

been honestly reported to the claimant, if the results were falsely represented by the men who made the investigations, they certainly would have done a better job of making the false statements than they testified to. They testified to the results almost as variable as testified to by the witnesses for the Government.

"I have no doubt that the Government has not proved that there was no fraud in the preparation and circulation of the labels and circulars referred to in the libel.

"1. In addition to the facts which in a general way already have been found, I find that the label and circular referred to in the amended libel introduced in evidence, in so far as they represent that the remedy called 'Gizzard Capsule' was a remedy for large tape worms, do not contain false representations and are not false.

"2. I find that in so far as the label speaks of the 'Gizzard Capsule' as a remedy for pin worms it has not been proven that so much of the label and so much of the circular in which like language appears is false.

"3. I find that the claimant in this case, the George H. Lee Company, in publishing and circulating and attaching to its package labels and circulars referred to in the amended libel, was not guilty of any fraud and that the labels and circulars are not fraudulent.

"*Conclusion of law.*—Upon the facts found I conclude as a matter of law that the plaintiff is not entitled to the relief asked in the amended libel.

"Counsel for the claimant may prepare and submit to the Court for approval an entry a form of judgment in this case.

"To the conclusions of law which the court has stated and also to the findings of fact, and to each of them, the plaintiff is allowed an exception."

On February 18, 1935, judgment was entered ordering that the libel be dismissed and the product delivered to the claimant.

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

24526. Misbranding of Calso Water. U. S. v. 475 Bottles of Calso Water. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. no. 33166. Sample no. 73665-A.)

This case involved a product the labeling of which contained false and misleading claims as to its composition, also unwarranted curative and therapeutic claims.

On August 7, 1934, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 475 bottles of Calso Water at Seattle, Wash., alleging that the article had been shipped in interstate commerce on or about April 17 and June 7, 1934, by the Calso Co., from San Francisco, Calif., and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis showed that the article consisted essentially of a carbonated solution of calcium, magnesium and sodium salts including phosphate, chloride, and bicarbonate.

The article was alleged to be misbranded in that the following statements appearing in the labeling were false and misleading: "Made with distilled water and the salts normally present in the human body." Misbranding was alleged for the further reason that the following statements, "It is very efficient in the treatment of the acid conditions of the body fluids and tissues which recent research has shown to be present in most of the acute and chronic diseases", were statements regarding the curative or therapeutic effects of the article and were false and fraudulent.

On March 13, 1935, the Calso Co., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation was entered and it was ordered that the product be released under bond conditioned that it be relabeled under the supervision of this Department.

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

24527. Misbranding of Dietene. U. S. v. 36 Bottles [67 Bottles] of Dietene. Default decree of condemnation and destruction. (F. & D. no. 83096. Sample no. 56627-A.)

This case involved a product sold as a reducing diet. Examination showed that it contained no ingredients which would produce the reduction in weight claimed, and that the labeling contained unwarranted curative and therapeutic claims.

On July 20, 1934, the United States attorney for the Western District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 36 bottles of Dietene at La Crosse, Wis. On August 16, 1934, the libel was amended to cover 67 bottles of the product. It was alleged in the libel as amended that the article had been shipped in interstate commerce on or about July 10 and July 21, 1934, by the Dietary Foods Co., from Minneapolis, Minn., and that it was misbranded in violation of the Food and Drugs Act as amended.

Analysis showed that the article consisted of ordinary food substances including dried milk, malt extract, sugar, wheat germ, wheat bran, cacao powder, and salt, flavored with vanilla.

The article was alleged to be misbranded in that the references in the following statements appearing in the labeling, relative to its effectiveness in weight reducing, were false and misleading, and that those relative to its curative and therapeutic effects were false and fraudulent: "Dietene Reduces correctly * * * Dietene reduces over-weight promptly and surely because by it the day's Calories are cut about one-third. Dietene is a reducing diet of pure foods in concentrated form which has a number of distinct advantages over bulk food diets. * * * It embodies all the reducing diet principles used by the nutritional experts in the professional field * * * The full regular main meal provides necessary bulk and the essential carbohydrates for proper burning of the fats which the body is giving off during the relatively rapid reducing which Dietene accomplishes * * * The Dietene-Diet is economical, as it only costs one-third or one-half of regular meals it replaces. It Positively Contains No * * * Salts * * * Directions for Use: Whip, beat, or shake in a covered jar 4 big heaping teaspoonsful of Dietene with an ordinary glass of water. This constitutes a complete reducing-diet meal. Replace usual breakfast and lunch with Dietene—or lunch only if slow reduction of weight is desired. Protects Health * * * Its superior proteins (derived from dairy and vegetable sources), mineral salts and vitamins, fully protect health while reducing."

On November 9, 1934, no claimant having appeared, judgment of condemnation was entered and it was ordered that the product be destroyed.

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

24528. Adulteration and misbranding of Restorax Cheno Tablets, and misbranding of Instant Alberty's Food. U. S. v. 11 Cans of Instant Alberty's Food and 119 Boxes of Restorax Cheno Tablets. Products released under bond to be relabeled. (F. & D. nos. 33268, 33269. Sample nos. 816-B, 818-B.)

These cases involved products the labeling of which contained unwarranted curative and therapeutic claims. Examination of the Restorax Cheno Tablets showed that they were below the standard of quality represented, since they were represented to contain no drugs; whereas they contained a laxative plant drug, and that the composition was not in agreement with the composition indicated in the labeling.

On August 22, 1934, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 11 cans of Instant Alberty's Food and 119 boxes of Restorax Cheno Tablets at Portland, Oreg., alleging that the articles had been shipped in interstate commerce on or about May 5, 1934, by U. S. Okey, from Wilmington, Calif., and charging misbranding of both products and adulteration of the Restorax Cheno Tablets, in violation of the Food and Drugs Act as amended.

Analyses showed that the Restorax Cheno Tablets contained plant materials including a laxative plant drug, and that the Instant Alberty's Food consisted of a mixture of powdered skim milk and plant material including starch.

The Restorax Cheno Tablets were alleged to be adulterated in that their strength and purity fell below the professed standard of quality under which they were sold, namely, (booklet entitled "Cheno Keep or Regain that Youthful Figure", a supply of which was shipped by the manufacturer to the consignee) "These tablets do not contain drugs but are composed of food substances, * * * Four Cheno Restorax Tablets contain a level teaspoonful of dehydrated vegetables."

Misbranding of the Restorax Cheno Tablets was alleged for the reason that the statement on the label, "Does not contain Drugs * * * Contains Dulce, Irish Moss, and a combination of Dehydrated Vegetables with additional