of the plaintiff, the Government, and against these cans of 'Unguentum'; and you have heard all this evidence; and if you were to find in favor of the defendant, you would say, you would find in favor of the defendant named here in this libel. If you find in favor of the Government, this would be the form of verdict that you would render: 'We find in favor of the plaintiff, the United States of America, and the articles described and referred to as "Unguentum" in the libel are adulterated and misbranded according to the Food and Drugs Act of the United States of America.' If you believe the witnesses and find in favor of the Government, that is the kind of verdict you would find.

"Of course, you will all have to agree to it, all 12 of you, and it will be signed by your foreman, and the consequence of finding for the Government would be there would be an order signed by the judge confiscating this 'Unguentum.' That would be the effect of your verdict if you find for the Government—it would be confiscated.

"Let one of the jurors go around and see if you all agree on your verdict. Reverend Minsker, you talk to each one, if that is satisfactory to you, you act as foreman.

"If you are not going to find for the plaintiff, then you will have to find for the defendant and there will have to be another suit. In other words, instead of directing the verdict, I am letting you find it. The Government contends—and the Government may be right—that I should tell you what your verdict should be, but I am letting you find it."

The jury returned a verdict for the Government, and on November 15, 1934, judgment of condemnation and forfeiture was entered, and it was ordered that the product be destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

24034. Misbranding of Men-tho-lo. U. S. v. 118 Packages and 142 Packages of Men-tho-lo. Default decrees of destruction. (F. & D. nos. 31152, 31153. Sample nos. 40257-A, 40258-A.)

These cases involved a drug preparation, the labels of which contained unwarranted curative and therapeutic claims.

On October 3, 1933, the United States attorney for the Northern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 260 packages of Men-tho-lo at Wheeling, W. Va., alleging that the article had been shipped in interstate commerce in various shipments on or about February 21, June 26, and September 5, 1933, by the Leighton Supply Co., from Pittsburgh, Pa., and charging misbranding in violation of the Food and Drugs Act as amended.

Analyses showed that the article consisted essentially of menthol and methyl salicylate incorporated in a mixture of petrolatum, paraffin, starch, and water.

The article was alleged to be misbranded in that the following statements regarding its therapeutic and curative effects, appearing in the labeling, were false and fraudulent: (Tin container) "For Catarrh * * * Croup, * * * Toothache, Asthma, Hay Fever, Sore Joints, Rheumatism, * * * Scalds, * * * etc."; (carton) "For Catarrh. * * * Hay fever or Asthma, * * * For Rheumatism, Sore Joints, Swellings, and all pains of a Rheumatic Nature * * * For Toothache, * * * For * * * Scalds, Etc. * * * For Sore Throat, * * * It will draw out inflammation and soreness. * * * gives instant relief in case of Croup or Cold on the Lungs"; (circular) "An External Remedy for all Aches and Pains. For Catarrh, * * * Asthma or Hay Fever, Influenza or Grippe, * * * For * * * Toothache, * * * the aching parts. This affords quick relief in nearly all cases. For Colic, Cramps, Croup, Sore Chest, * * * etc. apply to affected parts, * * * This draws out soreness and prevents inflammation. For Backache, Sore or Swollen Joints, * * * or any lameness of a rheumatic nature, * * * A Sore Throat or severe Cough can be relieved, if not entirely cured. * * * For Catarrh of the head or throat, * * * you will get great relief, if not an entire cure. * * * Skin Eruptions, etc., * * * After a severe scald or burn, it will draw out inflammation and prevent unsightly scars. * * * Try Men-tho-lo for Piles, Frost Bites, or anything where a liniment or ointment might be used. * * * I would not be without Men-tho-lo, as it saved my son's life when he had the croup. * * * For Backache, Limbs or Chest, * * * For Piles, * * * Scalded Feet, * * * For Colic, Cramps, Croup or Catarrh, * * * We dare not claim for all above, A staid and everlasting cure, But nine times in ten or more, Relief is absolutely Sure."

On January 4, 1935, no claimant appearing, judgments of condemnation were entered and it was ordered that the product be destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

24035. Misbranding of camphorated oil. U. S. v. 140 Bottles of Camphorated Oil. Default decree of condemnation and destruction. (F. & D. no. 31154. Sample no. 40249-A.)

This case involved an interstate shipment of camphorated oil, the labels of which contained unwarranted curative and therapeutic claims.