

charged in the libel are false, then, of course, your verdict should be for the claimants, and you will find that the article has not been misbranded.

"Any suggestions, gentlemen, or any objections?"

Mr. PERRY: "No, your honor."

Mr. WOOD: "No, we have none."

THE COURT: "Forms of verdict have been prepared for your guidance. One form reads: 'We, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find for the libelant.' The libelant, you understand, is the Government.

"The other one: 'We, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find for the claimants, Mr. Johnson and Mr. Lee.'

"After you retire to your jury room, you will select one of your number to act as your foreman, and proceed with your deliberations. After you have agreed upon a verdict, you will have it signed by your foreman and returned to open court. Any verdict agreed upon must, as you know, be unanimous. Swear the bailiffs."

The jury, after deliberation, returned a verdict for the Government and on January 6, 1941, judgment was entered condemning the product and ordering that it be destroyed.

514. Misbranding of Elsaco Mineralized Water. U. S. v. 100 Bottles of Elsaco Mineralized Water. Default decree of condemnation and destruction. (F. D. C. No. 3602. Sample No. 32657-E.)

On January 2, 1941, the United States attorney for the District of Arizona filed a libel against the above-named product at Phoenix, Ariz., alleging that it had been shipped by the Electrovida Co. from Redwood City, Calif., on or about December 3, 1940; and charging that it was misbranded.

Analysis of a sample of the article showed that it consisted essentially of lime water containing traces of sulfates and chlorides and a small amount of potassium iodide.

The article was alleged to be misbranded: (1) In that the combination of letters "Elsaco," appearing on the bottle label, constituted a false and misleading device since as a result of statements in a leaflet entitled "Elsaco Mineralized Water A Biologically Pure Mineral Water," which had been shipped by the Electrovida Co. on or about August 10, 1940, and was distributed by one of its agents, the said combination of letters meant to purchasers that the article was an appropriate and effective treatment for run-down, nervous condition, arthritis, swollen, stiff and painful joints, gall-bladder trouble, headaches, nervousness, mucous colitis, ulcer of the stomach, neuritis, stomach and kidney trouble, sinus trouble, toxic diseases, severe intestinal trouble, nerve trouble, rheumatism, eczema, pleurisy, varicose veins, asthma, chronic fistula, ulcerated colitis, anemia, gallstones, tumors, weak eyes, hemorrhages, and that it was "one of the greatest means for the rebuilding of the body tissues, cell life, and blood that has yet been discovered"; whereas it was not an appropriate or effective remedy for the disease conditions listed nor was it a means of rebuilding the body tissue, cell life, and blood. (2) In that statements in the aforesaid circular were false and misleading as applied to an artificially prepared mineral water; the labeling failed to reveal that any treatment by electrolysis to which the water had been subjected had had any significant result on its therapeutic or curative effects, a fact material in the light of the statement that the article had been treated by electrolysis and that it contained electrically treated mineral elements; and that the article contained but inconsequential proportions, if any, of many of the elements listed.

On February 6, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

515. Misbranding of mineral water. U. S. v. 9 Bottles and 12 Bottles of McFadden 3 Sisters Springs Mineral Water. Default decree of condemnation and destruction. (F. D. C. No. 2814. Sample No. 15891-E.)

On September 13, 1940, the United States attorney for the Eastern District of Missouri filed a libel against 9 1-gallon bottles and 12 5-gallon bottles of mineral water at Flat River, Mo., alleging that the article had been shipped from McFadden 3 Sisters Springs, Hot Springs National Park, Ark., on or about August 8, 1940; and charging that it was misbranded.

Examination showed that the article contained calcium bicarbonate (2.77 grains per quart) and smaller proportions of other mineral constituents commonly found in ground waters.