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397—1907

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

BEAR LITHIA SPRINGS COMPANY,

Complainant, Appellant,

and

GREAT BEAR SPRING COMPANY,

Defendant, Respondent.

On Appeal.

BRIEF FOR APPELLANT.

This is an appeal from a decree dismissing a bill on the ground the complainant had been guilty of such fraud on the public as to disentitle it to relief. The complainant is a water company selling spring water brought from Elkton, Va., under the trade-mark of a black bear, with the words "Bear Lithia Water" on its side and under the name of Bear Lithia Water.

The defendant under its corporate name of Great Bear Spring Company, has been selling water brought from near Fulton, New York, under the name of Great Bear Spring Water, and has sometimes recently used the picture of a white or polar bear upon its labels. Complainant claims that these actions on the part of the defendant constitute an infringement of its trade mark and are in unfair com-

petition with it, and its bill prays that defendant be restrained from the use of either the figure of a bear or the name "Bear" in its advertisement and sale of water or in its corporate name. The appeal by complainant brings up not only the question of whether the bill was improperly dismissed but also of whether complainant under the evidence is entitled to the relief prayed for.

I.

THE BILL SHOULD NOT HAVE BEEN DISMISSED ON THE GROUND OF FRAUD ON THE PART OF COMPLAINANT.

The defendant did not meet complainant's case on the merits, but put forth all its efforts to show that complainant, because of its own acts, was disentitled to relief. The attempts of defendant to prove fraud on the part of complainant resolve themselves into four headings and we will consider each.

(a) *The claim of defendant that the quantity of lithia in the water was not rightly stated.*

The analysis published was made in 1885 by Professor Mallet, an eminent chemist and professor in chemistry in the University of Virginia showed .012 grains of lithium carbonate per imperial gallon, and no claim has been made that it was not published in absolute good faith. The only chemist of standing produced by defendant was Professor Stillman, who found five ten-thousandths of a grain of lithia per gallon of water (p. 284). John C. Sparks (p. 286) and Alfred O. Brooks (p. 299), youthful chemists produced by the defendant, both found a trace of lithia. Brooks acknowledged (p. 305) that if he had taken more water he might have found more lithia. Sparks (pp. 294, 295) did not test his residues. Dr. Smith, for the complainant, testified (pp. 516, 517)

that in order to obtain an expert analysis it is necessary to test the residues.

Professor Heyward, of the United States Department of Agriculture, states in his pamphlet on analysis of mineral waters that the analysis of Bear Lithia water made by that department, showed no more variation (from Prof. Mallet's analysis) than would be expected of two samples taken at different times (p. 539). The affidavit of Professor Deghuee, produced by the defendant, made on the order to show cause, and read in evidence, (p. 501), shows .0002 grains of lithium per gallon, which when combined with the carbonates to form *lithium carbonate* shows slightly more than the quantity found by Professor Mallet (p. 518). Surely no charge of fraud can be made on this evidence. This claim of defendant was disregarded by the Vice Chancellor.

(b) The claim of the defendant that there is fraud in calling the water a lithia water.

The water is shown by analysis to contain lithia, and hence it is a lithia water. No natural water is a lithia water in any other sense than that it contains lithia, as in no natural water is lithia present in sufficient quantities to be a predominating chemical, or physiological ingredient, (p. 506). No one can be deceived as to its composition, for the reason that the quantity of the lithium carbonate contained in the water is widely advertised by complainant to be .012 grains per imperial gallon. The analysis appears on the half gallon bottle of complainant (C-44) in all complainant's circulars and those of its predecessors (C-24, C-40, C-41, C-42) and generally throughout complainant's literature. There can be no deceit.

(c) In the statements upon the labels used on pints and quarts of carbonated water that the water was bottled at the spring.

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This statement appeared only on these bottles—the pamphlets, containing pictures of labels having these words, all antedating the removal of the bottling plant to New York. The facts in evidence in regard to the use of this label are as follows:

In 1902 (p. 133) complainant's bottling plant was removed from the springs—where it had been operated since 1885—to New York City. At that time a large number of labels for carbonated water were on hand, and their use was continued through inadvertance (p. 119), without thought on the part of anyone that the statement was no longer true. Mr. Jennings, president of complaiant, testified (p. 118) that it never occurred to him that the labels contained an untrue statement until his attention was called to it, after the bill was filed. He at once ordered his foreman to discontinue using these labels and to get new ones printed at once. The evidence on this is as follows:

"Q. Now, Mr. Jennings, it appears that some labels have on them the words, "Bottled at the springs;" upon which bottles are those used?

A. On our quarts and pints of sparkling water.

Q. Were those labels that you got out, or that you got from the former owner of the spring?

A. Well, they were labels that we had printed similar to those used by the Bear Lithia Water Company in the year 1889; I had a very large lot of them; I think we have the facts exactly about it which we can show later, but I think we had about 300,000 labels that we had printed, of the same size that suited both the quarts and pints.

Q. Using the former bottles that were labeled, as models?

A. Yes, sir.

Q. And at that time the bottling was altogether done at the Spring, was it not?

A. Yes, sir; we had no idea of bringing it to New York in these cars at that time.

Q. The labels that you put upon your quarts and pints were out of this lot that you had made in the year 1889?

A. Yes, sir.

Q. Did it occur to you or come to your notice at all, after you had made this change in the manner of bottling your water, that these labels had that on them?

A. No, it never occurred to me; I never thought of it.

Q. When was the first that your attention was directed to it?

A. When the defendants brought the point up here.

Q. And what did you do then?

A. I ordered the foreman of the establishment to discontinue using them; and to get new ones printed right away, and to wrap these up and put them on one side, and some day I hoped, when we brought the thing around, so that we could do it, as soon as we commenced bottling at the Spring, that we could then use them again; that is when we got our bottling works ready down there."

The business of carbonated water comprises but a small portion of that of complainant. For the last three years (p. 154, l. 1) it has been less than seven per cent.

At most the only use of the label complained of was upon carbonated water and the denial of relief should only have been extended to that water. There is no reason why this complainant should not have the protection of law in its sale of uncharged potable water constituting thirteen-fourteenths of its business. The denial of relief, even if fraud could properly have been found should only have been in regard to carbonated water; because relief will only be denied where the fraud complained of is a part of the very subject as to which relief is sought.

Bateman vs. Fargason, 4 Fed. R., 32.

Shaver vs. Heller & Merz Co., 108 Fed. R., 821.

Trice vs. Comstock, 121 Fed. R., 629, 628.

Although the statement was not intentionally made that the water was bottled at the Spring, the statement is essentially true. All the water brought to New York is brought in glass-lined compartment-cars (p. 118, l. 5), which are really nothing but big bottles. It is bottled in these glass lined tanks at the Springs, and then rebottled at New York. By means of this system, the water comes in contact with nothing but glass and is delivered to the customers in its original purity.

The use of this label cannot be held to be fraud. Courts of Equity do not search for obscure and immaterial misrepresentation in order that they may deprive a meritorious suitor of relief. Probably no established business of any importance can be found in which surviving statements once true have not become inexact. As was said in the case of Clark Thread Co. v. Armitage, 67 Fed. R., 896, 899: "The code of morals by which the defendant seeks to test the complainant's acts is so strict that if it were assented to, very few business houses which exploit their goods by advertising, certainly not the defendant himself—could escape condemnation."

It is NOT EQUITY that an established business should be refused protection because a microscopic examination by its competitor shows some unimportant and inconsequential statement which does not state the truth with mathematical exactness. The learned Vice Chancellor erred in holding such to be the law. Equity does not stoop to pick up pins.

"Fraud to disentitle complainant to relief cannot be predicated of trivial inaccuracies."

Brown on Trademarks, Sec. 777.

"The Court cannot go into the business of arranging the language in which merchants shall place their goods on the market."

Putnam Nail Co. vs. Ausable Horse Nail Co., 53 Fed., 390.

"Some of the statements, they (the labels) contain, survivals from the older labels, are not now strictly accurate, notably the words, "Moritz Fisher, Sole Agent for the United States of America," but they are immaterial. * * * The criticism that its label states that there is such a factory and brewery in New York, when complainant's is at Newark, is too trivial to merit discussion."

Tarrant & Co. vs. Johann Hoff, 76 Fed., 959.

"One who is honest as to millions is not likely to develop into a petty thief. If the statements complained of had been made animo furandi, it is hardly possible that they would have been confined to a part of the business so infinitesimal. In short, the record fails to show any motive for the alleged false statements. There is no proof that anyone ever was defrauded and it is impossible to perceive how anyone could be defrauded thereby."

Clark Thread Co. vs. Armitage, 67 Fed., 896, 900.

Not all misrepresentation disentitles to relief. As was said in the case of Block vs. Standard Distilling Co., 95 Fed., 978.

"The misrepresentation which would justify the Court in refusing the relief must be such as is intended to or does in fact mislead or cheat the public, such as operates as a fraud on the public."

Other cases to the same effect that equity will not debar from relief for immaterial misrepresentations, are

Gruber Almanac Co. vs. Swingley, 63 Atl. Rep. (Md.) 684.

Cahn vs. Gottschalk, 2 N. Y. Supp., 13.

Dixon Crucible Co. vs. Guggenheimer, 2 Brewster (Phila.) 321.

Hennessy vs. Wheeler, 69 N. Y., 271.

Lichtenstein vs. Goldsmith, 37 Fed., 359.

Societe Anonyme vs. Western Distilling Co., 43 Fed., 416.

City of Carlsbad v. Kutnow, 71 Fed., 167.

Centaur Co., vs. Robinson, 91 Fed., 889.

A. Bauer & Co. vs. La Societe Anonyme, etc., 120 Fed., 74.

In the last case the complainant's labels failed to show assignment but gave name of a prior proprietor. The Court said: "There were no false statements. There is no deception upon the public. In such a case the rule fails, and the rule itself proper in appropriate cases should not be here permitted to work a wrong."

(d) The claim of defendant that Bear Lithia Water is not a medicinal water as is claimed by complainant.

There is absolutely no proof that any advertisement of Bear Lithia Water was made in bad faith. Defendant assembled all of the medicinal advertisements from 1890 to date, and then endeavored to show that the water would not do all that was said of it. The only representations as to the medicinal qualities of Bear Lithia Water made by complainant

since 1902 appear on the body label of the half gallon of still water (C-16) where the language used is: "Highly recommended for dyspepsia, diseased kidneys, inflammation of the bladder, phosphatic deposits, stone in the bladder, gout, rheumatism, uric acid, and urinary trouble generally," and in the art-booklet, C. 24, in which the water is advertised for liver, bladder or kidney trouble.

The defendant produced as its witnesses on this branch of the case, Dr. John J. Broderick, p. 318, Dr. George E. McLoughlin, p. 345, and Dr. George N. Culver, p. 356. No one of these doctors testified to any use of Bear Lithia Water, and Dr. Broderick, (p. 338, l. 30), says he never used any lithia water. Each of these three doctors, when a long list of diseases was given to them, which it was claimed by defendant that Bear Lithia Water had been advertised to cure, and they were asked if Bear Lithia Water would cure these diseases; to the leading questions of defendant's counsel answered "No," with the accuracy and precision of an automaton. They showed no familiarity as to the effects of mineral water. Not one of them showed clinical experience with Bear Lithia Water, or any other medicinal water. All these doctors apparently base their opinion on the drug composition alone.

In answer to this line of evidence the defendant produced patients who had actually been cured by the use of Bear Lithia Water, and doctors familiar with this and other mineral waters and their value in the treatment of disease.

CHARLES W. S. TURNER, a lawyer of Washington, D. C., was cured of nephritic colic (pp. 5-7), by using Bear Lithia Water, and this cure first brought medicinal fame to the Spring.

JOSEPH T. HALL (p. 391), a bank cashier, in January, 1895, was left, after an attack of the grip, with acute Bright's disease (p. 397, l. 3). Bear Lithia Water was recommended to him by a friend. He was relieved very soon after he commenced taking the water, and completely recovered, and has never had any attack since that time. He gave the testimonial which was printed by Bear Lithia Water Company in their booklet, Exhibit C-41, (p. 398, l. 31).

BRICE A. MARTIN (p. 403), a druggist, suffered from uric acid trouble and a slight attack of albuminuria. About three months before he testified he began the use of Bear Lithia Water, and his condition had greatly improved (p. 405, l. 20-30).

ALFRED H. BISCHOFF (p. 415), pharmacist and chemist, testified that he had an acute attack of diabetes as the result of excessive exertion. He took Bear Lithia Water with very good results, so that at the present time he cannot find any trace of sugar in his urine (p. 417, l. 31).

DR. JOSEPH. H. WOLF, a plain old country doctor of 65, who has lived and practiced at Elkton, Virginia, within half a mile of the Springs since 1868, (p. 421, l. 25), testified that the Spring, to some extent, had a traditional reputation for curative properties (p. 422, l. 9). He has prescribed Bear Lithia Water frequently in his practice, and has found it particularly efficacious in kidney and urinary trouble, including bladder troubles, bile troubles, and dyspepsia, and diseased condition of the intestinal tract (pp. 222-223). He has used it as a general alterative, and in cases of incipient gout, rheumatism, and uric acid diathesis (p. 123, l. 10-16). He says that he has found that it has great advantages, and has secured great benefit from its use in the treatment of these diseases (p. 423, l. 20-28). In some instances the use

of the water resulted in cures. He has found the water of great advantage in neuralgia; has used it with advantage in mild cases of eczema; one or two instances of gall stone; and has found it very fine in conditions arising from kidney troubles (p. 423, l. 25-40). It is a very good water to be used in convalescence from fevers, including typhoid. He has had very little experience with the use of this water in respect to consumption, and no experience in cases of ulceration of the stomach, cholera infantum, teething children, or female complaints (p. 424, l. 19-24). He has prescribed it extensively up to the present time—sometimes without other medicines. Upon being recalled (p. 458), he mentioned the case of Mr. Campbell who was cured of a bad case of acute cystitis. He says (p. 448, l. 35), that he gave the testimonial published in Exhibit C. 40, and that he stands by it.

It is very apparent that Dr. Wolf is not an experienced expert witness, and he became somewhat confused and contradictory in his cross examination. A careful reading of his whole evidence will convince one of its truth. As he says (p. 449, l. 21), "*I only know of its effects, not its chemistry.*"

DR. DAVID SHERMAN, of Brooklyn, N. Y., (p. 460) testified that he has used Bear Lithia Water very extensively in his practice since 1902 (p. 461, l. 11). He has found it beneficial in cases of albuminuria, chronic Bright's disease, cystitis, uric acid diathesis, rheumatic and gouty conditions (p. 461, l. 22). It has a mild action on the bowels, and a tendency to overcome excessive flesh. He enumerates various specific cases in which he has tried the water, and its action has been therapeutically beneficial. He has prescribed the water in ten or fifteen cases of kidney troubles and conditions resulting from uric acid diathesis (p. 464, l. 10).

DR. JOHN P. THELBERG, of New York City (p. 476, l. 16), a chemist and physician, and one of the most renowned physicians in New York City, testified that he uses natural mineral waters in his practice. He states that the medicinal value of a natural mineral water is not the same as the corresponding drug value of the mineral constituents in solution, (p. 477, l. 30-33). The potency is much higher in the natural mixtures of salts in mineral waters than in the chemicals where they are singly prescribed, or in combination (p. 477, l. 36-40). He has used bear Lithia Water for a few years—at least two— in his practice; prescribes it often. He finds it of a special medicinal value in uric acid diathesis, gout and rheumatism (p. 478, l. 10-20). He reaffirmed, on cross examination, that mineral waters have an efficiency in excess of their drug efficiency. We quote from page 480, et seq.:

"Q. The quantity of lithium that is contained in this water is so small, is it not, that it would not have any beneficial effect whatever in the treatment of any disease, would it?

"A. It would not have if you dispensed it from the drugs; but in a mineral water, with the other ingredients of the water, and with the variety of properties of the water, as we might say, taking all the other properties of the mineral water into consideration, then I would say that it undoubtedly has beneficial effects in the treatment of diseases.

"Q. What other substance is there in this combination or composition of this water, which, taking for instance the lithium or the iron or the calcium, or any other of these constituents contained in this water, would be beneficial in the treatment of rheumatism or gout?

"A. Well, I have to answer that question in a roundabout way. In the organism we have various diseases, but we do not have the uric acid troubles

by the pounds or ounces, but in the whole system there might be a few grains only, and of course we do not expect to relieve the system of that quantity of irritating substance in one dose of anything; we expect that by continued doses, that finally we may get the irritating substance out of the system, and therefore we continue the doses continuously, getting the blood gradually into proper condition so as to favor the elimination of the uric acid. Now, it cannot be done by one dose, it is not to be expected that it can be done. The lithium contained there in this water is in combination with these other minerals, or salts. I say there are, it seems to me, other and important factors, the action of which we do not altogether know; there may be a retroactive effect. We cannot test for it, we cannot know about it, but the retroactive effect may be there. The effect that we have we only find it by its results. And I say, that in that view, they have quite a great therapeutic potency; and taking this into consideration, and with this explanation, I may answer your question by saying that the lithium contained in this water might have, and in fact may have, a therapeutical effect, and I think it has.

"Q. But why this water, containing as it does these various mineral salts, has this therapeutic effect you cannot give us any answer for it?

"A. No, sir, no; we find it by experience; we cannot give you any absolute reason for it."

He illustrates the difference in drug potency of the salts and of the mineral water by the case of sprudel salts. Although sprudel salts are the residuum of Carlsbad water, the same effect is not produced by the salts as by drinking the water (p. 488, l. 25-32).

DR. JOHN D. McGILL, of Jersey City, (p. 485), testified that he has examined the published analysis of Bear Lithia Water; that it is a pure water combined with medicinal substances such as are efficient in

the cure and alleviation of disease. He says that natural waters, impregnated by nature with various salts, are the most efficient kind of waters to use in the treatment of disease. Nature will produce a better prescription than all the doctors can give. He thinks that small doses systematically frequently repeated, are vastly more efficacious in the curing of disease, than large drug quantities. He says that what it would cure "can only be determined by the experience of the practitioner. It is valuable as a pure water alone, and it is also valuable for the medicinal and metallic salts which it contains." (P. 488, l. 18-21).

DR. ERNEST E. SMITH, of New York City, (p. 503) is a chemist and physician by profession. He has written and published articles based upon his own original investigation on the subject of uric acid, intestinal indigestion and other digestive disturbances, and upon the subject of mineral waters and waters generally (p. 404, l. 21-30). He informs us that the qualities of a mineral water (p. 507, l. 10-30) that are to be considered in forming an opinion of its value as a remedial agent, are:

First. Its thermal qualities.
Second. Nature of its gaseous constituents.
Third. Mineralization of the water.
Fourth. The quality of radio activity.

In order to properly judge of a mineral water, it must be tested clinically (p. 507, l. 25). He says that it is impossible to reach a certain conclusion as to the medicinal value of Bear Lithia Water without a knowledge of all the component factors, and that in the absence of a clear, scientific knowledge, the only test that can be made is the actual use of the water in practice (p. 508, l. 17-21) Medical opinion differs in regard to mineral waters. He says (p. 508, l. 39.) "The medical profession are divided in their opinion

upon that point; some physicians believe that in what we may speak of as mineral water, the potency of its constituents is identical with what we may speak of as drug potency of these same substances outside of the water; another class of physicians, and this includes the physicians who make the use of water in clinical practice, believe that the concurrence of natural ingredients, natural in the water, carries with it a greater potency than the drug potency itself; that is, that the mineral water potency is greater than the drug potency." In his opinion (pp. 510-515), it is consistent with the mineralization of Bear Lithia Water, as shown by Professor Market's analysis, that it should possess medicinal value in diseases of the kidneys, in some cases of incipient Bright's disease, diseases of the bladder, diseases of the stomach and intestines, uric acid diathesis, diseases of the liver, rheumatism and gout, urinary calculi and gravel, cholera infantum, teething diseases of children, consumption, neuralgia, female complaints, eczema, gall stone, convalescence from typhoid and ulceration of the stomach; that it should operate as an alterative, and as a pure water act as a prevention in the contamination of fevers, especially such fevers as are carried by water; and he explains in detail why it is consistent with the mineralization of this water that it should have remedial effects in these various cases.

It appears that an actual clinical test is necessary to determine the medical efficacy of a mineral water. The complainant has shown this test by Dr. Wolf, Dr. Sherman and Dr. Thelberg, and by patients actually cured by the use of the water. *Cures have resulted* from the use of the water, and these witnesses state the facts. The evidence of the defendant's witnesses is purely theoretical and does not meet this evidence.

The learned Vice-Chancellor incorrectly states in his conclusions p. XXXI, l. 36, et seq.:

"None of the experts or physicians called by either "side pretend that this water would cure any of the "diseases named, except Dr. Smith, who did say that "acute rheumatism resulting from a gouty affection "might be cured by the use of a proper remedy, and "such a result might be reasonably expected from the "use of this water, but that it would cure rheumatism "generally he did not assert."

How such a statement can be made in the face of the evidence of Drs. Wolf, Sherman and Thelberg is beyond our comprehension. Perhaps the Vice Chancellor, in the tiresome routine of a long trial, forgot much of the testimony. At any rate, he misstated it.

The learned Vice Chancellor erred in holding that the complainant was guilty of making false statements. It would be hard to conceive better evidence than that given, on which to base a claim of *bona fides*. Of course, a natural mineral water is not to be compared to an artificial and often dangerous patent medicine, as is done by the Vice Chancellor in his zeal.

The complainant has shown that in the opinion of medical experts who have used it, Bear Lithia Water will cure or benefit the diseases for which it is advertised. The mere opinions of doctors who have never used the water, and who do not generally believe in mineral waters, cannot be set up to establish the falsity of these advertisements. Whether Bear Lithia Water is a valuable remedical agent in the cure of disease is a matter of opinion, and those who have used it are most competent to express an opinion. It has been proved as to most of the advertisements of the complainant, that they are true; as to none of them, that they are false.

As was said by Justice Depue, in the case of Cowley v. Smith, 17 Vr., 380, cited with approval in Cummings v. Case, 23 Vr., 77, at 84:

"But where the representation is concerning an "assertion or affirmation not susceptible of exact "knowledge, the assertion is to be taken *secundum* "*subjectam materiam*, as meaning no other than a "strong belief founded upon what appeared to the de- "fendant to be reasonably certain ground."

The rule is clearly stated by Chief Justice Shaw in the case of Page v. Bent, 2 Metc., 371, 374, cited with approval in Coulon v. Roemer, 23 Vr., 53, at 56:

"But in a matter of opinion, judgment and esti- "mate, if one states a thing of his own knowledge, if "he in fact believes it, and it is not intended to de- "ceive, it is not a fraud, although the matter thus "stated is not in fact true. The reason is that it is "apparent from the subject matter that what is thus "stated as knowledge must be considered and under- "stood by the party to whom it is addressed, as an "expression of strong belief only, because it is a "subject of which knowledge, in its strict sense, can- "not be bad."

Medical knowledge, and the statements of doctors, can be held only to be expressions of opinion. Medicine is not an exact science. It is an art. Fraud cannot be imputed to this complainant for publishing statements of medicinal belief where there is no evidence whatever that any bad faith has been used in this regard, and where it is shown that these statements are based upon actual clinical experience and valid scientific theories.

II.

THE LEARNED VICE CHANCELLOR ERRED IN HIS CONCLUSION THAT THE USE BY THE DEFENDANT OF THE FIGURE OF A BEAR WAS NOT AN INFRINGEMENT OF COMPLAINANT'S TRADEMARK, OR IN UNFAIR TRADE.

The Vice Chancellor in his conclusions rightly found that confusion existed in the mind of the public between the water of the complainant and that of the defendant, but held that this confusion was caused wholly by the similarity of names, and not in any degree from the use by defendant of a white bear on its labels, the bear used by the complainant being a black bear. He misses the point that the confusion in the waters arises from the fact that both are known as "bear" water. The confusion already created by name is increased by the picture of a bear. This is well shown by the instance given by Miss Bray (p. 210, l. 13-33), where two persons came to the Bear Lithia Springs Company's office and insisted that the company had an exhibit at the Brooklyn Food Show and said that the company had the same picture in the window as was exhibited at the show. The picture in the window was of a black bear. Mr. Jennings, President of cmplainant, went over to see the advertisement at the Food Show (p. 218, l. 9), and the bear there shown was a large polar bear.

In the case of Popham vs. Cole, 66 N. Y., 69, cited in the conclusions of the Vice Chancellor, the only ground of confusion was two very dissimilar pigs used on packages of lard. We venture the opinion that the same decision would not have been made in case the figure of a pig had been used upon a product with which it had no natural relation, where there already existed, independent of the use of the picture, a confusion between the two products. In

the case at bar the use of the name "bear," as applied to water is wholly artificial, as is also the use of the figure of a bear. The question is not wholly one of resemblance, but also of the creation of confusion. As was said by Lord Granworth in Sexio v. Provezende, L. R., 1 Ch. App. 192:

"I do not consider the actual physical resemblance "of the two marks to be the sole question for consid- "eration. If the goods of a manufacturer have, from "the mark or device he has used, become known in "the market by a particular name, I think that the "adoption by a rival trader of any mark which will "cause his goods to bear the same name in the mar- "ket may be as much a violation of the rights of that "rival as the actual copy of his device."

This principle has been cited with approval, and held to cover cases of unfair competition, by the United States Circuit Court of Appeals, in the case of Bissell Chilled Plow Works vs. Bissel Plow Co., 121 Fed. 357, 366.

III.

COMPLAINANT, IN ITS USE OF THE WORD BEAR AND OF THE FIGURE OF A BEAR, AS APPLIED TO THE SALE OF WATER, LONG ANTEDATED THE DEFENDANT..

COMPLAINANT'S SALE OF WATER.

The Bear Lithia Spring is a large and well-known spring, located at Elkton, Virginia. The land, prior to the sale to complainant's predecessors, had been in the Bear family since 1778. At least as early as 1860 the spring was known in the neighborhood as "Bear Spring" (p. 17, l. 35).

ROBERT J. RIDDLE, a witness, who has always resided in the neighborhood, says that the water was regularly shipped from this spring to Harrisonburg by stage at least as early as 1876 or 1877 (p. 18, l. 12).

WILLIAM J. RUNKLE recalls (p. 23) that in 1879 when he lived near the post road, the water from the Bear Spring was regularly hauled by on the stage to Harrisonburg. From that date up to 1885, the shipment of this water as Bear Spring water was continuous. We know, from the evidence of Mr. Turner, who resided at the spring, that prior to the analysis in 1885 the water was sold as Bear Spring water (p. 8, l. 39-42). In 1885, after Mr. Turner had been cured of nephritic colic (p. 10, l. 40), a sample was sent to Prof. Mallet of the University of Virginia for analysis. He reported that the water contained lithia, and at Mr. Turner's suggestion it was called thereafter "Bear Lithia Water." From that date up to the present time the evidence shows that the water has been continuously sold as Bear Lithia Water.

Early in 1886 John F. Jones and William P. Compton took charge of the business. In May they hired Mr. Runkle to do the bottling and hauling for them (p. 24, l. 6). From that time the water was sold under the trademark of a bear, first a cardboard stencil (p. 25, l. 22), then a copper stencil being used on barrels, and bottles being used with the figure of a bear blown upon the side. From that date to the present, the water has always been sold under the trademark of the figure of a bear.

On January 1, 1887, Jones and Compton leased the spring from the owners of the two adjoining farms, the line of division between which cuts the spring, for a period of twenty years, Exhibit C. 1. This was modified by subsequent leases and the title

became vested by assignments in the Bear Lithia Water Company, a Virginia corporation.

In 1887, the land of Henry A. Bear, which included half the spring, was sold at foreclosure sale to Philip B. Jennings, Exhibit C. 8, and was subsequently transferred by him by deed, Exhibit C. 9, to the Bear Lithia Springs Company. The Company also, as assignee of the Bear Lithia Water Company, holds a lease, Exhibit C. 7, from Adam C. Bear, the owner of the other half of the spring, granting the right to divert water from it for sale for a period of thirty years.

From the start of the sale of Bear Lithia Water the advertising has been extensive. Exhibits C. 60a, C. 61, C. 62 and C. 63 show that it was advertised in "The State" and in "The Virginia Medical Journal," at Richmond, as early as 1888. From that time a continuous line of advertisements is shown by complainant, running down to the present time. These advertisements almost invariably contain the trademark of the figure of a bear.

In 1889, the Bear Lithia Water Company, a Virginia corporation, predecessor to complainant, was organized, Exhibit C. 4, and this corporation took over the rights of the lessee of the spring. On June 9, 1891, it registered its trademark, Exhibit C. 49. This states, "the essential features of the trademark are the words Bear Lithia Water upon the body of the representation of a bear."

In 1890 a warehouse was opened in New York City (p. 33, l. 27), and an office maintained there. The sale of water became at once very large, it being shipped in carload lots, to such grocers as Park & Tilford, and Acker, Merrall & Condit (p. 36, l. 14).

In 1899 the Bear Lithia Springs Company, the complainant, was organized, to take over the stock

and business of the Bear Lithia Water Company, and subsequently all the rights of the Bear Lithia Water Company were assigned to it.

From 1888 up to the present time, Bear Lithia Water has been extensively advertised and sold under its name and under the trademark of the figure of a bear.

DEFENDANT'S SALE OF WATER.

The defendant advertises that its water is taken from a spring known as Great Bear Spring, located near Fulton, New York. Prior to 1890 water had been piped from a spring sometimes called "Great Bear Spring" for a water works system at Fulton; but no commercial sale is shown prior to this time (p. 224, l. 40). In 1890 a partnership was formed, composed of A. G. Gilbert, H. C. Nichols, J. H. Case and F. A. Emerick, for the sale of water in Syracuse, under the name of the Pure Water Supply Company. Sale was first begun in July, 1890 (p. 259, l. 20). The first advertisement of defendant offered in evidence wasc published in March, 1893, in the Syracuse Standard, where it appeared with the figure of a black bear identical with that of the Bear Lithia Water Company. In 1894 the Pure Water Supply Company started in Jersey City (p. 228, l. 8). On April 18, 1899, the Great Bear Spring Company, a corporation of New Jersey, was formed, and this succeeded the Pure Water Supply Company.

The earliest use by defendant or its predecessors of any figure of a bear was in the advertisement in the Syracuse Standard of March 24, 1893, when a black bear was put in (p. 226, l. 18, etc.). This was discontinued and never re-inserted, after March 30, 1893 (p. 227, l. 8), a protest having been made by the Bear Lithia Water Company. The next evidence of any label of defendant showing the representation of a

bear is from Mr. Estes, defendant's witness, who testified that when he went to Albany in June, 1897 (p. 361, l. 19), the Pure Water Supply Company was using an oval label with a polar bear on it (p. 361, l. 26).

It will be seen from this evidence that the complainant had an established business in the sale of Bear Lithia Water, under the figure of a bear, many years prior to the time that the predecessors of defendant entered the field.

VI.

THE DELAY OF COMPLAINANT IN BRINGING ACTION DOES NOT DIVEST IT OF ITS RIGHT TO AN INJUNCTION UPON FINAL HEARING.

It is claimed by defendant that complainant has been guilty of such laches in not bringing suit as to disentitle it to relief. It is well established, however, that no degree of laches of complainant takes away his right to injunction for infringement on final hearing. The piracy of the infringer does not become legalied by continued use. The only effect of delay is to deprive complainant of his right to an accounting for damages.

In the case of McLean v. Fleming, 96 U. S., 245, 257, the Supreme Court of the United States stated as follows:

"Acquiescence of long-standing is proved in this "case, and inexcusable laches in seeking redress." "* * * But, infringement having been proven "* * * the injunction was properly ordered."

This rule that delay will not deprive complainant of injunctive relief, has been followed in this country down to the present time.

In Menendez v. Holt, 128 U. S., 514, it was followed and distincly upheld, although there had been a delay of eleven years, with full knowledge.

The rule is also applied in Brown Chemical Company vs. Myer, 139 U. S., 540, 546, and Saxlehner v. Eisner, 179 U. S., 19.

It thus appears that if complainant had been guilty of laches, without protest, it would stlil possess a right to injunctive relief.

Upon examining the facts, however, it will be seen that complainant was not guilty of laches. As soon as the first advertisement of defendant's predecessors appeared in the Syracuse Standard of March, 1893. (p. 43), a protest was made by Mr. Dickinson, one of the Bear Lithia Water Company, and the advertisement complained of was stopped (p. 44). Mr. Dickinson says that he did not hear of Great Bear Water again (p. 59, l.1) until about one and one-half years after Mr. Jennings bought out the Bear Lithia Water Company, (1899), when he saw Great Bear wagons on Broadway. This shows that up to 1900, their business in New York must have been inconsiderable. Mr. Jennings, President of the complainant, and for years prior to 1899 interested in the water business, never saw Great Bear Spring Water until about the time he secured control of the Bear Lithia Water Company (p. 100, l. 12). He then, at once, wrote to the Great Bear Spring Company, requesting them to cease their infringement (p. 100, l. 32), and to "change their design and inscription to ones "which will in no way imitate ours." (Ex. C. 33.) This was answered by rather an arrogant reply of Mr. Emerick, defendant's President, (p. 101, Ex. C. 34). Then, to use the words of Mr. Jennings:

"The fact is it had become intolerable; it started in in a small way, and it gradually worked up until I felt we would have to come into the courts about it." (p. 104, l. 17). And he again, on November 2d, 1905, wrote to Mr. Emerick, (Ex. C. 35, p. 108), and received a reply (Ex. C. 36, p. 103), that the picture of a bear was too general and common to permit any one to restrict its use. Then, this suit was brought.

It will be seen that the complainant always protested against defendant's infringement of the trademark. But, it is not for the defendant in this case to come into court and say that it has built up a business in the sale of "Bear" spring water, while the complainant stood by. It appears from the evidence that the defendant is not now, and has not been for many years, selling water from the Bear or Great Bear Spring, but from springs miles distant.

The Vice Chancellor finds as follows in regard to this fact (p. 224, l. 28):

"The water distributed from Jersey City does not come from the original Great Bear Spring, but from other springs located in the same district or watershed some distance from it. The defendant undertook to show that the spring from which the water they are selling is taken, was known in the neighborhood as one of the Great Bear Springs, but in my opinion the preponderance of the evidence does not favor that claim, and my conclusion is that the water which they are thus selling does not come from the "Great Bear Spring," nor is it one of a group sufficiently near the Great Bear Spring to be classed as a feeder to that spring, because it has an outlet of its own and has no subterraneous connection with the Great Bear Spring, since it has not been depleted or affected by the demands made upon the greater spring."

The defendant represents that it is still selling water from this spring. It is practising a fraud on the public, and it is not for it to bring its fraud into a Court of Chancery and ask for protection to continue its use on the public. Clean hands are requisite for the defendant, if he wishes to assert a right to be protected.

IV.

THE COMPLAINANT POSSESSES A VALID TRADE-MARK OF THE FIGURE OF A BEAR, AND THE WORDS "BEAR LITHIA WATER."

Any name, figure or symbol may constitute a valid trade-mark when it is of such a nature that it shows the origin of the goods to which it is applied. It is only necessary that it be in its essence artificial,—not naturally associated with the goods to which it is applied,—and that the one acquiring it should be first in his use of it as a designation under which the goods are sold.

Mc.Lean v. Fleming, 96 U. S., 245.

The word "bear" and the figure of a bear, as applied to water, is wholly artificial, and, therefore, is a suitable subject for a trade-mark for this commodity. The figure of an animal as a trade-mark has often been sustained.

White v. Miller, 50 Fed., 277,—a chicken cock as applied to whiskey.

Lichtenstein v. Goldsmith, 37 Fed., 359,—elk's head on cigars.

Kenny v. Toupin, 60 Fed., 272,—Indian and spruce tree on balsam.

Coleman v. Crump, 70 N. Y., 573,—bull's head on mustard.

The complainant regularly acquired its trade-mark. Its predecessors were the first to adopt the words "bear," "Bear Lithia Water," and the figure of a bear for use in the sale and advertisement of water, and to put its goods so designated upon the market. This gave it a valid trade-mark.

Schneider v. Williams, 17 Stew., 391.

Defendant claims that its water was sold to Fulton inhabitants as Great Bear Water prior to 1890. It is very doubtful whether the water was generally known under that name. There is in evidence a water bill of the Fulton Water Works Company, dated 1898, Exhibit C. 72, which shows that the water was not so designated by the Company. The specification of the contract between the Fulton Water Works Company and the construction firm, for the water works, speaks of the springs as those located on the "Connors lot and Osgood farm." The contract between the Village of Fulton and the Fulton Water Works provides (p. 381½) that water is to be derived "from the springs and streams upon what is known as the Connors farm and the farm of Calvin S. Osgood, just south of said village." In neither of these papers is any mention made of the Bear Springs or Great Bear Springs, but the springs are spoken of merely as the springs on the Osgood farm.

But even if the rather vague statements of defendant's witnesses in this hespect were taken to be true, the sale of water through a water works system would not consttitute a sale for which a trade-mark could be secured. In order to acquire a trade-mark, it is necessary that the articles be put on the market.

Schneider v. Williams, 17 Stew., 391.

The article must be placed on sale in competition with other articles, so that the purchaser has a choice and may or may not purchase this article under the

trade-mark. The object of a trade-mark is to distinguish goods from other goods. Of course, the customers of a village water works supply have no choice. The water suppiled to them is not in the general market. It makes no difference to the purchasers what the water is called. When they open the faucets they get that and that only.

The proof is undisputed that Bear Lithia Water was sold under that name at least five years before Great Bear Spring Water was ever sold in the market; and that the water from the Bear Lithia Spring had been sold as Bear Spring Water for many years prior to its sale as Bear Lithia Water.

V.

THE USE BY DEFENDANT OF THE WORD "BEAR" IN ITS CORPORATE NAME, AND OF THE FIGURE OF A BEAR, AND OF THE WORD "BEAR" ON ITS ADVERTISEMENTS AND ON ITS RECEPTACLES AND LABELS, IN THE SALE OF WATER, IS IN UNFAIR COMPETITION WITH COMPLAINANT.

When the Pure Water Supply Company first began its sale of water under the word "Bear," the complainant's predecessors had already sold water for many years under both the name and the figure of a bear. The advertisement had been extensive, and there is at least a probability that the Pure Water Supply Company knew about it. It is proved that they had notice of it in 1893, when they first began the advertisement of their water, and when they first used the figure of a bear. This is shown by the letter of April 22, 1893, which was produced by defendant upon demand, at the trial (Exhibit C. 20, p. 43); but they did not see fit to stop their infringement, only

being a little more quiet and discontinuing the advertisement referred to in the letter. An examination of the advertisement of March 24, 1893, in the Syracuse Standard, about which this letter was written, and a comparison with the current advertisement of the Bear Lithia Water Company, cannot but force upon one the conclusion that it was an attempt to steal the business of that company. Attached hereto are photographs of C. 77, the advertisement appearing in the Syracuse Standard, and (C. 17), the advertisement of complainant's predecessor which was inserted in a New York magazine, C. 17 being taken from Frank Leslie's Monthly for June, 1891. Not only is the advertisement of the water made for the same medicinal effects for which Bear Lithia Water was widely advertised, but even the complainant's figure of a black bear was used.

BEAR LITHIA WATER COMPANY'S ADVERTISEMENT.

FRANK LESLIE'S POPULAR MONTHLY



TRADE MARK.

A. G. DICKINSON, *President.* H. M. DICKINSON, *Sec. & Treas.*

The Bear Lithia Water Co.,

Of Elkton, Rockingham County, Va.

NATURE'S OWN REMEDY.

Cures Kidney and Bladder Troubles, Uric Acid, Gout and Rheumatism, Phosphoric Deposits, Inflammation of the Bladder, Dropsical Affections, Brick Dust Deposit, Gravel, Malaria, and all forms of Dyspepsia, Cholera Infantum, Albuminuria.

SPARKLING. STILL.

New York Office: 945 Broadway.

For sale by PARK & TILFORD, ACKER, MERRALL & CONDIT, R. A. HAVENOR, and all leading grocers and druggists.

Send for Dr. Lewis A. Sayre's testimonial, and hundreds of others.

20

Although the Pure Water Supply Company knew that Bear Lithia Water was sold in New York City they opened up a branch here in 1894 or 1895, doubtless attracted by the pastures made green by the exeensive advertising of Bear Lithia Water. About 1897, the use was made by the Pure Water Supply Company of a few labels having upon them the picture of a bear. No extensive use of any label having
30 the picture of a bear, is shown until after 1902, when defendant's neck-label was designed.

The bad faith of the Great Bear Spring Company, and its desire to compete unfairly with the complainant, is well shown by the letter to Mr. McGrath, C. 73, in which he is advised that "we have no criticisms to make about this water with the exception of calling your attention to the fact that it is a pure and simple medicine, and should never be drunk except upon the advice of a physician." This shows the
40 guile of the serpent without the harmlessness of the

PURE WATER SUPPLY COMPANY'S ADVERTISEMENT.



dove. Its attempt to profit by the confusion between the two waters, and secure the customers of the Bear Lithia Springs Company for itself, is well shown by the large advertisement (p. 121, l. 8-25) inserted upon the Bear Lithia page in the telephone book. It is most significant that the only other advertisement of the company in that book, upon a page where names of subscribers appear, is a small one (p. 122, l. 14-22), about one-tenth the size of the advertisement on the Bear Lithia page, which appears upon the page on which the Great Bear Springs Company's number stands. The Great Bear Spring Company's advertisement does not appear upon the pages in the telephone book on which there are the names of other water companies (p. 123, l. 9). The conclusion is irresistible that the defendant was quietly and insidiously stealing the business of the complainant by underhanded methods, until, as Mr. eJnnings said in his testimony, it had become unbearable.

That the public has been deceived into buying Great Bear Spring Water when it was intended to purchase Bear Lithia Water, there can be no doubt. The numerous orders received by complainant from its own customers within the last few months, addressing complainant as "Great Bear Spring Company," "Great Bear Lithia Company," "Great Bear Water" and "Great Bear Spring Water Company" (pp. 104 to 108), show that the confusion among customers of complainant is very great.

Miss Kate Bray, who commonly answered the telephone at the downtown offices of complainant, testifies that it was an almost daily occurrence for customers talking over the telephone to confuse the two companies (p. 291), and she gives numerous recent cases of confusion which she has noted (pp. 209-213).

Mr. Walter Wells, salesman for the complainant, (pp. 189-199) relates numerous incidents showing the confusion in the minds of complainant's customers between Bear Lithia Water and Great Bear Spring water. The case of Logan & Bryant, (p. 179, l. 10) given by him, shows that the Great Bear Spring Company does not hesitate to place its water upon complainant's coolers, in cases where complainant's customers think both the waters are the same.

That great confusion actually exists is plainly shown by the evidence of the witnesses Higbie (p. 63); Miller (p. 171), and Ganders (p. 179). Each of these men is at the head of the Mineral Water Department of a large New York establishment. Each testified that there is great confusion. Mr. Miller says that often the one ordering water does not know which of the two he wants, and a resort has to be made to the prior order. Sometimes the one ordering can tell which he wants only by being told the price. He says that he would have to "look twice"

before he would distinguish between a bottle of the complainant and one of the defendant, which was submitted to him by defendant's counsel.

Mr. Duval (p. 187, l. 39), told his wife to orde Bear Lithia Water, and she ordered and used Great Bear.

Mrs. Jennings (p. 200, l. 22) who had used Bear Lithia Water in Cincinnati, after coming to New York, used Great Bear for months, supposing she was drinking Bear Lithia.

The learned Vice Chancellor in his conclusions, says, p. XXVI, l. 40:

"The evidence in this cause leaves no doubt in my "mind that to a certain extent the use of the word "Bear" in the two names is confusing to some of "complainant's customers, and that the similarity be- "tween the names of the two corporations is so great "that the ordinary purchaser may be easily confused "and misled to send his order to the defendant when "it was his intention to buy from the complainant, but "I am also of the opinion that the confusion shown "by the testimony is not to any appreciable extent, "caused by the symbols used by these parties, but is "confined entirely to the difficulty in distinguishing "between the corporate names and that the use of "the word "Bear" in the two names is the principal "cause of the confusion, for it is not shown that such "condition existed while the defendant was market- ing its water as the "Pure Water Supply Company," "but only arose after the defendant had adopted its "present corporate title. This title it adopted with "full knowledge that the complainant was then in "the market selling its water under the title of "Bear "Lithia Water Company", and it is to be charged "with the knowledge that in adopting a name with "the word "Bear" in it, confusion would be likely to "arise, especially as the business it was engaged in

"was substantially the same as that then being cer-
"ried on by its competitor. It might have continued
"to carry on its business of selling Great Bear Spring
"water, under the name of the "Pure Water Supply
"Company" and have thus avoided the confusion in
"business proven to exist in this case. It chose to do
"otherwise, and the result which it should have ap-
"prehended would follow, now exists, and if this ques-
"tion alone controlled this cause, the complainant
"would be entitled to the relief sought on this partic-
"ular branch of the case."

We agree with the learned Vice Chancellor that the confusion is caused mainly in the use of the word "Bear." We disagree with him in his conclusion that this confusion arises wholly from the similarity of corporate names. It also arises from the sale by defendant of "Bear" water, and from its use of the figure of a bear. The use of the corporate name, Great Bear Spring Cpmoany, merely increased the confusion and the infringement.

The conclusion from this evidence is irresistible that there exists great confusion in the minds of purchasers of the two waters, and that persons desiring Bear Lithia Water may and often do get Great Bear water. The opportunity for a dishonest dealer to substitute is great, as is shown by the fact that many persons who had been using one of these two waters were unable to tell which one they desired; and complainant is entitled to be protected from this danger.

As is said by Vice Chancellor Stevens, in the case of International Silver Company v. Rogers Corporation, 21 Dick., p. 119, 138:

"The law is well settled that if the manufacturer
"puts it in the power of the retailer to misrepresent,
"he is answerable for the probable consequences."

The law gives relief where there is likely to be confusion, as is said by Mr. Justice Bradley, in the case of Celluloid Manufacturing Company v. Cellonite Company, 32 Fed., 94, 97:

"Similarity, not identity, is the usual recourse "when one party seeks to benefit himself by the good "name of another. What similarity is sufficient to "effect the object, has to be determined in each case "by its own circumstances. We may say generally "that a similarity which would be likely to deceive "or mislead an ordinary, unsuspecting customer is "obnoxious to the law."

In Brown v. Sidell, 153 Penn., State, 74, it is said:

"The actual resemblance need not be so close as "to deceive any but the most careless buyers."

This language was cited with approval in Draper v. Skeiritt, 116 Fed., 206, 212.

The leading case of McLean v. Fleming, 96 U. S., 245, gives the following test of the degree of resemblance which constitutes an infringement:

"If the resemblance is such as to deceive an ordi- "nary purchaser giving such attention to the same "as such a purchaser usually gives."

Other cases lay down substantially the same rule.

"If the resemblance is such as to deceive a person "son of ordinary caution, or if it is calculated to de- "ceive the unwary."

Coleman v. Cramp, 70 N. Y., 553.

"It is sufficient (to establish unfair competition) "that it is calculated to deceive ultimate or ordinary "purchasers, including incautious, unwary and ig- "norant purchasers."

Bissell v. Bissel, 121 Fed., 357.

"If some particular familiar feature strikes his "(the purchaser's) eye, he may be excused from "looking fully at any of the accessories."

Paul on Trade-maks, Section 190.

It will be seen from the above citations that is only necessary, in order to be entitled to relief, for the complainant to show that there is such a resemble-ance that the ordinary purchaser is likely to be de-ceived. In this case the complainant's evidence goes much further, and shows numerous cases where there has been actural confusion between these waters, and where the persons who were confused and de-ceived were persons of intelligence.

We submit that the decree appealed from should be reversed and a decree directed restraining defen-dant from the use of the word "bear" as applied to water sold by it; from the use of the word "bear" as a part of its corporate name; and from the use of the figure of a bear in its advertisement and sale of water.

COLLINS & CORBIN,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals.

Between.
BEAR LITHIA SPRINGS COMPANY,
Appellant-Complainant,

and

GREAT BEAR SPRING COMPANY,
Respondent-Defendant.

On Bill, &c.
Respondent's
Brief.

Statement of Facts.

Complainant, a corporation organized under the laws of this State on August 16, 1899, seeks to enjoin the defendant, which is also a corporation, organized under the laws of this State on April 18, 1899:

First—From using the words "Bear" as applied to water sold by it, either in its corporate name, or otherwise.

Second—From using the figure of a bear upon its labels, bottles, receptacles, coolers and wagons, and in its advertisements.

Complainant bases its right to relief upon the following facts, which are claimed to have been proven:

A number of years ago, Henry A. and Adam C. Bear were the owners of two farms in Virginia, on the dividing line of which there existed a spring which, by reason of its location, was generally known as the "Bear Spring."

The water was used to a certain extent, locally, until the year 1885, when one Charles Turner, a relative of the Bears, who was stopping at Elkton, in the vicinity of the spring in question, had the water analyzed, and finding that it contained lithium, he some time thereafter handed the analyses to Messrs. Jones & Compton, who became the lessees of the spring in 1887, and at the suggestion of Mr. Turner, Jones & Compton adopted the name "Bear Lithia Water" as an appropriate one for the water (p. 8). Since that time, the water has been generally designated and known by that name.

Exhibit C40 contains the statement, "The water was not offered to the general public until 1886," which statement, after a careful reading of the testimony, will be found to be correct. After Jones & Compton became the lessees of the spring, they commenced the shipment of water from it and stenciled the receptacles containing the water with a black bear. The business was conducted by them and their assigns until the organization of the Bear Lithia Water Company in 1899, which it is claimed became the owner of all the rights of Jones & Compton in and to the spring, trade-mark and trade name.

In 1890 Mr. A. G. Dickinson purchased a controlling interest in the Bear Lithia Water Company and an office was thereafter opened in New York City. And on June 9, 1891, the Bear Lithia Water Company filed a statement in the United States Patent Office, on an application for a trade-mark for mineral water. The statement sets forth that the trade-

mark consists of a representation of a *black bear*, and the words "Bear Lithia Water" on the side of the bear. The original trade-mark, as registered, contains the cut of a black bear similar to that used by the complainant at the present time, with the words "Bear Lithia Water" on its side, and underneath it appears the following language:

> "Highly recommended for Dyspepsia, Dis-
> "eased Kidneys, Inflammation of the Bladder,
> "Phosphatic Deposits, Stone in the Bladder,
> "Gout and Rheumatism, Uric Acid, Urinary
> "Troubles generally. Directions: Since no gen-
> "eral rule can be laid down which will apply
> to all cases, we will simply say that to
> "get at the real benefit to be derived from the
> "use of a mineral water, it should be used free-
> "ly—just as you would use it if you visited the
> "spring. The best general directions we can
> "give, are that you will (to the exclusion of all
> "other water while using this), drink several
> "glasses during the day and one on retiring at
> "bedtime. Address, Bear Lithia Water Co.,
> "Elkton, Rockingham Co., Va."

Before the New York office was opened, Bear Lithia Water was sent to physicians in New York free of charge, and up until 1892 the water was sold exclusively as a medicinal water (pp. 47 & 48) and bore the label, Exhibit C15, which is the same as the registered trade-mark, but has the analysis of Professor Mallet added thereto. The same label was used by the Bear Lithia Water Company prior to the Dickinson acquisition.

Complainant claims to have established its business under the trade-mark of the figure of a black bear with the words "Bear Lithia Water" written on its side, and that the defendant in selling its

water under the name of "Great Bear Spring Water" and in using the figure of a bear on its labels, has caused confusion in the mind of the public to the detriment of the complainant's business.

The defendant contends:

First—That the complainant has no exclusive right to the use of the name "Bear" in connection with the sale of water.

Second—That the complainant has no exclusive right to the figure of a bear as a trademark, in connection with the sale of water.

Third—That the complainant, being the junior corporation, cannot restrain the defendant from the use of its corporate name.

Fourth—That the complainant, having no exclusive rights, can proceed only on the ground of unfair competition, and that defendant's business has not been conducted in unfair competition with that of the complainant.

Fifth—That the complainant has been guilty of laches.

Sixth—That the complainant is not entitled to the aid of a court of equity, because the business which it seeks to protect was built up, and conducted as a fraud upon the public.

That there was a spring or group of springs in Oswego County, New York, which were called "Bear Springs" and "Great Bear Springs" as early as 1860, is not disputed by the complainant.

In 1883, Mr. Emerick, the president of the defendant company, having made a study of springs, chiefly in Oswego County, where he was born and always resided, was instrumental in organizing the

Fulton Water Works Company, for the purpose of utilizing the water from the springs, which were known to him as the "Bear Springs" or "Great Bear Springs," as a source of supply to the Village of Fulton.

From a reading of Mr. Emerick's testimony, it can be readily seen that he is perfectly familiar with all the lands in the neighborhood of the springs in question, and having made a study of these springs, is better able to speak on the subject than any other person examined in this cause.

He says, that at a point about five miles south of Fulton there exists a ledge or heighth of land, which dips or slopes to the north, the current of the Oswego River, which is only a short distance west, also runs to the north. On this ledge there are several springs and from that point to a point about two miles from Fulton, there are about one hundred springs or outcroppings of water, all of which are so located that by gravity they flow through natural underground arteries, towards the springs on the Connors farm, where a caison was put down by the Fulton Water Works Company (pp. 251-254).

That these springs are connected naturally beneath the surface, was demonstrated by the drying up of the other springs by taking the water from the caison (p. 253, l. 2).

In 1885 the Fulton Water Works Company completed its pumping station and water was supplied to the inhabitants of Fulton from these springs.

The water supplied by this company was at all times known and called "Great Bear Spring Water."

In 1890 a partnership was formed at Syracuse, New York, for the purpose of selling Great Bear Spring Water. Shortly thereafter partnerships were formed in various other cities, for the purpose of selling Great Bear Spring Water. To all

of the copartnerships the Fulton Water Works Company granted the right to sell Great Bear Spring Water, under that name. These copartnerships, from 1896 or 1897, were operated under the firm name of "Great Bear Spring Co." (pp. 356; 358; Ex. D21).

On Sept 17, 1894 the Fulton Water Works Company, registered a trade-mark in the United States Patent Office and the statement on the application sets forth that the trade-mark of the company consists of the words "Great Bear Spring;" that these words have generally been used as shown on the accompanying fac-simile in connection with the picture of a *polar bear* on a cake of ice, and that the essential feature of the trade-mark has been used continuously in business by said company since November 1, 1885.

The Fulton Water Works Company, subsequently assigned its right to the trade-mark and name to the various copartnerships and upon the organization of the defendant company, all their rights were assigned to it.

The defendant, about seven years ago, purchased very nearly all the lands whereon outcroppings of water appeared between the highlands above described and the Connors farm owned by the Fulton Water Works Company, and are now taking water from several of these springs, one of which is located on the Woodworth farm, which has been known as the "Bear Spring" for a great number of years, according to the testimony of Harry P. Betts (p. 380), George D. Henderson (pp. 383-384) and Frank Hayden (pp. 384-385).

The property owned by the defendant and whereon these springs are located, has been called the "Great Bear Farm" ever since the defendant became the owner of it, and the railroad station has been called "Great Bear" for some time past. Since

acquiring title to the Woodworth farm, the defendant has advertised the fact that their water is from the "Great Bear Springs" located at a point about five miles from Fulton (Ex. D27, p. 364).

POINT I.

Complainant has no exclusive right to the name "Bear" in connection with its sale of water.

That a valid trade-mark cannot be acquired in a word which has been previously appropriated or used by others is the general rule of law laid down by Paul in his work on Trade-Marks, Sec. 66.

Bouvier has defined the right of trade-mark in these terms:

> "The right of trade-mark is said to be best "termed an exclusive right arising from first "use."
>
> "The assumed name or designation must not "be one that was then in actual use by others."

Hopkins on Trade-marks, Sec. 30, p. 63.

Hoyt v. Lovett Co., 71 Fed. Rep., 173; 31 L. R. A., 44, seems to be a case in point. It was there held that prior use of a name by other persons is sufficient to defeat a trade-mark although it was not a commercial use and was only for a short period.

> "Where the word 'Matzoon' had been in use "in Armenia to designate an article of food "made of fermented milk, it was held that such "word could not be appropriated as a trade-

"mark by the manufacturer who first intro-
"duced both the name and the article into the
"United States."

Dadirrian v. Yacubin, 72 Fed., 1010.

Where the words "Club House" was proven to have been long in use as designating a superior kind of gin used in such establishments, it was held that no one could appropriate such words as a trade-mark.

Corwin v. Rushton, 7 Bosw., 222.

In Luyties v. Hollendeer, 30 Fed., 632, complainant had adopted in 1878 and registered in the Patent Office in 1883, the name "Kaiser" as a trademark for natural mineral water, selling it in bottles labeled "Kaiser Natural Mineral Water" with the words "Kaiser Water Schwalheim" blown in the glass, and it appeared that mineral water known as "Kaiserqualle," or "Kaiserbrunnen," which in English means "Kaiser Spring," "Kaiser Fountain," had been sold in various places in Europe with the addition of the name of the place where the spring from which the water was obtained was located, it was held, that the word "Kaiser" was not a valid trade-mark, as other parties had acquired and exercised the right to use it.

Cited in Paul on Trade-marks, Sec. 66.

It is proven in this case that the Fulton Water Works Company, defendant's predecessor, commenced the sale of water under the name "Great Bear Spring Water," as early as 1885, and nowhere in the testimony have we been able to find that the complainant's predecessors commenced the sale of

water earlier than 1886 or 1887, which was after the analysis of the water by Professor Mallet.

But even though the complainant began the sale of water before the defendant, still that would not give it the exclusive right to the use of the name "Bear," there being springs in Oswego County, New York, which have been known as "Bear Spring," or "Great Bear Springs" from time immemorial. The existence of such springs gives others than the complainant the right to use the name "Bear" in connection with the sale of water, and it is, therefore, immaterial whether the defendant, or any other person, has such right.

> "The essential requisite of a trade-mark is "that it shall indicate the origin or ownership "of the article to which it is applied. Anything "that is distinctive and will do this, *and which "others may not use with equal truth,* may be "appropriated."
>
> Paul on Trade-marks, Sec. 25.
> Schneider vs. Williams, 17 Stew., 391.

The name, "Great Bear Spring," or "Great Bear Spring Water," was not devised by the defendant's predecessors. They found them settled, known and recognized appellatives of the springs and waters issuing therefrom at the time they began to use them.

> See Delaware & H. Canal Co. vs. Clark, 13 Wall, 311-327.

In Congress Spring Company vs. Congress High Rock Spring Company, 45 N. Y., 291, which came up on a motion to dismiss the complaint, the Court said:

"In this inquiry all of its allegations are to "be taken as true. One of them is, that the "names 'Congress Spring' and 'Congress Wa- "ter,' are, and from 1892 have been, used to "designate a particular spring of water at Sar- "atoga Springs, and the flow therefrom pos- "sessed of very remarkable medicinal qualities "peculiar to itself. Another is, that these "names have never been applied to *any other "spring or any other water,* and that no other "spring nor any other water possessed these "peculiar curative powers."

"Keeping in mind the fact established for "the purposes of this case by the allegations "of the complaint, that there is but one Con- "gress spring, and but that one spring from "which does flow Congress water, exclusively "possessed of these peculiar curative medicinal "qualities; and there can be no question but "that these proprietary marks, adopted and "used by the plaintiffs and their predecessors, "do indicate the true origin and ownership of "the article to which they are applied. And "whatever may be the counter allegation of the "defendant's answer, and whatever it may be "in their power to show upon the trial of an "issue, the fact as presented to us by the com- "plainant is, that of the numerous other min- "eral springs at Saratoga, none of them pos- "sess the peculiar curative properties of that "owned by the plaintiffs, *nor was any of them "ever called by the name of Congress spring, "or the waters thereof called Congress water, "so that none other than the plaintiffs* may use "the proprietary marks adopted by them, upon "any article of water but theirs *with equal "truth,* nor has any an equal right to employ "these marks * * * They have the right to

"be protected in its exclusive use, for under "the facts as shown by complainant none other "can use it with equal truth, and none other "has equal right to employ it for the same pur- "pose."

In other words, if it had appeared in the above cause that any other spring was known as "Congress Spring," an exclusive right could not be acquired.

The name "Bear Spring" is that of a geographical site and is open to the objection that geographical names cannot be exclusively appropriated for the purpose of trade-mark, unless it comes within the one exception to this general rule, namely, that complainant is the sole owner of such geographical site, and there is no other site, the owner of which can use the name with equal right.

"Is it not a reasonable conclusion from these "and the kindred cases which we have hereto- "fore examined, that there can be no technical "trade-mark in a geographical name? To the "author's mind that conclusion is inevitable, "and there is but one class of geographical "names which are to be excepted from the oper- "ation of the rule, namely, those applied to a "natural product and its sole place of produc- "tion. The name so used may very properly be "a trade-mark, indicative of the origin and "ownership of the natural product, and at the "same time indicating the locality of its pro- "duction. Here the name undoubtedly is a "trade-mark if there is but one owner of the "entire locality, and the Courts have uniformly "so held."

Hopkins on Trade-marks, Sec. 58, p. 133.
City of Carlsbad v. Schultz, 78 Fed. Rep., 469.
City of Carlsbad v. Kutnow, 71 Fed. Rep., 167, affirming 67 Fed. Rep., 794.
Hill v. Lockwood, 32 Fed. Rep., 389.
Northcutt v. Turney, 101 Ky., 314; 41 S. W. Rep., 21.
Congress & Empire Spring Co. v. High Rock Congress Spring Co., 45 N. Y., 291.

The Court will take judicial notice of the fact that in Stewart County, in the State of Tennessee, there exists a village and spring called "Bear Spring," which has been known as such for many, many years.

"The same scientific objection to geographi-
"cal names as trade-mark obtains as in the
"case of proper names."

Hopkins on Trade-marks, Sec. 58, p. 134.

The complainant's predecessors sold their water up until 1892, according to the testimony of Mr. Dickinson (p. 47), as a medicine, and for no other purpose whatever, and could, therefore, not preclude defendant from applying a similar name to a table water.

"Q. Is it not a fact that you only claimed
"it as a medicinal water and not as a table
"water at that time? A. At that time we
"claimed it as a medicinal water.

"Q. And all your correspondence was to
"that effect? A. Yes.

"Q. And all your advertising matter was to

"that effect, was it not? A. Yes, sir, the first "part of it.

"Q. You advertised quite extensively in the "medical journals, didn't you? A. Yes, sir.

"Q. How long did you continue the adver- "tisement of your water as exclusively a medi- "cinal water? A. Up to the time or about the "time that Mr. Reusch came with us.

"Q. When was that? A. About 1892, I "think it was.

"Q. And you then say you started the sale "of your water as a table water? A. Yes, sir."

Under these circumstances any person prior to 1892 had a right to adopt the name "Bear" as a trade-mark in connection with the sale of a drinking water which was not sold as a medicine.

Could a person selling a cough mixture, called by him "Bear Cough Mixture" restrain the sale of another of a table water under the name "Great Bear Spring Water," or a person selling vinegar as "Bear Vinegar" restrain the sale of water as "Great Bear Water?"

Our contention is that he could not.

The use of a trade-mark by one person or vendor will not prevent another from adopting the same trade-mark for a different article.

It was also held that a dealer in dry white oxide of zinc has no remedy against another who uses the same trade-mark to distinguish the oxide when ground in oil. In this case Judge Blatchford said:

"The defendants have not sold the dry white "oxide in that state. It is not shown that the "plaintiffs sold such oxide ground in oil. It is "true that the oxide is intended to be ground "with oil for a paint. So, flour is intended to "be made into bread; but if a baker should

"falsely stamp his bread with the mark of a "particular brand of flour, the maker of such "brand, if having a trade-mark therefor, could "not claim that the baker had violated his "trade-mark. And so of any other raw mate- "rial which enters as an ingredient into a com- "pound or article of manufacture.'

La Societe Anonyme Des Mines vs. Baxter, 14 Blatchf., 261 Fed. Cas. No. 8,099. See also, Osgood v. Rockwood, 11 Blatchf., 310 Fed. Cas. No. 10,605.

Bear Lithia Water prior to 1892, was not in the same general class as "Great Bear Spring Water."

In Amoskeag Mfg. Co. vs. Garner, 54 How. Pr. (N. Y.), 297, which was brought to restrain the use of the name "Amoskeag" as a trade-mark for prints and calicoes, and it appeared that the complainant never used the name on prints or calicoes, but on unprinted cloth. The Court while holding that the injunction *pendente lite* had been properly refused, granted a permanent injunction restraining the defendant from applying the word "Amoskeag" to prints or calicoes. In the course of its opinion, the Court used the following illustration:

"But now suppose the plaintiff had received "from the Legislature of New Hampshire the "name of 'The Amoskeag Baking Company,' "and for forty years had been engaged in the "humbler, though hardly less useful, avocation "of manufacturing almost every variety of "bread, roll, muffin, cracker, biscuit, cake and "pie, on which articles of food it had invaria- "bly stamped its corporate name, or some ab- "breviation thereof, such as 'Amoskeag.' Sup- "pose, however, that the plaintiff had omitted

"or had not yet decided to make and vend the "single variety known as 'crumpets,' and there- "upon a rival baker attempted to sell his crum- "pets as 'Amoskeag Crumpets,' would not any "customer, upon seeing the name thus applied, "naturally say that the Amoskeag Baking Com- "pany had added crumpets to its other varie- "ties of bread? And would not the rival bak- "ery be restrained, upon the plain principle of "an unauthorized use of the company's name? "The parallel is not precise, as the printing of "calicoes may require some additional machin- "ery, but the difference is only in degree."

Bear Lithia Water having been exclusively advertised and sold as a medicine, a prospective purchaser of such a water would certainly not be led to believe that Great Bear Spring Water was the same article, and it would be far from reasonable to suppose that a person knowing that the complainant was vending a medicine was also selling the same medicine as a table water.

But complainant cannot take one word from its corporate name or trade-mark and say that because it happens to be part of the corporate name or trade name of the defendant, that its use by the defendant is unlawful.

POINT II.

The complainant has not the exclusive right to the use of a figure of a bear as a trade-mark.

It is denied that the complainant adopted the figure of a black bear with the words "Bear Lithia Water" on its side before the defendant began the use of the figure of a bear.

Conceding for the purpose of argument that the complainant has the exclusive right to the figure of a black bear, we cannot see how another could be enjoined from using the picture of a bear, which is so dissimilar as to distinguish rather than confuse an article to which it is applied.

From a reading of the cases on this subject it would appear to us that inasmuch as the pictures of a bear used by both parties is so dissimilar, the right to its use resolves itself into one of unfair competition, that is, is the figure, taking all the circumstances into consideration, such as to be likely to lead to well founded confusion.

The cases of Blackwell vs. Wright, 73 N. C., 314, and Popham vs. Cole, 66 N. Y., 69, are parallel cases. In the first case the plaintiff had adopted the picture of a bull as a trade-mark, and sought to restrain the defendant, who was using the picture of a head of a bull as a trade-mark, from using the same, and the Court proceeded as in a case of unfair competition, considered all of the dissimilarities of the two labels and found that the head of an ox or bull could not be held to be a colorable imitation of the trade-mark of the plaintiff.

In the second case the Court said:

"The defendant's trade-mark is not the same "as that used by the plaintiff. They have upon "their packages the imprint of an animal of "the same genus as that appearing upon the "plaintiff's packages, but entirely unlike in ap- "pearance and characteristics, and placed upon "a globe, which does not appear as a part of "the plaintiff's trade-mark. The question in "this, as in every other case, is, whether there is "such resemblance between the two as to de- "ceive a purchaser using ordinary caution. The "difference is so palpable here that no one can "be deceived. The shape and general appear- "ance of the pictured animals upon the two "brands and their position, the one upon a "globe and the other without such support; the "one representing a small, lank and lean wild "boar, and the other, a large, fat, well-condi- "tioned domestic animal, are so entirely dis- "similar that the one can hardly be said to be "an imitation of the other, and clearly not a "fraudulent or deceptive imitation. The "brands and lettering descriptive of the arti- "cle, and giving the names of the plaintiff, and "defendants, respectively, as manufacturers, "are entirely unlike in arrangement, size of "letters, and general form and appearance in- "somuch that no one could mistake the pack- "ages of the defendants for those of the plain- "tiff."

The test, it would appear, from these cases is, do both pictures so resemble each other as to bring them within the rule of unfair competition? If not, the complainant acquires no exclusive rights.

Vice-Chancellor Bergen has found, and we believe

correctly, that there is no pretense at simulating the labels or packages of the complainant, and that the character of bears used by defendant are so dissimilar in appearance that anyone relying upon the label could not be misled.

POINT III.

The complainant cannot restrain the defendant from the use of its corporate name, (a) because it is the junior corporation; (b) because it is not used in unfair competition with complainant's business.

(*a*) Our corporation act, Section 8, Session Laws of 1896, page 277, subdivision 1, provides, that no name shall be assumed, already in use by another corporation of this State, or so nearly similar thereto as to lead to uncertainty or confusion.

In the case of German Hanovarian & Oldenberg Coach Horse Ass'n vs. Oldenberg Coach Horse Ass'n, 46 Ill. App., 261, it was held by the Illinois First District Appellate Court that where two associations are incorporated under the laws of Illinois under similar names, the claim of the older corporation to the use of the name will be upheld, and nothing done by the individuals, in the name assumed by the junior corporation, before it was incorporated, adds to the rights of the junior corporation, since the assumption and use of a corporate name is in direct violation of law, and the Courts of that State will refuse to enforce or give efficacy to rights claimed to have been acquired by means of such illegal acts.

The law having authorized the selection of a name by the defendant, and having declared the name so selected to be its corporate name, there is no reason why the law should not protect the corporation in the use of that name.

(*b*) The defendant in organizing its corporation infringed upon the rights of no one. The complainant was at that time known as the "Bear Lithia Water Company," a corporation of Virginia, a name so entirely dissimilar from the corporate name of the defendant that it cannot be said that they would lead to uncertainty or confusion.

In Blackwell v. Wright, above cited, the name "Original Durham Smoking Tobacco" was held not to be an infringement of the name "Genuine Durham Smoking Tobacco" and its use was not in unfair competition with plaintiff.

For some years prior to the incorporation of the Great Bear Spring Company, its predecessors had been operating under the same name.

The complainant's predecessors, the Bear Lithia Water Company, organized a new corporation and changed its name to "Bear Lithia Springs Company," which change, if the names were before then confusing, would have a decided tendency to make it more so.

Great Bear Water was not put upon the market to compete with Bear Lithia Water, and it cannot be said, after reviewing the history of both companies that the defendant selected its present corporate name with intent to palm off its water as that of the complainant, or to profit by its trade reputation.

International Silver Co. v. William H. Rogers, 60 At. Rep., 187.

Eureka Fire Hose Co. v. Eureka Rubber Co., 60 At. Rep., 561.

The principal portion of complainant's name being geographical, the cases and argument under Point I, apply here.

POINT IV.

Defendant's business has not been carried on in unfair competition with that of the complainant.

It is claimed that the defendant's use of the name "Great Bear Spring Water" and the picture of a bear on its labels, wagons, coolers and advertising matter, has led to confusion.

There are, of course, a great many things to be considered in arriving at a conclusion on this point: How the business of each originated; the identity or similarity of the names; the identity of the business of the respective parties; the manner in which the business of the respective parties is conducted; the class of people with whom they deal; the character of bottles used by each; the shape, size and color of the labels; the manner in which labels are worded; all of these and many other questions are to be taken into consideration.

It is perfectly apparent that this is not one of the ordinary class of cases where a person who has established a reputation under a certain trade name or mark, after many years of industry, seeks to restrain the use of his trade-mark by one who has deliberately appropriated it for the purpose of reaping a benefit by reason of such established reputation.

The predecessors of both parties started in business about the same time apparently without knowledge of the existence of the other, the complainant

selling a medicinal water and the defendant a table water.

The sale of Great Bear Spring Water became extensive from the very beginning and at the present time the company is doing a business of about a half a million dollars a year, and according to the testimony of Mr. Estes, its general manager, has spent over $175,000 in advertising "Great Bear Spring Water" since May 1, 1899.

At the time the defendant started its branch in New York, no spring water was being sold in what is termed "return packages" (p. 271).

Mr. Emerick was the originator of the plan of selling water in bottles to be returned for refilling, and the defendant by reason of its adoption of this plan in the sale of water at an unusually low price, did a very large business. The greater part of their business, about ninety-seven per cent., was, and has at all times been in the sale of water in five-pint ground glass stoppered bottles, six to the case, and the balance of their business is made up in the sale of water in five-gallon demijohns, long necks, quarts, pints and syphons.

The ground glass stoppered bottles have always had the words "Great Bear Spring, Fulton, N. Y.," moulded on them, are sold to private customers and not to the wholesale trade. These bottles have always been shipped in cases stenciled on the ends "Great Bear Spring Co." Up to four years ago these bottles were not labeled in any manner, but about that time defendant began the use of a canary yellow paper seal for this class of bottles, having thereon the figure of a polar bear, the name of the company and a notice that the water is from the company's springs near Fulton, N. Y.

The pint and quart bottles for a number of years, bore the oval label offered in evidence, which contains the picture of a polar bear on a floating cake

of ice, but for several years past, a shield label with the picture of a polar bear has been substituted for the old one and a collar-label with the figure of a polar bear added.

On the half gallon green bottles, a square label with the same figure of a polar bear on a cake of ice is used. This label contains the name of the water with the statement that it is a pure spring water and is from the company's springs near Fulton, N. Y. The bottles also bear the same collar label as the pint and quart bottles.

The five gallon demijohns have the words "Great Bear Spring, Fulton, N. Y." blown in the glass, are sealed with the same character of seal as the half gallon bottles, and when sold to the trade bear another shield label with the picture of a polar bear.

The interests of the respective parties hereto apparently did not clash until the complainant commenced to ship its water here in 1902, in tank cars, when it began actively to compete with the defendant for business.

It began the sale of water in eight half gallon bottles to the case. These bottles have porcelain and rubber stoppers wired on and have the figure of a bear and the words "Bear Lithia Water, near Elkton, Va." blown in the glass. No paper labels are put on these bottles, but a sealing label with the figure of a black bear is put through the wire lever.

Complainant also sells water in five gallon demijohns, which have a large design of a bear blown, or etched in the glass, but have no labels attached.

The pint and quart bottles put out by it, bear an oval label, a fac-simile of which appears on its letter heads and has printed upon it "Bear Lithia Water, Bottled at the Springs by the Bear Lithia Springs Co. Bear Lithia, Shenandoah Valley, Vir-

ginia," the name Virginia being in large heavy black type. In the center of this label is the picture of a black bear with the name of the water on its side.

The defendant at all times most prominently advertised the location of its springs as being near Fulton, Northern New York, and the color, shape and size of all its labels are entirely different from those of the complainant.

Taking into consideration the many distinguishing characteristics between the package of each party, can it be said that a person of ordinary perception can be induced to buy the defendant's water, supposing it to be that put out by the complainant?

In Blackwell vs. Wright, above cited, where the defendant was selling tobacco under the name "Original Durham Smoking Tobacco," the Court held that the use of such name was not in unfair competition with the business of the plaintiff, who was selling "Genuine Durham Smoking Tobacco," and said:

> "We are unable to see from the pleadings, or "upon inspection of these labels how or where- "in the trade-mark of the plaintiffs is infringed "upon by that of the defendant. The plaintiff "does not allege in his complaint that the color "and appearance of the paper label is any part "of his trade-mark, and had he done so it is "far from clear that one can have a trade-mark "in a color or general appearance of paper, a "thing in universal use. Nor can the name "'Durham,' the name of the town where both "parties are doing business, be exclusively ap- "propriated as a trade-mark. The word 'genu- "ine' is unlike the word 'original' used by the "defendant and the words 'smoking tobacco'

"a thing in general use by that name, of course, "is not pretended to be the subject of appro- "priation. The names of the manufacturers "printed on the labels are unlike, *and the fig- "ure of an entire animal upon the labels of the "plaintiff, and the head only of an animal upon "that of the defendant, so far from misleading "by the similarity, would rather tend to distin- "guish the one from the other. Certainly in "connection with the other many dissimilari- "ties of the two labels the head of an ox or bull "cannot be held to be a colorable imitation of "the trade-mark of the plaintiff.* Those who "purchase by a trade-mark, of course, must "examine it and as soon as that is done in our "case, there is no ground for being misled. We "must assume that dealers and consumers of "such a commodity have ordinary intelligence "and adopt ordinary precaution against impo- "sition and fraud. To adopt a different rule, "would be productive of the greater confusion "and mischief in an age remarkable beyond "all that has preceded it. * * * To our "mind the plaintiff does not disclose a case "which entitles him to injunctive relief. * * * "The term 'original Durham smoking tobac- "co,' seems a fair set-off to 'genuine Durham "smoking tobacco.'"

In Wirtz vs. Eagle Bottling Co., 5 Dickinson, p. 164, an injunction was granted restraining the use of a label, because, as the Court said:

"For the purposes of this case, the rule laid "down and enforced in McLean vs. Fleming, "*supra*, will be adopted as the true one. That "declares that exact similitude is not required; "in other words, that the counterfeit need not

"be a fac-simile of the genuine, but that if the "counterfeit so closely resembles the genuine "as to mislead ordinary purchasers, buying "with the care usually exercised in such trans- "actions, the use of the counterfeit should be "prohibited. An important part of this rule, "as it applies to this case, is that clause of it "which directs that in determining whether the "counterfeit so closely resembles the genuine "as to be likely to deceive the ordinary buyer, "the Court must take into consideration the "degree of care which buyers usually exercise "in buying such an article as that which is "the subject of the distinguishing mark; for "it is a matter of common knowledge that the "ordinary buyer does not, as a general rule, "exercise as much caution in buying an article "for which he pays a few pennies as he does "in purchasing a more valuable thing. The in- "stances are very rare, I suppose, where a pur- "chaser exercises as much care in buying a "bottle of beer as he does in buying a bottle "of whiskey, a box of cigars, or a hat or a "coat."

"It is said by Lord Cranworth, in Leather "Cloth Company vs. The American Leather "Cloth Company (11 House of Lords Cases, "522), that the gist of the complaint in all "these cases is that the defendant, by placing "the plaintiff's trade-mark on goods not manu- "factured by the plaintiff, has induced persons "to purchase them, relying on the trade-mark "as proving them to be of the plaintiff's manu- "facture, *and that this necessarily supposes "some familiarity with the trade-mark.* We "may say in this case, as was said by the Court "in that, that to any one at all acquainted with "the plaintiff's trade-mark, there could not be

"even on the most cursory glance, any decep-
"tion. There was no representation, direct or
"indirect, by the use of the device or symbol,
"whether by itself or in connection with the
"entire brand and mark of the defendants, that
"the article which they sold was manufactured
"by the plaintiff. *The Court is not bound to*
"interfere where ordinary attention will en-
"able purchasers to discriminate between the
"trade-marks used by different parties."

Popham vs. Cole, 66 N. Y., 69, at p. 75.
Mosler vs. Jacobs, 66 Ill. App., 571.

"The defendant's water has been known for
"a number of years as Saratoga Vichy. * * *
"The defendant's is a sparkling water and for
"several years has been sold under a label of
"which the word "Saratoga" is as prominently
"displayed as the word "Vichy." It is true
"there is a small label attached to the bottle on
"which the word Vichy is the more prominent,
"but in view of the many other distinguishing
"characteristics, it seems inconceivable that
"anyone of ordinary perception can be induced
"to buy the defendant's water supposing it to
"be imported vichy. An individual stupid
"enough to be deceived under such circum-
"stances is beyond the aid of a Court of Chan-
"cery. In his case a *writ de lunatico* is a more
"appropriate remedy than a writ of injunc-
"tion."

La Republique of France vs. Saratoga
Vichy Spring Co., 99 Fed., 733.

"In determining the question regard must
"be had to all the circumstonces of the case.

"The class of people who buy the goods, or deal "with the parties, and the place where the "goods are usually exposed for sale must be "considered."

Paul on Trade-marks, Sec. 188, and cases.

"Equity will not interfere where ordinary at- "tention will enable discrimination."

Partridge vs. Menck, 2 Sanf. Ch., 622.
Merrimach Co. vs. Ga., 4 E. D. Smith (N. Y.), 389.

"But the mere possibility that an extremely "ignorant or careless person may be deceived "is not a test."

Bolan & Byrne Mfg. Co. vs. Jonasch, 29 Misc. Rep., 99.

It is a well-known fact, of which the Court will take notice, that the goods sold by both parties is purchased by people of the better class, people who are not likely to be misled by a confusion of the labels in question.

Mr. Highbee, complainant's witness, produced for the purpose of showing confusion, testified (p. 74):

"Q. There is no question about your being "able to distinguish one bottle from the other, "is there? A. Hardly."

He also says on page 75 that if a person had looked at the complainant's label he would hardly be misled into buying Great Bear Water.

After reading all the evidence we cannot find that a single witness was produced to prove that he, knowing the character of label used by the complainant, was deceived by the defendant's label.

POINT V.

The complainant has been guilty of laches.

Complainant and its predecessors, for thirteen years past, have been aware of the fact that the defendant was selling water under the name of "Great Bear Spring Water," and that for seven years it and its predecessors have been operating under the name of "Great Bear Spring Company."

In April, 1893, having ascertained that Great Bear Spring Water was being sold in Syracuse and that an advertisement with the picture of a bear appeared in one of the local papers, complainant wrote the defendant company, claiming that there was an infringement of their "trade-mark" (Ex. C20, p. 43). There was apparently no objection to the sale of water under the name Great Bear Spring Water.

In 1899, a second letter was written (Ex. C33, p. 100) complaining of an infringement of the trade-mark, to which a reply was sent stating that the defendant had no intention of discontinuing operations under the trade name "Great Bear Spring Company" (Ex. C34, p. 101). This letter gives the names and addresses of various persons connected with the business, for the benefit of the complainant, if it desired to start proceedings to test the right of the respective parties.

According to the testimony produced on behalf

of the defendant, and as appears from the numerous exhibits in the cause, it has been using its trade name without interruption, for more than sixteen years past, and that it has used the figure of a polar bear continuously on certain classes of its bottles for more than ten years (Ex. D20 to 31).

Complainant certainly must have known that during all these years the defendant claimed to be rightfully entitled to the use of its trade-mark and name, and that relying upon such right it was extending its business, and expending thousands upon thousands of dollars each year in advertising its water.

No attempt was ever made by it to ascertain its rights until now, when it seeks to reap the benefit of defendant's industry.

In Saxlahner v. Siegel Cooper Co. *et al.*, 91 Fed., 536, the labels and trade-name were very closely simulated, but the Court held that a delay of nine years to prosecute constituted laches.

In Louis vs. Chapman, 3 Beav., 133, the Master of Rolls refused an injunction to restrain the infringement of the copyright solely on the ground of six and one-half years' delay.

> "Where a person infringes a trade-mark,
> "does so with a show of right and justification,
> "inexcusable laches on the part of the proprie-
> "tor will work a forfeiture of a trade-mark and
> "disentitle him to any relief whatever."
>
> Paul on Trade-marks, Sec. 106.

In Old Time Distillery Co. vs. Casey, 104 Ky., 616, it appeared that both parties claimed original adoption of the brand "Kentucky Comfort" as a trade-mark for whiskey. Each party clearly acted in good faith in the selection of the words and there

was no intention on the part of either to wrongfully appropriate the invention of the other. In considering the defence of laches, the Court said,

> "As a matter of fact the parties for ten "years have acted on the theory that their geo- "graphical position made it unimportant to put "to the test who was technically entitled to "this trade-mark. The appellees have stood "still too many years with knowledge of the "fact that appellant has been expending large "sums of money in extending the use of and "demand for this brand of whiskey and ought "not to be permitted now to reap the benefit "of the appellant's industry and enterprise."

The cases of McLean v. Fleming, 96 U. S., 257; Memendez v. Holtz, 128 U. S., 514; Brown v. Meyer, 139 U. S., 546, cited by complainant's counsel in the Court below, on the subject of laches, do not apply.

The established rule is, that where the person who infringes a trade-mark, does so with a show of right and justification, laches will work a forfeiture of the trade-mark, but where the trade-mark is appropriated without show of reason and in fraud of the proprietor's rights, laches will not usually defeat the remedy by injunction.

> Paul on Trade-marks, Sec. 106, p. 174.
> Saxlehner v. Eisner, 179 U. S., 19.
> Sanders v. Jacob, 20 Mo. App., 96.
> Northcutt v. Turney, 101 Ky., 314.
> Prince Metallic Paint Co. v. Prince Mfg. Co., 6 C. C. A., 647; 57 Fed., 938.

Even if the complainant would under ordinary circumstances have been entitled to relief, it would be inequitable to grant it now.

POINT VI.

The complainant is not entitled to the aid of a court of equity.

First—Because it fraudulently calls its water a "lithia water."

Second—Because it advertises and leads the public to believe the water sold by it is bottled at its springs, when in fact such water is bottled at New York City.

Third—Because it adds commercial salts to its water and calls it "Bear Lithia Water."

Fourth—Because it fraudulently built up its business and advertises its water as a medicinal water and a cure for various diseases.

Fifth—Becaue the business conducted by the complainant is against public policy.

1. The complainant not only by the use of its name, but in all of its advertising matter continues to lead the public to believe that its water contains such a quantity of lithium as to warrant its being called a lithia water.

On page 8 of Exhibit C42, they say,

> "Many advertised lithia waters are lithia "in name only. They contain none of the chem- "ical qualities with which Bear Lithia is teem- "ing and which the most careful analyses of "scientific men have again and again demon- "strated."

The average man knows very little or nothing about lithium or about a published analysis of water, and the impression intended to be conveyed by this language is, that their water contains large quantities of lithium salts. But knowing that their water is about as lightly mineralized as any natural spring water can possibly be, and knowing that it only contains a slight trace of lithia, the language is misleading and false.

On page 13 of the same exhibit they say, "Bear Lithia is the one and only superlatively perfect lithia water known to man." On the cover of Exhibit C24, the booklet which contains pictures of various kinds of bears, appears the following:

"Here's Health." "Bear-Lithia."

The only analysis of this water which was apparently ever made for the complainant, and which is the only one published by it, is that of Professor Mallet, which shows .012 of a grain of lithium carbonate per imperial gallon. Mr. Sparks, and Mr. Brooks, chemists, testify, that upon analyzing the water they found only a trace of lithium, and Professor Stillman, a professor of chemistry in Stevens Institute of Technology for thirty-five years and one of the most prominent chemists in this country, testified that he found only 0.010 parts per million or 0.0005 grains per U. S. gallon.

Complainant did not even see fit to have its water analyzed for the purposes of this trial to substantiate their claim that the water contains the amount of lithium advertised by them.

In view of the testimony of all of the physicians and chemists on this subject and the statement of Professor J. K. Haywood, chief chemist of the United States Department of Agriculture, to the effect that it is a misnomer to call Bear Lithia Water, a lithia water (pp. 531, 532, 539), it seems to us that the use of such name and the publication of the

analysis made in 1885, which does not apply to the water sold now, is such a fraud as to warrant the withholding of equitable relief.

2. Bear Lithia Water has always been advertised by the complainant as being "bottled at the springs." This statement appears on labels used both here and in Columbus, used up to the time of trial, and in fact bottles containing the same labels were purchased during the trial. This statement also appears prominently displayed on the front cover page of Exhibit C42, p. 115, and seven times on the rear page of the same booklet; also upon the bottle label on the front cover page of the illustrated booklet C24, in use at the present time; also in other parts of the same book, and on all of its letter heads used up to the time of trial.

The story of Mr. Jennings (p. 119) that he overlooked these misstatements and that it was first called to his attention by the affidavits of the defendant, is not entitled to very much credit when it is seen how extensively this statement was made in very nearly all of its literature, and particularly on all the letter heads which he used continuously. It is not reasonable to suppose that he, the manager of this business, and having supervision over the publication of all advertising matter would overlook such an important statement. After the filing of complainant's bill hangers were displayed in their windows with the picture of a syphon containing a label whereon was printed "bottled at the springs" (pp. 200 & 201), and it was admitted that syphons were never bottled or filled at the springs, but that this work has always been done in New York.

The publication of these false statements was deliberate, and made for the purpose of benefiting

their business. It is common knowledge that in order to get the best results from the use of a mineral water, it should be obtained at the spring, because if loosely transported the minerals precipitate and the water deteriorates considerably, but when bottled at the springs it is not liable to substitution, or likely to deteriorate very much, and for that reason if the public could be impressed with the idea that the water is bottled at the spring, it would work greatly to the advantage of the complainant. That the purchasing public is interested in knowing whether mineral waters are bottled at the spring is plain to be seen, from the testimony of Walter E. Wells, complainant's agent. He says:

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"A. Yes, sir, in my soliciting trade, if I come "in contact with the Great Bear Spring Co. "customers, I merely state one thing. Q. And "what is that? A. That our water is a very "much softer water, and I can say truly, that "I do not and that I have not misrepresented "in any way, anything about the water being "brought here in tank cars or anything of that "sort, I have never done that. Q. You make it "a practice of telling every person whom you "go to see that you bring your water here in "tank cars, don't you? A. No, sir, not neces-"sarily, I do not tell any person anything at all "about bringing the water here in tank cars "or anything of that sort unless I find it abso-"lutely necessary. If they commence to ques-"tion me about it, why, then, I do tell them; "I do not avoid the question. Q. In what in-"stances is it necessary? A. Well, up to two "years ago it was not necessary to say anything "at all about it, but just about that time, the "Crystal springs were making a great display "about their bottling the water at the springs.

"And we were bringing our water from the "springs in tank cars * * * and since that 'time it has become absolutely necessary or *it "has come to a point now, where we have to tell "the customers the way that the water is han- "died, and to show them how carefully it is "handled so as to avoid the possibility of con- "tamination, and so for that reason I find it "necessary on occasions to tell them that it "comes here in these glass lined tanks.* Q. That "seems to be quite an important thing in the "water trade, is it not? A. Our competitors "have made it so. Q. Oftentimes these people "you go to see, would say, "Now, the Crystal "Springs Co. bring their water here in bot- "tles from the spring?' A. Yes, sir. Q. And "you would have to go into an explanation as "to how your water is brought from the "springs? A. Not necessarily, I merely state "to them that they do, and if they ask me a "pointed question 'do you?' I tell them the way "we handle our water. Q. They sometimes ask "you if you bring your water in glass bottles, "don't they? A. They ask me if we bottle it "at the springs."

For several years according to this testimony the question as to whether the complainant bottled its water at the springs has become very important in the transaction of their business, and still people were led to believe that they were receiving water which was bottled at the springs. And in one of the booklets (Ex. C24) they say, "We can absolutely prove that every drop of water sold by the Bear Lithia Springs Company * * * is brought in glass from our springs at Bear Lithia. * * *" Do they tell the plain truth here about the matter, or in any other place, or do they say in any place

that the water is brought in tank cars? No. This again is a statement made for the express purpose of and calculated to deceive people into believing that the water is bottled at the spring, as their labels, letter heads and other literature states. No one reading the above statement would ordinarily construe it to mean anything else than that the water is bottled at the springs in the bottles which are sold to the trade. It must be read in its common and ordinary accepted meaning, and it requires a wonderful stretch of imagination to say, as the complainant attempts to do, that its steel enamel tank cars are bottles and that therefore no fraud is committed.

In Kraus v. Peebles & Son, 58 Fed., 585-594, Judge Taft said: "The manifest advantage, which distillery bottling has in the bottled whiskey trade, arises from the improbability that a distiller botling whiskey at his own distillery warehouse would bottle any whiskey but that which he has distilled," and he refused the injunction upon the ground that this advertisement was a misrepresentation.

The Vice-Chancellor held that the argument of Judge Taft appeals with equal force to water, and found the complainant guilty of fraud.

3. Complainant is guilty of fraud in calling some of its waters "Bear Lithia Water" after adding commercial salts thereto.

Mr. Jennings, on page 136, says:

> "Q. The water that you call vichy has some-
> "thing added to it, has it not? A. Yes, sir. Q.
> "After it comes to New York? A. Yes, sir.
> "Q. And the water that you call your carbon-
> "ated water has some ingredient added to it
> "in order to call it carbonated water? A. Yes,
> "sir. Q. Aside from the gas you use in it? A.
> "Yes, sir. Q. The water called seltzer water,

"has something added to it? A. Yes, sir, we "salt the Bear water which is contained in the "syphons, the Bear vichy and the Bear seltzer "in syphons, they put some salts in that water, "but I don't know that they do it in the Bear "carbonate water. * * *"

This according to the cases hereafter cited is sufficient to defeat complainant's right to relief.

4. Complainant has always advertised and still advertises its water as a remedy and cure for various diseases and these claims it has never ceased to make. Exhibit C40 contains the following statement on the front page:

"Nature's own remedy. *Cures* kidney and "bladder troubles, uric acid, gout and rheuma- "tism, phosphoric deposits, inflammation of the "bladder, dropsical affections, brick dust de- "posits and all forms of dyspepsia which arise "from non-assimilation of food such as heart "burn, flatulence, sick headache, and a sense "of fullness after eating."

In the same booklet it is also claimed to be a remedial agent in the treatment of diseases of the urinary organs, nervous dyspepsia and albuminuria, a solvent of stone in the bladder; that it contains valuable constituents which peculiarly adapts it to the relief of kidney, liver and urinary diseases; that it is a remedy for almost any disease where an alterative is indicated; that it has been observed to have great beneficial effects in consumption cases (on p. 10); that its solvent properties make it an invaluable remedy for phosphoric deposits, gravel and all troubles of the kidney, bladder and urinary organs induced by uric acid.

"Babies have been brought to the springs ill "almost unto death with cholera infantum. "They have been invariably cured in thirty "days. Physicians are recommending it large- "ly for all these sufferers" (on. p. 11).

Exhibit C41, claims it to be a remedy for incipient disease; a prompt and sure cure for dyspepsia (on p. 6); that astonishing recoveries have been had from the use of the water in neuralgia, acid stomach, female complaints and many other intractable diseases and for ulcerations of the stomach.

Exhibit C42, on page 6, reads,

"It is a water which washes away the ills of "man, if man will let it. Acid dyspepsia, ner- "vous dyspepsia, gout, rheumatism, albumi- "nuria, *all these are truly, surely,* dissipated, "driven off by the free and exclusive use of "Bear Lithia Water. Bright's disease is "nipped in its incipiency. The organs are "renovated, rendered whole, capable and fit "for their natural offices."

On page 7,

"If you have urinary troubles, Bear Lithia "will *absolutely* eradicate them, if you are "whole 'twill keep you whole. It is a certain "preventative as well as a positive cure. Fever "germs—typhoid, malarial or others—cannot "affect the delicate inner organism of one "whose drinking water is exclusively Bear "Lithia."

Exhibit C24, on page 4, reads,

"While Bear Lithia Water possesses remark- "able medicinal qualities, it is often supposed

"that by these medicinal qualities it becomes "not a table water but purely a medicine. This "is an erroneous impression, as the natural "lithia in the water dissolves and washes away "any uric acid or tendancies toward liver, "bladder or kidney trouble."

It is not contended by the complainant that they do not continue to make the claims contained in the various booklets above mentioned, but their whole defense to the charge of fraud was an attempt to show that their claims were well founded. Mr. Jennings in his testimony says that they were in the habit from time to time to have booklets printed for the purpose of advertising their business and as they ran out would supplement them by new styles.

Exhibit C42 was prepared exclusively to advertise the medicinal qualities of the water and Exhibit C24 was issued, as is apparant from the language above quoted, to inform the public that it was not only a medicine and a cure for the various diseases claimed by it, but also a table water.

Complainant's letter heads, all of which were used after these proceedings were brought, contains the following language,

"Natures own remedy. *Cures* kidney and "bladder troubles, uric acid, gout and rheu- "matism, phosphatic deposits, inflammation of "the bladder, dropsical affections, brick dust "deposits, gravel, albuminuria, cholera infan- "tum, malaria and all forms of dyspepsia."

Complainant made a desperate but futile effort to substantiate the truthfulness of some of its claims as to the curative powers of Bear Lithia Water.

Mr. Turner was called to testify as to its value for nephritic collic from which he suffered many years ago. From his testimony it appeared that lime stone water did not agree with him; that by using Bear Lithia Water his condition was relieved temporarily, and that as soon as he went to his own home, or went to Texas, and drank the water at those places, the attacks were renewed and he was obliged to return and drink Bear Lithia Water. But he says that for the past sixteen years he has been very careful in the choice of his waters and although he does not use Bear Lithia Water, but only occasionally, he does not suffer from his former condition. Surely it cannot be said that he was cured by the use of complainant's water any more that he would have been cured by the use of another pure spring water which was not a lime water.

Joseph F. Hall, a friend of Harry Dickinson, a former proprietor of complainant's business, and who furnished a testimonial several years after his imagined cure by the use of Bear Lithia Water says, that he was informed by his physician, that he was suffering from some kidney trouble, passing considerable blood in his urine; that he had been using medicine prescribed by his physician for several weeks and then started in to use Bear Lithia Water, and found that within a few days the blood disappeared and he now claims to be cured. It is just as reasonable to suppose that the medicine prescribed by his physician, was the cause of the betterment of his condition, and possibly more so, than that it was because of the use of the water. Very little reliance can be placed upon such testimony, as there is no fraudulent vendor of nostrums or quacks, who cannot produce people, and testimonials from people who honestly believe that they have been cured by the use of their fraudulent concoctions.

Brice Martin, a druggist who claimed to have been suffering from uric acid trouble and albuminuria, and who said he knew that he was so suffering because he could get no insurance, and had made tests, of which he apparently knew nothing about, claimed that he was feeling very much better since using Bear Lithia Water, but that he had made no further tests and does not know whether he is cured.

Dr. Wolfe, a physician resident at the springs and produced by the complainant, for the purpose of proving the curative powers of Bear Lithia Water was asked whether he had used this water in the treatment of people suffering from kidney and urinary troubles, bladder troubles, dyspepsia, gout, rheumatism, uric acid, diatheses, eczema, gall stones and the other ailments numerated in the various booklets above mentioned and he answered that he had in a great number of them. On cross examination he was asked (page 427): Q. You don't claim that this water is a *cure* for all the diseases you have mentioned, do you? A. *No sir, and nothing like it, no remedy is a cure for all diseases I have mentioned.* Q. *Don't you know that the Bear Lithia Water people claim that it is an absolute cure?* A. *I don't know that they do, if they do, they are claiming that which cannot be true.* Q. You would not undertake to cure anybody by the use of Bear Lithia Water who was suffering from consumption, would you? A. No sir, not consumption, beause I don't believe there is any cure for it at all. On page 428 he says: Q. Now Doctor would you guarantee to cure anyone suffering from gout, with that water alone? A. Well now, it might mitigate the symptoms. Q. But you would not guarantee to cure? A. Not unless it was a very mild case. Q. Would you guarantee to cure anyone suffering from rheumatism by the use of

the water alone? A. If used freely the water would have a decided benefit upon the patient, but I would not undertake to cure. On page 433 he says: Q. *Then you don't say that Bear Lithia Water will cure any of these diseases, do you?* A. *No sir, I would not say that.* Q. *What you do say is, that it might be useful in aiding in the cure of any particular disease?* A. *Yes sir, I might say that.* Q. *That is Bear Lithia Water would be just as useful in that respect as any ordinary pure water would be?* A. *Yes sir.* Q. *And that is true (all) is it not?* A. *Yes sir.*

In speaking of the treatment of persons suffering from Bright's disease by the use of this water he said that ordinarily he would avoid the use of lime, but when his attention was called to the fact that lime substances were the principle ingredients of Bear Lithia Water he qualified his previous statements and said: Q. Then why would you prescribe Bear Lithia Water in the treatment of that disease (incipient Bright's disease)? A. Because the water is very light, it is very pleasant to the stomach, and I prescribe it in preference to the other water.

Dr. David Sherman, called by the complainant, for the purpose of showing results in the treatment of diseases by the use of Bear Lithia Water, which he says he has prescribed in several cases, says that his attention was called to Bear Lithia Water in 1902, that he was looking around for a lithia water which could be purchased at a reasonable price. He has never examined the analysis of the water, does not know what minerals are contained in it, or the quantity of lithia contained in it. The minimum dose of lithium generally prescribed by him is from three to five grains three times a day. P. 467: In acute cases he says that he would prescribe large doses of lithium and in chronic cases a lithia water because it contains smaller quantities of lithium.

P.468: You do not consider Bear Lithia Water would have effect upon acute attacks? A. It has a very good effect but not sufficient to overcome the immediate violent pains. P. 469: Q. You would not say that it has absolutely good effect do you in cases of Bright's disease? A. *Well, no sir, you know there is no cure for Bright's disease.* Q. And it would not be an absolute cure for any disease, would it? A. It would so act as to more or less overcome the uric acid condition. Q. *My question is, would it be a cure in any form of Bright's disease?* A. *No sir.* P. 471: Q. *You do not consider this water a cure for all rheumatic conditions do you?* A. *No sir.*

P. 473: The Doctor admitted that all the minerals contained in this water have a recognized therapeutic value that he was familiar with the medicinal value of all the salts in Bear Lithia Water, but could not say why the water should have any more beneficial effect in the treatment of the various diseases mentioned by him than any other water.

Dr. John Thelberg, complainant's witness, says that he has used Bear Lithia Water in his practice in uric acid, diathesis in gout and rheumatism. He believes that the salts in combination are of medicinal value, but when asked for a reason could not explain why. P. 480: Would you say that this water has any effect medicinally because of the lithium contained in it? A. I would not say so alone, because of the lithium contained in it, we do not know that it is a fact—you will find that the combination of the water is effective in certain directions, we find that it is effective and that it has a diuretic effect.

Dr. John D. McGill, from whose testimony it is plain to be seen that he is a professional expert, says that Bear Lithia Water is a pure water com-

bined with medicinal substances, such substances as are efficient in the cure and alleviation of disease. In speaking of the use of Londonderry water by him he says (p. 491), A. I did prescribe it to get its lithium effects because it has lithium salts in combination with other salts, just as nature has prescribed it—nature has taken a very small quantity of lithium and placed it in combination with other salts. Why? Because that is nature's formula, nature has placed it in such combination, nature has backed it up with these other salts so that it has made it and makes it efficient in the cure and amelioration of various diseases. (Court, on p. 492): What do you mean by the term nature prescribes? A. Well, we try to copy nature as far as we can in the treatment of disease. Q. You don't mean to give me the impression, do you, that nature has written a particular prescription for that water? A. I think nature has so arranged it, that that water has been produced. How else can we explain it? * * * Q. Is it produced for a particular purpose do you suppose? A. That is dependent on how much you believe in Providence. (Court, p. 499): Q. What in your opinion taking that analysis would you feel would cure incipient Bright's disease? A. There is a possibility that it would assist it, and as far as any remedial measure would go, for the cure of incipient Bright's disease, it is possible I say it would assist it, so that it would disappear, in its incipient stage, of course, it would not cure it when the disease was further established. Q. Would not any pure water have the same effect as this water? A. Not in my opinion because it is not alkaline, *it is neutral.* Q. Whether any alkaline water? A. Possibly another alkaline water might act as well.

Dr. Ernst E. Smith, their last expert, only testified that it is consistent with the mineralization of Bear Lithia Water as revealed by Professor Mallet's

analysis that it possesses medicinal value. Q. What do you mean by consistent, that is a thing I don't quite understand? A. I mean, your Honor, that a water presenting the mineralization that has been presented by this water may possess an ordinary action in those diseases and those diseased conditions, *that is, its mineralization does not preclude its being of medicinal value.*

He said that he considered medical guidance necessary in the treatment of diseases, that it requires a careful examination of each patient to diagnose the cause of his disease and that it would be absolutely essential to do so before recommending the use of a mineral water. It would be improper, he says, for a person to treat himself by the use of a mineral water as it might be dangerous in acute conditions, which are subject to rapid variations (p. 521). On page 526 he says that there is no specific that is of advantage in chronic rheumatism and on page 720 he says that there are various forms of kidney diseases and that he would not contend that these various forms could be cured or are even curable. Q. Do you judge of the therapeutic value of this water from its analysis or from the use of that water? A. Well I have not expressed any actual opinion as to the value of this water, that is as to its composition, I only say that as far as its composition is concerned it is consistent with its being of value in certain conditions.

As opposed to the medical testimony on the part of the complainant, and the admissions by all that the complainant claims its water as a cure for various diseases which are in fact incurable, we have the testimony of Doctors Broderick, McLoughlin and Colver, all physicians of long and reputable standing in Jersey City. They all testify that they have made a careful study of the analysis of Bear Lithia Water and are familiar with the therapeu-

tic and chemical effect of all its ingredients. When questioned as to the various diseases enumerated in complainant's literature, they all testify that Bear Lithia Water is not a cure for any of the diseases which complainant claims its water to be a positive cure for and that it would be no more beneficial in the treatment of any of those diseases than any ordinary pure water.

But it is not necessary for the Court to look to medical testimony alone for guidance, it can take notice of the facts of medical science which are known to intelligent persons, although not educated as physicians and we all know that the complainant cannot cure incurable diseases. We cannot express our views on this subject more aptly than by referring to the language of Vice-Chancellor Bergen in his opinion:

> "The modern law of unfair trade is a perfect "superstructure of the ethical principles found- "ed upon the basis of all ethics * * * hon- "esty. In no class of cases is the rule that he "who comes into a court of equity must do so "with clean hands more rigidly applied."
>
> Hopkins on Trade-marks.

In the Pepper Whiskey case, Krauss vs. Jos. R. Reebles Sons Company, 58 Fed. Rep., 584, complainant advertised its whiskey as a straight whiskey bottled at the distillery. It was, however, adulterated or mixed with a better whiskey, but the Court held that this made no difference, and that inasmuch as complainant's advertisement was untrue in that respect an injunction was refused.

In Manhattan Medicine Co. vs. Wood, 108 U. S., 218, one of the leading cases in this country on this subject, the Court said: "It is not honest to state

that a medicine is manufactured by Moses Atwood, when it is manufactured by the Manhattan Medicine Company," and for this reason refused an injunction.

Starey vs. Chilworth Gunpowder Co., L. R. 242, B. D., 90, resembles the Pepper Whiskey case.

In Reed vs. Connell, 120 Mass., 477, plaintiff sought to establish the right to the words "East Indian" as applied to a remedy. An injunction was refused, because as the Court said, such language led the public to believe that the medicine was used there.

In Alden vs. Cross, 25 Mo. App., 123, a trademark was claimed in the words "fruit vinegar" and it was found that fruit entered into its composition only to an insignificant extent, it was held that the complainant practiced a clear deception and an injunction was refused.

Cited with approval, 187 U. S., 528.

In Prince Mfg. Co. vs. Prince Metallic Paint Co., 125 N. Y., 124, an injunction was refused because there was a misstatement made by the plaintiff as to the place from which the ore was obtained and the Court said:

> "And although the false article is as good "as the true one the privilege of deceiving the "public for their own benefit is not a legitimate "subject of commerce."

An injunction was refused in Pudding vs. Horr, 8 Simmons, 477, because a false statement was made as to the mode in which tea was procured.

In Worden vs. Cal. Fig Syrup Co., 187 U. S., which was brought to enjoin the use of the trademark, or name, "Syrup of Figs," it appeared that

figs were to a limited extent used in the preparation, but Justice Shiras said:

> "Our conclusions are that the name 'Syrup "of Figs' does not, in fact, properly designate "or describe the preparation made and sold by "the California Fig Syrup Co., so as to be sus- "ceptible of appropriation as a trade-mark, "and the marks and names used upon the bot- "tles containing complainant's preparation and "upon the cartons and wrappers containing the "bottles are so plainly deceptive as to deprive 'the complainant of relief by way of injunc- "tion."

In Cal. Fig Syrup Co. vs. Stern, Circuit Court of the United States, Eastern Dist. of Michigan, April 1, 1895, affirmed in 73 Fed., 812, it was held that Syrup of Figs contained but a small proportion of fig juice, which has no considerable laxative properties is deceptive and deprives one so using it to any claim to equitable relief.

The statement on a package "chicorien kaffee aus der fabrik von E. B. Muller & Company in Roulers Belgien" was held to be misleading and unfair, where the facts showed that the chicory root was only harvested in Belgium and the other processes done in the United States.

Scheuer vs. Muller, 74 Fed. Rep., 225.

> "The specific complaint is that the public, "by the latter product, believing the complain- "ants mill is still running at Minneapolis, and "that said product is made by complainant at "said mill. * * * It may be that the rolled "wheat produced at the complainant's mill at "Akron, Ohio, for instance, is just as good as,

"or even better, than that * * * made at "the original mill in Minneapolis. But the "product of the mill of Akron, Ohio, is not the "product of the mill at Minneapolis. A court "of chancery cannot reserve for complainant "the benefit of an impression on the trading "public which no longer has any basis in fact. "I cannot declare a right in the complainant "to have people continue in the belief that the "Pettijohn California Breakfast Food, now "marketed by it, is made at a Minneapolis "mill."

American Cereal Co. vs. Eli Petti John Cereal Co. 72 Fed Rep. 903

In Schmalz vs. Wooley, 12 Dick. Ch., 303, the Court cites with approval the language used in the case of McAndrew vs. Bassett, 4 De G., J. & S., 380:

"The essential ingredients for constituting "an infringement of that right probably would "be found to be no other than these, first, that "the mark has been applied by the plaintiffs "properly—that is to say, that they have not "copied any other person's mark and that the "mark does not involve any false representa- "tion; secondly, that the article so marked is "actually a vendible article in the market, and "thirdly, that the defendants, knowing that "to be so, have imitated the mark for the pur- "pose of passing in the market other articles "of a similar description."

Johnson & Johnson vs. Seabury & Johnson, 61 At. Rep., p. 5.

"But the defendant sets up another defence.

"They recriminate. They charge that what-
"ever reputation the complainant's stove ac-
"quired on the market, has been established by
"falsehood and deception. They allege that the
"stove which the complainant calls 'Portland,'
"and sells under that name, is, in all respects,
"identical with a stove known as the 'Canopy,'
"and which has been on the Newark market
"for a long time, and is now sold by dealers in
"Newark for less money than the complainant
"sells its stove for. The charge, it will be per-
"ceived, is that the complainant is selling its
"stove under a false name. There can be no
"question that a complainant who seeks judi-
"cial protection in a case of this kind, must, to
"succeed, come into Court with clean hands
"and a pure conscience, nor that it will be the
"duty of the Court to refuse him protection
"against the fraud of his rival if it appears
"that he is himself committing a fraud on the
"public. No such thing as an exclusive privi-
"lege to defraud the public is known to the
"law, and no man can successfully assert a
"right to judicial protection for profits derived
"from a business carried on in such manner
"as to deceive and cheat the public."

Van Horn v. Coogan, 7 Dick. Ch., 380.

"Indeed, it may be doubted whether either
"of the parties to this controversy has any pe-
"culiar claim to the favorable consideration
"of a court of equity. They both practice, to
"a certain extent, a deception upon the public.
"The articles sold by each is probably the same.
"It is not claimed to be any more or less than
"Holland gin, well known as an alcoholic bev-
"erage; and yet each party advertises and of-

"fers it for sale as a medicine. The defendants "announce that it is a 'superlative tonic, diur- "etic, anti-dyspeptic and invigorating cordial.' "The plaintiffs call it 'an invigorating tonic "and medicinal beverage.' The defendants as- "sert in their labels that it has extraordinary "medicinal efficacy, and the plaintiffs that 'it "has no equal,' in numerous specified diseases. "Its real name, 'gin,' is not mentioned. It is "called everything else but what it is. It is "not a tonic, or cordial, or medicine of any "kind, within the ordinary meaning of those "words, and the word 'schnapps' itself, what- "ever may be its signification in the country "from which it was imported, is not generally "known to mean gin, and therefore, the repre- "sentations of the parties as to the nature of "the article are calculated to deceive. It may "be a very good article of gin; and gin, like "every other alcoholic beverage may, and prob- "ably does, possess some medicinal properties "which in some cases, properly prescribed and "taken, may be beneficial to the human sys- "tem; but to palm off this or any other liquor "in common use exclusively as a medicine and "a specific for certain diseases, under names "not generally understood by the community, "is a species of fraud which a court of equity "should not be called upon to protect."

Wolfe, *et al.* v. Burke, *et al.*, 56 N. Y. Rep., 115.

The use of the word "Habana" on a label of cigars which had Havana tobacco for a filler only is such a misrepresentation as will defeat the manufacturer's right to protection against infringement of his label.

Solis Cigar Co. vs. Pozo, 16 Colo., 388.

A trade-mark in Spanish of cigars made in New York indicating that they were made in Havana is not one that equity will protect even though it might be easily seen from the revenue stamps on the boxes that the cigars were of domestic manufacture.

Palmer vs. Harris, 60 Pa., 156; 100 Am. Dec., 567.

An advertisement, "The great smallpox and diphtheria cure and preventive. Cures the worst cases without marking," etc., was held to be such a misrepresentation as to require the Court to withhold its aid from the party using it.

Houchens v. Houchens, 95 Md., 37; 51 Atl., 822.

Clearly after reviewing all the facts, the complainant has by its own showing convicted itself of fraudulent conduct.

5. The complainant's business is conducted in violation of public policy.

Our act regulating the practice of medicine and surgery, General Stat., page 2081, Section 5, prescribes certain requirements necessary for the practice of medicine in this State. Section 34 of the same act, provides, that any person shall be regarded as practicing medicine within the meaning of the act, who shall prescribe, direct, recommend, advise, apply, give, or sell for the use of any person or persons, any drug or medicine or other agency or application for the treatment, cure or relief of any bodily injury, infirmity or disease.

In Dr. Miles Medical Company vs. The May Drug Company, No. 610, March Term, 1895, of the Court of Common Pleas, Allegheny Co., Pa., MacFarlane, J., said:

"Aside from the general question of public "policy this State has by its statute regulat- "ing the practice of medicine, attempted to pro- "tect the public against charlatans and quacks "and thus declares its public policy, that no "one may habitually prescribe medicines for "the public without certain qualifications. It "also by these statutes recognizes the science "of medicine and the necessity for a course of "study. The plaintiff may not be liable for "a violation of these acts, but its business is "against public policy. Its 'medical experts' "are attempting to prescribe at long range. The "attempt to diagnose cases of heart disease, for "example, without a physician's examination "cannot be too severely reprobated. We do not "need to be told by medical authority, our own "knowledge informs us that not only a careful "examination but great skill is needed to detect "the numerous valvular and other diseases of "the heart. Further any intelligent, thought- "ful person knows that many of the symptoms "listed by the plaintiff are caused by other dis- "eases or disorders. For one sick to diagnose "his own case is the heighth of folly, yet this "plaintiff advises the poor deluded victim to "pass upon subjects often baffling the highest "medical skill, to settle the nature of the dis- "ease and to then take Dr. Miles' nervine or "heart cure, or some other high-sounding prep- "arations of unknown ingredients, recommend- "ed in glowing testimonials.

"Although these defences were not set up "in the answer, when it appears that the plain- "tiff's business is based upon misrepresenta- "tions, or when it appears, as we find upon ex- "amining the pamphlet sent out with its medi- "cines that it is violating a criminal statute

"and is conducting a business contrary to pub-
"lic policy, it needs no authority that it is the
"duty of the Court to deny it relief."

The complainant, on the label as registered by it, which is the same label used on some of its bottles, gives directions as to the use of its water. Mr. Jennings, its manager, page 148, testified that they receive letters from people making inquiry as to the curative powers and properties of their water and that these letters are answered by a representative of the company, who is not a physician.

Upon all the grounds above stated, we respectfully submit that the defendant is entitled to use its trade-mark and trade name and that the decree of the Court of Chancery, dismissing complainant's bill, should be affirmed.

WELLER & LICHTENSTEIN,
Solicitors for and of Counsel for
Respondent-Defendant.

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In Chancery of New Jersey

BILL OF COMPLAINT.

To His Honor William J. Magie, Chancellor of the State of New Jersey:

Humbly complaining, showeth to your Honor your orator, the Bear Lithia Springs Company, a corporation of New Jersey:

1. Your orator is a corporation organized under the general corporation act of New Jersey, by certificate filed August 16th, 1899. Immediately upon its formation there was transferred to it the possession of certain springs near Elkton, in the State of Virginia, together with the established business of bottling and selling water from said springs, under the name of "Bear Lithia Water," and the trade-mark of a figure of a bear, which had been used for many years in connection with said business, and the right to use the labels and designs which had been theretofore used in connection with the sale of said water; and your orator has ever since its formation carried on said business extensively at Elkton and in the city of New York and elsewhere in the United States, and has also shipped said water to foreign countries, using said trade-mark, labels and designs, and selling the water under the name "Bear Lithia Water." Samples of the labels used by your orator, showing its trade-mark used by it and by the Bear Lithia Water Company, its predecessor, are annexed to and made part of this bill.

2. The sale of water from said springs began many years ago under the name of Bear Spring Water, by the then owners of the springs, namely, Adam Bear and Henry A. Bear, and the water at once acquired a high reputation as a table water, which it still retains. About twenty years ago, it was found by analysis to contain lithia, and the then owners who had acquired from Adam and Henry A. Bear the right to take the water from the springs and to sell it, under the name of Bear Spring Water, changed the name to "Bear Lithia Water," under which name it was thereafter sold by the successive owners, including your orator, of the springs and of the business, trade-mark and labels.

3. In June, 1891, the said title and business were vested in the Bear Lithia Water Company, a corporation of Virginia, by which company the trade-mark which had been for some years theretofore used by the company and those from whom it derived title, was registered June 9th, 1891, in the office of the United States Commissioner of Patents. A copy of the certificate of registery and of the trade-mark is annexed to and forms part of this bill.

3. The said trade-mark, together with the property in said spring and business of the Bear Lithia Water Company, was transferred to your orator, and your orator has ever since conducted the business.

4. Your orator and those from whom it derived title, have liberally advertised said water, and it is a water of high quality and value for table use, and its reputation under the name of Bear Spring Water and Bear Lithia Water was established many years ago, and the trade in it has grown to large dimensions, especially in the city of New York and ad-

joining territory, where the water is regularly delivered to customers by wagons.

5. In or about the year 1894, several persons formed a partnership in the County of Oswego, in the State of New York, under the name of the Pure Water Supply Company, and began to put upon the market bottled table water obtained by them from some source in the County of Oswego, which they called the Great Bear Spring. On the 18th day of April, 1899, some of the proprietors of the business formed a corporation under the general law of New Jersey, by certificate filed on that date under the name of the Great Bear Spring Company, and began to sell bottled water, delivered the same in wagons, in and near the city of New York in competition with your orator. For some years past said company has not been supplying its customers from said spring, but from another spring at a distance therefrom.

6. Soon after the formation of the Pure Water Supply Company, it became known to the Bear Litha Water Company, the predecessor of your orator, that the Pure Water Supply Company was beginning to use some labels with a picture of a bear, and in other respects resembling the labels long previously in use by the Bear Lithia Water Company, and also infringing upon their trade-mark, and they warned the said Pure Water Supply Company to refrain from such use, and thereafter your orator is informed and believes that the use of said labels was for some time discontinued on most, if not all, of the packages of said company, although by the use of the word "Bear" on its bottles, and subsequently by the use of the word "Bear" in the name of the Great Bear Spring Company, and on its bottles, and in the description of its waters, customers of your orator and others were

deceived, and the public purchasing table water were in some cases led to believe that the water sold by the Great Bear Spring Company was that of your orator.

7. During the last few months the Great Bear Spring Company has renewed and increased its use of the representation of a bear upon its labels, and has begun the extensive use of labels resembling your orator's, with the frandulent purpose of obtaining the benefits of the reputation of your orator's water. Samples of the labels recently used on bottles of water sold by them in the city of New York are annexed to and made part of this bill. The Great Bear Spring Company has also recently advertised its water, printing, in connection therewith, the figure of a bear in advertising pamphlets, calendars, and other advertisements, and has caused the figure of a bear to be placed upon the wagons, with the fraudulent purpose of obtaining thereby the benefit of the reputation of your orator's water, and of inducing the public to buy the water sold by said company under the belief that it is the water sold by your orator. Your orator is informed and believes, and therefore charges, that the Great Bear Spring Company is about to place the figure of a bear on the coolers furnished by it to its customers.

8. By the use of the word "Bear," as applied to the water sold by it, and by placing the word "Bear" and the figure of a bear upon the labels, bottles, receptacles and wagons, and in its advertisements, the said Great Bear Spring Company has injured your orator, and is now injuring your orator in its business of selling potable waters, by reason of the fact that the public has been induced to purchase the water of the said company under the belief that it was Bear Lithia Water.

9. Your orator submits that the use of the word

"Bear" as applied to potable water sold by the said Great Bear Spring Company, and the use of the figure of a bear and the word "Bear" upon the labels, bottles, receptacles and wagons, and in its advertising matter, it is unfair competition with your orator. Your orator has requested said Great Bear Spring Company to refrain from such use, and said Great Bear Spring Company has refused to comply with said request, but has continued and increased such use.

All of which matters and things tend to the manifest wrong and injury of your orator.

Forasmuch as your orator has no adequate remedy at law, and can only be relieved by this Honorable Court, to the end, therefore, that the said Great Bear Spring Company may answer, without oath, the premises, and that it may be restrained from the use of the word "Bear" as applied to the water sold by it, either in its corporate name or otherwise, and from a use of the word "Bear," and from the use of the figure of a bear upon the labels, bottles, receptacles, coolers and wagons, and in its advertisements; and that your orator may have such other and further relief in the premises as may be equitable;

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of injunction directed to the said Great Bear Spring Company, and restraining it from the use of the word "Bear" as applied to the waters sold by it, and from the use of the word "Bear," or the use of the figure of a bear upon its labels, bottles, receptacles, wagons or coolers, or either of them, and from said use in its advertisements, and from the use of the word "Bear" and the use of the figure of a bear in any way whatsoever as applied to the advertisement or sale of drinking water, but

also the State's writ of subpoena addressed to the Great Bear Spring Company commanding them, on a certain day and under a certain penalty therein expressed, to appear before your Honor and to answer the premises and abide the order of the Court.

And your orator will ever pray, etc.

COLLINS & CORBIN,
Solicitors of Complainant.

EXHIBIT 1.

No. 19,672.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

This is to certify, That by the records of the United States Patent Office it appears that the Bear Lithia Water Company, of New York, New York, and Bear Lithia Springs near Elkton, Virginia, a corporation organized under the laws of the State of Virginia, did, on the 8th day of April, 1891, deposit in said office for registration facsimiles of a certain trade-mark for mineral water, and the date of the receipt thereof was duly noted and recorded; that on the 8th day of April, 1891, it deposited therewith a statement and a written declaration, under the oath of A. G. Dickinson, an officer of said corporation, copies of all of which are hereto annexed, and the said corporation having made the payment of the fee of twenty-five dollars and complied with the regulations in such cases prescribed by the Commissioner of Patents, and in all other respects complied with an act of Congress approved March 3, 1881, entitled "An act to authorize the

registration of trade-marks and protect the same," the said facsimiles, statement and declaration were duly recorded, and the said trade-mark has been duly registered in the said patent office this 9th day of June, one thousand eight hundred and ninety-one, and protection therefor will remain in force for thirty years from said date, unless sooner terminated in accordance with Section 5 of said act.

In testimony whereof the seal of the Department of the Interior is hereto affixed this ninth day of June, 1891, and of the [SEAL.] Independence of the United States the one hundred and fifteenth. Given under my hand at Washington, D. C.

C. E. MITCHELL,
Commissioner of Patents.

TRADE-MARK.

THE BEAR LITHIA WATER COMPANY,

Mineral Water.

No. 19,672. Registered June 9, 1891.

(Cut attached consists of representation of a black bear standing so as to expose side view with the words "Bear Lithia Water" upon its side, and with a sprig of grass upon the ground in front of it. Underneath the bear are the following words: "Highly recommended for dyspepsia, diseased kidneys, inflammation of the bladder, phosphatic deposits, stone in the bladder, gout and rheumatism, uric acid, urinary troubles generally. Directions—Since no general rule can be laid down which will apply to all cases, we will simply say, that to get at the real benefit to be derived from the use of a mineral water it should be used freely—just as you would use it if you visited the spring. The best general directions we can give are, that you will

(to the exclusion of all other water while using this) drink several glasses during the day and one on retiring at bedtime. Address Bear Lithia Co., Elkton, Rockingham Co., Va.")

UNITED STATES PATENT OFFICE.

THE BEAR LITHIA WATER COMPANY OF NEW YORK, N. Y., AND BEAR LITHIA SPRINGS, NEAR ELKTON, VIRGINIA.

TRADE-MARK FOR MINERAL WATER.

Statement and Declaration of Trade-mark No. 19,672, Registered June 9, 1891.

STATEMENT.

To all whom it may concern:

Be it known, That the Bear Lithia Water Company, a corporation organized under the laws of Virginia and located at Bear Lithia Springs, near Elkton, Virginia, in said State, and doing business with an office in New York, has adopted for its use a trade-mark for mineral water of which the following is a full, clear and exact specification:

The trade-mark of said company consists of a representation of a black bear and the words "Bear Lithia Water" on the side of the bear. These have generally been arranged as shown in the accompanying facsimile, in which the animal named is represented standing on the margin of a spring of water. A few sprigs of grass appear upon the margin of the spring.

The essential features of the trade-mark are the words "Bear Lithia Water" upon the body of the representation of a bear.

This trade-mark has been continuously used in business by said company and those from whom it derived its title since January 1, 1888.

The class of merchandise to which this trade-mark is appropriated is beverages, and the particular description of goods comprised in said class is mineral water. It is usually affixed to bottles and demijohns, and is stenciled on cases and barrels containing this water.

BEAR LITHIA WATER COMPANY,

By

A. G. DICKINSON,
Prest.

Witness:

A. WM. ZEITLAW,
W. T. WARD.

DECLARATION.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.

A. G. DICKINSON, being duly sworn, deposes and says that he is President of the corporation, the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that said corporation has at this time a right to the trade-mark therein described; that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by said corporation in commerce between the United States and foreign nations or Indian tribes, and particularly with the Spanish West Indies, and that the description and

fac-similes presented for record truly representthe trade-mark sought to be registered.

A. G. DICKINSON.

Sworn to before me this 14th day of May, 1891.

[L. S.] JOSEPH E. LABADIE,
Notary Public (174),
N. Y. County.

EXHIBIT 2.

Strap label used by Great Bear Spring Company as a seal to cover the cork or stopper of a bottle, having upon it representation of a white bear, side view.

EXHIBIT 3.

Square yellow label used by the Great Bear Spring Company upon the side of its half gallon bottles, and having upon it an oval picture showing a side view of a white bear upon a cake of ice.

EXHIBIT 4.

Strap label used by Bear Lithia Springs Company, as a seal to cover the cork or stopper of a bottle, having upon it the picture of a black bear.

EXHIBIT 5.

Oval brownish yellow label used by Bear Lithia Springs Company on its bottles of sparkling water, having upon it a picture of a black bear.

EXHIBIT 6.

Yellow and blue label used on the neck of half gallon bottles by the Great Bear Spring Company, and having upon it the pictures of two white bears.

ANSWER.

Great Bear Spring Company, answering the bill of complaint of the above named complainant, says:

1. That it has no knowledge of the transfer to the complainant, immediately upon its formation or at any other time, of certain springs near Elkton, in the State of Virginia, together with the established business of bottling and selling water from said springs, under the name of "Bear Lithia Water," and leaves said complainant to make such proof thereof as it may deem advisable, but that this defendent denies that the trade-mark of a figure of a bear, and the right to the use of certain labels and designs which had heretofore been used in connection with the sale of said water was ever transferred to said complainant; denies that said complainant at the time of the filing of its bill of complaint herein, or at any other time, had any right or authority to use the figure of a bear as a trade-mark in connection with the sale of any kind of water, and denies that it had any right or authority to use the labels and designs which had theretofore been used in connection with the sale of said water.

2. That the trade-mark of a figure of a black bear which was registered by the Bear Lithia Water

Company on the ninth day of June, eighteen hundred and ninety-one, as set forth in complianant's bill, was at the time of filing said bill, and is at the present time, the property of Adam C. Bear and Henry A. Bear, but that this defendant has an equal right to the use of a bear in connection with the sale of water by it; that the complainant never acquired the right to the use of the trade-mark claimed by it in said bill of complaint, and that it has been using said trade-mark in violation of the rights of said Adam C. Bear and Henry A. Bear, and this defendant.

3. That it admits that the sale of the water from said springs begun many years ago under the name of Bear Spring Water by the then owners of said springs and that the actual sale of said water begun in the year eighteen hundred and eighty-six; it denies that said water at once acquired a high reputation as a table water, and says that up to about three or four years ago the water sold by the complainant and its predecessors was sold and advertised solely as a medicinal water, and up to that time was not sold and had acquired no reputation as a table water.

4. That it admits that in the month of June, eighteen hundred and ninety-one, the said business was vested in the Bear Lithia Water Company, a corporation of Virginia, by which company said trade-mark was registered, but denies that the said trade-mark, together with the property in said spring and business of the Bear Lithia Water Company, was transferred to the complainant; that after registering said trade-mark the said Bear Lithia Water Company, by virtue of a certain agreement in writing entered into by it; vested all its right, title and interest in and to said trade-mark in said Adam C. Bear and Henry A. Bear, and that the said

Adam C. and Henry A. Bear have, since the year nineteen hundred, been the owners of the entire interest of the Bear Lithia Water Company therein; that the said complainant never acquired any right either from the said Adam C. Bear and Henry A. Bear, or any other person, to the use of said trade-mark, or the figure of a bear as a trade-mark, in connection with the sale of water; and that spring is not owned by the complainant, but is the property of said Adam C. Bear and some other person, unknown to this defendant.

5. That it admits that the said complainant advertised said water as a water of high quality and value for table use, but says that such advertising has only been done within the last three or four years, but that prior thereto the same had always been advertised as a medicinal water.

6. That it admits that after the formation of the Pure Water Supply Company it used the picture of a bear upon its labels and that the predecessors of the complainant were aware of that fact, but says that the picture of a bear used by the Pure Water Supply Company resembles no label that had been used by the complainant, or its predecessors, or that it in any manner infringed upon any trade-mark; that it is true that a letter was written to the Pure Water Supply Company asking it to refrain from the use of a picture of a bear and that said letter was answered; that the Pure Water Supply Company insisted upon its right to use the picture of a bear in connection with the sale of water by it, and at that time refused and always continued to refuse to discontinue the use of the picture of a bear in connection with the sale of water by it; that on several occasions the complainant and defendant, and its predecessors, have corresponded in reference to the

right to the use of a picture of a bear in connection with the sale of water and that the complainant and defendant have at all times claimed the right to the use of said trade-mark, and that the right of the defendant and its predecessors to the use of a picture of a bear has never been questioned in any court; that it denies that complainant's customers have ever been deceived, or lead to believe, that the water sold by the defendant was that of complainant.

7. That it denies that for the past few months it has renewed or increased its use of the representation of a bear on its labels, or that it has since that time begun the extensive use of labels in any manner resembling those of the complainant, with the fraudulent purpose of obtaining the benefit of the reputation of the complainant's water, and denies that it has in any manner caused the figure of a bear to be used in order to represent its water as the water of the complainant, or that it has used the figure of a bear for the purpose of inducing the public to buy the water sold by it as that of the complainant.

8. That it denies that by the use of the word "Bear" as applied to the water sold by it, and by placing the word "Bear" and the figure of a bear upon its labels, bottles, receptacles and wagons, and in its advertisements, it has injured the complainant in its business of selling potable water, other than such injury as it may have sustained by fair, just and lawful competition, and denies that the word "Bear" as applied to potable water sold by it and the use of a figure of a bear and the word "Bear" upon its labels, bottles, receptacles and wagons, and in its advertising matter, is in unfair competition with the complainant.

9. This defendant further answering says that for more than a century past a certain spring, or

group of springs, in and about Fulton, Oswego County, New York, have been commonly known as "Bear Spring" and "Great Bear Springs;" that in the year eighteen hundred and eighty-four, one Frederick A. Emerick, the President of the defendant company, was instrumental in organizing the Fulton Water Works Company, a corporation of the State of New York, for the purpose of utilizing the waters of said springs as a source of supply to the inhabitants of Fulton; that shortly after its organization said company acquired title to said springs and considerable property surrounding the same, erected a pumping station and actively engaged in the business of supplying the water from said springs through mains to the inhabitants of Fulton, by whom it was purchased and generally known and designated as "Great Bear Spring Water." Shortly after said company began the operation of its business, the water supplied by it became extensively know and its fame spread to adjoining cities; that in the year eighteen hundred and ninety, a co-partnership was formed between various persons and said Frederick A. Emerick, under the name of Pure Water Supply Company, for the purpose of shipping water from said springs for sale in the city of Syracuse and vicinity. Said co-partnership entered into an agreement with the Fulton Water Works Company, whereby it was granted permission to sell Great Bear Spring Water, under that name; that a building was erected by it at Fulton, wherein they conducted the business of bottling and shipping Great Bear Spring Water, from Fulton to Syracuse and vicinity, and advertised Great Bear Spring Water, quite extensively under that name, and also made use of the picture of a white, or polar bear, standing on a cake of ice, as a trade mark, on its letter heads, labels, envelopes and other advertising matter; that said water was at all

times advertised as a pure table water without medicinal qualities, and its fame for purity spread very rapidly and the sale thereof became very large.

10. That in January, eighteen hundred and ninety-four, another co-partnership was formed, of which said Frederick A. Emerick was a member, for the purpose of establishing the increased sale of Great Bear Spring Water, in the city of New York and vicinity; that it obtained permission to use the trade name "Great Bear Spring" from said Fulton Water Works Company, erected a building at No. 648 Henderson street, Jersey City, as a distributing depot, and opened offices in the cities of New York and Brooklyn; that it advertised "Great Bear Spring Water" under that name very extensively, and at all times used the picture of a polar bear on its labels and in connection with its other advertising matter.

11. That on the seventeenth day of September, eighteen hundred and ninety-four, said Fulton Water Works Company filed a statement and declaration in the United States Patent Office, on an application for a trade-mark, in which said statement it is alleged that the trade-mark of said company consists of the words "Great Bear Spring;" that it is further stated therein that these words have been generally used by said company in connection with the picture of a polar bear, standing on a cake of ice, and that the trade-mark, the essential feature of which is the words "Great Bear Spring" has been continuously used in business by said company since November first, eighteen hundred and eighty-five; that said trade-mark was allowed and registered on October twenty-third, eighteen hundred and ninety-four, a copy of which said trade-mark is annexed to defendant's affidavits intended to be used on the hearing for a preliminary injunction in this cause,

and is marked Exhibit "A;" that defendant has been unable to procure another copy, and therefore begs leave that the same may he considered a part hereof.

12. That several other co-partnerships were thereafter formed for the purpose of extending the sale of Great Bear Spring Water, under that name, in various other cities, and on the thirteenth day of May, eighteen hundred and ninety-eight, the Fulton Water Works Company assigned all its right, title and interest in and to said trade-mark and trade name to said co-partnership, and after the organization of the defendant company, on the eighteenth day of April, eighteen hundred and ninety-nine, the business, good will, trade-mark and trade names of said co-partnerships were sold and assigned to this defendant, which is now the exclusive owner thereof.

13. That at the time said co-partnership was formed for the sale of Great Bear Spring Water, in the city of Syracuse and vicinity, the existence of the complainant was unknown to the members of said co-partnership, and that the existence of complainant's predecessors, or the fact that water was being sold by them under the name of "Bear Spring," "Bear Lithia," or any other name, was also unknown to them, and that the first knowledge they obtained that a water under the name of "Bear Lithia Water" was in the market was obtained in the month of April, eighteen hundred and ninety-three.

14. This defendant further answering, says that it and its predecessors have at all times most carefully avoided circulating advertising matter, or using labels of any description whatsoever which would in any manner resemble the advertising

matter and labels used by the complainant, and that the source of supply "Near Fulton, Northern New York," has at all times been made most conspicuous on its labels, circulars, letter heads, cards and bottles, and that the labels and other printed matter used by it has at no time resembled the labels and printed matter used by the complainant.

15. That defendant's predecessors were the originators of the plan of selling spring water in return packages, and developed the trade along the line which the complainant and defendant now pursue; that it and its predecessors had established a large lucrative business in the sale of Great Bear Spring Water throughout the States of New York, Pennsylvania and New Jersey, a great many years before Bear Lithia Water was known to the public, or claimed to be a table water, and that up to about four years ago said water was sold and advertised solely as a medicinal water, at a high price.

16. That the business of this defendant and its predecessors grew at a rapid rate of increase and that such increase has continued without cessation, and at the present time it has in use sixty-one wagons in Greater New York; that at no time since the Pure Water Supply Company commenced business in the city of Syracuse, as aforesaid, has any label or seal used in connection with the sale of Great Bear Spring Water been discontinued, excepting as it was believed a different kind of seal, or label, so far as shape was concerned, should be adopted.

17. This defendant further answering says, that it has large warehouses established at Buffalo, Albany, Jersey City, Harlem, Philadelphia and Washington, and is about to build additional warehouses in Brooklyn and Philadelphia; that it has an immense equipment, including hundreds of thousands of bottles in which its trade-mark has been blown,

and many thousands of cases or crates stenciled in the same manner; that it has in all about one hundred wagons and about one hundred and forty-seven horses; that it owns about two hundred and fifty acres of land surrounding its springs, and buildings erected along the railroads at said springs; that it owns real estate in Buffalo and Philadelphia and holds many leases on warehouses at other points; that the gross amount of work done by it in the past year was in the neighborhood of half a million dollars, and that the gross amount of business done by it for the week ending March, eighth, nineteen hundred and six, was eleven thousand five hundred and five dollars and thirty-one cents, and that the assets of this company exceeds three hundred thousand dollars over and above all its liabilities.

18. This defendant further answering says, that the complainant has at all times and still continues falsely and fraudulently to call the water sold by it a lithia water; that it advertises its said water in the public press, by booklets, on its labels and in various other manners as highly medicinal and as a sure and positive cure for various diseases and ailments; that the claims made by the said complainant that the said water sold by it is of medicinal value; that it is a cure, or useful in the treatment of the diseases and ailments enumerated by it in its advertisements, is false and fraudulent and made for the purpose of inducing the public to purchase the same; that said water so sold by the complainant is of no medicinal value and contains lithium salts of no description which is used medicinally.

19. This defendant further answering says, that the said complainant has at all times and still continues to print upon the labels used by it on its bottles the words "Bottled at the spring," and uses the same words in its booklets and other advertis-

ing matter; that such statements are false and fraudulently made for the purpose of leading the public to believe that the water contained in the bottles sold by the complainant is bottled at the springs at or near Elkton, Virginia, whereas, in truth, the water sold by the complainant and labeled as aforesaid, is bottled in the city of New York, after being shipped from the springs to the city of New York in enameled steel tank cars which are not glass lined.

20. This defendant further answering says, that the business done by it has at all times been at least twenty-five times greater than that done by the complainant.

21. That it has about thirty-five hundred white coolers whereon there appears the front view of a white or polar bear with the words, "Great Bear" written over the picture; that the picture resembles in no way the trade-mark picture of the bear claimed by the complainant, and that said coolers cost in the neighborhood of eleven thousand dollars; that said coolers cannot be replaced now for use the coming season, and that the use of said coolers by it is almost indispensable and will mean the loss of many thousands of dollars and customers.

22. That the picture of a bear such as is claimed by the complainant as a trade-mark has for more than thirty years past been continuously used as a trade-mark in the sale of mineral waters and other merchandise by various persons and corporations other than the complainant and its predecessors.

All which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable

costs and charges in this behalf most wrongfully sustained.

WELLER & LICHTENSTEIN,

Solicitors for Defendant.

Filed March 21, 1906.

REPLICATION.

The complainant joins issue on the answer of the defendant.

COLLINS & CORBIN,

Solicitors of Complainant.

Filed March 21, 1906.

ORDER OF REFERENCE.

It is, on this twenty-third day of March, nineteen hundred and six, on motion of Collins & Corbin, solicitors for and of counsel with the complainant, ordered, that the above stated cause be referred to James J. Bergen, Esquire, one of the Vice Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him, and advise what order or decree should be made therein.

W. J. MAGIE,

C.

We consent to this order.

WELLER & LICHTENSTEIN,

Solicitors of Defendant.

Filed March 24, 1906.

CONCLUSIONS.

Messrs. Collins & Corbin for the Complainant.

Messrs. Weller & Lichtenstein for the Defendant.

Bergen, V. C.

The issue presented in this cause is the alleged infringement by the defendant of compainant's trade name and symbol. The complainant advertises its potable water under the name "Bear Lithia Water" and a symbol which is the representation of a black bear with the words "Bear Lithia Water" printed across its body. It appears that recently some of the advertising matter of the complainant contains figures or representations of various kinds of bears, including one of a polar bear; but such use was made for the purpose of illustrating the printed matter and not with the intention of adopting them as a trade symbol. The symbol used by the complainant upon all of its labels and which it relies upon as its adopted trade mark is a black bear standing upon four feet with the words above mentioned printed across its body. The defendant advertises its potable water and offers it to the public under the name of "Great Bear Spring Water," and is using as a trade symbol the figure of a polar bear standing on a cake of ice in some cases and in others partly on a cake of ice and partly in the water in which the ice is floating. The complainant claims priority in the use of a bear as a symbol and of the word "Bear" as descriptive of the origin and ownership of the articles sold, and charges that in using the polar bear as a symbol and the words "Great Bear Spring" as descriptive, the defendant has created a confusion in the marketing of goods of the respective parties resulting in unfair competition, besides mis-

leading the unwary purchaser, and prays that the defendant be restrained from using the word "Bear" or the figure of a bear of any description in connection with its business. The water sold by the complainant comes from springs at Elkton, Va., located on lands owned by a family named Bear as long ago as 1778, and which at least since 1860 have been known in the neighborhood of Elkton as "Bear Springs," a name undoubtedly accorded because the lands were owned by the Bear family. While the testimony shows that this water was sold prior to 1885, such sales were confined to a very limited area, and were not of sufficient moment to have any weight in settling the merits of this controversy, but in the latter year an analysis of the water was made by Prof. Mallet, of the University of Virginia, which disclosed the presence in the water of twelve one-thousandths of a grain of lithia per gallon, and from that time the name "Bear Lithia Water" was adopted to describe the water, and a copy of the analysis has since then been printed on the labels used by the complainant on one of its packages. The analysis of the water made by the defendant for the purpose of this suit vary so little from that made in 1885, that I am justified in assuming that the earlier analysis was substantially correct. From 1888 the complainant and its predecessors in title have extensively advertised this water as "Bear Lithia Water" in connection with the figure of the black bear above described as a symbol, until it has become well known in the market under that name. The testimony also shows that the defendant did not put its goods on the market under the name and symbol it now uses until after the complainant had to some degree established a name and reputation for its water under the trade name "Bear Lithia Water" in connection with its trade symbol of a black bear with

the name of the water printed across its body.

The defendant's use of its name and symbol, of which the complaint is made, originated as follows: Near Fulton, N. Y., there existed a spring known for many years in that locality as "Great Bear Spring." It was situated in a section of country which for several miles adjacent to the spring contained numerous other springs, some of which were appreciably affected by the drawing of the water from the Great Bear Spring for a public water supply. In 1885 a water company was organized to furnish the city of Fulton with a public water supply, and for that purpose the Great Bear Spring was appropriated by that company and artificially enlarged so that its capacity was increased at the expense of other smaller springs in the immediate vicinity. In 1890 a partnership was formed by persons at Fulton under the name of the "Pure Water Supply Company," which at first purchased water from the Fulton Water Company, taken from the Great Bear Spring, and sold it at Syracuse, N. Y., as a table water. This business so increased that in 1894 the partnership established a branch in Jersey City and began supplying potable water to purchasers in New York as well as in other cities adjacent. The water distributed from Jersey City does not come from the original Great Bear Spring, but from other springs located in the same district or water shed some distance from it. The defendant undertook to show that the spring from which the water they are selling is taken, was known in the neighborhood as one of the Great Bear Springs, but in my opinion the preponderance of the evidence does not favor that claim, and my conclusion is that the water which they are thus selling does not come from the "Great Bear Spring," nor is it one of a group sufficiently near the Great Bear

Spring to be classed as a feeder to that spring, because it has an outlet of its own and has no subterraneous connection with the Great Bear Spring, since it has not been depleted or affected by the demands made upon the greater spring.

On the eighteenth day of April, 1899, the defendant was incorporated under the laws of this State, assuming the name of "Great Bear Spring Company," which corporation succeeded to the property and rights of the Pure Water Supply Company, and has since conducted its business under the new name. The complainant corporation was also incorporated under the laws of this State in August, 1899, as "Bear Lithia Springs Company," succeeding to the corporate rights of the Bear Lithia Water Company, a corporation organized under the laws of Virginia. While the water sold by the defendant was always advertised since 1890 as Great Bear Spring Water, the use of the polar bear as a trade emblem does not appear much earlier than 1894, at least not to an extent sufficient to indicate any intention to appropriate it for such a purpose. The complainant by its bill of complaint prays for an injunction restraining the defendant from using the word "Bear" as a part of its corporate name, from applying the word "Bear" to the water sold by it, and from using the figure of a bear of any description in advertising or selling its table water. The defendant insists that because it was chartered by this State to use its present corporate name, this Court cannot restrain such use. This proposition has not the sanction of the best authority. A corporation may adopt a corporate name if not in conflict with our corporation act, but such adoption gives it no greater right to use it to the injury of another than if an individual should so act. A corporation cannot appropriate the name or trade-

marks of another and thus obtain its business by any simulation or deceit.

C. S. Higgins Co. v. Higgins Soap Co., 144 N. Y., 462.

The first question presented is, has the defendant by the adoption and use of a corporate name, including the word "Bear," and by advertising its goods as "Great Bear Spring Water," unlawfully infringed the rights of the complainant, resulting in unfair competition and probable confusion of business. There is no pretence that the defendant has simulated the labels or packages of the complainant other than in the use of the figure of a Polar Bear. The labels otherwise are so distinct in size, shape and color as to negative any charge of attempted simulation. They are so different that no person of sufficient intelligence to warrant the Court in entertaining his complaint on that score, could possibly mistake the package, if depending upon its appearance, as an assistance to the character of his purchase. The question under this branch of the case is reduced to the charge of unfair competition in business arising from the confusion of the names of the Great Bear Spring Water and Bear Lithia Water. In support of this claim the complainant has shown that it has received from its customers communications through the mails variously addressed to "Great Bear Spring Company," "Great Bear Lithia Water Company," and "Great Bear Spring Water Company," which it insists shows that the confusion among its customers is great, and that the defendant is unfairly benefited at complainant's expense in the competition for business between them.

The evidence in this cause leaves no doubt in my

mind that to a certain extent the use of the word "Bear" in the two names is confusing to some of complainant's customers, and that the similarity between the names of the two corporations is so great that the ordinary purchaser may be easily confused and misled to send his order to the defendant when it was his intention to buy from the complainant, but I am also of the opinion that the confusion shown by the testimony is not, to any appreciable extent, caused by the symbols used by these parties, but is confined entirely to the difficulty in distinguishing between the corporate names, and that the use of the word "Bear" in the two names is the principal cause of the confusion, for it is not shown that such condition existed while the defendant was marketing its water as the "Pure Water Supply Company," but only arose after the defendant had adopted its present corporate title. This title it adopted with full knowledge that the complainant was then in the market selling its water under the title of "Bear Lithia Water Company," and it is to be charged with the knowledge that in adopting a name with the word "Bear" in it, confusion would be likely to arise, especially as the business it was engaged in was substantially the same as that then being carried on by its competitor. It might have continued to carry on its business of selling Great Bear Spring Water, under the name of the "Pure Water Supply Company" and have thus avoided the confusion in business proven to exist in this case. It chose to do otherwise, and the result which it should have apprehended would follow now exists, and if this question alone controlled this cause, the complainant would be entitled to the relief sought on this particular branch of the case.

The next ground of complaint is, that the com-

plainant having adopted as a trade symbol the figure of a black bear, the defendant should be enjoined from using as a trade symbol, the polar bear. I am not disposed to accede to this claim. The animals represented, while of the same genus, are so dissimilar in appearance, and the labels upon which they are used so unlike in color, shape and size, that any one relying upon the label and the symbol, as indicative of the character of the article he desired to purchase, could not be misled, nor could the goods of one of these contestants be sold as the goods of another by an unscrupulous dealer to any person of ordinary intelligence, who relied upon the character of the symbol.

In *Popham vs Cole*, *66 N. Y.*, *69*, it was held that the use of a small, lank and lean wild bear was not an infringement upon the representation used by another of a large, fat, well-conditioned domestic animal of the same genus, the Court saying that they were "so entirely dissimilar that the one can hardly be said to be an imitation of the other, and clearly not a fraudulent or deceptive imitation." In the case now under consideration the complainant's symbol is a black bear with the words "Bear Lithia Water" printed across it; the symbol used by the defendant is a large polar bear, white in color, and unless we are to hold that the use as a symbol, of a black bear, prevents another from using as a symbol any other of the bear genus of an entirely distinct type and color, then the complainant's contention on this point must fail, and in my judgment the use made by the complainant of the black bear with large letters across it, does not give it the exclusive right to the use of every other figure of a bear.

The defendant also interposes as a reason why relief should not be afforded to the complainant,

that it does not come into Court with clean hands. It was shown that on all of the labels used on carbonated water by the complainant, is the statement that the water is "bottled at the springs." This statement was proven to be untrue; the water is not bottled at the springs, but is brought from the springs in large glass lined tank cars to New York city, where it is siphoned by a pipe or hose into a tank in the warehouse and from thence bottled. The complainant seeks to meet this charge by the argument that as they bring the water from the springs in glass lined tanks, that for all essential purposes it is bottled at the springs. This argument does not appeal to me, if there is any merit it having the water put in the bottles at the springs, and that there is merit is to be inferred from the fact that the complainant keeps that statement constantly before the eye of its purchasers. In my judgment this statement is material in inducing the public to purchase what the complainant offers for sale. It may be fanciful, it may be that just as good results are reached by bringing the water in glass lined car tanks and bottling it in New York city, as if it was bottled at the springs, but the pnrpose of the advertisement is to induce the sale of the water, and when the public are buying potable water because they suppose it to be bottled at the source or spring, and thus kept pure and less subject to contamination, and therefore more healthful than that furnished through the ordinary public water supply or other local sources, they have a right to be furnished with what it is represented to them they are buying, and it does not answer the purpose to be told that some other method of bottling is just as good. The complainant during the progress of the trial, when this point was made by the defendant, gave orders to discontinue the use of the labels containing the

false statement, but in my judgment repentance came too late to be entitled to any consideration in the determination of this cause. The condition existed when the bill of complaint was filed, and the discontinuance of the misrepresentation when discovered and exposed is entitled to but little consideration, in determining the bona fides of the complainant's position when it applied for equitable assistance.

The second objection urged by the defendant on this point is, that the complainant has falsely represented to the public the curative property of Bear Lithia Water; and that such representation was known to the complainant to be untrue. The evidence shows beyond doubt that as long ago as 1893 the complainant's circular advertisements and all letterheads used by it contained the following representations referring to Bear Lithia Water: "Nature's own remedy. Cures kidney and bladder troubles, uric acid, gout and rheumatism, phosphoric deposits, inflammation of the bladder, dropsical affections brick-dust deposits, gravel and all forms of dyspepsia." The advertisement on the letterheads included malaria as one of the ills curable by the use of this water, but this statement was not embraced in the circular. The letterheads of the complainant now in use still advertise that the water *cures* not only the foregoing list of ailments, but in addition thereto, "albuminuria, cholera infantum, malaria and all forms of dyspepsia." It is proper to say that all of the complainant's advertisements do not make the broad claim above set out, but the general trend of them all is an appeal to those suffering from the enumerated troubles to use the water with a confident expectation of cure in all cases which are supposed to be derangements likely to yield to lithia when pre-

scribed as a medicine, and the information sought to be conveyed by these advertisements is, that the presence of lithia in the Bear Lithia Water makes it an antidote in cases of that class.

The testimony shows, that the minimum dose of lithia usually prescribed by a reputable physician for the relief of a disease, for which that medicine in its commercial form is usually given, is three grains each, three times a day, and in order to administer a like quantity by using Bear Lithia Water the patient would have to drink at least one thousand gallons of water in twenty-four hours. The testimony of three most reputable physicians called by the defence shows very clearly that the water used as freely as human capacity will permit, not only will not cure, but will not afford any benefit beyond such as would come from the use of any ordinarily pure drinking water. The complainant produced some witnesses as experts who had no experience in the use of the water, but their testimony proves nothing beyond the claim that from a chemical standpoint the analysis was not inconsistent with the possibility that the water might have a beneficial effect upon the diseases it was claimed it would cure. One of the witnesses gave it as his opinion that "its mineralization does not preclude its being of medicinal value," and that the possibility would be enhanced if there was present a recently discovered agent which he described as "radio-activity," but there was no evidence that radio-activity was present in the water. The testimony of these experts as a display of learning is very interesting, but does not meet the question at issue; for none of the experts or physicians called by either side pretend that this water would cure any of the diseases named, except Dr. Smith, who did say that acute rheumatism resulting from a gouty affection might be cured by the use of a

proper remedy, and that such a result might be reasonably expected from the use of this water, but that it would cure rheumatism generally he did not assert.

The credulity of a Court cannot be expected to extend beyond a reasonable limit, and when testimony is given which is opposed to common knowledge and the experience of mankind, as well as reliable medical evidence, hypothetical testimony, which seeks to lead to a contrary result, must be rejected as of no value; it is testimony but not evidence. That this water will not cure the ills it is promised by the complainant that it will, is in accord with the evidence in this cause, and with common sense. There may have been isolated cases where the user supposed his recovery was aided, or perhaps produced by the use of this water, for conditions may have existed in some cases which made it appear to the person benefited that it was the result of the use of this water; but that is the case with every quack medicine, as the numerous testimonials obtainable and published in such cases testify; but that this water will cure all the human ills that it is advertised to do, no sane person can for a moment believe; and assuming, as we must in the absence of contrary evidence, that the managers of the complainant corporation were and are in that class, they were, in advertising for sale their commodity, making a statement which they knew to be false. The question is thus presented: Do such representations justify this Court in refusing the relief asked for? In considering this question I disregard all claims of the complainant to the effect that the defendant has been guilty of like conduct, without passing upon the question whether such conduct has been proven, for the complainant is the supplicant for aid, and it is its position and not that of the defendant which must be established

to be such as to appeal to a Court of conscience. In cases of this class the complainant, to be entitled to equitable relief, must show an honest property right to the trade-mark or label for which he is seeking protection, and the rule is well settled that if the commodity which the complainant is selling under a trade name, trade-mark or symbol is offered to the public under a misrepresentation or falsehood, he has no standing in a Court of Equity, nor can he successfully call upon that Court to aid him in preserving to him the right to deceive the public without interruption.

Manhattan Company v. Wood, 108 U. S., 218

Worden v. Cal. Fig Co., 127 U. S., 516, and case there cited and discussed.

An advertisement, "The great small-pox and diptheria cure and preventive. Cures the worst cases without marking, etc.," was held to be such a misrepresentation as to require the Court to withhold its aid from the party using it.

Houchens v. Houchens, 95 Md., 37, 51; Atl., 822.

The doctrine that the complainant must come into Court for relief in causes of this class with clean hands, and that if any misrepresentation is used by the complainant to enhance the sale of his product, it will induce the Court to withhold its decree, is so well supported by authority that a citation of them is unnecessary.

This complainant has advertised its water as bottled at the spring; the ordinary and proper interpretation of this language and the one intended to be conveyed by the complainant is, that the water in the bottle, upon which the label is pasted, was

put in that bottle at the spring and thus kept free from any possible contamination that might affect it during transportation to the buyer, and he is justified in relying upon that statement, a statement not true and known to the complainant to be false.

In *Kraus v. Peebles & Son, 58 Fed., 585–594,* Judge Taft said: "The manifest advantage, which distillery bottling has in the bottled whiskey trade, arises from the improbability that a distiller bottling whiskey at his own distillery warehouse would bottle any whiskey but that which he has distilled," and he refused the injunction upon the ground that this advertisement was a misrepresentation. The argument used by Judge Taft applies with equal force to water, and bottling it in a warehouse in New York city is not bottling it at a spring.

The declaration that the Bear Lithia Water is a cure for the diseases named is not an expression of opinion as to the possible or hoped-for effect, but a positive statement of a fact which is not and cannot be true. The care with which all Courts have protected the public against imposition, so far as they have had the power, should be rigorously exercised when the misrepresentatation is calculated to mislead those seeking a restoration to health, and any conduct which leads people to believe that a remedy will effect a cure when it is known that it will not, is a menace to the community that cannot be too severely condemned, and the Court should hasten to declare its determination not to aid in its perpetuation.

There will be a decree dismissing the bill of complaint.

Filed May 22, 1906.

FINAL DECREE.

This cause coming on to be heard in the presence of Collins & Corbin, of counsel with the complainant, and Weller & Lichtenstein, of counsel with the defendant, and the pleadings and proofs having been heard and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by it in its bill of complaint,

It is, on this nineteenth day of June, A.D. 1906, by William Magie, Chanceller of the State of New Jersey, ordered, adjudged and decreed, that the complainant's bill be and the same is hereby dismissed with costs.

W. J. MAGIE,
C.

Respectfully advised.

J. J. BERGEN,
V. C.

Filed June 19, 1906.

NOTICE OF APPEAL.

The complainant hereby appeals from the final decree made and filed on this nineteenth day of June, A. D., 1906, in above stated cause, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

COLLINS & CORBIN,
Solicitors for and of Counsel with Complainant.

I conceive there is good cause of appeal in above stated cause.

GILBERT COLLINS,
Of Counsel with Complainant.

(Filed June 19th, 1906.)

PETITION OF APPEAL.

To the Honorable Court of Errors and Appeals in the last resort in all causes:

The petition of Bear Lithia Springs Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the nineteenth day of June, nineteen hundred and six, wherein the said Bear Lithia Springs Company was complainant and the said Great Bear Spring Company was defendant, in this respect, to wit, that the said decree adjudges that the complainant is not entitled to the relief sought and prayed for by it in its bill of complaint, and that the complainant's bill be dismissed with costs, and your petitioner humbly appeals from every part of the decree as aforesaid, upon the ground that the same is erroneous for that the said decree should have adjudged that the complainant was entitled to the relief sought for in the bill of complaint.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

COLLINS & CORBIN,

Solicitors for and of Counsel with Appellant.

(Filed July 14th, 1906.)

In Chancery of New Jersey.

BETWEEN
BEAR LITHIA SPRINGS COMPANY,
Compl't,

and

GREAT BEAR SPRING COMPANY,
Def't.

Transcript of stenographer's notes of evidence, taken in the above entitled case, before his Honor, James J. Bergen, Vice-Chancellor, at the Chancery Chambers, in Jersey City, N. J., on Monday, the sixteenth day of April, 1906, at 10 A. M.

APPEARANCES:

Messrs. COLLINS & CORBIN, for the Complainant.

Messrs. WELLER & LICHTENSTEIN, for the Defendant.

MR. COLLINS—I will first make the offers necessary to show our title.

I offer in evidence agreement between Adam C. Bear and wife, and Henry A. Bear and wife, of the first part, and John F. Jones and Wm. B. Compton. of the second part; said agreement is dated January 1st, 1887.

Marked Exhibit C 1.

Next I offer in evidence the certificate of incorporation of the Bear Lithia Water Co., dated February 20th, 1889.

Marked Exhibit C 2.

Next I offer in evidence an assignment, which is dated June 12th, 1889, between J. R. Jones, of the first part, and Polk Miller and W. Miles Carey, of the second part, whereby Jones assigns to Miller & Carey all his right in that lease.

Marked Exhibit C 3.

Next I offer in evidence an assignment dated June 1st, 1889, whereby Miller & Carey, assignees of Jones; and Compton, the other lessee, transferred all their interest to the Bear Lithia Water Company, a corporation of Virginia.

Marked Exhibit C 4.

Next I offer in evidence a trade-mark, No. 19,672, issued by the United States to the Bear Lithia Water Co. on the 9th of June, 1891.

Marked Exhibit C 4a.

Next I offer in evidence an agreement between the Bears and the Bear Lithia Water Company, whereby is extended the lease for a further period of twenty years, dated the 21st day of November, 1889; this agreement extends the lease from the date of the expiration of the original lease for twenty years, thus the two extensions making a total of forty years, and bringing the expiration of the lease to the first of January, 1927.

Marked Exhibit C 5.

Next I offer in evidence an amendment of the charter of the Bear Lithia Water Company, dated the 26th of November, 1880.

Marked Exhibit C 6.

Next I offer in evidence a deed, dated December 1st, 1899; between Adam C. Bear, of the first part, and the Bear Lithia Water Co., of the second part, granting an exclusive right for a period of thirty years, that is, to the year 1929.

Marked Exhibit C 7.

Next I offer in evidence a deed, dated May 20th, 1903, between John T. Harris, Jr., Special Commissioner for the Supreme Court of Rockingham Co., and Philip B. Jennings, of the City of New York; it was finally given on that date, May 20th, 1903, after the payments had already been made.

Marked Exhibit C 8.

Next I offer in evidence a deed, dated the 22nd day of March, 1906, by Philip P. Jennings and wife, to the Bear Lithia Springs Co., by which he conveys to them the same property.

Marked Exhibit C 9.

Next I offer in evidence an assignment from the Bear Lithia Water Co. to the Bear Lithia Springs Co., dated January 15th, 1899.

Marked Exhibit C 10.

Next I offer in evidence a deed, dated April 7th, 1906, by Adam C. Bear, of the first part, to the Bear Lithia Springs Co.

Marked Exhibit C 11.

MR. LICHTENSTEIN—I beg to make a formal objection to the foregoing offer. I do not object to them as to the form of proof, but I do object to them as to their relevancy.

COURT—The objection will be noted.

CHARLES W. S. TURNER, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. Where do you live?

A. In the County of Loudum, in the State of Virginia.

Q. What is your age?

A. I was born on the 28th of July, 1849.

Q. What is your profession?

A. I am a lawyer by profession, having practiced in my own county in Virginia, as well as in the city of Washington, D. C.

Q. Where were you born?

A. I was born in the county I now live in.

Q. And have you always lived in Virginia?

A. All my life, with the exception of a few months when I was in Texas.

Q. Do you know the County of Rockingham, Va.?

A. I lived there for ten years.

Q. What ten years did you live there?

A. I went there in 1879, and I was away for a few months, when I was in Texas, and afterwards I lived there in the year 1890.

Q. At what town?

A. I lived in a little station called Elkton, and in that vicinity most of my time was spent at the Bear Lithia Spring, as it is now known.

Q. You speak of a spring that is known as the

Bear Lithia Spring; were you acquainted with that during this period you speak of?

A. Yes, sir; my first acquaintance with it was during the time of the war 1861–1865; one of the owners of the place, Col. Jacob Bear, and my father were personal friends, and I visited the place during the time of the war; I cannot say exactly the year it was, but I remember very well the circumstance; I remember the circumstance; that period of my life cannot ever be forgotten by me; I remember it was in the Christmas holidays, and I was there, I remember, for a few days, and I knew the spring then as early as that as the "Bear Spring," that is all; it was the Bear Spring then, and the Bear Spring it has always remained.

Q. Now, you spoke of Jacob Bear; was he the father of Henry and Adam C. Bear?

A. He was the father of Henry and the brother of Adam.

Q. Now, that was just a short visit, then you went again in 1869; you made a short visit then, did you?

A. Oh, I made a short visit, for a day or two, that time, and again in the year 1878; I was in very bad health, and had been so for some time; my condition was induced by the use of limestone water, as I afterwards learned.

Q. What was the disease you suffered from?

A. I had gravel and kidney trouble.

MR. LICHTENSTEIN—I object on the ground that it is not competent to testify as to what he was suffering from.

COURT—I will take it.

Q. Was it nephritic colic?

A. Yes, sir, it was nephritic colic I was suffering from.

Q. Where did you go then?

A. Then, after spending a few months in the County of Flankmeyer with Mr. Rutters, I went back to Stanton, and at that visit I had my home at the house of Mr. Henry A. Bear, with whom I spent the winter of 1878. He usually broke up housekeeping in the summer and went to his place in Rockingham County in Va., and he did so in this instance, and knowing my condition of health he suggested that I should go there; I was in very bad condition of health at that time; I suppose I weighed about eighty or seventy-five pounds; I don't know just exactly, but I do know that I was in very bad health.

Q. What had been your usual weight?

A. 135 or 140 pounds.

Q. What is it now?

A. Now it is 150 pounds.

Q. Go on.

A. I went to Harrisonburg, the nearest place to this place in Rockingham Co., Va., and I was carried across the country for about 20 miles to Mr. Henry Bear's home, which was very near the Bear Lithia Springs. I hardly recollect anything at all about that trip. I was so very weak, my condition was so very poor, that I do not remember very much about it, but I know that in a very few weeks, I cannot tell you how many, but not more than six or seven weeks, I experienced considerable relief. One thing I noticed; I had no recurrence of nephritic colic. While I was there and in and during these six weeks, or about that time, I eliminated some gravel which was small, but from that time on I improved very rapidly, and at the end of the period I mentioned, about six weeks, I weighed one hundred pounds, showing that I had gained considerably.

Q. How long were you at the springs?

A. I was there from some time in June until October or November, I cannot recall which.

Q. Did you or not drink the water from the spring?

A. I drank no other water but that.

Q. Were you cured of your nephritic colic?

A. I went back to Stanton and commenced using the limestone water again, and it was not long before I had trouble again, and then I went back again, in the early part of the year 1880, to the home of Dr. Wolff, and I was again at his house—

Q. Is Dr. Wolff a practicing physician there?

A. Yes, sir; he was a practicing physician there. Well, as I say, I went there in the early part of the year 1880, and I noticed very soon after my arrival and after the use of the water my trouble ceased, and from that time on I had no trouble until the year 1882, when I went, as I have stated, to Texas, and when I was there I had a recurrence of this same trouble and I concluded to return, and I went back again to Dr. Wolff's, and I stayed there until 1900, and from there I went to Fort Royal, Va., and then afterwards returned to the County of Loudoum, where I have since lived.

Q. When did you go to Texas?

A. In 1882 and 1883.

Q. The date you just gave as 1900 you meant should be 1890, did you not?

A. Yes, sir; oh, yes, I mean 1890, not 1900.

Q. And when at Dr. Wolff's did you use this water?

A. Oh, yes, sir; I went for it, and it was brought to me, and I used no other.

Q. Now, I would like to know from you whether, during the time you were there in the vicinity of the springs, you knew whether or not this water was shipped and sold, and if so under what name?

A. The water was shipped; I know that myself,

both after my recovery and before that time. Before that time I was there so very little that I don't know very much about it, but I do know it was shipped after my recovery, and for the period that I have known it, as the "Bear Water." First it was shipped in that way because it had no name, and I had some correspondence with Dr. J. W. Mallet, of the University of Virginia. The result of that correspondence was that I got a quantity of that water; how much now it was I cannot say, but whatever the quantity was that he called for I took it and shipped it to him by express, and I afterwards received from him a letter containing an analysis, which has since passed out of my possession, and I think I handed it to John R. Jones, one of the lessees of the springs. I knew both of the lessees, both Gen. Jones and Mr. Compton, and I think I prepared the first lease for them, and at my suggestion, finding that there was some lithia in it, thought that an appropriate name would be to call it "Bear Lithia Water," and General Jones, I think it was, designed the first that I ever saw, the bear, and had the word "Bear" on the body of the bear.

By the Court.

Q. Did he have the words "Bear Lithia Water" or only just the bear?

A. I don't remember exactly. I remember that he had the bear and the word "Bear," and that is all I recollect now.

By Mr. Collins.

Q. Before this analysis by Prof. John W. Mallet it had been shipped and sold, hadn't it?

A. Yes, sir.

Q. And what was it called?

A. It was always known as "Bear Spring Water."

Q. "Bear Spring Water?"

A. Yes, sir; while living there I had a number of friends who would write to me about the water, and I would turn the letters over to the owners of the springs, sometimes to Henry and sometimes to Adam, and they both I know shipped the water from that place; now that was after the completion of the Shenandoah Railway, and I think that was completed in the year 1881, and I know that at that time, they were shipping the water from that spring.

Q. It was called "The Bear Spring Water" was it?

A. Yes, sir.

Q. How did they ship it away?

A. Usually in demijohns, sometimes in bottles, but they were generally furnished by people who wanted the bottles.

Q. And they sold the water you say?

A. Yes, sir.

Q. And the people who wanted the water would send the vessels for it?

A. Yes, sir. but sometimes they would furnish the vessels themselves; if a person had no vessel, then they would buy a demijohn at the store and send it.

Q. Who did that?

A. Either Adam Bear or Henry Bear, just as the case may be.

Q. When was it you sent the water from analysis to Prof. Mallet?

A. I cannot recall now just when it was exactly, but it was in the 1880's sometime I think.

Q. Can you approximate it?

A. Not without reference to some record.

Q. Have you got the records so that you can refer to them?

A. No, sir; you saw the letter itself.

By Mr. Collins.

Q. A letter from you to Prof. Mallet, dated October 17th, 1885, was it?

A. I suppose that is correct.

Q. 1885 is the time you sent it to him?

A. Yes, sir.

Q. Do you know of that spring which seems to have been owned during the time you were there and taking the water by Henry and Adam Bear, do you know of the entire property including the spring being in the Bear family?

A. Oh, yes, sir.

Q. For a great while?

A. Yes, sir.

Q. How long?

A. Jacob Bear by name, acquired that property from Adam Miller; that was before the formation of the County of Rockingham, which was in the year 1778; I have been tracing the title, and I had to go to the County of Augusta to trace the title.

Q. That was another Bear?

A. That Jacob Bear; it came into the hands of his son Henry, and Henry had two sons, Jacob and Adam, and the farm lines of the two, when divided, ran immediately through this spring, which was about as large as this room, I should think, or it was when I first saw it.

Q. When was that division made?

A. I cannot say now, but it was back in the early forties, I think.

Q. So that it has been in the Bear family in a direct line from away back before 1760?

A. 1778.

Q. Were you cured of this nephritic colic?

A. I never had any trouble since I left there the last time, and I attribute my cure to that.

Q. Did you use anything but that water?

A. No, sir.

Q. You had several recurrences and went back each time, and took the water, and each time you were cured?

A. The only precaution I have taken has been to avoid the use of lime stone water.

Q. After being cured the last time, when was that?

A. The last time I went there to live was in 1879, I went to Texas, and then came back again, and I lived there until 1890; I staid there, and I lived there altogether, in the county; I staid right there for the purpose of having the use of this water; that was my sole purpose, and I did it to my great financial loss.

Q. Then you went home to your own country, where you have lived ever since?

A. Yes, sir, I lived there as a child; I lived in Stanton, Va.; I was born in the County of Loudoun, and my parents went there when I was an infant, to Stanton, and I lived there all my life, until, as I say, I went to the Bear Lithia Springs, and then from there I went to Fort Royal, and then I came back again, and I remained there until I married, and lived there with my family.

Q. There is no lime stone water where you live?

A. No, sir, not where I live.

Q. So that you have not had to have any further attacks of your old trouble?

A. No, sir.

Cross-examination by Mr. Lichtenstein.

Q. Are you related to the Bears in any way?

A. No, sir, except in this way, my brother married Adam Bear's daughter.

Q. And when you first went to the Bear farm, you just went there on a visit as I understand?

A. Yes, sir.

Q. And for no other purpose?

A. No, sir, except to get out into the country.

Q. And you were ailing at that time, when you first went there?

A. Yes, sir, the first visit I made there?

Q. Yes?

A. Oh, no, sir, I was a child then; the first visit was during the Christmas holidays, when I went there and made a visit for a few days there and the second time that I went there, I went there at the instance of Henry Bear; I was nothing but a boy at the time, and I went there to take some drawings to his father; his father had purposed to build a house in Stanton, and I had to go there to take some drawings which my father had prepared, and when I got there, I found that his wife was dead, and I went back in a day or two after that, and the next time that I went there was in the year 1879; that was the time that I was in bad health.

Q. How long did you stay there in 1879?

A. I stayed there in 1879 until the fall, October or November probably.

Q. And you went there simply to get out into the country, as I understood you?

A. Yes, sir, in the first instance.

Q. And were you suffering from your disease at that time?

A. Yes, sir, and had been for a year before that.

Q. And you had been living in a limestone country?

A. Yes, sir.

Q. Now, after you left in the fall of that year, did you go back to your native town?

A. No, sir, my native county was Loudoun, and my residence was Stanton.

Q. You went back to your residence town, didn't you?

A. Yes, sir.

Q. And you had another attack of nephritic colic?

A. I had several of them.

Q. How long after you returned?

A. I cannot say, but probably a month or two; or a month say.

Q. What was there that did not agree with you?

A. That has been my experience unfortunately, I had to give up a large practice to be there.

Q. And then you returned to the country again?

A. I returned to the country, to the Bear Lithia Spring neighborhood.

Q. When you first went to the Bear farm in 1879, you did not know of the curative powers or properties of this water?

A. Except in this way. My father knew Col. Bear, who had met him, and the old gentleman said to my father "send your boy on down to the springs, and it will do him good, I think it will cure him," and so my father sent me.

Q. And at that time, the spring was not known; that is, the time when you went there.

A. Known as a medicinal spring?

Q. Yes?

A. It was only known as the Bear Spring.

Q. Merely because it was on the Bear farm?

A. Yes, sir.

Q. How long did you stay there the second time, when you went back, after 1879?

A. I remained there continuously; except when I was called away professionally, until 1890, except as I say for a few months that I went to Texas.

Q. Now, when was it that you went to Texas, do you recall that?

A. I cannot tell exactly, you young men can re-

member dates and things of that kind better than we can, but I cannot say exactly.

Q. About what year?

A. It was in the year 1880, probably, 1881, 1882, or 1883, I cannot tell exactly, but I can recall this, that it was during the term of Gov. Cameron of Virginia.

Q. So that you remained at the farm about two or three years before you went to Texas?

A. Probably so, I was not there continuously; sometimes when the Bears left they kept the house open only in the summer time; sometimes I boarded up at Dr. Wolff's, and sometimes at other places, near by, but it was always where I could get the continuous use of the water.

Q. But you were using the water for at least two or three years before going to Texas, were you not?

A. Yes, sir.

Q. You were ailing all that time, were you?

A No, sir.

Q. Why did you continue to use the water then?

A. So as to get my health; I was gaining flesh when I went away, and then I suffered again with the same trouble, and when I went back again, I was benefited by the use of the water, and I remained there so as to get the benefit of the water.

Q. You went to Texas, you say?

A. Yes, sir.

Q. How long did you remain there?

A. I came back, either in the fall or winter, I cannot tell exactly; I was not there very long; probably, from August or September to October.

Q. Did you start ailing again in Texas?

A. Yes, sir.

Q. That is what brought you back, was it?

A. Yes, sir.

Q. You had intended to establish yourself in Texas, hadn't you?

A. Yes, sir.

Q. And you only remained in Texas a few months?

A. Yes.

Q. After you returned, did you go right to the farm?

A. No, sir; I went to Dr. Wolff's.

Q. How far from the farm did he live?

A. Probably two miles, or a little over.

Q. Why didn't you go to the farm?

A. Because I stated before, they lived in Stanton during the winter, and in the summer time he occupied the house by the spring; he had two bachelor brothers who were living there and their arrangements were not suitable for me, and so I went and staid then with the bachelor brothers there.

Q. After returning from Texas, how long did you remain there?

A. I remained there until I left permanently; it was in the year 1890; I lived there sixteen years, or nearly so.

Q. Where did you go from there?

A. I went from there to Fort Royal, in Virginia, in the County of Warren, and from there I went back home, where I have lived ever since.

Q. It was in 1885, you say you shipped some water from the spring?

A. Yes, sir, I think about that time.

Q. That year is the date of the certificate?

A. Yes, sir.

Q. Prior to that time, the water had not been shipped from the farm, had it?

A. Oh, yes, sir.

Q. By the Bears themselves?

A. Yes, sir.

Q. That is, some one came there and asked for a bottle of water?

A. And people would write to them from the dis-

tance for it; they would come in from Harrisburg, and different distant quarters for the water, and purchase it and take it away with them, and they also had it sent by the carriers, mail carriers.

Q. Since 1890, have you been ailing at all.

A. No, sir.

Q. What water do you use now.

A. I take good care not to drink limestone water.

Q. What kind of water do you use?

A. I drink Bear Lithia water, and if I cannot get that, I get what is next to it, which is the Golin thaLithia Water, but I do not drink that very much; I drink very little water anyway when away from home, but at my home I have the very finest free stone water.

Q. From your own spring?

A. Yes, sir, from my own spring.

Q. The water that you have been drinking from your spring, how long have you been continuing to use that?

A. For some time.

Q. Several years?

A. Yes, sir; oh, I have been using it ever since I lived these, since I went there in June.

Q. You use that more than you use any other kind of water, do you?

A. Yes, sir.

Q. It is very seldom you get any Bear Lithia Water down there, is it not?

A. I get it at Washington.

Q. And your own spring water seems to prevent the occurrence of this disease you suffer from?

A. Yes, sir.

Re-direct by Mr. Collins.

Q. You have had no trouble since you left in 1890, you say?

A. No, sir.

Q. You gave to Gen. Jones or to Mr. Compton, one or the other of them.

A. I gave to Gen. Jones or Mr. Compton, one or the other or both—interrupted—

Q. You gave a testimonial to the effect of this water upon you, didn't you?

A. Yes, sir; I gave a testimonial.

Q. Which was published.

A. Yes, sir; I gave them a testimonial as to the effect of this water upon me, which testimonial, I understand, was published.

Q. In the booklets of the Bear Lithia Water Co., and the Bear Lithia Springs Co.?

A. Yes, sir.

ROBERT J. RIDDLE, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You were born when?

A. In 1855, the 5th of January.

Q. Where?

A. About one mile south of the Bear Springs, as it was then called.

Q. "Bear Springs" it was called then?

A. Yes, sir.

Q. What is it called now?

A. The "Bear Lithia Springs."

Q. Have you lived there all your life?

A. Yes, sir.

Q. Did you know anything about that spring when a boy?

A. Yes, sir; I used to go to the mill, which was about half a mile below, and I know that it was called the "Bear Springs" at that time, and in fact it has always been understood and known as the

"Bear Springs" by everybody in that locality, and it was known to me as the "Bear Spring."

Q. Did this spring itself have any reputation or notoriety at that time, when you were a boy?

A. Well, no, sir; I cannot swear positively that it did, but it was well known, I know that.

Q. Did you know of water being shipped from it and sold, and if so, when did that begin, to your knowledge?

A. Well, they hauled water away from the spring there in 1876, 1877, 1878 and 1879, and along those years; all that time it was hauled to Harrisonburg—

Q. Harrisonburg is how far away from it?

A. The town is about twenty miles from the spring.

Q. Who hauled it?

A. Alec Walker and Henry Harmon, two colored fellows that carried the mail.

Q. Who did they haul it for?

A. A little bit of the time they hauled it for John Jones and for William B. Compton and for others; I cannot remember just all who.

THE COURT—He says they hauled it to Harrisonburg and sold it at Harrisonburg.

A. Well, now, I don't know that they sold it at Harrisonburg, but they hauled it there; they went and dipped the demijohns in there and filled them and hauled it out to Harrisonburg.

By Mr. Collins.

Q. When was the railroad finished?

A. The railroad was built in 1880 and 1881, and it was finished, I think, in 1881.

Q. And this hauling was done before 1881, was it?

A. Yes, sir; both before and after.

Q. The hauling by the wagon is what I am speaking of?

A. Oh, yes, sir.

Q. That was done before the railroad was completed?

A. Yes, sir.

Q. The railroad runs by the Shenandoah River to Harrisonburg, does it not?

A. No, sir.

Q. Well, the water has to be hauled to Harrisonburg?

A. Yes, sir.

Q. Do you know Mr. Turner, the last witness?

A. Yes, sir.

Q. Do you know when he came over there for his health?

A. Yes, sir; I know it was in 1879.

Q. Was the water hauled away from that spring into Harrisonburg until he came there?

A. There was some hauling away from there before he came there at all.

Q. And afterwards also?

A. Yes, sir.

Q. You say Gen. Jones hauled it away?

A. Yes, sir; Gen. Jones hauled it away, both before he came there and after.

Q. After that they began to do it, did they?

A. Yes, sir.

Q. And the first hauling was by the Bears themselves, was it?

A. I don't know. They hauled it out by the mail wagon; the mail wagon hauled it every time they came in, and went away again with the water. They always got a lot of water and hauled it out to Harrisonburg every time they came in.

Q. Do you remember when Gen. Jones and Mr. Compton began to haul it themselves?

A. No, sir; I cannot fix the time, but I know they did it.

Q. What was done with the water that was hauled to Harrisonburg?

A. I don't know; I suppose—

Q. You don't know?

A. No, sir.

Q. You spoke of the stage hauling it; is that the same colored men that you spoke of before?

A. Yes, sir; that is the same two colored fellows that I spoke about.

Q. They drove the stage, did they?

A. Yes, sir.

Q. How often did they haul it?

A. Well, they would come over three times a week, I should say, and then it got to be so that they had to come over daily, and the water was hauled across over to Harrisonburg every day by the mail wagon in that way.

Q. Well, you say it was afterwards called "Bear Lithia Water?"

A. Yes, sir.

Q. When first was it called that?

A. It was in 1884 or 1885, I cannot state exactly, but I suppose after it was analyzed.

Q. Do you know whether it was sold after that; that is, shipped away and sold?

A. Oh, yes, sir, it was.

Q. Do you know it was?

A. Why, I saw it at the depot; I saw it being loaded, and saw it put in the express cars.

Q. Lots of it, you say?

A. Yes, sir, lots of it.

Q. For how long?

A. Oh, I cannot tell you how long.

Q. Well, did it ever stop?

A. It has never stopped as far as that is concerned.

Q. It has been continuous, has it?

A. Yes, sir; it continues to-day.

Q. Do you know whether Mr. Turner was sick when he came there?

A. Yes.

Q. How sick was he?

A. He was very sick; he was in a very bad condition; young Dr. Wolff used to handle him; he used to help him in and out of the buggy, and in and out of the house, I know.

Q. He had to be helped?

A. Yes, sir.

Cross-examination by Mr. Lichtenstein.

Q. What was your business down there in 1876?

A. I cannot tell you now; I have been working with anyone that I could get a job with; anything I could get to do; first one thing and then another.

By Mr. Collins.

Q. You were twenty-one years old then, were you?

A. Yes, sir.

By Mr. Lichtenstein.

Q. Where were you born?

A. About one mile from this Lithia spring.

Q. There was a number of springs around that neighborhood, were there not?

A. Not so plentiful; there is another spring; there is a spring they call the Kyte Spring, and then there is the Elk Lithia Springs, and I suppose they are about two and a half or three miles apart; we'll say they are three miles apart; there are those three different springs there.

Q. Each spring is known by the name of the farm it is located on?

A. Yes, sir, in a general way, it is, but sometimes it is given another name; I know one spring there they call the Salmon's Spring; that is another spring that is out there.

Q. How do you recall that it was in 1876 you saw water hauled from the farm?

A. From the post-office, I used to go to collect in the store there, and to mind it; it was the post-office that I collected for, and the mail was carried from there, and I used the wagons there every day, some part of the time, and other parts of the time as much as three times a week, would be there.

Q. And you recollect exactly that it was in 1876 that you saw water hauled from the farm, and that they began to do that?

A. No, sir; 1877, 1878 and 1879; I am not positive about 1876, but about that time.

Q. How was it hauled?

A. In demijohns.

Q. It was hauled in demijohns from the spring?

A. They would come to the spring and fill them up, and haul them away.

Q. Who would do that?

A. Ed Walker and Harry, and whoever it was that was bringing the mail wagon, would do it.

Q. And where was it carried to, do you say?

A. It was carried to Harrisonburg; that was their only route; they used to go clear through to Shenandoah City.

WILLIAM J. RUNKLE, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. What is your age?

A. I am sixty-five years old.

Q. Where were you born?

A. Rockingham County, near Elkton, Va.

Q. And lived there all your life?

A. Yes, sir; except for little while that I was away, five or six years, I should say.

Q. Where is your birthplace, as regards the spring, known as the "Bear Lithia Spring?"

A. Three miles or three and a half miles away, probably.

Q. Where you were, the Bear Lithia Spring was three to three and a half miles away?

A. Yes, sir.

Q. So you have always known that spring, have you?

Q. Yes, sir.

Q. Have you held any official position in Virginia?

A. I am a notary public.

Q. What else?

A. A magistrate.

Q. What we call a Justice of the Peace?

A. Yes, sir.

Q. Now, what was that spring called when you were a boy?

A. It was called "Bear Spring."

Q. And since then has it been called the "Bear Lithia Spring?"

A. I don't remember what year, but probably after it was analyzed, but I don't know what year it was analyzed.

Q. Now, prior to that time, and before it was analyzed, do you know of any water being sold from it?

A. I know of water being taken from it; I don't know whether it was sold or not, but I know it was shipped or sold from it.

Q. When did that begin?

A. I was away from 1870 to 1876, and I was back again in 1879—

Q. And they were hauling it then?

A. Yes, sir.

Q. Who was shipping it?

A. Why, I presume—well, I don't know who was shipping it. The mail carrier; I lived on the road, and the mail carrier, he passed by my place very frequently with demijohns or bottles of water.

Q. You don't know who shipped the water then?

A. No, sir.

Q. Who controlled the spring at that time?

A. Mr. Adam Bear and his brother, or rather the heirs of his brother; that was in that year 1879; I don't remember what year he died, old man Jacob, but his heirs probably controlled the spring at that time?

Q. Do you remember when Gen. Jones and Mr. Compton took the lease of it?

A. Yes, sir.

Q. Did you work for them?

A. Yes, sir; I filled the bottles up for them.

Q. You drew the water to put in the bottles?

A. Yes, sir.

Q. When did you begin to work for them?

A. I contracted with them on the 20th day of May, 1886.

Q. Then what was the water called?

A. The water was called at that time "Bear Lithia."

A. How long did you work for them?

A. I worked for them—that was 1886, and I worked for them until June or July 1st, 1888.

Q. During that time, you drew water and bottled it for them?

A. Yes, sir.

Q. And was it shipped?

A. It was shipped, yes, sir.

Q. Was that a business they carried on there?

A. Yes, sir; that was a business they carried on.

Q. Did they sell it.

A. Yes, sir; they sold it; they made a business of it.

Q. How extensive was it?

A. Oh, well, they done a pretty good big business; very good business, sometimes; sometimes they had, or I would ship and haul sometimes for one man as much as five barrels, and five or ten cases of bottles, or something like that.

Q. Did Gen. Jones and Mr. Compton have a trade-mark?

A. Yes, sir.

Q. What was it?

A. The "Bear"—a black bear.

Q. I show you a stencil made out of metal, out of which is cut a bear, with the words "Bear Lithia Water Co.;" do you recognize that?

A. It looks like one that I used to handle, or something like it.

Q. You stenciled that on the wooden cases, did you?

A. Yes, sir; the first I had was just card-board stencil, a little board——

Q. A card-board stencil?

A. Yes, sir.

Q. I show you a glass bottle marked "Bear Lithia Water," and then the figure of the bear blown in the glass, and the words "Elkton, Va.;" do you recognize that as a bottle used by them?

A. Yes, sir; that looks like the bottles; the original, that was first used to put the water in, and this is one of them I presume—I kept this bottle myself——

By Mr. Corbin.

Q. That is not the one?

A. Well, it was a similar one to this.

By Mr. Collins.

Q. Is that one of the old time bottles that Jones and Compton used?

A. Yes, sir.

Q. You say it looks like it?

A. Yes, sir.

Q. Have you any doubt but that it is one of that lot that they had?

A. Oh, no, sir; there is no doubt about that, no doubt about that at all.

Q. When was it they began to stencil on this design on the cases, and when did they begin to get bottles like that, or about like that?

A. I think the first bottles must have come in in June or July of 1886, a few of them, because they could not get as many as they wanted, but after that, in December I think it was, I hauled four or eight cases, I don't remember just exactly, to the springs for them.

Q. Did they ship it in some other way than in these bottles?

A. Yes, sir.

Q. Describe how?

A. They shipped it in demijohns, or in five gallon demijohns.

Q. Five gallon demijohns?

A. Yes, sir, and in carboys of ten gallons.

Q. These demijohns were glass demijohns enclosed in wicker covers, were they?

A. Yes, sir, they were glass demijohns and some of them enclosed in wicker covers, but I also had them in cases, and they gave me the control of it, and I did as I chose about it, while I was working for them, and I had the bottles all cased up, or rather the demijohns all closed up with boards on the sides.

Q. Cased up with boards and then a bear figure stencil on the board cases?

A. Yes, sir.

Q. And you say you had ten gallon carboys?

A. Yes, sir.

Q. And were they cased with boards in the same manner?

A. Yes, sir.

Q. And they were also cased up?

A. Yes, sir, they were also cased up the same as five gallon demijohns.

Q. And they were stenciled in the same manner?

A. Yes, sir, they were stencilled in the same manner; I had some of that water that was shipped in thirty gallon barrels also, and we had also eight or ten mulberry barrels made and we shipped them in them also.

Cross-examination by Mr. Lichtenstein.

Q. You were the first man that did public hauling of this water from the spring?

A. Yes, sir; I think I was, in fact I know I was.

Q. You know you were?

A. Yes, sir, that is for Gen. Jones and Mr. Compton direct; I made the contract with them.

Q. You were in the livery business at that time?

A. Yes, sir, I was in the livery business when I made the contract with them.

Q. And when you started to haul the water they had no mark or figure of a bear on it at all, at first, had they?

A. Well, I don't know whether I shipped any without the figure of the bear on it, I know that we did not since this little card-board stencil was sent to me.

Q. You do not recall having shipped any water extensively before the first stenciling was done?

A. No, sir, I cannot say as to that.

Q. The first stencil was a bear cut out of card-board?

A. Yes, sir.

Q And you put it on in black paint?

A. Yes, sir, we put it on in black paint, lamp black and varnish.

Q. That had no letters on it at all?

A. No, sir, we did not have any letters on it.

Q. After you first used this first stencil card-board, they gave you a stencil with the words "Bear Spring" over the top of it, didn't they?

A. Yes, sir; something like that.

Q. Before you got this particular stencil, didn't you have a stencil with the words "Bear Spring" over the figure of a bear?

A. Yes, sir; I think there was a figure of a beare and then the words "Bear Spring" over it; yes, sir, I think there was.

Q. And then they gave you a stencil with the words "Bear Lithia Water" on the side of the bear, but that was long afterwards, wasn't it?

A. Not very long, well, probably it might have been.

Q. This stencil shown to you by Judge Collins, has the figure of a bear cut into it and the words "Bear Lithia Water Co.?"

A. In the bear?

Q. Yes, the stencil shown you by Judge Collins has the figure of a bear cut into it, with the words "Bear Lithia Water Co." in the bear, has it not?

A. The first we had was run in over the top of the figure of the bear, and that was cut out of card-board, as I have told you.

Q. And do you remember what the words were?

A. "Bear Spring Water," well, now, I am not positive about that, whether it was "Bear Lithia" or "Bear Spring;" I am not sure about that.

Q. Do you recollect when it was you first started to use this stencil with the words "Bear Lithia Water Co." on the side?

A. No, sir, I don't remember that.

Q. This stencil was afterwards changed, and the

words made just "Bear Lithia Water," without the word "Co.," was given to you?

A. The first one was.

Redirect by Mr. Collins.

Q. He asks if this was changed from the "Bear Lithia Water Co.," and the one given to you being the "Bear Lithia Water?"

A. Yes, sir, that was changed; it is on that book there.

Q. I show you a book in which, beginning at page 380, under date 1888, December 14th, "Bear L. Water Co." headed and having "Bear Lithia Water Co." for a number of pages after it, and I ask you if that is in your handwriting?

A. Yes, sir, that is my handwriting; that is my book.

Q. And it shows the shipment from the date first given there, does it?

A. Yes, sir, I shipped before that, but I had a mall book that I carried in my pocket probably; I could not find it up to this time.

Q. An earlier one than this?

A. Yes, sir, it was earlier than this one. I kept an account of everything that was done. They paid me by the case and by the barrel, and by the demijohn, for hauling, and that is, of course, the more I hauled the more I got, and I took all the orders that I could get for them, and a good many of them sent the money direct to me, and here is the way that I kept the account: I would give them credit for what they paid me, and when the other people paid me I gave them credit on the book that that was paid.

Q. Was that your own memorandum or for the company?

A. It is my own memoradum; it is the way that I kept the accounts between them and myself.

Q. Does it show all the water that was shipped, or only as much as you were interested in?

A. This shows the water that I hauled for them. Of course, I hauled some water for them that went to them in Harrisonberg, and some of it was charged and some was not charged on this memorandum book.

Q. This is your memorandum of the charges you made so as to show what would be due you?

A. Yes, sir; that was in 1887 and 1888—nothing in July, 1888.

Further cross-examination by Mr. Lichtenstein.

Q. It also shows the amount of water that you hauled, does it not?

A. It only shows the packages.

Q. And you could tell from your books there what the packages consisted of?

A. Yes, sir.

A. And you did all the hauling for Mr. Jones and Mr. Compton?

A. For them alone, that time, yes.

Mr. Collins—I offer in evidence the stencil which has been shown to the witness.

Marked Exhibit C 12.

Next I offer in evidence the bottle that was shown the witness.

Marked Exhibit C 13.

Next I offer in evidence the book, especially with reference to page 380 of that book.

Marked Exhibit C 14.

Harry M. Dickinson, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You live in Mt. Vernon, New York State?

A. Yes, sir.

Q. And your office is No. 1123 Broadway, New York City?

A. Yes, sir.

Q. What is your business?

A. Real estate.

Q. Were you formerly, or was your father formerly, in the water business?

A. Yes, sir.

Q. When did your father buy into the "Bear Lithia Water Co.?"

A. About 1890; if I am not mistaken, it was somewhere in 1890 or 1891, but the papers will show.

Q. November 23rd, 1890, was it?

A. Yes, sir.

Q. You bought out the Bear Lithia Water Co. stock, did you?

A. I had better explain that perhaps; my father was a very ill man, indeed, and he was in the hands of the doctor, Dr. Van Sandford in Harlem; we lived then on West 124 street, New York City, and as I say my father was under treatment by Dr. Van Sanford; he put him to drinking mineral water, claiming that he had an attack of "Bright's," and my father went down to see Dr. Henry Macquire in Richmond Va.; I am going to tell how we came to have or to get into possession of this water, and Dr. Henry Macguire told him to take—

MR. LICHTENSTEIN—I object to the witness telling anything that anyone told him on the ground that it is hearsay evidence.

COURT—You must understand that you cannot tell what another person told

you; you must only state the facts as you know them.

By Mr. Collins.

Q. Well, under the advice of a doctor, he began to take this water?

A. He began to use the mineral waters, as I have stated, under the advice of Dr. Henry Macquire, and he said the reason—

MR. LICHTENSTEIN—I make the same objection. The witness is attempting to state what was said by Dr. Macquire.

COURT—You are not to tell anything that anyone told you.

WITNESS—Then I shall have to come to a standstill right there, because I can only tell what I have been told.

By Mr. Collins.

Q. Did your father as a result of this visit to Virginia purchase the Bear Lithia Water Co.'s business?

A. Yes, sir.

Q. And that was in 1890 you say?

A. Yes, sir.

Q. How much did he buy?

A. He bought the leases.

Q. Of course, he bought the stock, a controlling interest in the stock, didn't he?

A. Yes, sir.

Q. That is the stock of the Bear Lithia Water Co.?

A. Yes, sir.

Q. You have the stock book of the Lithia Co. here and all the stock is owned by your father?

A. Yes, sir.

Q. Did you become an officer of the company?

A. Secretary and Treasurer.

Q. Of the Bear Lithia Water Co.?

A. Yes, sir.

Q. Did you continue as such until the time that stock was sold to Philip B. Jennings and others?

A. Yes, sir.

Q. Representing what is now the "Bear Lithia Springs Co.?"

A. Yes, sir.

Q. So your concern sold out to Philip B. Jennings and others?

A. Yes, sir.

Q. That was in 1899, was it not?

A. Yes, sir.

Q. From 1890 to 1899 the same time you were there, let us have the history of that business; the stock I see was $50,000, that is the stock of the Bear Lithia Water Co., and that was afterwards increased to $100,000?

A. Yes, sir.

Q. State the history of that business, from the time you and your father took hold of it as controlling the Bear Lithia Water Co., until you sold out to the Jennings party?

A. We first opened an office at 68 Broad Street in New York City, and Mr. Compton remained at the spring as our manager; his duties consisted of shipping the water to us, in barrels, in demijohns and in bottles, and then we shipped that water to Washington and other places in almost every direction, wherever we could obtain orders or wherever orders came from, and sometimes our barrel business was so heavy that we could not get the water fast enough, and we could not control the barrel business, as after shipping the barrels to parties, we found that we could not get them back again, and so after a while because of that circum-

New Jersey State Library

stance, the difficulty of getting the barrels back from the customers, we determined to discontinue the use of barrels in our business, and only to ship the water in bottles, in demijohns and carboys.

Q. In glass?

A. Yes, sir; those bottles which we afterwards issued to our customers, with a seal on the stopper, and we wrote to our different agents and to our customers not to receive those bottles with the seals broken, under any circumstances.

Q. What was there in the way of a trade-mark or a stencil on the barrels or on the packages in which the glass receptacles for the water were contained, or blown into the glass?

A. A black bear.

Q. Do you recognize this bottle as one of those (handing witness a bottle)?

A. This is one of the first bottles that we issued; we improved on this style of bottle very much; we had a better bear made— (Interrupted)

Q. That was the kind of bottle you found in use when you bought into the concern, was it (exhibiting to the witness Exhibit C 13)?

A. Yes, sir.

Q. How were the figures shown on the cases and on the barrels; how were they put on there?

A. They were stencilled figures.

Q. What did that show?

A. A bear and inside of the body of the bear the words "Bear Lithia Water Co." on the body of the bear.

Q. Now, I show you a bottle of the character—

A. They were known to us; yes, sir.

MR. COLLINS—I offer in evidence that bottle and the label upon it.

Marked Exhibit C 15.

Q. Did you about this time begin to bottle a sparkling water?

A. Not immediately, we did not commence to bottle a sparkling water until we employed Mr. Reusch. We employed him and sent him down to the springs.

Q. When was that?

A. I should say that was a couple of years after we first started.

Q. Mr. Reusch was a man who was engaged in the business of bottling and selling sparkling water, was he not?

A. He was a bottler for some other spring, and we advertised for a bottler, and as a result of that advertisement we bought out his plant and we sent him down there, and he was there after about two years.

Q. So that Mr. Reusch afterwards became your employee and you engaged him entirely?

A. Yes, sir.

Q. After you employed Mr. Reusch did you begin the bottling of sparkling waters?

A. Yes, sir.

Q. And did you sell them?

A. Yes, sir.

Q. Did you advertise them?

A. Yes, sir.

Q. As what kind of water?

A. As sparkling water to take the place of table waters, to be used with liquors, &c.

Q. Where did you sell these sparkling table waters?

A. We sold it in Washington, we sold it in New York, in Philadelphia, in Baltimore; in fact, we sold it in all the large cities; we had agents in all the large cities.

Q. Name some of your leading customers?

A. Well, there was Park & Tilford, Acker, Mer-

rill & Condit, A. A. Heroner, Fifth Avenue Hotel, the Windsor Hotel and any number of saloons, and J. S. May, on Broad street; he handled it extensively.

Q. As a table water and as a drinking water was it used in saloons?

A. Yes, sir.

Q. And was it called "Bear?"

A. "Bear Lithia."

Q. Was there any special name except "Bear Lithia?"

A. No, sir; "Bear Lithia Water."

Q. How extensively did Acker, Merrill & Condit and Park & Tilford handle this water?

A. In carload lots always. Sometimes if they needed a little extra water they would ask for a few cases to be shipped to them until we could get a carload to them.

Q. You sold it also in Washington?

A. Yes, sir.

Q. Where else?

A. In North Dakota. We sold it in Atlanta, in Mobile and in a great many other places.

Q. Did you ship any water abroad?

A. Yes, sir; we shipped water to Cuba. We shipped it to Pebro Dustillo, who was our agent in Cuba.

Q. I show you a bottle. Is that a sample of the kind you used, including the label, for the sparkling water?

A. Yes, sir.

MR. COLLINS—I offer in evidence that bottle with the label describing it as a sparkling water.

Marked Exhibit C 16.

Q. The label of that bottle, is it one designed by your company.

A. I think it was designed by ourselves; it is an original label, I think.

Q. Is that what you called a seal (indicating)?

A. It is what we call a cap, that we used on both character of bottles.

Q. The time you took charge of the company of what character was the advertising thatha d been done?

A. As well as I can remember now, except for what local advertising they did, the advertisements were by the way of circulars and leaflets and pictures and such things sent around to the doors and such like as that.

Q. Leaflets?

A. Yes, sir.

Q. What did they have on them?

A. They always had the figure of a bear on them.

Q. What did you use in the way of trade-mark on your letterheads.

A. The figure of a bear and "Bear Lithia," and in some cases the bear had the words "Bear Lithia Water" on the body of the bear, and sometimes we had a label or letterhead with the words "Bear Lithia Water Co." without the figure of the bear.

Q. You had the figure of a bear on your letterheads?

A. Yes, sir.

Q. Did you then extend the advertising?

A. Yes, sir.

Q. What did you adopt?

A. In what way—what papers did we use?

Q. Yes, what kind of advertisements did you use?

A. We had a great big advertisement on the station at the Sixth avenue elevated, two feet wide

and three feet long or three feet six inches long, or something like that; it was quite a large advertisement; it was quite a big thing, and we had that on the elevated stations, and we had advertisements in the elevated cars also, both in New York elevated cars and in the Brooklyn elevated; we had our advertisements appear in a large number of the different magazines, and we also advertised in the various medical journals, and in quite a number of similar papers lying outside of New York, and there was an advertising agency; they would supply us with a list and inform us that we could have so many lines in so many of those papers for so much money a month.

Q. You were about to describe how the advertisements appear on the elevated railway stations?

A. They had a bear and the words "Bear Lithia Water" on it?

Q. And was it advertised in the cars?

A. Yes, sir; it was advertised in the cars very extensively in the usual way, and then, as I said before, it was largely advertised in the different medical journals; it was also advertised in *Leslie's Magazine*, and also in the different albums that were put aboard the various steamers; there were so many that were put aboard every steamer coming into New York, and for that the contract price was, I think, $100.

Q. When did you begin to advertise this water as extensively as you have indicated?

A. Almost ever since we bought the spring.

Q. I show you Frank Leslie's journal for the year 1891 or a copy of it?

A. Yes, sir.

Q. Was that one of your advertisements?

A. Yes, sir; it is found on page 141.

Mr. Collins—I offer in evidence the adver-

tisement of the Bear Lithia Water appearing on page 141 of Frank Leslie's journal.

Marked Exhibit C 17.

Q. Did you advertise in the *Town Topics* in the issue for July 23rd, 1891, and I draw your attention to the fourth page of that issue?

A. Yes, sir; we also advertised in the *Town Topics*.

MR. COLLINS—I offer in evidence the copy of *Town Topics* for July 23d, 1891, with special reference to page 4 of that issue.

Marked Exhibit C 18.

WITNESS—I have a list of the different advertisements and papers that we used at that time for advertising our water.

By Mr. Collins.

Q. Have you a list there of the different advertisements?

A. Yes, sir.

Q. What year or years does it cover?

A. It covers from 1891, 1892, 1893 and 1894. This list was made up of the parties that we paid checks to for advertisements, but it is quite frequent we often paid for advertisements in cash, and we would receive a receipt for the amount paid, and it would be put into the petty cash; of course those are not included in this list; I had entire charge of the cash, and there was no one but my father and myself had anything to do with it whatever, and he authorized me to pay certain bills, and I paid them as they came in.

MR. COLLINS—I offer in evidence this list

of the advertisements, consisting of four sheets, and I ask that each sheet be marked as the same exhibit, C 19.

Q. How much did it cost you on the average?

A. Well, it varied, sometimes it would be more and sometimes it would be less; I know that it has been as high as three or four thousand dollars in one year, and sometimes it would only be about two thousand dollars; it is impossible to give you an exact average.

Q. In what period would that be?

A. In each year, and then we had men that we sent out from hotel to hotel, with samples of the water to introduce it, to introduce this water, and they were paid a salary, and they were allowed so much each to spend at the different bars, and sometimes we would give the proprietor of the place a case of water if he would start the use of it in his place, over the bar; we did everything in that line to bring it to a point so as to be able to obtain their trade.

Q. Did you sell both table and medicinal water?

A. Oh, yes, sir; we always sold both, we never dropped the medicinal water; one of the waters was artificially charged and the other was the natural water.

Q. Now, at the time you took up the business, about what was the magnitude of shipments; how many carloads a month would you ship?

A. Oh, it varied; I cannot answer that question; Mr. Reusch knows exactly what they sent out, and he can answer that question very much better than I can; he knows what it would average better than I do.

Q. Well, he does not know about the time when you first started?

A. No, sir; Mr. Compton kept the books then,

and he would send me down the memorandas; he sent the memoranda down to us.

Q. I thought you might know?

A. No, sir; I do not.

Q. Did the business increase?

A. Yes, sir; it increased all the time.

Q. Did you open a New York office?

A. Yes, sir; we opened a New York office at No. 68 Broad street, and then afterwards at 945 Broadway, New York.

Q. Did you have a storage place?

A. Yes, sir; we stored our water at J. H. Meyer & Co.'s place in Washington Street; they had a whole row of cellars there running under his great big warehouses.

Q. Now, Mr. Dickinson, did you advertise elsewhere than in New York?

A. Oh, yes, sir, all over the country, every which way.

Q. Did you among the other cities that you advertised in, advertise in Syracuse?

A. Yes, sir; we advertised in Syracuse, through a New York agent; he placed our advertisements all through the State.

Q. Did you look for the papers you got from them?

A. Yes, sir.

Q. While examining the Syracuse Standard of March 24th, 1893, which was one of the papers you advertised in, did you discover something there?

A. Yes; I discovered that another water company was using our "Bear" as a trade-mark, and I wrote them a letter the moment I discovered it.

Q. I show you a bound file of the Syracuse Standard, and refer you to page five; it is dated March 24th, 1893, and I wish you would read that advertisement slowly, and allow the stenographer to take it down?

A. There is a black bear at the left of the advertisement standing upon the ground with a few sprigs of grass in front; the bear is standing so that his side is presented, and the words printed are as follows: "Quality and Quantity. It is quality with the bear spring, and quantity with city water. It is softness with bear spring, and hardness with Onandaga water. The famous Great Bear Spring is in Oswego County, which is noted for its fine water supply. The bear Spring is Recommended by doctors in cases of fevers and kidney trouble, and is used with great results; it is the only pure soft water sold in Syracuse; to families in cases, and to hotels, banks and offices, in bulk. Pure Water Supply Co., 259-261 Walton Street, Telephone 180-00."

Q. You find that same advertisement in the issue of March 25th, 1893, do you?

A. Yes, sir.

Q. Also in the issue of March 26th?

A. Yes, sir.

Q. And in the issue of March 28th?

A. Yes, sir.

Q. And also in the issue of March 30th?

A. Yes, sir; whether these papers were sent to us as samples or not, I do not know, but I remember seeing that in writing at that time or about that time; I remember that very well.

Q. When you saw this advertisement which has been called to your attention, what did you do?

A. I wrote a letter at once to the Pure Water Supply Co., and told them that they must stop using that trade-mark, as it was ours, and I sent them the number of our registry.

MR. COLLINS—I call upon the other side to produce the original of that letter so sent.

Letter produced and handed to counsel.

Q. I show you a letter dated April 22, 1893, and will ask you to read it?

A. "To

"Messrs. Pure Water Supply Company,

"No. 259 and 261 Walton street,

"Syracuse, N. Y.

"Gentlemen: We beg to notify you that you are "infringing our *Trade-Mark* and beg that "you will discontinue the use of same at once. "*Declaration of Trade-Mark.* 'That said corpora- "tion has at this time a right the Trade-Mark "therein described, that no other person, firm or "corporation has a right to such use, either in the "identical form, or in any such *near resemblance* "*thereto as might be calculated to deceive*, that is "used by said corporation in commerce between "the United States and foreign Nations, and par- "ticularly with the Spanish West Indies, and that "the description and fac similies presented for "record truly represents the Trade-Mark sought to "registered.' We hope that nothing further will "be necessary, and that you will immediately com- "ply with our request.

"Very truly yours,

"Signed H. M. DICKINSON,

"Sec'y and Treas. Bear Lithia Water Co.

"P. S.—What I refer to is your advertisement "in the Syracuse Standard of March 24th, 1893.

"Yours very truly,

"Signed H. M. DICKINSON,

"Sec'y and Treas. Bear Lithia Water Co.

"Our Register number is 19672."

Letter offered in evidence and marked Exhibit C 20.

Q. Did you get a reply to that?

A. No, sir.

Q, Did the advertisement stop?

A. I did not see it after that time.

Q. Not after this April 22, 1893?

A. No, sir.

Q. At that time there was no company selling water as bear spring water in New York except yourselves, was there?

A. None that I knew of.

Q. Did you ever know any further use of the figure of a bear by any rival company until after you sold out to Mr. Jennings?

A. No, sir.

Q. After you sold out to Mr. Jennings, did you have any occasion to learn whether there had or had not confusion sprung up between the Bear Lithia Water Co. and some other one company?

A. Yes, sir, afterwards.

Q. What did you learn?

A. A great many friends of mine—

Q. When was it?

A. I cannot exactly fix the time, it might have been a year, or might have been two years afterwards; at that time of course I had very little interest in the Bear Lithia Water Co. at all, but as I said before, I was met by firiends of mine, very often on the street, and they said to me, "you are a fool to have sold out," and I said "why."

MR. LICHTENSTEIN—I object to this evidence as being merely hearsay.

MR. COLLINS—I offer to prove by this witness, that people who knew him, who knew of his owning this company, and who knew of the sale of his company to the Jennings Co. came to him.

COURT—You may prove the fact without repeating the conversation. He may say that people came to him and stated that they were confused by the names of these companies; I will receive this evidence but my opinion of it is that it is entirely immaterial.

By Mr. Collins.

Q. Proceed and give the general result?

A. I don't know just how to get at it, but the names of the two water companies were very confusing to them, in so far as they thought they were using the Bear Lithia Water when in fact they were using the Great Bear.

Q. How many such cases were there?

A. Oh, quite a number.

Q. How many?

A. Fifty or sixty different people would come to me, or they would meet me on the street and say that they were confused by the names being so similar, and to bring it down closer, a gentleman, an acquaintance of mine, whom I met on the ferry-boat this morning, he was a friend of mine that I have not seen for a great many years, and he said to me—

MR. LICHTENSTEIN—I object to that.

Objection sustained.

By Mr. Collins.

Q. How extensive a business did you do?

A. Do you want our whole business.

Q. Yes?

A. We considered it a very nice business.

By the Court.

Q. You were the treasurer of the company; you

know the amount involved, and the extent of the business, didn't you?

A. Well, we had about $40,000 of capital invested in it; we had that amount in operation all the time, we were selling the water and sending it out, and advertising and paying the expenses; as I say we had $40,000 of capital invested and using every penny of it.

By Mr. Collins.

Q. Can you tell us about the gross business you did in a year?

A. No, sir; I cannot answer that in any way at all; Mr. Reusch kept the accounts down there; I was more of an outside man; I attended to paying the bills and handling the cash.

Q. You cannot from memory tell us?

A. No, sir.

Cross-examination by Mr. Lichtenstein.

Q. Did you go down to the Bear Farm after your father purchased an interest in the business?

A. I have never been there.

Q. Do you recall what year it was and what months it was that you first started in on Broad street, New York?

A. No, sir; not without some papers or data.

Q. Have you anything from which you can tell when it was you first started in on Broad street?

A. I have no papers at all; my house was burned and I lost everything I had in the world, all my papers and all my documents and everything.

Q. Do you know how long it was after your father opened up in Broad street; how long it was after he purchased the interest in the spring?

A. I will say within six months.

Q. And that was the first time you started in to bring the water to New York?

A. That we originally commenced to bring the water to N. Y.?

Q. Yes?

A. Yes, sir; oh, no, sir, no, I want to change that; before we opened up at Broad street, before we opened the Broad street office, we brought on considerable water here, and sent it around to the different physicians in New York; we did that but we did not sell it then, and I think we did not sell any water until we opened up in Broad street.

Q. When you first started, you were doing a business exclusively with physicians, were you not?

A. No, sir; I don't think so.

Q. That is a fact, is it not?

A. No, sir; we were doing a business at that time with Park & Tilford, and with Mr. May, on Broad street, and a great many other places.

Q. Is it not a fact that you only claimed it as a medicinal water and not as table water at that time?

A. At that time we claimed it as a medicinal water.

Q. And all your correspondence was to that effect?

A. Yes.

Q. And all your advertising matter was to that effect, was it not?

A. Yes, sir; the first part of it.

Q. You advertised quite extensively in the medical journal, didn't you?

A. Yes, sir.

Q. And the advertisements in all the other newspapers and journals, were to the same effect?

A. You are speaking now of the earlier part of our business?

Q. Yes, the earlier part of your business?

A. Yes, sir.

Q. How long did you continue the advertisement

of your water as exclusively medicinal water?

A. Up to the time or about the time that Mr. Reusch came with us?

Q. When was that?

A. About 1892, I think it was.

Q. And you then say you started the sale of your water as a table water?

A. Yes, sir.

Q. Did you advertise in the public or journals to that effect?

A. Yes, sir.

Q. Have you any advertisements in the years 1893, 1894 or 1895?

A. I don't know, I know we sent out men to the hotels—

Q. Wait until the question is finished; have you any advertisements for the years 1893, 1894 or 1895, that you can show to that effect?

A. I have none personally, no, sir.

Q. Do you know of any?

A. No, sir, I do not; I have none; I have no papers of any kind, and have had none, since I went out of the company relating to that business.

Q. Now, when you first started in to carbonate your water, that was at the springs, was it not?

A. Yes, sir.

Q. And Mr. Reusch was in charge of that department?

A. Yes, sir.

Q. How long did you continue to carbonate your water at the springs?

A. Right up to the present time; as long as we had possession of the springs.

Q. Where is Mr. Reusch now, is he in charge of the place at the spring, or is he in New York?

A. I don't know anything about his affairs at the present time.

Q. You say that your company did quite an extensive business?

A. Our company did quite an extensive business, or rather we considered it so.

Q. You had $40,000, involved in the business?

A. Yes.

Q. And your father sold out his interest in the business for $20,000, didn't he?

A. Yes, sir.

Q. And your capitalization was about how much; it was $100,000, was it not?

A. It was $100,000 so far as our stock was concerned.

Q. Have you your books showing the amount of business you did from the time you first started in, until the time your connection with the company ceased?

A. No, sir, I carried them up to my house; all those books were carried up to my house, and they were all completely destroyed when the house was burned in December, some years ago.

Q. You were paying a royalty to the Bears, were you not?

A. Yes.

Q. Can you recall the royalties you paid per year to the Bears?

A. Mr. Reusch paid them.

Q. Can you remember what it was?

A. No, sir.

Q. By the amount of the royalty you paid, it could be figured up just exactly what amount of water you were drawing from the spring, couldn't it?

A. Yes, sir.

Q. How long did you stay at 68 Broad street?

A. My check-book would show exactly when we went from there to 945 Broadway, that is the only way I can fix that.

Q. Cannot you tell in any other way?

A. No, sir; I cannot tell in any other way, my first check-book will tell exactly when it was we changed from Broad street to Broadway.

Q. After you went to Broadway, did you still advertise your water as medicinal water only?

A. No, sir.

Q You had ceased doing that prior to that time, had you?

A. Oh, yes, sir, while we were in Broad street we ceased to do that, but we continued to advertise the water there, as of both kinds.

Q. And this sparkling water that you bottled at the springs, was that the only water that was shipped here in bottles?

A. No, sir.

Q. At that time?

A. Do you mean to say that we were not shipping any other kind of water, but the sparkling water from the spring?

Q. Yes?

A. No, sir, we were shipping both kinds.

Q. When you first started in, you shipped it in barrels, didn't you?

A. Yes, sir.

Q. How long did you continue to ship the water in barrels?

A. Up to the time Mr. Reusch went to the springs.

Q. Then you began to ship the water in bottles and in carboys and in demijohns?

A. Yes, sir, we began then to ship the water in bottles, demijohns and in carboys, also in quarts and pints.

Q. Now, the label on Exhibit C 15, was that designed by you?

A. Yes, sir, it was.

Q. That was the original label that you prepared for use on your bottles of water?

A. No, sir, there was a label prior to that which we used.

Q. Have you a sample of that label?

A. I have absolutely no papers of any kind.

Q. You refer to the labels on the trade-mark, as the first label you used?

A. Yes, sir, that was more like our first label, that was the label that we had when we first got the springs; that came to us with the springs; that is what they were using before we got the springs (witness indicating Exhibit C 4a).

Q. And all of the labels at that time, that were used, was a facesmile of the label which you have just exhibited as is shown on Exhibit C 4a.?

A. Yes, sir, more or less, that was so.

Q. With the descriptive matter under the figure of a bear?

A. Yes, sir.

Q. "Highly recommended for kidney and bladder trouble, &c.?"

A. Yes, sir.

Q. The water that was being shipped to N. Y. in bottles, exclusive of the carbonated water, had the label on it same as is contained in Exhibit C 15, hadn't it?

A. I do not remember any C 15 on it.

Q. The one you have seen, which has been marked Exhibit C 15, is the number we have adopted to identify it by, the water that was being shipped to New York in bottles, exclusive of the carbonated water, had that sort of a label on it?

A. Yes, sir.

Q. You catered only to the drug and grocery business, did you not?

A. You mean in regard to the sparkling water also?

Q. In regard to all the water?

A. No, sir, we catered to every doctor, to every hotel, saloon; it was sold to the saloon to hand out over the bar, and also to drug stores and to doctors; we tried everything that we knew or thought would result in business, we tried to cover the whole ground the best way we knew.

Q. When you moved to Broadway, is it not a fact, that you were only catering to the drug and grocery trade?

A. No, sir, it is not a fact.

Q. I show you a booklet headed "1893?"

A. Yes, sir.

Q. Do you recall that as one of the booklets issued by your company?

A. Yes, sir.

Q. Was that prepared by you?

A. Yes, sir.

Q. Do you recall the firm of Clark and Meader?

A. Yes, sir.

Q. What kind of a concern was that?

A. Either a drug house or a grocery firm, which of the two now, I cannot remember.

Q. At the time this pamphlet was issued you had moved from 68 Broad street, and were then in Broadway, were you not?

A. I suppose so, if you say so, I don't know, I cannot fix it myself.

Q. I call your attention to the front page of that pamphlet, look at it, and refresh your memory from that?

A. Yes, sir; "945 Broadway, New York?"

Q. There is no reference to Broad street on it?

A. No, sir.

Q. Look through this booklet, and state if you can find anything there in which reference to the sale of your water as a table water is mentioned?

A. No, sir, it would not do it, for it was just

about this time that I was sending advertising matter and men to the various hotels and other places in an endeavor to introduce it as a table water.

Q. I refer you to the book, you will find it on page "for sale by druggists and dealers in mineral waters everywhere"—did you advertise in this booklet the sale of water in any other manner?

A. No, sir, we had just begun to put up our sparkling, and to put it on the market, and these were testimonials of the efficiency of the water in sickness.

Mr. LICHTENSTEIN—I ask that that booklet be marked for identification.

Marked D I for identification.

COURT—As I understood you, you had not undertaken to sell it as a table water while you were at 68 Broad street, New York?

A. Yes, sir, I think a little while before we left 68 Broad street, it was, that Mr. Reusch closed the contract with us. I know that we were trying to sell the sparkling water just before we came to 945 Broadway, but that was an experiment; we were not certain that it would take carbonating; some of the other waters we knew would not take the carbonic acid gas, and we were not certain that this water would take the carbonic acid gas; the Buffalo Lithia Water would not take the carbonic acid gas, and there were several others that we knew would not take it, and this as I say was merely experimental, but we found that it would take the gas, and I have some of the original water which was bottled by the Union Bottling Co. in my cellar today.

By Mr. Lichtenstein.

Q. I refer you to the advertisement which reads as follows: "This water was not offered to the general public until 1886,"—and ask you where you got that information from?

A. I got that information from one of the circulars, I suppose, of the old Bear Lithia Co., for this is a copy of that.

Q. I show you a circular, and I ask you whether you recall having issued that one (handing witness paper)?

A. Yes, sir.

Q. That bears the address 945 Broadway, does it not?

A. Yes, sir.

Q. I also call your attention to the language used "we are endeavoring to avoid a retail business, and are recommending all persons using the water to buy it from their grocers or druggists," that is exactly what you were doing at that time, is it not?

A. Yes, sir.

Q. And you were endeavoring to do that?

A. Yes, sir.

Q. Were you at the time this circular was issued, advertising your water as a table water in any manner?

A. Yes, sir.

Q. Is there anything in this circular calling attention to that fact?

A. Those were a lot of old circulars that were originated in 68 Broad street, and they were used to send out to the druggists and others, and they did not refer to the table water, not as a table water, although it had been commenced.

MR. LICHTENSTEIN—I ask that that circular be marked for identification.

Marked D 2 for identification.

Q. At the time you first started in to sell your water do you recall what the prices were?

A. Do you mean the quarts?

Q. Well, take your smallest bottle, or your quart bottle; you were not selling pint bottles when you first started in, were you?

A. Yes, sir, pints and quarts.

Q. Do you recall what your charges were?

A. Yes, $5.50 per case, it seems to me, for the quarts; I cannot remember them all.

By the Court.

Q. You don't know how much?

A. No, sir.

Q. Cannot you approximate it?

A. No, sir; I know we were under-selling the appollinaris water.

By Mr. Lichtenstein.

Q. Look at D 2 for identification and see whether you can refresh your memory from that as to the prices you were charging?

A. For the still water?

Q. Yes, sir, for the still water?

A. Well, they varied—from 60 to 100 cases we charged $2.55 a case; from 40 to 60 cases, $2.60 a case; 20 to 40 cases, $2.65 a case; from 1 to 20 cases, $2.75 a case f. o. b. at the springs; the retail price was $4.25 per case and 40 cents per bottle.

Q. That refers to the pints?

A. No, sir, that refers to the still water, half gallons.

By the Court.

Q. How much in a case?

A. Each bottle was half a gallon.

Q. How many bottles in a case?

A. Twelve bottles in a case, six gallons.

By Mr. Lichtenstein.

Q. How long did you continue the sale of your water at those prices?

A. Up to the time we turned it over to Mr. Jennings.

Q. You never reduced them up to that time?

A. No, sir.

Q. What were you selling your sparkling water at per case?

A. I don't know, sir; I cannot remember unless you have something to refresh my memory with.

Q. I show you a letterhead or part of a letterhead and ask you if that is one you had in use at the time when you were in the business.

A. Yes, sir.

Q. How long did you continue to use that letterhead?

A. Until we got out a later one, a copy of which you probably have; I don't remember.

Q. Do you recall when first you got out a letterhead after the one I show you now?

A. No, sir; my check-book will show you exactly; the check-book is here; it is one of the company's books that I saved.

Q. Were you on Broadway at the time you gave up the use of the old letterhead and got the new letterhead, or were you still in Broad street?

A. I think we were still in Broad street when we got the new one up; those were a lot of old letterheads that we had, and we used them until we could get new ones made.

MR. LICHTENSTEIN—I ask that that letterhead be marked for identification.

Marked D 3 for identification.

Q. Do you recall where you obtained the cut of the bear shown on D 3 for identification?

A. No, sir, I do not.

Q. Did you have charge of the whole of the advertising for the company?

A. No, sir.

Q. Have you any idea where you obtained it?

A. No, sir.

Q. You had stock cuts, did you?

A. Not that I know of—not of that kind; I never saw one; I don't know where it came from, unless it was put on there by the one that got up that temporary paper for us.

Q. Did you give an order to some printer and tell him to put a bear on it?

A. Yes, sir; H. S. Elliot, I think it was.

Q. Where did he do business?

A. He did business on Broad street somewhere.

Q. You didn't give them any cut of a bear to put on your letterhead?

A. No, sir, I don't think so.

Q. They got up a design for you, you think?

A. Yes, sir.

Q. And you simply told them to put a figure of a bear on it?

A. I cannot tell you what I told them now.

Q. When you registered the trade-mark you adopted the cut of the bear that had been put on the letterhead by the public printer, didn't you?

A. No, sir; when we adopted the trade-mark we put on the trade-mark the bear that was in use in Virginia and sent it out there to be registered.

Q. You were in Broadway at the time you advertised in *Leslie's Monthly* and also in the *Town Topics*, were you not?

A. If you say so; I have no way of fixing it.

By the Court.

Q. Well, what do you say?

A. I cannot see it, and I cannot give an answer to the question without seeing it and without knowing what I am doing.

Q. Look at Exhibit C 17 and answer the question?

A. It says 945 Broadway; yes, sir, we were at Broadway then.

Q. You did not there advertise your water as a table water, did you?

A. Yes, sir, we did advertise both sparkling and still water.

Q. Did you advertise it as table water?

A. Yes, sir, sparkling and still.

Q. Does that imply that it was a table water?

A. Yes, sir; that is my construction of it, rather.

Q. It is headed "Nature's Own Remedy—Cures Kidney and Bladder Troubles and Various Other Diseases?"

A. Yes, sir.

Q. The advertisement in *Town Topics*, on the 4th page here; at that time you were also in Broadway?

A. Yes, sir.

Q. You advertised your water in the same manner that you did in *Leslie's Monthly*, didn't you?

A. Yes, sir.

Q. Have you any copies of magazines or medical journals with your ad in them?

A. I have told you that I have not a single solitary paper of any kind.

Q. Except the check-book?

A. No, sir, except the check-book.

By Mr. Lichtenstein.

Q. When did you first hear of the Great Bear Spring Co.?

A. The first time I ever heard of it was when I saw those wagons in Broadway, New York, except when I sent them that letter I have spoken of.

By Mr. Collins.

Q. When was it you saw the wagons in Broadway?

A. About a year or a year and a half after Mr. Jennings took hold of the company.

By Mr. Lichtenstein.

Q. You did not see, or have you examined this book with the Syracuse newspaper, to see whether the Pure Water Supply Co. continued the use of a black bear in the insertion of March 23 to 30th?

A. I have only seen that one book there.

MR. COLLINS—We had none of that March 30th, or at least we did not find any.

MR. CORBIN—None containing that black bear.

By Mr. Lichtenstein.

Q I show you a paper and ask you whether you did not see circulars of this kind distributed through New York long before you sold out to Mr. Jennings (handing witness paper)?

A. I never saw it before in my life, nor anything like it.

Q. You never knew of the Pure Water Supply Co., or the Great Bear Spring Co., doing business in Jersey City, did you?

A. No, sir.

Q. When did you first find out they had a warehouse in Jersey City?

A. I don't know that I have ever known it at all until within the last little while; I have just heard it from hearsay.

Q. The label on the bottle marked Exhibit C 12, do I understand you to say that was a design of a label made by you?

A. H. I. Elliot got those labels up for us.

Q. And prior to the time you sold it to Mr. Jennings were you using a label of this character?

A. Yes, sir.

Q. What kind of bottles did you put up your sparkling water in?

A. Second-hand appollinaris bottles.

Q. How large were they, and what did they contain?

A. They contained water when they were filled.

Q. Well, what quantity of water?

A. Well, they would not hold a quart quite; they are called quarts and pints.

Q. When was it you started in to sell your water as table water?

A. After Mr. Reusch took charge of the spring.

Q. When was it you started in to sell your still water as table water?

A. Always; we always did that, from the very first, as medicinal water, as table water, or to be used in any way you pleased.

Q. When did you first advertise your still water as a table wate firsrt?

A. We commenced to advertise it right from the very beginning—from the very time that we took over the springs.

Q. Have you anything to show in the nature of an advertisement or advertising matter that will show it?

A. I have to answer you again, as have before; no, sir, I have nothing but my check-book left.

Q. Is it not a fact that your business at the time that your father sold out was a failure?

A. A failure?

Q. Yes.

A. No, sir, it never was a failure.

Q. Can you explain how it came that you sold out for $20,000 when the investment was $40,000 that you had in it?

A. I can tell you this, my father's health was such that we did not expect him to live a year.

Q. You were the Secretary and the Treasurer of the concern, were you not?

A. Yes, sir, and I knew as much about water as you do about real estate, and I was very glad, I can assure you, to get rid of it.

Q. Did you start an agency in Washington?

A. Yes, sir.

Q. And didn't you give it up again?

A. No, sir, I did not.

Q. Was it in existence at the time you sold out to Mr. Jennings?

A. It was as far as I remember, I don't remember though.

Redirect by Mr. Collins.

Q. You were asked to read certain things on this paper or leaflet, marked D 1 for indentification; did it also on page 2, have the following in reference to this water: "it is a delightful drinking water and is very desirable as a table water; it is so light and soft, that it can be freely drank without producing, in the most delicate stomach, any feeling of fullness or oppression, but with a feeling of satisfaction and benefit?"

A. I recognize that sentence.

Q. You did advertise it as a table water, did you not?

A. Yes, sir, we always advertised it as a table water.

Q. I will show you a letterhead of Harrisonburg—

A. Oh, yes, sir, these were some old things that

we had and we wanted some, and they were ordered, but we had to get along the best way we could in the meantime, and sent out there to ask them to send us anything they could to get along with, and this was the style of letterhead that they were using there, and they sent it on to us, and we used that while the others were being prepared.

Q. And the ones shown here are identical with the others?

A. Yes, sir.

Letterhead offered in evidence and marked Exhibit C 21.

Q. Did you get out a letterhead that suited you better than this?

A. Yes, sir, that is, the new ones when we got them.

Q. That is the date printed on the letterhead "189–" so it must have been somewhere in the year 1890; now, can you tell us when?

A. That was since we got to Broad street and just as soon as we could get them out; they were made immediately for us.

Q. And that is 945 Broadway, it says?

A. Those were made before we left 68 Broad street; we knew that we were going to leave there and so we had them printed especially in that way, so as to be in readiness for the time when we got to 945 Broadway.

Letterhead offered in evidence and marked Exhibit C 22.

Further cross-examination by Mr. Lichtenstein.

Q. Do you know a printer by the name of Ziegler?

A. No, sir.

Q. Do you recall engaging a printer to design a

particular kind of bear, that you intended to use as a standard trade-mark?

A. No, sir.

Q. Prior to the time you had Exhibit C 12 made, you were using all kinds of bears, you say?

A. We were using some kind of bear, that I can remember; I remember we asked them for something of that kind, and they were sent up there from the old bear spring, that is, they sent us what it was they had in use there, and I think that was before Mr. Reusch went there though.

RECESS.

WILLIAM B. HIGBEE, a witness produced in behalf of the complainant, being duly sworn acording to law, on his oath saith:

Examined by Mr. Collins.

Q. You are in the employ of Acker, Merrill & Condit, the wholesale and retail grocery house in New York City, that we all know, are you not?

A. Yes, sir.

Q. Do you deal in both Great Bear Spring and Bear Lithia Water?

A. Yes, sir; we do now.

Q. When did you take on the Great Bear Spring Water?

A. Only recently.

Q. Do you know whether or not there is any confusion resulting to the public in the similarity of the name in the use of the word "Bear," as applied to the water?

MR. LICHTENSTEIN—I object on the ground that it is too general and calling merely for a conclusion of the witness.

MR. COLLINS—I am only asking for an answer, "yes" or "no."

A. I should say there was; yes, sir.

Q. State the character and how it is manifested?

A. Well, for instance, we have branches of our establishment all over the country, and we have one in particular, that I call to remembrance just now, which is in Flushing; he is a pretty smart sort of a man; originally he had been in the grocery business for many years in Flushing, and he is our representative there; now, every once in a while, he will send in an order for Great Bear Lithia Water, and I will say to the parties, "There is no Great Bear Lithia," and they will say, "Well, his order calls for that, and I will say, "I don't care what his order calls for; he said that he wanted Bear Lithia and that is what he wanted; now, there is no Great Bear Lithia Water, and, of course, I would send him the Bear Lithia Spring Water. Now, I have called his attention to that several times and asked him to be more particular in stating what he wants. We have had a great number of cases just like that from different places, when they were ordering the water; that is, they would order Great Bear Lithia Water when it was Bear Lithia Spring Water they wanted; again, we make out our orders on the different agencies around the town for what they want in the different places; sometimes they will cart it to us, and at other times we would have to cart it ourselves; but in making out the orders for the water there have been mistakes made almost similar to the one that I have just told you about; in fact, I have a knowledge of one instance where we made out an order for Bear Lithia Water and our drivers would stop there in Barclay street and get their water—

MR. LICHTENSTEIN—I object to this evidence as merely hearsay.

By Mr. Collins.

Q. You are in the habit of giving an order slip for the Bear Lithia Water, are you not?

A. Yes, sir.

Q. And the drivers would come back with Great Bear Spring Water?

A. Yes, sir; exactly; that is just what I wanted to say; I just want to show you that our drivers themselves get confused between the two companies, because of the similarity in the names.

Q. That is, the drivers would bring Great Bear Spring Water from Barclay street?

A. Yes, sir.

Q. When the order really was for Bear Lithia Water?

A. Yes, sir.

Q. Barclay street is the office of the Great Bear Spring Co.?

A. Yes, sir.

Q. Where is the office of the Bear Lithia Co.?

A. On New street now.

Q. They are several city blocks apart?

A. Yes, sir; I should say so.

Q. Over a mile, are they not?

A. Yes, sir.

Q. Go on; what other instances can you remember?

Q. We have had other customers; many of them write or send in for Great Bear Lithia Water, and orders would come in to me asking for Great Bear Lithia Water, and I would have to sift the matter out; I would have to look up the previous orders and to see what it was that the people had had before, and I would see that they had had Bear Lithia Water, and of course I would naturally conclude

as they had had Bear Lithia Water before, that it was Bear Lithia Water they wanted again, and we would give them the same as they had before.

Q. You would have to look up the order books, the previous orders, to find out what it was that they had before?

A. Yes, sir.

Q. Now, how frequently has that happened?

A. That manager of ours over in Flushing does that quite frequently; we have written to him several times and explained the thing to him, and yet now, probably once a month, he would make that same mistake.

Q. Now, these others that have sent orders directly; what have you to say about them?

A. Well, different ones at different times would make the same mistake.

Q. How frequently would it happen?

A. Oh, we have had a number of them, and we do of course a very large business, all over the country; we have branches all over the country and this sort of thing is happening all the time.

Q. Can you bring to mind cases where people have ordered water by telephone and it has been impossible to tell what it was they wanted by their first order?

A. Well, no, sir, I do not remember about that; I know we have had orders by telephone and we would have to look up their orders and see on them what it was they had before, and would supply them with the same water again.

Q. How would they express it by telephone?

A. Well, this Flushing man for instance would send us an order by telephone, and by letters as well.

Q. I want the telephone orders?

A. Well, he for instance would order by telephone, sometimes give us such an order like this:

"send me half dozen cases of half gallon Great Bear Lithia Water" and some of the boys around the place, of course, you know in all large places like ours we are changing hands up there very frequently, and oftentimes when we happen to have a new hand and the order comes to him through the telephone, you know they have not all been there quite as long as I have, why they would take the order and when it came to me I would see right away that the order was not right, that there was something wrong about it, as I knew that we did not have any Great Bear Lithia Water.

Q. You speak of certain direct customers who order water by telephone, who would get it ambiguously expressed?

A. Well, within the last year and a half, I am located at 43rd street at the Central warehouse; most of the orders we have coming in there now are wholesale orders that we attend to. We also do a retail business, but not so much now as before, but when at Chambers street, and I was there myself for twenty-five years, we took everything that came in, both wholesale and retail, and anything that came in there; we took that order in there; of course, we have a great deal of confusion there, and we do both a retail and a wholesale business, but now, as I say, I am in the wholesale trade now, and I do not see so many mistakes occurring such as I have spoken of as I did before.

Q. Tell us some of the confusion in the retail trade?

A. Well, I have myself telephoned there and ordered water and the order would come into me as "Manager Water Department;" orders would come in—

Q. How?

A. Orders would come in for "Great Bear Lithia Water," and then of course I would have to ask

about it, and to tell them there was no such thing as the "Great Bear Lithia Water;" that we had "Bear Lithia Water" and we had "Great Bear Spring Water," but that there was no such thing as Great Bear Lithia Water, and I would have to correct them before I could put the order through.

Q. How many years have you been with Acker, Merrill and Condit?

A. I am going on twenty-six years now.

Cross-examination by Mr. Lichtenstein.

Q. What is your business?

A. I have charge of the wines, liquor and mineral water departments.

Q. You have general charge?

A. Yes, sir.

Q. Of the purchase and sale?

A. Well, not so much the purchasing now as formerly; I have charge of and make out my orders and of course some one else does the buying for me.

Q. When in the retail department, did you have charge of the shipments?

A. No, sir, not the shipments of the water; I don't have charge of that.

Q. What was your bnsiness when in the retail department then?

A. I had charge of everything in that line; the orders came to me to be filled.

Q. So that the only confusion that you ever noticed, was that people would ask for Great Bear Lithia instead of Bear Lithia.

A. Well, I don't know just exactly as to that, but I thought that was confusion enough; some people would say—

By the Court.

Q. He asked you if there was any other confusion but that?

A. Well, the party would say, "I want that water with the bear on it." "Which water do you mean," I would ask, and I would tell them "that one water is very much more expensive than the other," and then the customer would say that he was wanting that water that we got before of you.

Q. They would always refer to the Lithia Water they wanted?

A. As a general thing.

Q. And the only difference would be they would add the word "Great?"

A. Very often.

Q. That is, they would say Great Bear Lithia instead of Bear Lithia?

A. Yes, sir.

Q. Now, that has been, you say, within the last year and a half?

A. Oh, that has been for some time before that, too.

Q. How many years back?

A. That I could not say.

Q. Now, you spoke of that man at Flushing, what is his name?

A. Mr. Fergerson.

Q. When did he first write you that he wanted Great Bear Lithia Water?

A. Well, I could not say exactly; we only had that store probably two and one-half or three years.

Q. Well, as far back as two and one-half years ago?

A. Probably two years ago.

Q. Did you write him then that you did not have any "Great Beer Lithia Water?"

A. We wrote him that there was no such thing as "Great Bear Lithia," yes sir.

Q. And did you ship him Bear Lithia?

A. Yes, sir, we shipped him "Bear Lithia Water."

Q. And then after you wrote him, he still continued to call it "Great Bear Lithia," did he?

A. He did at times; yes, sir.

Q. Do you mean to say that after you had shown him his misiake, he would still continue to call for "Great Bear Lithia," when it was "Bear Lithia" water he wanted?

A. Well, I would not say it was him, exactly; it might have been him, or it might have been one of his clerks, but it came from that store, anyhow.

Q. Have you any part of that correspondence?

A. I have not.

Q. Is it at your place of business?

A. That I could not say.

Q. Now, is the water sent to your warehouse by the "Bear Lithia Co.," or do you have to send for it yourselves?

A. Of late we get our water through Lueties Brothers.

Q. Is that an agent of the Bear Lithia Co.?

A. I don't know, sir.

A. Don't you order directly from the Bear Lithia Springs Co.?

A. We used to, up to within the last year.

Q. When you were in the habit of ordering directly, did they ship it you?

A. They sent it to us.

Q. That is your usual custom?

A. Yes, sir; and if we were in a big hurry for it, of course then we would send for it ourselves.

Q. Since you have been dealing with the Great Bear Spring Co., did they ship the water to you direct, or did you send for it?

A. We did both.

Q. Now, in sending your drivers for water, did you make out slips for them?

A. Surely.

Q. Showing just exactly where they had to go for it?

A. Not always.

Q. Would you give them an address?

A. Sometimes.

Q. And you put on it, if you wanted Bear Lithia Water, you would put on it the "Bear Lithia Co.'s" name?

A. The "Bear Lithia," yes, sir.

Q. And sometimes they would come back with Great Bear Spring Water, you say?

A. I have known it to be the case.

Q. Do you know whether you made a mistake or whether it was them made the mistake?

A. I know they made the mistake.

Q. Do you know whether you had the address on the paper correctly or not, or whether you had it on the paper at all or not?

A. Not always, because our men have been in the habit of going to both places, and like everybody else they get confused sometimes and get to the wrong place.

Q. What kind of bottles of water do you handle of the "Bear Lithia Co.?"

A. Half gallon, gallons, pints and quarts.

Q. Do you handle any of this sparkling water?

A. Yes, sir.

Q. Do you handle any water put up in bottles such as has been marked Exhibit C 15, I now show you?

A. This is the same as we handle.

Q. Did you have anything to do with the purchase of the water from the Bear Lithia Co.?

A. Not at the present.

Q. Do you know the price at which they sell their water to you?

A. They do not sell any of it to us at the present time.

Q. Do you know whether there is a difference in the price charged for the water put up in the bottle with the label on such as Exhibit C 15, from the other half gallon bottles or not?

A. I cannot tell you anything about that at the present time.

Q. Do you know anything about that?

A. No, sir.

Q. The water that is shipped to you from the "Great Bear Spring Co.," the half gallon bottles, there is no figure of a bear on those bottles, is there?

A. I should say there was.

Q. Whereabouts—what kind of a label has it on?

A. Well, nothing like that.

Q. Nothing like this?

A. No, sir, it has a bear on it.

Q. It has a bear on it?

A. Yes, sir.

Q. What kind of a bear is it?

A. It is a sort of greenish label.

By the Court.

Q. Is this Mr. Ferguson an independent dealer, or is he one of your agents?

A. He owned the store at one time, and we bought him out, and he now manages that store for us.

Q. For you?

A. Yes, sir.

By Mr. Lichtenstein.

Q. You are speaking now of the half gallon bottles?

A. Yes, sir, of the half gallon bottles.

Q. Of the "Great Bear Spring Co.?"

A. Yes, sir, of the Great Bear Spring Co.

Q. I show you a green bottle, is that the kind of bottle you handle?

A. Yes, sir.

Q. Do you also handle the white bottle that I now show you?

A. No, sir.

Q. What kind of bottles do the Bear Lithia Co. put up that you sell?

A. Well, the bottle that you have there, the two of them, they are the pints—they are similar.

Q. Exhibit C 16 which I now show you?

A. Yes, sir.

Q. And Exhibit C 15 which has been shown you?

A. Yes, sir, and the pints also, splits and the five gallon demijohns.

Q. And these pint bottles you speak of, are they the same color and shape as the one marked Exhibit C 16?

A. They are what we call in the trade an appollinaris bottle.

Q. And the carboy like that (showing witness a carboy)?

A. Yes, sir.

Q. I show you a bottle and ask you whether that is the bottle you call a "split" bottle?

A. Yes, sir.

Q. How much does that contain, half a pint?

A. Yes, sir, it is supposed to be about half a pint.

Q. And the next size is a pint bottle?

A. Yes, sir.

Q. Of the same color?

A. Yes, sir.

Q. About twice the size?

A. Yes, sir.

Q. And then you have the color just shown in Exhibit C 16?

A. Yes, sir.

Q. There is no question about your being able to distinguish one bottle from the other, is there?

A. Hardly.

Q. Hardly?

A. Hardly.

Q. If you knew the label of the Bear Lithia Co., you could not mistake it for the label of the Great Bear Spring Co., yourself, I am speaking of now?

A. I could not, no, sir.

Q. You could not?

A. No, sir.

Q. You never bought any sparkling water from the Great Bear Spring Co.

A. No, sir.

Q. And how long have you been buying the still water from the Great Bear Spring Co.?

A. I could not say exactly; probably a couple of years; it cannot be that long; at one time we did not stock the water at all; we only got it when we had orders for it.

Redirect by Mr. Collins.

Q. You say you would have no trouble in distinguishing the labels; how about people not familiar with them, using one at one time and another at another time, only casually?

A. Well, the misleading thing about it is the "bear." Some people look at the bear, they want the bear water; there is an advertisement, and there is a bear.

Q. Seeing the bear on the label, would they think that that is what they wanted?

A. Yes, sir.

Q. Do you furnish Great Bear Spring Water to Mr. Ferguson?

A. We do, yes, sir.

Q. He keeps both kinds, does he?

A. Yes, sir.

Further cross-examination by Mr. Lichtenstein.

Q. The label used by the Bear Lithia Co. has always been that of a black bear, has it not?

A. As far as I know.

Q. And the figure of a bear used by the Great Bear Spring Co. has always been that of a white bear; has it not?

A. Maybe similar to that, as far as I know (indicating).

Q. If your customer had been in the habit ofbuying Bear Lithia Water and had looked at the label and had seen that it was a black bear, do you mean to say that if that was impressed on his mind, that he could possibly make a mistake in buying Great Bear Spring Water instead of Bear Lithia Water?

A. Well, I don't know; if they were foolish enough, probably to ship him that; sometimes people want water very badly, and they might happen to keep it.

Q. You do not understand my question; my question was, if a person had been in the habit of buying Bear Lithia Water and had at any time bought Bear Lithia Water and had looked at the label and seen that it was a black bear, do you mean to say that you could have sold him Great Bear Spring Water and his having made a mistake in taking it?

A. Hardly.

Q. Hardly?

A. Hardly.

Q. In the sale of water people are rather cautious, are they not, as to what they buy?

A. As a general thing, they ask for what they want.

Q. They ask for what they want, do they?

A. Yes, sir.

Q. And where they want Lithia Water they would take no other kind of water, will they?

A. Well, sometimes they will; sometimes they really do not know what the word Lithia means: a great many people do not.

Q. If they ask particularly for Lithia Water, they would not take an ordinary drinking water for it, would they?

A. I don't know about that; a person might come in and say, "I want Lithia Water for table water," and we would give them appollinaris water.

Q. They would not ask for any particular brand of water, then?

A. No, sir; they would not.

Q. They would just come in and ask for Lithia Water?

A. Yes, sir.

Q. In the sale of Bear Lithia Water did you ever call attention to the fact that the water was bottled at the springs?

MR. COLLINS—I object to that as not cross-examination.

Question withdrawn.

Further redirect by Mr. Collins.

Q. Sparkling water is a table water, is it not?

A. Yes, sir.

Q. And, in that respect, when people are asking for table water, it makes no difference whether the word Lithia is on it or not, does it?

A. Well, if a person comes in and say, "I want Bear Lithia, or Appollinaris Water," we would give them what they asked for.

Q. Of course, you give them what they ask for, but you would occasionally ask the question, would you not, if the whole stress would be on the word "Lithia;" I want to know if that is the whole

question in regard to the water; there is such a thing as Londonderry Lithia Water, is there not?

A. Well, we only have about ninety different kinds of water.

Q. I mean when a person is buying a table water for drinking purposes, does the fact of the word "Lithia" in the name of it cut any figure in it?

A. It does for some people; they want the Lithia.

Q. And others not?

A. And others not.

Further cross-examination by Mr. Lichtenstein.

Q. This con'us'on which you say has arisen in the trade you don't know, of your own knowledge, whether the people bought the water—that is, these customers you speak of, whether they had ever seen the label used by the Bear Lithia Co.; do you, of your own knowledge?

A. My own knowledge, no, sir.

Q. Do you mean to say that no medicinal water is sparkling, and if the word sparkling is used, it means a table water?

A. I do not say that at all, because I believe there are medicinal properties in a water that is sparkling.

Redirect by Mr. Collins.

Q. A sparkling water is a table water?

A. Yes, sir, a sparkling water is a table water exactly, but there is medicinal properties in these sparkling waters.

Q. So they may, nevertheless, have medicinal properties?

A. Yes, sir.

Further cross-examination by Mr. Lichtenstein.

Q. And it is equally medicinal water even if it is sparkling?

A. Yes, sir.
Q. That makes no difference to it?
A. No, sir.

By Mr. Collins.

Q. As a rule, it is still water that is used medicinally?
A. Yes, sir.

WILLIAM J. RUNKLE, recalled in behalf of the complainant, saith:

Examined by Mr. Collins.

Q. I show you now a stencil which I did not have when you were on the stand before; do you recognize that as the first stencil they had. I mean after the card-board—that was the first metallic stencil?
A. This looks like the one they sent me; the first one after the paper one.
Q. After the paper one?
A. Yes, sir.

MR. COLLINS—I offer that stencil in evidence. Marked Exhibit C 23.

WITNESS—That was after I had the first one which was only a little piece of paper or card-board, and the words were cut into it like this something; it was just something like that (indicating).

MR. LICHTENSTEIN—I ask that these bottles to which I have referred should be marked for identification; that is the split and the green bottle.

Split marked D 4 for identification.

The green bottle marked D 5 for identification.

CHARLES REUSCH, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. Where do you live?

A. New York City.

Q. What is your age?

A. 44; going on 44.

Q. It appears already that your business was bought, and you were employed by the Bear Lithia Co., when Col. Dickinson took hold of it?

A. Yes, sir.

Q. What had been your business prior to that?

A. I had been in the water business.

Q. On your own account?

A. Yes, sir.

Q. And selling it?

A. Yes, sir.

Q. In New York City?

A. No, sir; in Stoneham, Mass.

Q. Had you any business in New York?

A. Yes, sir.

Q. When was it you made your business arrangements with the Bear Lithia Water Co., under Col. Dickinson's regime?

A. I think it was in February, 1891, and it might have been January, 1891.

Q. In 1891 you sold out your plant to that company?

A. Yes, sir.

Q. What did you do. Did you go with them on a salary?

A. Yes, sir.

Q. In what capacity?

A. As superintendent and manager at the springs.

Q. At Elkton?

A. Yes, sir.

Q. What was that spring known as then?

A. That spring was then known as the Bear Lithia Spring.

Q. And have you continued in the employ of that company and its successors, the Bear Lithia Springs Co., ever since?

A. Yes, sir.

Q. You are now located in New York?

A. Yes, sir.

Q. When did you come to New York?

A. In 1902; in April.

Q. So that from 1891 to April, 1902, you were at the springs in Virginia?

A. At Elkton, in Virginia, at the springs; yes, sir.

Q. During all that time since 1891, down to the present time, have the two companies respectively used on their stationary, merchandise, advertisements, any trade signs or marks?

A. Yes, sir.

Q. What was its character?

A. A "bear."

Q. You made an affidavit which has been annexed to the bill of complaint?

A. Yes, sir.

Q. In this cause?

A. Yes, sir.

Q. And you have seen exhibits that were annexed to the bill of complaint, that show the figure of a bear—you saw them?

A. Yes, sir.

Q. They are correct?

A. Yes, sir.

Q. They were the labels and advertisements of of the company?

A. Yes, sir.

Q. What do they use on their stationary?

A. I think there was one time where there was just a plain heading, but that was only for a short time, and then there was a "bear" on it, and after that always, there was a bear on it—prior to that time, that is prior to that one—

Q. How prominent has this picture of a bear been on their labels advertisements and stationary?

A. Very prominent.

Q. Generally these pictures have been of a black bear, but they have also used other sorts of bears; I will show you one (handing witness paper)?

A. Yes, sir.

Q. Various sorts of bears?

A. Yes, sir.

Q. In different position?

A. Yes, sir.

Q. Do you know when that one was issued; that is, the one before you (handing witness paper)?

A. Three or four years ago; three years ago, I think.

Q. About fours years ago?

A. Three years ago.

Q. That is high grade work, artistic pictures?

A. Certainly, no doubt.

MR. COLLINS—I offer that circular showing all kinds of bears, in evidence.

Marked Exhibit C 24.

Q. Before you went with the Dickinson's in 1891, had you seen the advertisement of the Bear Lithia Water Co.?

A. Yes, sir.

Q. When first that you remember?

A. I have seen circulars, no end of them—I used to be with P. Sherer & Co.; that is, in 1886, 1887, and 1888.

Q. Where was that?

A. 11 Barclay street.

Q. And you saw no end of circulars of the Bear Lithia Water?

A. Yes, sir; I saw no end of the circulars of the Bear Lithia Water, and the bottles too.

Q. And they had this name "Bear Lithia Water" and the picture of a bear?

A. Yes, sir.

Q. Do you remember seeing any advertisements, large advertisements at the elevated stations, and similar ones in the cars?

A. Well, I was in Virginia at the time, but I have on my occasional trips east seen them on the elevated railroad; yes, sir.

Q. How far back?

A. I think it was in 1892 and 1893, or something like that.

Q. What was the water called from this spring; what name did the water have, ever since you have know it?

A. The "Bear Lithia Spring."

Q. "Bear Lithia?"

A. Yes, sir.

Q. Bear Lithia Water itself?

A. Yes, sir; the Bear Lithia Water itself.

Q. Did you have your attention called to a concern which called itself the Pure Water Supply Co., that was engaged in selling water that they called the Great Bear Spring Water, and when first did you have your attention called to that?

A. In 1893, I happened to come up here, and I saw that up at Sherer's place; I saw some demijohns of water there, and I asked what they were and I understand that they were calling them—

MR. COLLINS—What he told you is not proper, for you to state—you cannot tell us that.

Q. You saw it—and how was it called?

A. I don't recollect exactly what they called it, but I know it was called "Bear Water," and I notified Mr. Dickinson on by letter at once, and afterwards I found out that Mr. Dickinson had written to the parties.

Q. That has been proved already?

A. Yes, sir.

Q. Did you see a picture of a bear in some advertisements of that concern?

A. Only lately.

Q. Only lately?

A. Yes, sir, only lately.

Q. In 1893, did you or not see it, and then afterwards observe that it was not any longer used?

MR. LICHTENSTEIN—I object to that as leading. Question withdrawn.

By Mr. Collins.

Q. Did you notice the picture of a bear at all in or about the year 1893?

A No, sir.

Q. You say you called Col. Dickinson's attention to something and he wrote a letter?

A. Yes, sir.

Q. What was it you called his attention to?

A. That there was another bear water on the market, using our name, which I thought nobody had a right to do.

Q. Did you call his attention to any use of the trade-mark of the bear?

A. No, sir; I would have done so I suppose, but I did not notice any.

Q. When was the first that you saw that this company that sold water, whatever its name may have been, then that sold the Great Bear Spring Water, were using the figure of a bear?

A. Well, to my recollection it is only within the last two years that I noticed it, and I seen it in a Twenty-thirdstreet car.

Q. A cross-town car?

A. Yes, sir; a cross-town car—no, sir, hold on; it was a Thirty-fourth street car.

Q. Was it a bear like that shown on Exhibit C 3 (handing witness paper)?

A. That is the one.

Q. That you saw in the cars?

A. Yes, sir.

Q. Is this it (handing witness paper)?

A. Yes, sir, that is the one.

MR. COLLINS—I offer this picture of a bear in evidence.

Marked Exhibit C 25.

Q. Was this use of the bear and advertisements extensive at first after you saw it?

A. This one?

Q. Any one—was it extensively used at first, by them?

A. I think they just commenced gradually, slowly.

Q. Gradually?

A. Yes, sir; I think they just commenced gradually.

Q. Is it now being extensively used?

A. They use it on all their bottles, I understand; I have seen them on their packages in Barclay street; the water they cart around; that is, half gallon bottles; I have seen it also in their five gallon demijohns, with a ribbon on the neck of the bottles, with a bear on it.

Q. How long has that being going on, that you noticed it so extensively?

A. That it seems to me about a year or something like that, that I have noticed it.

Q. Have you seen it printed on a panel for use on a wagon?

A. I saw it on a panel to be used on a wagon or as a model to be painted on a wagon.

Q. When was that?

A. I cannot give you the date exactly, but I think it was in February, I saw it in Pyle's wagon shop on Communipaw avenue.

Q. Pyle's on the hill, here in Jersey City?

A. Yes, sir, Pyles wagon shop here in Communipaw avenue, Jersey City.

Q. And you went in there and saw this panel in there ready to put on the wagon.

A. I went in there and asked them what wagon work they were doing, and if they had painted any bear on any wagon—

Q. And you saw it there?

A. Yes, sir.

Q. And had you seen it before that?

A. No, sir.

Q. You called attention to the label on the neck of a bottle in your affidavit in the bill, Exhibit 6?

A. Yes, sir.

Q. You say your attention had been called to that label that day?

A. Yes, sir.

Q. Is that a fact?

A. Yes, sir.

Q. Before that had any such label, until then, a day or two before that, had you seen any label of that kind on their bottles?

A. No, sir.

Q. State what use you made of the figure of a bear in connection with the shipment of the Bear Lithia Water from the Spring; begin at the beginning?

A. What use they made of the trade-mark?

Q. What figure of a bear and the name Bear Lithia Water?

A. We had all our boxes printed in Richmond, and any thing we afterwards manufactured therre from plain wood, we stamped with a bear, everything.

Q. And this brand made for you in Richmond, used that bear also?

A. Yes, sir.

Q. Go on?

A. Anything that went out of the place, was stenciled—now, for instance our demijohns were sealed with sealing-wax at first, and then we used this stamp to put this impression of a bear on it.

Q. Show that to his Honor—you say that was already there when you went down there?

A. There was a lot of dilapidated ones when I went there first, and I had them made from it just like it.

MR. COLLINS—I offer in evidence that stamp to which the witness has referred.

Marked Exhibit C 26.

By Mr. Collins.

Q. That would make an impression in the soft sealing-wax?

A. Yes, sir.

Q. Was there a change made after that in regard to the sealing of the bottle?

A. After that we put a ribbon with a trade-mark over the neck of the bottle.

Q. And applied what?

A. The very first bottles that I finished down there I used this figure that was put on there just on top of the cork, you know, when we got there; that is, when Col. Dickinson had charge of it; then

we got this round yellow one with a ribbon to it (indicating); the trade-mark that is on the top of that bottle there now; just the same as that.

Q. On the bottle marked Exhibit C 15?

A. Yes, sir.

Q. Just like that?

A. Yes, sir.

Q. You have two of these labels; are they different colors?

A. Yes, sir; one is yellow, and I don't know what the other color is called.

Q. Was there any distinction between them, you use one for one kind of water and the other for another?

A. No, sir.

MR. COLLINS—I offer in evidence these two labels.

Marked respectively Exhibit C 27 and C 28.

Next I offer in evidence this neck label which is on Exhibit C 15, which need not be given another number as the bottle has already been marked Exhibit C 15.

Q. Now, I show you an envelope addressed to C. H. Gooden in Virginia, post-marked December 27th, 1888, and we have on the back of the envelope a figure of a bear, with the words, "Bear Lithia Water," on it; did you find that envelope down in Virginia when you went down there?

A. Yes, sir.

MR. COLLINS—I offer that envelope in evidence.

Marked Exhibit C 29.

Q. Did you find some letters that I will show you, one dated September 27th, 1888, one dated

October 8th, 1888, and one dated February 21st, 1889, among the papers of the Bear Lithia Co. in the office, when you went down there?

A. Yes, sir.

Q. Who was Mr. Gooden?

A. Mr. Gooden worked there the first part when Mr. Compton took hold, and he made some barrels there for us and done different kinds of work there packing bottles and printing cases and such work as that.

MR. COLLINS—I offer in evidence three letters of the dates above given.

Marked respectively Exhibits C 30, C 31 and C 32.

MR. COLLINS—I will ask the privilege of having these letters read, as they were from outsiders and they were found there when this witness went down there.

MR. LICHTENSTEIN—I have no objection to the letters being offered, to show that letters were directed to the Bear Lithia Co., but I object to their contents.

MR. COLLINS—The reason we selected these letters was because they refer to shipments to New York.

MR. LICHTENSTEIN—I object to the contents.

COURT—I will overrule the offer so far as the contents were concerned, but the letters may be admitted to show the trademark, or any other mark which you claim they do use, as well as the fact that they were addressed to the Bear Lithia Water Co., because they say they do not object to that; but so far as

the contents are concerned, this Court is decided that they are overruled.

By Mr. Collins.

Q. You came up here and have run their office since 1902?

A. Yes, sir; up in 37th street and 11th avenue.

Q. Has there been any confusion arising out of the name "Bear," or the use of the name "Bear," by the defendant or by reason of the use of a picture of a bear recently by the defendant, and if so, state how?

A. There has been very much confusion; most of my experience comes from the telephoning; a party calling up on the telephone, "Is this the Bear Lithia Spring Co.?" "Yes." "Well, send me six bottles of lithia water." I tell them we do not put it up in six bottles to the case; you see they are apparently under the impression—

Q. You told them that you did not put Bear Lithia Water up in six bottles to a case?

A. Yes, sir.

Q. Well; what was the result of that?

A. Well, they thought they did.

MR. LICHTENSTEIN—I object to that.

By Mr. Collins.

Q. You told them you did not have six bottles in a case?

A. I told them we did not put it up in six bottles to a case; that we did not put it up that way, and then it is ordered, and we send them eight bottles in the case.

Q. As a fact do you not sell six bottles to a case?

A. No, sir; we do not sell six bottles to a case; we put it up eight bottles to a case?

Q. Do the Great Bear Spring Co. sell six bottles to a case.

A. Yes, sir; they sell six bottles to a case.

Q. What other instances of confusion can you give us?

A. It was reported that money supposed to be paid to the Bear Lithia Springs Co. goes to the Great Bear Spring Co.—(Interrupted).

MR. LICHTENSTEIN—I object to that and ask that it be stricken out.

COURT—It must be stricken out.

By Mr. Collins.

Q. I suppose you cannot tell what the drivers have told you, but if you have acted on that notion and gone to the Great Bear Spring Co. about it, you may state it?

A. No, sir, because the drivers generally correct those things themselves.

MR. LICHTENSTEIN—I object to the evidence and ask that it be stricken out.

Ordered stricken out.

By Mr. Collins.

Q. Go, on.

A. Well, I was down at the spring here lately, and a party—

Q. Are you going to tell something that happened here while you were away?

A. Oh, no, sir, while I was down at the spring; they wanted to see the spring, and they wanted to know where they got the water from, and they found the places and then they told me that the water delivered by wagon in Philadelphia—well, I know that it is not; that is the Bear Lithia Co. do not—

MR. LICHTENSTEIN—I object to that and move that that be stricken out.

Ordered stricken out.

By Mr. Collins.

Q. You have no delivery by wagon in Philadelphia?

A. No, sir; we do not deliver water by wagon in Philadelphia.

Q. Do the Great Bear Spring Co. have deliveries of water in Philadelphia by wagon?

A. Yes, sir; I believe they have.

MR. LICHTENSTEIN—I object to that, and ask that it be stricken out.

COURT—I will let it stand.

By Mr. Collins.

Q. What other confusion can you tell us about?

A. Well, postal cards come in calling for empty bottles—

MR. LICHTENSTEIN—I object to that and ask that it be stricken out.

Ordered stricken out.

By Mr. Collins.

Q. There is confusion that comes from the letters you got, is there?

A. Yes, sir; there is a confusion that comes from the letters that we get, letters come in asking—

MR. LICHTENSTEIN—Same objection. Same ruling.

MR. COLLINS—We will produce the letters—of course, if we not produce them, then it goes for nothing, unless we do produce them.

Q. Have you had any cases of orders to your company, that you could perceive were intended for the other company?

A. We never deliver any water when we think it is intended for the other company.

Q. I want to know when an order comes in to you, and after you have found that it was for the other company, therefore you do not deliver it?

A. When people insist on buying six bottles to a crate and the order comes in in that way, then we know that it is not for our water.

Cross-examination by Mr. Lichtenstein.

Q. Prior to starting in business with Col. Dickinson, you were in the business of putting up carbonated water, were you not?

A. Yes, sir.

Q. Were you in Virginia or in Massachusetts?

A. Massachusetts.

Q. Did you move your plant to Elkton.

A. Yes, sir.

Q. Near to the spring?

A. Right at the spring.

Q. And what kind of water were you putting up for the Bear Lithia Co.?

A. Carbonated water, both still and sparkling; both.

Q. You were putting up both still and sparkling water?

A. Yes, sir.

Q. Did you attend to the filling of the still vessels of water?

A. Still and sparkling both.

Q. What kind of machinery did you use for the filling of the sparkling water and the charging machinery?

A. The regulation machine—a puffer.

Q. Did you use the carbonic acid gas?

A. We use the natural carbonic acid gas from Saratoga. First off, I might say that I made my own gas, same as everybody else made it, but afterwards we found that we could buy the natural carbonic acid gas, and we adopted it; thinking that it would be more acceptable.

Q. When did you first commence to use the natural carbonic acid gas from Saratoga?

A. Shortly after we got there.

Q. Did you continue to use it?

A. Yes, sir.

Q. Until when?

A. We are still using it.

Q. You moved your carbonating plant to New York, did you?

A. No, sir.

Q. You do not fill any sparkling bottles at the springs now, do you?

A. No, sir; no sparkling water.

Q. You stopped shipping your bottles of carbonated water at the springs, didn't you?

MR. COLLINS—I object to that as not being cross-examination.

COURT—I will take it.

A. No, sir.

By Mr. Lichenstein.

Q. Well, as a matter of fact, when you first started in there, you did bottle your sparkling water and all other water at the spring?

A. Yes.

Q. And when you came to New York, in 1902, you established your bottling department in New York?

A. Yes, sir.

MR. COLLINS—I object to this as not cross-examination, and ask that it be stricken out.

COURT—I will allow the question; I will not strike it out.

By Mr. Lichtenstein.

Q. And you established a carbonizing plant in New York?

A. Yes, sir.

Q. And you carbonize all your water in New York City now; that is true, is it not?

A. Yes, sir.

Q. Do you attend to that work in New York?

A. Yes, sir; I furnish it.

Q. What kind of carbonic acid gas do you use in New York?

A. The natural gas from Saratoga.

Q. In liquid form?

A. Yes, sir; in liquid form.

Q. Where do you get it?

A. From the New York Carbonic Acid Gas Co. of Saratoga.

Q. Do you use their gas exclusively?

A. Exactly.

Q. You never use any other kind of gas in New York?

A. We may have had one or two cylinders from New York as samples.

Q. And the bottles of carbonic or the charged water, that is the same water that you use in the other bottles, is it not?

A. Exactly.

Q. Now, you say that you know they use all kinds of "bears" in their advertising matter, do you?

A. Yes, sir.

Q. White bears and black bears?

A. We have; yes, sir.

Q. And bears standing in all sorts of positions?

A. Yes, sir.

Q. Have they done that right straight along?

A. I don't know how long, but you see the circulars there.

Q. Is this the only instance you refer to—the circular that has been marked Exhibit C 24?

A. No, sir; but I think I have some advertisements where there is a standing bear.

Q. Do I understand you to say that they merely used one kind of bear as a mark, or that they have used all kinds of bears?

A. They have used different bears.

Q. Was that ever since you first started in business with them?

A. At first it was as their trade-mark; it is there on these envelopes.

Q. Now, the people that telephoned to you, you of course didn't know whether they ever had had your water before they telephoned to you or not about it?

A. Unless I looked up the books, no, sir.

Q. And you don't know whether they had ever seen your labels or not?

A. I would not have any way of knowing that, unless I looked up the books, of course.

Q. The picture of a bear you saw on one of the wagons; I show you a hanger and ask you if that is the picture that you say you saw on the wagon you spoke of?

A. I think that is the same thing.

MR. LICHTENSTEIN—I ask that this hanger be marked for identification.

Marked D 6 for identification.

Q. Did you ever see the bottle water, the long

neck bottle of water of the Great Bear Spring Co.?

A. Yes, sir.

Q. Do you mean to say that you have not seen bottles of the Great Bear Spring Co. with the label on such as is shown in D 5 for identification for the past eight or ten years?

A. No, sir; I have not; I never saw that bear until lately; within a year or something like that, well, it might have been two years.

PHILIP P. JENNINGS, a witness produced in behalf of the complainant being duly sworn according to law on his oath saith:

Examined by Mr. Collins.

Q. What is your age?

A. Forty.

Q. You are the President of the complainant company?

A. Yes, sir.

Q. When was your attention first directed to spring water, commercially?

A. In 1891.

Q. Under what circumstances?

A. Well, four of us were negotiating for the Buffalo Lithia Springs, and it was a very large transaction—

Q. That is in Virginia too?

A. Yes, sir; we were dealing with Col. Goode, the President of the Buffalo Spring Co. and it involved a very large amount of money—

Q. And you did not come to a purchase?

A. No, sir; but on account of that large amount of money we looked into other water companies—

Q. How long were you dickering with Col. Goode?

A. For a year.

Q. And during that time you looked at other

water companies, and other springs, and among the others, were the Bear Lithia Water Company's plant?

A. The Bear Lithia and the Londonderry Lithia seemed to be the most prominent.

Q. What did you notice as to the Bear Lithia Water Co.'s advertisement?

A. I noticed particular the advertisements used on the elevated stations in New York in 1891.

Q. Describe them?

A. I remember distinctly the "Bear" and how the bear was faced, facing to the side with the name "Bear Lithia Water" printed on its side.

Q. How large was it?

A. It was a framed sign; I should think about three by two feet and I remember about the part of the station it was on—

Q. Was it in all the stations?

A. All the stations that I noticed.

Q. Did you notice the advertisement in the cars themselves?

A. I do not remember those.

Q. After a year's negotiation with Col. Goode, what then happened?

A. He backed out finally, he just simply left a letter for us, saying that he had decided not to sell; the terms were all arranged and the price agreed upon, but he left us, just leaving this note for us, and then returned to Virginia. One of our party started right down for the springs, and before leaving said "if I can do absolutely nothing further with Col. Goode, I think that the best thing to do would be to go to the Bear Lithia Spring and look at it, and report back to New York" which he did.

Q. And he reported it?

A. Yes, sir; he reported back to New York what he had done and fully described the spring and we then thought that it would be advisable to negotiate

with Col. Dickinson to see what could be done with him.

Q. With the result that you bought the stock?

A. No, not at that time; we thought the price was too high and we negotiated a little further with the Londonderry Co. for a time, and gave it up afterwards for the time being, but I remember the advertisements of these different water companies on through these succeeding years down until 1898 when I took the matter up again with Col. Dickinson and it ended in our contract in 1899.

Q. Did you notice this advertisement of the Bear Lithia Co.?

A. Yes, sir.

Q. Always with the figure of a bear on it?

A. Yes sir; always had the figure of a bear on it: I remember these three companies that we negotiated with very distinctly, the Buffalo, the Bear Lithia and the Londonderry Lithia.

Q. In 1898 you negotiated with Col. Dickinson and it culminated in 1899?

A. Yes, sir; January 15th 1899.

Q. And that was the time of the contract?

A. That was a written contract; we paid him so much cash down, and it was to be completed in 1903.

Q. You paid him so much cash?

A. Yes, sir; we paid him so much cash, and the final payment was made in January 1903.

Q. And then you got everything turned over to you?

A. Yes, sir; we got everything turned over to us, when we made the first payment, and we took possession in 1899; January 15th, 1899.

Q. And as it appears, you got the contract he had, and afterwards, according to the documents already in evidence, became the owner of the whole farm?

A. That came to us very soon, it came to our notice that this farm of Henry Bear was to be sold under foreclosure, and I went to Harrisonburg and I bought it in May 1899—May 23rd, 1899, I bought the Henry Bear farm.

Q. So that you and your associates have had the actual possession of the spring since January 15th, 1899?

A. We have had the actual possession of the spring since January 15th, 1899.

Q. Have you done an extensive business?

A. Very large, and it is, I think, steadily increasing each year.

Q. And after you had bought in the Henry A. Bear farm, you made this new lease with Adam C. Bear?

A. Yes, sir; we commenced figuring with Adam Bear right away, to see if we could make a more favorable lease with him; to see if we could make more favorable terms with him, and we got a promise of the purchase of that farm.

Q. You organized a new company in August 1899, which is the present complainant and took over the assets of the old company, the Bear Lithia Water Co.?

A. August 16th, 1899.

Q. Why was that change made?

A. In the name?

Q. Yes, there was a change from the Virginia Co. to the New Jersey Company; that speaks for itself, but why did you change the name?

A. The lawyers that drew this contract there in the name of the Bear Lithia Water Co. suggested it, we had before then called it the Bear Lithia Springs Co.

Q. And they had everything?

A. Yes, the lease to the purchase of this property and everything.

Q. After you got control of the business, did you push it?

A. Certainly, we pushed it very hard.

Q. Continuously?

A. Yes, sir.

Q. Up to now?

A. Yes, sir; very hard.

Q. What was the first you ever heard of a Great Bear Spring Water?

A. About the time I bought this property from Col. Dickinson, was the first that I ever heard of it; I never heard of it, nor had I seen the name or trade-mark or picture or anything else before that.

Q. You had some correspondence with them, didn't you?

A. Right away.

Q. Let us have it?

A. I think Mr. Corbin has a copy of our letter to them.

MR. COLLINS—I call upon the other side for the original.

Produced.

MR. COLLINS—We may as well put the correspondence right in now.

The first letter is dated January 30th, 1899, and I will ask the witness to read it.

Letter reads as follows:

"Jan. 30th, 1899.

"Great Bear Spring Co.,
"648 & 650 Henderson St.,
"Jersey City, N. J.

"Dear Sirs:

"We hereby notify you for the second time that you are infringing on our registered trade-

mark, in using in your advertising and business a design and inscription so similar to ours as to deceive the public.

"We request that you will immediately change your design and inscriptions to ones which will in no way imitate ours. If this is not done promptly, we will commence proceedings against you at once.

"Yours truly,
"Bear Lithia Water Co.
"Philip B. Jennings, Mgr."

Marked Exhibit C 33.

By Mr. Collins.

Q. Here is the answer which I will ask you to read?

Witness reads letter dated Oswego, N. Y., Feb. 18th, 1899, as follows:

"Messrs. Bear Lithia Water Co.,
"No. 234 Broadway, New York.
"Dear Sir:

"Your letter of the 30th ult. relative to infringement of trade-mark which was sent to 650 Henderson Street, Jersey City, is sent to the writer.

"We have an impression that our trade-mark, also copyrighted, does not infringe, and we have no intention of discontinuing operations under the trade name of Great Bear Spring Company. Water from the "Great Bear" spring, well known under that designation, has flown since memory of the oldest inhabitant, and in addition to our distributing company is also supplying the water works system of Fulton and Oswego Falls, N. Y. We are of the impression that our sales are neither helped nor injured by your enterprises.

"In addition to the writer, the Fulton Water

Works Co., Incorporated, of Fulton, N. Y., Mr. T. H. Wheeler, of 26 Broadway, New York, H. E. Nichols and A. G. Gilbert, of Fulton, Geo. B. Sloan, Jr., of Oswego, and others make up the list of people interested in this business, any one of whom can be easily located should you desire to investigate the matter further and in the manner proposed.

"Very truly yours,

"F. A. EMERICK."

Marked Exhibit C 34.

Q. Mr. Emerick, who signs that letter, Exhibit C 34, is he the President, or was he the presidentof that company?

A. He is now; I don't know whether he was then or not.

MR. COLLINS—I call upon the other side for the production of the original letter under date of November 2nd, 1905.

Produced.

By Mr. Collins.

Q. I show you a letter dated N. Y., November 2nd, 1905, and will ask you to read it?

A. Letter read as follows:

NEW YORK, Nov. 2nd, 1905.

"Mr. Frederick A. Emerick,

"Pres. Great Bear Spring Co., Oswego, N. Y.

"Dear Sir:

"I wish to write you personally and frankly regarding the similarity of your name Great Bear to our name, and now I notice your company is using more and more the trade-mark of a 'bear,'

which I think will tend to cause more confusion in the public mind.

"Our 'bear' trade-mark we registered at Washington a great many years ago and has always been a distinctive part of our advertising, and it does not seem fair and square to me for your company to use a similar trade-mark.

"Will you kindly write me your views on the subject.

"Yours very truly,

"PHILIP B. JENNINGS."

Marked Exhibit C 35.

Q. I show you another letter, an answer to that letter marked Exhibit C 35, and will ask you to read it; it is dated Nov. 7th, 1905?

A. Letter reads as follows:

"Mr. Phillp B. Jennings, President,

"No. 62 New Street, New York.

"Dear Sir:

"I note your favor of the 2nd inst. I long since ascertained that the use of a picture of a bear was too general and common to permit anyone to restrict its use.

"If I were to make a suggestion in this matter, it would be that you share with us the expense which we bear in making the use of "Bear" water popular. We have been at it for some time and intend to continue it until our spring, which has been producing water of this brand for a century, runs dry.

"I am always glad to meet my friends who are interested in the sale of water, believing as I do

that the effort of all in the popularizing of the drinking of spring water is a benefit rather than an injury to each of us.

"Very truly yours,

"F. A. EMERICK."

Marked Exhibit C 36.

Q. I notice that in 1905, you speak of the fact that the use of a picture of a bear has become quite extensive, and that there was confusion from the use of the name, as well as the use of the bear—the use of the bear would be more likely to increase the confusion—what was the fact from these letters and what is the fact about the confusion?

A. The fact is it had become intolerable; it started in a small way and it gradually worked up until I felt we would have to come into the Courts about it.

MR. LICHTENSTEIN—I object to that and move that it be stricken out.

WITNESS—I have collected recently, which I would like to submit—

By Mr. Collins.

Q. I am going to do it now.

A. Well, in the case of our own customers who have written to us, I think I have collected some fifty instances within the last few weeks.

Q. I show you a package contained in an envelope of correspondence, what are they?

A. "Great Bear Lithia Water Co."

Q. Are those original correspondence or letters from your customers and others?

A. They are all from our own customers—

MR. LICHTENSTEIN—I object to that on the

ground that they cannot be evidence against us in that manner.

COURT—The contents of the correspondence cannot be evideuce of any fact, but they are evidence to show that these people were confused.

WITNESS—This is just one form of confusion, and we would like to offer these letters from those people which are our own customers.

By the Court.

Q. What does that postal contain?

A. It contains an order?

Q. It is not about the confusion, then?

A. Yes, sir; it is.

Q. What is there confused about it?

A. There is the name "Great Bear Lithia Co."

Q. But it went to you?

A. Yes, sir; it went to us, we got it, but my point is this—suppose that that customer recognizes the water he is drinking, and he offers it to a friend, and he would say, "Where do you buy that Great Bear Lithia Water"—

Q. Then he would give your address?

A. He may give our address or not.

Q. The confusion there is the use of the word "great," then?

A. Yes, sir; the confusion there is the use of the word "great"—"Great Bear Lithia Water," when there is no such thing.

Q. The word "Great" is put on, and it ought not to be on?

A. Yes, sir; that is just it—those are all alike.

Q. There are differences, are there not?

A. Not in these.

Q. The confusion there is in the address, then?

A. Yes, sir; the confusion is in the address; for instance, the first is dated February 16th, 1906; the second is dated October 10th, 1905; the third one is dated December 4th, 1905; the next one is dated December 25th, and that is the "Great Bear Water Company," No. 62 New street—

Q. That was your customer?

A. Yes, sir; that was our customer, and he orders eight bottles in a crate, which shows that it is our water he wanted. It is, as a matter of fact, the bookkeepers have to look it up before we can be sure.

By Mr. Collins.

Q. What is the date of it?

A. March 22d, 1906; "Great Bear Spring Company, New street." Please send us some water at once—that is, Great Bear Spring Company.

Q. Is he one of your customers?

A. Yes, he is one of our customers; then another one, Great Bear Lithia Co., 62 New street, February 24th, 1906, just an order.

Q. Was he a customer of yours?

A. Yes, sir.

Q. What is the next?

A. "Great Bear Spring Water Company," New street, New York City.

Q. On all the rest of them, is that the difficulty?

A. Yes, sir.

Q. They put the word "Great" in front of your name?

A. Yes, sir.

Q. What others have you?

A. "Great Bear Spring Co.," "Great Bear Lithia Water Co.," and "The Great Bear."

Q. Give the dates?

A. "Great Bear Spring Co.," July 20th, 1905—that is an old one.

Great Bear Water, January 29th, 1902.

Great Bear Lithia Co., January 31st, 1906.

Great Bear Spring Water Co., 62 New street, August 24th, 1905.

Bear Lithia Water Co., March 4th, 1900.

Great Bear Spring Co., New street, near Beaver, November 23d, 1905.

Great Bear Spring Co., 62 New street, August 30th, 1905.

Great Bear Spring Water Co., 62 New street, August 3d, 1905.

Great Bear Lithia Co., New street, Manhattan, January 2d, 1905.

Great Bear Spring Co., March 5th, 1906.

Great Bear Spring Water Co., 62 New street, August 11th, 1905.

Great Bear Lithia Water, 62 New street, September 19th, 1905.

Great Bear Lithia Water, 62 New street, February 10th, 1905.

Great Bear Lithia Water, 62 New street, July 29th, 1905.

Great Bear Lithia Water Co., 62 New street, April 27th, 1905.

Great Bear Spring Co., Beaver, near New street, city, February 6, 1906.

Great Bear Spring Co.—that is a big customer of ours—February 6th, 1906.

Great Bear Lithia Springs Co., 62 New street, July 29th, 1905.

Great Bear Spring Co., 62 New street, July 21st, 1905.

Great Bear Water, 62 New street, April 2nd, 1906.

Great Bear Spring Co., New near Beaver, March 28th, 1906.

Bear Lithia Springs Co., 62 New street, and he orders six bottles of Great Bear Spring Water.

Q. And you turned that over to the Great Bear Spring Co.?

A. Yes, sir.

Q. What is the next?

A. Great Bear Lithia Water Co., 62 New street, December 19th, 1905.

Great Bear Lithia Water, New near Beaver, April 12th, 1906.

"Send one box of G. B. Lithia Water."

Great Bear Lithia Springs Co., 62 New street, March 2nd, 1906.

Great Bear Lithia Water, first address 10 Barclay street, and then it is scratched out and "New street near Beaver," written in, the order is for one case Great Bear Lithia Water.

Q. That is an order?

A. Yes, sir; that is an order for twelve half gallons at Francis H. Leggett & Co., who are customers of ours.

Great Bear Spring Co., one demijohn of Lithia, five gallon demijohn, they were customers of ours.

Great Bear Spring Co., one demijohn of Lithia Water, five gallons.

Great Bear Lithia Co., New York City, "Kindly have your driver deliver a case of Great Bear Lithia Water at Mrs. Birmingham's," that is a customer of ours.

That is all I have in that form.

Q. And some are addressed to you, which seem to be intended for the Great Bear Spring Co.?

A. Yes, sir; there have been a great many.

Q. And those you would send to them?

A. Yes, sir; sometimes we would turn the order over to the driver, and he would go and find out that it is not our customer, and then he would return it to them.

Q. Those are illustrations of the confusion with

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the correspondence that you have been able to pick out?

A. Yes, sir; recently.

Q. Within the last few months?

A. Yes, sir.

Q. I suppose it would be a great deal of material to go through if you went any further?

A. Yes, sir; it would.

Q. What other confusion can you speak of—any?

A. Yes, sir; I state that the confusion that comes to my notice around the city, there is a great deal of it. These cases for example: A Mr. French, one of our customers, he would have come to-day as a witness, but unfortunately he sailed for Europe last Tuesday; he is is one of our best friends of the water we have to sell, and last winter, he recommended to Mrs. Dixon—I was present at the time; Mrs. Dixon asked him about the water; they were speaking of the waters that she was drinking; she said she was drinking a distilled water; and she did not like it, and she asked Mr. French what he thought about it, and he recommended in the strongest terms that she should drink the Great Bear Water. Well, of course, I was very much surprised, and I asked him about it afterwards, after he had got through, I said to him, "Mr. French, you didn't mean the Great Bear Water, did you?" And he was very much mortified and annoyed at having made the mistake. Now, my contention is that if I had not happened to be there—

MR. COLLINS—Now, we have many such instances as that which we could give. The witness has given you this one as an instance, and I will now ask your Honor if you will permit us to give such illustrations as that?

COURT—If you had the witnesses here so that they could give their evidence, I might admit it, but I will not permit you to prove it in this way. If that man had been here, and he said, "yes, I did recommend that water through a mistake, and I fell into that error because of this other company confusing me," then I think I should admit that, but otherwise I cannot admit it.

MR. LICHTENSTEIN—I object to the evidence thus far given, in that respect, and I ask your honor that the conversation related to by this witness should be stricken out.

COURT—Yes, it will have to be stricken out.

MR. COLLINS—I offer these postal cards and the letters, the dates of which have been given, and I will ask that they be put in an envelope and the envelope marked with its contents to be considered as an exhibit.

Envelope marked Exhibit C 37.

MR. COLLINS—I offer to prove a large number of similar cases, to the one last given, as an illustration.

MR. LICHTENSTEIN—I make the same objection to this offer that I made to the evidence already given.

COURT—I overrule the offer.

By Mr. Collins.

Q. What other illustrations of confusion can you tell about—you cannot tell about those you have found about the city, from hearing people speak of

it, but in connection with the orders or the direct business of the company, either by telephone or otherwise, at your place of business?

A. Yes, I told you about sending one of our representatives—

Q. And is it something he reported to you?

A. Yes.

Q. No, then you cannot tell that, you can only say what you yourself know about it?

A. It is very difficult to tell—

Q. I thought there might be cases that you could tell us about by telephone, some orders similar to those related by Mr. Higbee?

A. Some of our clerks can tell you about those; I have answered the telephone a good many times, when there has been confusion, but I think the clerks can tell you about that better than I can.

Q. Have you a large clientage where you deliver the water to, such as offices in the lower part of New York city?

A. Yes, sir; very large.

Q. Such customers as what?

A. We have always had the New York Stock Exchange, the Produce Exchange, in fact we could show by our books, I think, the largest houses down town deal with us.

Q. And did you introduce a method for the summer use of this water?

A. Yes, and I always understood that we were the first parties to introduce this cooler.

Q. Explain it?

A. First off we started with a glass cooler; we poured the water in, and then put the ice in an aluminum receiver, so as to keep it from coming in contract with the water; next there was a wooden form of cooler devised, and the next is the present style of cooler, we are now using; I raised the money necessary for Mr. Rose to make the cooler—

Q. That is the half gallon cooler?

A. Yes, sir; there are larger ones than that; they are standing on a stand, and the bottle is inverted on the top of the cooler—

Q. The bottle is inverted over that place there (indicating)?

A. Yes, sir.

Q. In the larger ones they have the five gallon demijohns?

A. Yes, sir; for the larger ones they put the five gallon demijohns on the top of the cooler, inverted in that way.

Q. And the ice being in this tank, and outside, the water trickles down into this receptacle for it, and it comes out cool at the tap?

A. The ice cools the water; it runs through the pipes to the tap, and as the water comes out of this pipe, more water runs into it from the demijohn, and in this way the pipes remain full and as it is drawn off through the spigot, more comes down from the demijohn.

Q. I see the demijohn is inverted after the cork is taken out, and this receptacle is then filled with water, this receptacle being surrounded with the ice, and as the water is drawn off from this receptacle other water takes its place, so that this cooling receptacle always remains full?

A. Yes, sir; that is it exactly.

Q. There is a trap with a rubber ring here, so that no more can run into the chamber than will just fill it?

A. Yes, sir; that receptacle is trapped as you see, with that rubber ring, and immediately the receptacle is full of water no more will run from the demijohn, that is, there will be just enough to fill it up, and no more.

Q. How many of these coolers have you?

A. I don't know, exactly, but I think we have several thousand.

Q. And they all have your name "Bear Lithia Springs Co. of Virginia," and the place of the New York office?

A. Yes, sir; just the same as that.

MR. COLLINS—I offer this cooler in evidence. Marked Exhibit C 38.

Q. When did you introduce the cooler business into your business?

A. Well, I cannot say exactly; several years ago now.

Q. Have you learned that the defendant is introducing a cooler one of which was exhibited here in Court?

A. Yes, sir.

Q. On the preliminary hearing?

A. Yes, sir.

Q. Of a similar character and with the figure of a bear upon it?

A. Yes, sir.

Q. Have you found a "Great Bear Water" in the places of business or homes of your customers at all?

A. I cannot testify to that, as having seen it myself, but some of our representatives have, and will testify to it.

Q. Then I will withdraw that—this picture of the spring may be rather interesting (handing witness paper)?

A. We have improved the grounds around there since then.

Q. When was that taken?

A. A year or two ago—this is the flow of the water, and that is the way it runs off.

Q. What is the flow of the spring?

A. I don't know, it is tremendous though.

MR. COLLINS—I offer that picture in evidence.

Marked Exhibit C 39.

Q. Is this one of the Dickinsons advertisements or circulars (handing witness)?

A. Yes, sir; it is one I found or it was turned over to me when we bought the company out; there were some in Spanish and some in English.

MR. COLLINS—I offer that circular in evidence.

Marked Exhibit C 40.

Q. Is this another one of their's (handing witness)?

A. No, sir; that is one; I got it up myself.

Q. It is the "Bear Lithia Water Co.;" did you have that name for a while?

A. I think I had this one prepared myself.

Q. Does it give the officers anywhere?

A. No, sir.

Q. You think you got that one up yourself?

A. We used the name "Bear Lithia Water Co." first.

MR. COLLINS—I offer that circular in evidence.

Marked Exhibit C 41.

Q. Here is one that you also made, is it (handing witness)?

A. Yes, sir.

Q. Do you remember when?

A. Our Treasurer can certify to that, he has the bill and the papers regarding that.

Q. It is one of yours, anyway?

A. Yes, sir.

MR. COLLINS—I offer this pamphlet in evidence.

Marked Exhibit C 42.

WITNESS—(Indicating picture of cooler in Exhibit). That is the first cooler we got out; that is the glass cooler which I told you about.

Q. It shows it?

A. Yes, sir.

Q. And here is the last one that Mr. Reusch already identified which is marked Exhibit C 24.

A. This I had made in 1902.

Q. Have you advertised this water continuously and extensively?

A. Yes, sir.

Q. Ever since you became concerned in it in 1899?

A. Yes, sir.

Q. As what?

A. "Bear Lithia Water."

Q. And what has been the distinctive feature of your advertisements in the pictorial line?

A. "A Bear."

Q. You have seen the labels that are exhibited or attached to the bill, professing to be of Bear Lithia Water?

A. Yes, sir.

Q. Are they all labels of your predecessors or of your own?

A. Yes, sir.

Q. And are what they profess to be?

A. Yes, sir.

MR. COLLINS—I offer in evidence this five gallon carboy.

Marked Exhibit C 43.

I next offer in evidence a slightly different bottle.

Marked Exhibit C 44.

Next I offer in evidence this siphon.

Marked Exhibit C 45.

Next I offer in evidence this split.

Marked Exhibit C 46.

Q. There is a pint similar to the quart, is there not?

A. Yes, sir.

Q. There is another bottle with a patent stopper—where is that?

A. It is here.

MR. COLLINS—I offer in evidence this bottle with the patent stopper.

Marked Exhibit C 47.

Q. In all cases, the bottles have either the figure of a bear blown in or etched on the glass or label?

A. Yes, sir.

Q. On the bottle there is a paper label with the figure of a bear?

A. Yes sir.

Q. And they have—these bottles that are corked, they all have cork labels?

A. Yes, cork labels, and the corks are branded in the quarts and pints.

Q. I call attention to a little pamphlet, which I have seen before, what is that (indicating)?

A. Those were circulated very largely.

Q. How long have you done so?

A. For several years.

Q. With particularly close attention to it, as a drinking water?

A. Yes, sir.

MR. COLLINS—I offer this pamphlet or circular in evidence. It is in the nature of a booklet with several pictures on it.

Marked Exhibit C 48.

Q. I now show you an envelope; is this one of your envelopes?

A. Yes, sir; we put a bear on every bit of stationery or advertisement matter that goes out from our place.

MR. COLLINS—I offer that envelope in evidence.

Marked Exhibit C 49.

Next I offer in evidence four little books, ostensibly issued by the Great Bear Spring Co.

MR. LICHTENSTEIN—It will be admitted that they are issued by the Great Bear Spring Co. from time to time.

Marked respectively Exhibits C 50, C 51, C 52 and C 53.

Adjourned to Wednesday, April 18th, 1906, at 10 A. M.

April 18th, 1906, at 10 A. M. Hearing continued.

PHILIP P. JENNINGS, recalled on behalf of the complainant, his direct examination resumed:

Examined by Mr. Collins.

Q. It having been developed by some questions in the cross-examination of Mr. Reusch that the bottles sent to customers are not filled at the springs, I think it proper to interrogate you on that subject now, although I had originally intended to leave it

until the defence had set up and proved what they claimed in their answer—I will therefore ask you about it—how is the water shipped from the spring to New York?

A. In glass-lined tank cars.

Q. With or not with compartments.

A. Most all of them have compartments, they are large, round tanks with compartments.

Q. Also glass lined?

A. Yes, sir; also glass lined?

Q. The whole thing being glass lined?

A. Yes, sir; the whole thing being glass lined.

Q. I believe the manufacturer of the cars is to be here as a witness?

A. Yes, sir.

Q. And he will show us the material?

A. Yes, sir.

Q. When the cars arrive at New York, what is done with their contents?

A. The water is drawn into glass-lined receiving tanks; then it is pumped into a glass-lined receiving tank on the top floor of our warehouse, and then it is drawn from that into the bottles.

Q. So that from the spring to the customer, it is kept enclosed all the time?

A. Yes, sir.

Q. Now, Mr. Jennings, it appears that some labels have on them the words, "Bottled at the springs;" upon which bottles are those used?

A. On our quarts and pints of sparkling water.

Q. Were those labels that you got out, or that you got from the former owner of the spring?

A. Well, they were labels that we had printed similar to those used by the Bear Lithia Water Co. in the year 1899; I had a very large lot of them; I think we have the facts exactly about it which we can show later, but I think we had about 300,000

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labels that we had printed, I think of the same size that suited both the quarts and pints.

Q. Using their former bottles that were labeled, as models?

A. Yes, sir.

Q. And at that time the bottling was altogether done at the spring, was it not?

A. Yes, sir; we had no idea of bringing it to New York in these cars at that time.

Q. The labels that you put upon your quarts and pints were out of this lot that you had made in the year 1899?

A. Yes, sir.

Q. Did it occur to you or come to your notice at all, after you had made this change in the manner of bottling your water, that these labels had that on them?

A. No, it never occurred to me; I never thought of it.

Q. When was the first that your attention was directed to it?

A. When the defendants brought the point up here.

Q. And what did you do then?

A. I ordered the foreman of the establishment to discontinue using them; and to get new ones printed right away and to wrap these up and put them on one side, and some day I hoped, when we brought the thing round, so that we could do it, as soon as we commenced bottling at the spring, that we could then use them again; that is when we got our bottling works ready down there.

Q. Does that show one of your cars (showing witness a photograph)?

A. Yes, sir; that is one of the cars closed.

Q. Standing on a switch?

A. It is standing on a turn table at the car shop; I think it is.

Q. And with your advertisement on it.

A. Yes, sir.

Q. Is that the car with the sides taken off (showing witness a photograph)?

A. Yes, sir; well, it is being made up; these tanks are not in full view, but when it has been filled, then the sides of the car are closed in.

Q. With what—with wood?

A. Yes, sir; they are framed in with wood.

MR. COLLINS—I offer these two photographs in evidence.

Marked respectively Exhibits C 55 and C 56.

Cross-examination by Mr. Lichtenstein.

Q. You took charge of this business right after Mr. Dickinson sold out his interest in it, did you?

A. Immediately; yes, sir.

MR. COLLINS—I forgot to ask the witness a few questions, and I will ask permission now to do so, before you conclude your cross-examination.

By Mr. Corbin.

Q. Have you examined the telephone book—that is, the public telephone book in New York city—for advertisements of the Great Bear Spring Co.?

A. Yes, sir.

Q. Where did you find advertisements of the Great Bear Spring Co. in that book?

A. On the page where our names appear—the Bear Lithia Springs Co.

Q. They have an advertisement in that book?

A. They have one, a small one, on their page, but there is no other page where the names appear; at least I have not found it, except on the pages where our name occurs.

Q. Will you turn to those pages?

A. That page (indicating).

Q. That is the page on which the Bear Lithia Water Co.'s telephone number comes?

A. Yes, sir.

Q. There is an advertisement running across the entire bottom of that page?

A. Yes, sir.

Q. The advertisement of the Great Bear Spring Co.?

A. Yes, sir.

MR. LICHTENSTEIN—You had better read the advertisements, so that it may go on the record.

MR. COLLINS—(Reading). The advertisement appears as follows: "Great Bear Spring Water" (on the left); "10 Barclay street, N. Y., Tel. 8815 Cortlandt; 12th av. and 133rd street, N. Y., Tel. 936 Morningside; Brooklyn," (on the left side again). "Tel. 3393 L. Main; Jersey City, Tel. 505 Jersey City; Newark, Tel. 2048 J, Newark."

Q. That advertisement runs entirely across the bottom of the page?

A. Yes, sir; it runs entirely across the bottom of the page.

By Mr. Collins.

Q. And is it the page where the name "Bear Lithia Spring Co., 62 New street," with a telephone number "5690 Broad," appears?

A. Yes, sir.

Q. And the warehouse, 467 11th ave.?

A. Yes, sir.

Q. All under the heading of New York city?

A. Yes, sir.

Q. Their telephone number not being on that page—that is, the Great Bear Spring Co.'s name, in the alphabetical list—not appearing there on that page?

A. No, sir.

Q. Turn to the page in which the Great Bear Spring Co.'s name appears in the alphabetical list, under the heading of New York city; do you find an advertisement of the Great Bear Spring Water on that page?

A. Yes, sir; a small advertisement, running one-third across the page, the center column at the bottom.

Q, Will you read it?

A. It is about one-tenth the size of the one they put on our page, with the words, "Great Bear Spring Water, 10 Barclay street, N. Y., Tel. 8816 Cortlandt." Harlem Branch, "Tel. 936 Morningside."

Q. That is the issue of February, 1906, is it?

A. Yes, sir; that is the issue of February, 1906. I do not find it appearing on any other page in the book where the names appear.

By Mr. Lichtenstein.

Q. Read that (indicating) among the advertisements in the front of the book, at page 7?

A. This is a full page advertisement of the Great Bear Spring Co.

By Mr. Corbin.

Q. Have you examined the pages upon which the names appear of the other water companies doing business in New York city, to see if there are other Great Bear Spring Companies' advertisements in the telephone books upon those pages?

A. Yes, sir.

Q. Are there any other advertisements of the Great Bear Spring Co. appearing in this telephone book at the foot of the pages which contain the names and the numbers of other water companies?

A. No, sir; no other.

By Mr. Collins.

Q. No other anywhere, where the names of subscribers occur?

A. I stated that there were no advertisements on any other page.

MR. COLLINS—I offer that telephone book in evidence. Marked Exhibit C 57.

By Mr. Corbin.

Q. I show you a calendar with the words "Great Bear Spring Co." across the front—is that a publication of the Great Bear Spring Co.?

A. Yes, sir.

Q. About when was that calendar put out?

A. During the holidays—around the last holidays.

Q. Did you ever know of them putting out any calendar before that, with the picture of a bear on it?

A. Not to my knowledge.

MR. CORBIN—I offer that calendar in evidence. Marked Exhibit C 58.

Q. I show you a publication called "Decker's Quarterly," explain what that is?

A. Well, it is a price list, or largely a price list, of all kinds of groceries, liquors, mineral waters, &c.

Q. What do you find in that booklet in regard to "Bear Waters?"

A. I find confusion—

MR. LICHTENSTEIN—I object to that term.

COURT—Read what you found.

A. Well, among the water companies I found "Bear Lithia Springs Co., offered in five different forms, and again in four—

MR. LICHTENSTEIN—I object to any publication of this kind being read from, as it does not appear that it emanates from the defendant company, or from any one connected with it.

COURT—What they are trying to show is that the issue of these publications in this form is confusing to the public.

WITNESS—I find that they have in this same list "Great Bear Lithia Water" offered retailing in the same list on page 61 of Decker's Quarterly.

By Mr. Collins.

Q. That is an independent publication which grocers take, and it is from that they are supposed to get price lists?

A. Yes, sir.

MR. COLLINS—I offer that Decker's Quarterly in evidence, especially the page referred to, page 61.

Marked Exhibit C 59.

Q. Have you noticed the wagons lately of the Great Bear Spring Co.?

A. Yes, sir.

Q. Upon any of these wagons, have you noticed the figure of a bear appearing?

A. Yes, sir.

Q. When first did you see the figure of a bear on the wagons?

A. The first I noticed it, I think it was in February, but I saw it again the other day, within a week, I think, and I saw the same wagon again at Park Theatre on February 17th—I saw it first in February, and then I saw it again the other day, but perhaps not the same wagon.

Q. Describe the picture of the bear that you saw on the wagon?

A. I think it is a copy of this picture which has been offered in evidence, and marked Exhibit C 58, although I think it was larger and framed; at least four times the size of this picture, Exhibit C 58, I should think, and it was framed and it was screwed on to the wagon—it had a regular board frame on it, and it was screwed to the side of the wagon, giving me or any one—well, giving me the idea of a regular painted sign.

Cross-examination by Mr. Lichtenstein.

Q. After you took charge of the business, did you take an active interest in the business?

A. Yes, sir.

Q. And have taken such interest ever since you have been connected with it?

A. Yes, sir.

Q. What interest have you taken, just describe it; state what your position has been, what positions you have held and what have you done in connection with your business?

A. Well, I have been the President of the company, and I suppose I have taken the same interest in the business that any active President in a company would take.

Q. You have been around the place of business

every day, in connection with the particular business of the concern?

A. Well, not every day; but I have attended to it all the time.

Q Are you also manager of the company?

A. I never took that title.

Q. But you do the work that the manager would usually do in connection with such a business?

A. Well, yes, sir.

Q. Do you supervise the getting out of all the printing matter?

A. Yes, sir.

Q. And all advertisements?

A. Well, I would not say that I supervise all the prfnting matter, although I mean to do so as a rule.

Q. These things come under your charge, as a rule?

A. Well, I would not say, hardly—

Q. When you first started in business, and took over the business of Col. Dickinsou, what was the character of that business; what kind of water did you sell?

A. Bear Lithia Water.

Q. Was it at that time shipped from the present springs you use?

A. Yes, sir.

Q. Did you have any offices in New York?

A. Yes, sir.

Q. Whereabouts?

A. At 945 Broadway.

Q. Did you have any offices at any other place?

A. Well, immediately after taking hold?

Q. Yes?

A. No, that was the office.

Q. Since that time, have you established any branch offices?

A. Yes, sir.

Q. Where?

A. Well, we have a branch in Ohio.

Q. Whereabouts?

A. Columbus.

Q. When was it established?

A. Well, it has been—we have always had representatives in Columbus, O.

Q. When was that branch established?

A. Well, I can say that we have always had a branch in Columbus, Ohio?

Q. You mean you have always shipped water to Columbus, O.?

A. Yes, sir.

Q. When did you establish a regular branch office?

A. It is not a regular branch office.

Q. Merely an agent there in charge of your business?

A. Well, we there have the State agency and they are large representatives of our water.

Q. This concern simply buys the water from you?

A. Yes, sir.

Q. Do you prepare the printed matter for use by that company?

A. No, sir.

Q. You furnish the labels used by them, don't you?

A. Well, I cannot say whether we have or not.

Q. Don't they use the very same labels?

A. They have our labels and they have samples of our labels I am sure, but I don't know whether they use them or not?

Q. Have you ever looked at the labels used by your Ohio representatives?

A. No, sir; I have not; not that I know of.

Q. Do you recall furnishing them with a copy to be used for their own labels?

A. I should say we did furnish them a copy to be

used from which to print their labels, but I am not sure about that, even.

Q. It has the same cut on it you use on your sparkling water, has it not?

A. I am not sure.

Q. Now, how did you ship your water when you first started in business—from the springs?

A. In cases, in demijohns, barrels—I mean bottles in cases, or we did a case goods business, and also in barrels and demijohns.

Q. And to what class of trade did you start to cater to?

A. To every class.

Q. Didn't you make a specialty of selling water shipped by you to druggists and grocers.

A. Well, all classes; we sold to all classes; that was one of the strong points of the water, of the business.

Q. That is the medicinal qualities of the water was your strong point, when you started in business first?

A. I did not say that.

Q. Is it not a fact that all the printed matter distributed by you, and all the advertisements in the public press and in the journals, at that time, referred to this water of yours, simply as a medicinal water?

A. No, sir.

Q. Well, in what way did you distinguish, or did you inform the public that it was a drinking water, an ordinary table water?

A. We merely stated that it was.

Q. Was it not simply because you stated that the water being sold by you was still and that it also was a sparkling water?

A. Well, we went into it a little stronger than that, I think.

Q. Well, have you any journal, newspaper adver-

tisement or pamphlet of any kind used by you, when you first started in business in New York city, which shows that you were selling your water as a table water?

A. All of our pamphlets show that, every booklet that we have ever published, every booklet that the Bear Lithia Springs Co. ever published, every representation that, I think, either I or any of the officers have ever made.

Q. The letterheads which were first used by yourself, have you got a copy of them?

A. No, sir.

Q. When did you first design the letterhead that you use now?

A. The letterhead, I should say, was changed a little from what Col. Dickinson used, but practically it is the same letterhead that Col. Dickinson used for the Bear Lithia Water Co.; if there was any change at all, it was made in 1899.

Q. Who does your printing in New York city?

A. We have several printers.

Q. How often do you have your letterheads printed?

A. Well, very frequently.

Q. When was the last time you had any letterheads printed?

A. I cannot say.

Q. Cannot you recall about that?

A. No, sir; I cannot; our Treasurer can state, I think, but it must have been several years ago.

Q. About how many years ago?

A. I would not be at all surprised if those letterheads were made in 1899.

Q. All of these letterheads you think were made in the year 1899, or as early as that?

A. Yes, sir; you see we made them up in very big quantities—

Q. When did you move to New street?

A. I think I can tell that; I went to Mexico that spring, and I think it was in the year, and in the month of May, 1900.

Q. Did you have any letterheads printed after you moved to New; that new place?

A. I think the lithographers using the same stone changed the address, although I am not sure about that, either.

Q. I show you Exhibit C 35, is that one of the letterheads which was printed for you, and used by you while you were at 62 New street?

A. Yes, sir; that is one of our letterheads.

Q. Now, if these labels that you used on your sparkling water were old labels used by you while you were bottling at the springs, how did it come to pass that you put a fac-simile on your labels upon your letterheads in 1900, when you had this letterhead printed?

A. This is a fac-simile of our label.

Q. It is a fac-simile of your label?

A. Yes, sir.

Q. I call your attention to this exhibit, whereon it appears the words "Bear Lithia Water, bottled at the springs," with the wording thereunder, "fac-simile of our label;" was that ever called to your attention?

A. No, sir.

Q. The fact that the words "bottled at the springs" were on your letterheads; that you say was never called to your attention?

A. No, sir.

Q. And you have continued to use these letterheads up to the present time, have you not?

A. Well, we discontinued it the other day, or when this trial commenced.

Q. You discontinued it when the trial commenced?

A. Yes, sir.

By Mr. Collins.

Q. You do not mean when the trial commenced; you mean when the suit commenced?

A. I mean when the suit commenced.

By Mr. Lichtenstein.

Q. Which do you mean; the suit or the trial?

A. Well, we discontinued it within a month's time.

By Mr. Collins.

Q. The same time you discontinued the labels you discontinued the letterheads, did you?

A. Yes, sir.

By Mr. Lichtenstein.

Q. Then you have been writing your letters right up to the present time on these letterheads, have you?

A. No, sir.

Q. Do you remember Mr. Estes being at your office a little while ago, that is, a few days ago?

A. Yes, sir.

Q. Do you remember handing him one of your letterheads with the same cut on it?

A. Oh, we used that up for scribbling or something like that; I think we have a right to do that.

Q. This is not a fac-simile of all your labels, is it?

A. No, sir; just for quarts and pints.

Q. Why do you say it is a fac-simile of your labels, then, if it is not a fac-simile of all your labels?

A. Well, it is a fac-simile of that label.

Q. And this is only used on your sparkling water labels, the pints and quarts?

A. Yes, sir.

Q. What else?

A. That is all.

Q. When did you open your office at 173 Fifth avenue?

A. That is the Fifth avenue entrance to 945 Broadway building; it is the old "Cumberland."

Q. Did you have any letterheads printed with that address on?

A. I don't think so, I think we used the letterheads we had then, although I am not sure about that.

Q. When did you stop shipping your water in bottles from the spring to the markets of New York, and the vicinity of New York?

A. Well, I think we can claim that we ship today to the vicinity of New York and sometimes perhaps to New York?

MR. LICHTENSTEIN—I ask that that answer be stricken out as not responsive.

WITNESS—You asked me when we stopped—I don't mean to say that we are doing a large business in shipping bottles up to the vicinity of New York, or to this vicinity, but we are still doing it to some extent.

Q. When you took charge of your business, all of your water was shipped in demijohns, pints and quarts, and five gallon bottles and barrels, was it not?

A. Yes, sir.

Q. Now, when did you stop sending water from the spring in these bottles, for general use in your business?

A. Never—do you mean—

Q. I mean for the distribution by your office, or help, in New York to customers?

A. In New York only?

Q. Yes?

A. Generally, I think in 1902.

Q. And since 1902, with the exception of getting special orders to ship water direct from your spring to some particular customer, it has been your habit to send all of your water to the markets of New York in these tank cars you have described?

A. Yes, sir; to the markets of New York—yes, sir.

Q. When you took charge of this business, you had your carbonating plant at the springs, didn't you?

A. Yes, sir.

Q. When did you move your plant from the springs to New York?

A. Some time in 1902.

Q. And since that time you have done all of your carbonating in New York city?

A. Yes, sir; entirely.

Q. At your building?

A. Yes, sir.

Q. And did you ever siphon water at the spring?

A. Ever fill siphons?

Q. Yes—fill bottles and siphons at the spring?

A. Fill siphons at the spring—no, sir.

Q. That has always been done in New York city?

A. Yes, sir.

Q. And is done at the present time in New York city?

A. Yes, sir.

Q. Do you pay any attention to the filling of the siphons, or do you supervise that work at all?

A. I know about it.

Q. Have you been around your bottling department at all?

A. Yes, sir.

Q. And know generally how that water is bottled?

A. Yes, sir.

Q. And know what ingredients are put into these waters?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Who is the practical man in charge of that department?

A. Mr. Hamilton, the foreman.

Q. And you desire to say that you know nothing as to what is put into that water, or the manner in which it is put into the siphons?

A. Well, I think I can testify.

Q. Will you tell us generally how that is done, and what it is that is done?

A. Well, this water of ours is charged with this natural gas which we buy from the New York Carbonic Gas Co., who are the agents for the Saratoga Spring Co., where the gas is bottled, or put into tubes—

Q. What is added to the water before it is put into the bottles?

A. Nothing.

Q. Are you sure of that?

A. Well, I would not be sure about it, but I think we are putting out a carbonic water and a bear seltzer and a bear vichy that I think they put some salts in.

Q. Do you know what kind of salts they put into these waters?

A. No, sir.

Q. Is there a different kind of salt put into each one of these waters?

A. I cannot say.

Q. What is the difference between your carbonate water and your vichy water?

Mr. Collins—Just for the sake of saving

time, I will object to this question as not cross-examination.

THE COURT—I will take it.

A. I think they put a little more salt in one than another; I think the vichy has a little more salt in it, but I don't know about that myself.

MR. LICHTENSTEIN—If your Honor please, it is not our duty to allege fraud; it is a matter that the Court has a right to inquire into of its own volition.

COURT—My notion about it is that if you set up a defence that is upon you to prove it unless the complainant opens the door in some way so as to justify such a cross-examination on your part, otherwise you will be confined to a direct examination. If you want to get at this you can call this witness yourself to testify upon these points.

MR. LICHTENSTEIN—I think if your Honor please, they have opened the door. Judge Collins asked how this water was shipped, and how it was tanked to New York, and how it was filled in the glass at the springs and as to the manner of bottling —(interrupted).

COURT—I don't think so, you are confined in your cross-examination to the matters brought up by the complainant. You would be allowed to ask him whether the water he bottled and sold was all the natural water from that spring, or whether there has anything been added to it or not; that I think you have a right to do. But to go into the various

processes of the manufacture of these various waters I do not think you can do that, and I so rule.

By Mr. Lichtenstein.

Q. Then, as I understand you, the water you put up in your bottles and which you call Bear Lithia Water in your siphons, and in your vichy bottles, and in your carbonic water bottles, is not the Bear Lithia Water, that comes from the springs?

A. No, sir; I did not say that.

Q. The water that you call "vichy" has something added to it, has it not?

A. Yes, sir.

Q. After it comes to New York?

A. Yes, sir.

Q. And the water that you call your carbonic water has some ingredient added to it in order to call it carbonic water?

A. Yes, sir.

Q. Aside from the gas you use in it?

A. Yes, sir.

Q. The water called "seltzer water" has something added to it; some ingredient added to it.

A. Yes, sir; we salt the bear water which is contained in the siphons, the bear vichy and the bear seltzer in siphons; they put some salts in that water, but I don't know that they do it in the bear carbonic water; the Bear Lithia water in siphons is the pure Lithia water with carbonic acid gas added; this gas that I have been speaking about, which we purchased from the New York Carbonic Acid Gas Co., and which is from Saratoga, we use that and only that.

Q. The water is pumped into your tank cars at the springs; is run through the hose from the pumping station, is it not?

A. I don't know, sir.

Q. Have you never been there?

A. No, sir.

Q. Have you seen the manner in which the water is pumped from the cars to your building?

A. Yes, sir; through block tin pipes.

Q. Into a tank in the basement?

A. Yes, sir.

Q. And then it is pumped from the basement to a department called your bottling department?

A. I don't know about that pipe or not, whether that is a block tin pipe or not; I have had an expert go there to examine that part of it, with the view of ascertaining that it was perfectly sanitary, &c.

Q. What do you do with all of the water that you had in your warehouse that had those labels on after this suit was started?

A. How do you mean—I don't know.

Q. I thought you said you had ordered them all destroyed?

A. Oh, no.

COURT—No, he said that they had put them away so as to be able to use them some time when they had got their bottling works or apparatus finished or ready down at the spring.

By Mr. Lichtenstein.

Q. What did you do with the labels that you had in the plant?

A. Well, I have not been there since this suit was started.

Q. Do you mean to say that you have not been selling water or bottles of water with these labels on since the suit was started.

A. No, sir; we have not.

Q. How do you know that you haven't when you

say you haven't been there since the suit was started?

A. Well, I gave my instruction, and our foreman is a very conscientious man, and as I say I gave him the orders not to do it, and I believe that he has fully follow out my instructions in regard to that, and that none of those labels have been used since.

Q. When you first started, did you have any wagons going around for the sale of the water?

A. Not at first.

Q. When did you first start the use of wagons?

A. I cannot say now.

Q. You say your business was very extensive from the beginning in New York city?

A. Yes, sir.

Q. How did you deliver your water, if you did not do it by wagons; if you did not have any wagons?

A. We had such firms as Acker, Merrill & Condit, and Park and Tilford, and McKesson & Robbins, Clarke, Chapin & Bushnell and Francis H. Leggitt & Co.—

Q. How did you deliver the water to them?

A. Through these different houses.

Q. But how was the water delivered to these different houses?

A. Oh, well, some of them in very large shipments; I think they sent for it; I think we made them an allowance for cartage, and I think they sent to the cars themselves and got it, and some others we had the express companies deliver.

Q. How long did you continue to use these means of sending your water out?

A. I think we did have wagons with our names on very soon after we started; I remember that just as soon as we moved to 62 New street we had a truck with our name on?

Q. How many wagons do you use at the present time?

A. Well, is it necessary for me to answer that?

COURT—I think that is a fair question; I think you should answer it.

A. We have I think, sixteen of what we call delivery wagons and one truck; that handles the case goods business.

MR. LICHTENSTEIN—Up to within three years ago, how many wagons did you run all together?

A. I don't know, sir.

Q. You have been connected with the business all that time, cannot you recall how many wagons you had in use four years ago?

A. No, sir.

Q. Will you say you had more than two?

A. Yes, sir.

Q. Up to four years ago?

A. Yes, sir.

Q. And will you say that you had more than five?

A. I cannot say that.

Q. It has been within the last three years that your business has grown quite extensively?

A. No, sir.

Q. Well, has it not been within the last three years that you have added all these wagons?

A. We have on account of this special phase; the business has taken in this special delivery business?

Q. What is this special phase you speak of?

A. Delivering water in what we call bulk to offices, banks, exchanges, etc., and also to private houses.

Q. You never did that before, not until three years ago?

A. Well, we always had some office trade.

Q. It has been entirely within the last three years

that you endeavored to branch out or extend your business in that direction?

A. I think I can say yes to that.

Q. When did you first put in operation these tank cars?

A. In I should think about this time in 1902, perhaps a little later than this.

Q. It was when you first started to ship your water in tank cars that you started in to acquire more wagons and extend your business and sell to offices, banks, &c.?

A. No, sir; we had been doing that business prior to that sometime; I remember distinctly shipping water in the tank cars for distribution to these offices, exchanges, &c.

Q. When you first started in business, do you recall the prices you charged for your water?

A. Well, no, sir; I cannot say exactly; I could look it up though, and give you the exact figures later.

Q. Give us your best recollection?

A. I think I can give you the retail prices, perhaps; no, sir; I don't know as I can either; I think our quarts were $7.50 a case, retail, of fifty bottles —pints, $5.00 a case of fifty bottles and $10.00 a case of one hundred bottles, half pints; I think we retailed at $10.00 a case of one hundred bottles; the half gallon still water, twelve in a case; the retail price is $4.50, I think, a case; the siphons were one dollar a crate of ten; our half gallon bottles, with still water in them, which we delivered to the houses, eight in a crate, we have charged $1.50 a crate for them.

Q. You are doing that now?

A. Yes, sir.

Q. I am not speaking of the present time; I am asking you what price you charged when you first started in business?

A. I cannot say when we first started with half gallon crate business—

Q. I show you a booklet, one of which is marked in evidence as Exhibit C 41, and ask you whether that contains the price-list of your waters up to within three years ago?

A. Well, this book I think it was the first one I had printed; I don't think it lasted very long—

Q. I show you a booklet, one of which is marked in evidence as Exhibit C 41, and ask you whether that contains the price list of your waters up to within three years ago?

A. I cannot say whether that is up to within three years ago or not; this book was used about six months and not over a year, I am sure.

Q. Look at the Exhibit marked C 50, "Decker's Quarterly," which was offered in evidence this morning, of the issue of June, 1900, does that contain the prices at which you were selling your water at that time?

MR. COLLINS—That they were selling it at wholesale or sold it at retail?

MR. LICHTENSTEIN—They were selling it.

A. I think those are correct.

Q. Cases of twelve half gallon bottles, $4.50 a case?

A. Yes, sir.

Q. Fifty quarts of sparkling water, $7.50?

A. Yes, sir.

Q. Fifty pints of sparkling water at $5.50?

A. Yes, sir.

Q. One hundred half pints of sparkling water, $8.50?

A. Yes, sir.

Q. Five gallon bottles, $3.50?

A. Well, that latter, I cannot say as to that; the

others, I think are correct, or I think the half pints is not exactly right.

Q. Well, look again then?

COURT—I understand them to say that they charged more for their water when they first started, and that they had to reduce their prices because of the competition of this other company; I don't think it is worth while to take up any more time on that point.

By Mr. Lichtenstein.

Q. It was after your tank cars brought the water to this market, that you reduced your prices to fifty cents a case, is it not?

A. I cannot say that; I should say that probably it was, but it might have been prior to that; I think soon after opening our New street office we found we had to reduce the price to meet the competition.

Q. How did it come? You say you had this blue book marked Exhibit C 41 printed?

A. Yes, sir.

Q. How did it come that you had the words "bottled at the springs" printed upon the front page of that booklet?

A. We were bottling at the springs then; that was printed in 1899, I remember.

Q. You were speaking of the wagons of the defendant company, taking the picture of a bear upon it recently, do you recall what kind of a wagon you used in your business; what is the color of the wagon used?

A. We have always meant to use a very light yellow color, what I would call a colonial yellow.

Q. Haven't you been using a white wagon?

A. No, sir.

Q. Did you not, up to within a short time ago, use a white wagon exclusively?

A. No, sir.

Q. Or a cream color?

A. What I call a colonial yellow.

Q. The Great Bear Spring Company have been using a yellow wagon, haven't they?

A. Yes, sir.

Q. All these years?

A. Yes, sir; I think so.

Q. You knew where the defendant company had their wagons made, did you not?

A. No, sir; I did not.

Q. You have your wagons made at Brode's, in Hoboken, don't you?

A. I don't know, sir.

Q. Is it not a fact that the defendant company started in to have their wagons made at Brode's, and you started to have your wagons made also at Brode's, and that you had to have them painted the same color?

A. I don't know where the wagons were made; I spoke of the color and style of the wagon we wanted.

Q. You spoke of the confusion of people desiring to order your water and using Great Bear Spring Water; you were instrumental in having the Bear Lithia Spring Company organized, were you not?

A. Yes, sir.

Q. And your name prior to that time was Bear Lithia Water Co., that is so, is it not?

A. No, sir.

Q. What was your name?

A. My name was "Jennings."

Q. I meant your corporate name?

A. I made a contract with the Bear Lithia Water Co., but it was not closed until 1903, four years after I made it.

Q. Why did you change the name; why did you change the word "water" and put the word "spring," and make it conform more to the title of the Great Bear Spring Co.; why did you do that?

COURT—He has testified to that a long time ago; I don't think it necessary to go into that further; I understand it thoroughly; he says that he was advised by counsel to make that change.

By Mr. Lichtenstein.

Q. Did you consider that that was going to prevent any confusion?

A. I did not think anything about that then.

Q. When did you first hear of the Great Bear Spring Co. doing any business around here.

A. At the time I made my contract with Col. Dickinson early in 1899.

Q. You knew they were doing quite an extensive business at that time, didn't you?

A. No, sir.

Q. Didn't you know that they had an office on Barclay street?

A. Not until the spring of 1899, the time I wrote them.

Q. Did you learn they were doing quite an extensive business at that time?

A. Immediately after that.

Q. Yes?

A. I supposed they were doing a very small business at that time.

Q. You said in your direct examination, as I recall it, that there would have been no trouble between you and the Great Bear Spring Co., if it had not been for the use of this bear?

A. The name "bear," if I said anything, it was about the name "bear."

Q. You knew they were using the name "bear" ever since you took charge of the business, didn't you?

A. Yes, sir.

Q. You never took any steps legally, to prevent their using that name?

A. Yes, sir; I did.

Q. Legally in Court?

A. No, sir.

Q. Now, you say you were the first people that introduced coolers into the New York market in connection with the sale of spring water?

A. I said I always understood that we were the first people that introduced coolers into New York in connection with the water business.

Q. Is it not a fact that the Great Bear Spring Co., were the first ones to have Mr. Rose introduce or manufacture coolers, and that you afterwards bought coolers from the same man?

A. Well, I understood that I raised the capital for Mr. Rose to do business with.

Q. Don't you know that the Great Bear Spring Co. had obtained coolers long before you ever started to put your water on the market in that shape?

A. No, sir; I do not know that.

Q. You said the coolers you put up had the figure of a bear upon it; the great majority of your coolers had the words "Bear Lithia Water" alone, without the figure of a bear on it, didn't they?

A. No, sir.

Q. You have coolers out with the words "Bear Springs Co.," and without the figure of a bear, haven't you?

A. Not to my knowledge.

Q. Didn't you write to Mr. Rose only a few weeks ago, asking him whether he could swear that all

the coolers put out by you had the figure of a bear on them?

MR. COLLINS—I object to that as not being cross-examination.

Objection sustained.

By Mr. Lichtenstein.

Q. Now, you have been using other water aside from the Bear Lithia Water; you have been selling it, haven't you?

A. We sold a little; the only time in our business experience that we were out of water, and during that time we gave our customers, or sold our customers, some Trinity Spring Water.

Q. That is a water you got from where?

A. We got that water from the Trinity Spring; it is located here in Bergen County, somewhere.

Q. At Ridgefield Park, is it not?

A. I don't know exactly where it is, it is located opposite or over on the Palisade somewhere; on the western slope of the Palisade; we sold that water for two days; we were entirely out of water of our own, and we told our customers that we would get them this Trinity water, so as to keep them going until our cars arrived, if they wished to have it, and many of the customers said that they would take it to accommodate us, and so we sold them that water, I think there were only 363 demijohns of that water; or about that number—yes, it was 363 demijohns of Trinity water sold.

Q. You say you had about 300,000 labels printed in 1899—now, do you mean to say you haven't used more than 300,000 labels since that time?

A. Yes, sir; I mean to say that we haven't used that many.

Q. You use a filtering plant in your New York establishment, do you not?

A. Yes, sir.

Q. What do you use that for?

A. This filtering plant—I think we had better put a scientific man to explain the machinery.

By the Court.

Q. What do you use it for?

A. We use the filtering plant to run the water through in case there should be any leaves or anything in the water, to take it out, whatever it might be.

By Mr. Lichtenstein.

Q. You do not run all your water through that filtering plant, do you?

A. Yes, sir; we do.

Q. Every shipment that comes in?

A. Yes, sir.

Q. I show you a label—is that one of your labels used by the Bear Lithia Springs Co. at Columbus (handing witness paper)?

A. That is the first that I have seen of it, I suppose that is so.

By Mr. Collins.

Q. You mean by this the persons who sold the water?

A. The persons who buy the water from us, and to whom we gave the agency for the State.

By Mr Lichtenstein.

Q. That is a fac-simile of your label, the one you use in New York?

A. Yes, sir; I think that is exactly our label, with the addition of their names.

MR. LICHTENSTEIN—I ask that the label be marked for identification.

Marked D 7 for identification.

Q. Did you attend to all the correspondence of your house?

A. No, sir.

Q. During the course of your business, do you receive letters from people asking in reference to the curative powers or properties of this water?

A. Yes, sir.

Q. And you answered those letters?

A. I do not attend to the correspondence myself.

Q. Who does that; to whom do you delegate that work?

A. Well, I think Mr. Sykes, the Secretary, has more of that to do than anyone of us.

Q. You have a particular branch of your business set apart for that part of the work, haven't you?

A. Not specially.

Q. You receive numerous letters from people asking as to the curative properties of your water, do you not?

A. No, sir; not numerous letters.

Q. But you say that Mr. Sykes is the man that answered all that correspondence?

A. I think he is the man that attends most to that.

Q. Do your letter-press books show the correspondence you have with those people?

A. They must.

Q. You keep copies of all your letters, do you?

A. Yes, sir.

Q. Do you have a physician connected with your business?

A. No, sir.

Q. Do you have any physician answering your correspondence in reference to such inquiries?

A. No, sir.

Q. You do that all yourselves, do you?
A. Yes, sir.
Q. Do you have people inquiring from you, from time to time, in reference to the quantity of water they should use for certain diseases, enumerated in your pamphlet?

MR. COLLINS—I object to the question as not cross-examination.

COURT—I will take it.

A. Yes, sir.
Q. And do you answer those letters informing the persons as to the quantities they should use for specific diseases?

MR. COLLINS—I object to that question—the correspondence will speak for itself.

WITNESS—I suppose they are answered.

COURT—You will have to prove that by your own witness; you cannot show it by a cross-examination of this witness. I shall exclude the examination—if you want to go into all their correspondence, you will have to produce the letters.

By Mr. Lichtenstein.

Q. I show you a hanger, and ask you whether this is a hanger put out by your company recently?
A. No sir.
Q. Do you mean to say you never had that printed?
A. We had that printed; we had 500 printed on May 10th, 1902.
Q. Haven't they been circulated here recently?
A. No, sir.

MR. LICHTENSTEIN—I ask that this hanger be marked for identification.

Marked D 8 for identification.

Q. Were they circulated at all?
A. Practically no.

By the Court.

Q. Did you mean to say that you had them printed and threw them away, and did not use them at all?

A. Oh, no; they put them out for one week on the elevated stations and then took them off and put on another one a in its place.

Q. Why?

A. Because we wanted to get a variety and we went from one to another, and I think that we had altogether about 500 of them.

Q. Why didn't you use them?

A. Well, we did use them; as I say, we only had 500 of them, and they were there for a week, and then we would substitute another one and so on each week we put them all out.

By Mr. Collins.

Q. They served through the week?
A. Yes, sir.
Q. And then you put another one in its place?
A. Yes, sir.
Q. And so on week by week?
A. Yes, sir.

By Mr. Lichtenstein.

Q. Is it not a fact that you had this same hanger advertisement in your window up to within three weeks ago?

A. We did put one or two of them in the win-

dow; of course, we kept copies of all the different advertisements that we used.

Q. It was exposed to public view, was it not?

A. Yes, sir.

Q. And is not that the way Mr. Estes obtained a copy of it?

A. No, sir; it is not the way he obtained a copy of it.

Q. You had another hanger printed of a similar design with this siphon, have you not, here recently?

A. Similar to that?

Q. Yes?

A. No, sir.

Q. Haven't you had a hanger printed and circulated here recently having two siphons on it?

A. We have so many different forms of advertisements that really I am not sure about it.

By Mr. Collins.

Q. This hanger, if he did not get it in the way he states, how did he get it?

A. I think we can put a witness on to prove that.

Q. Mr. Wells was in your company's employ, was he not?

A. Yes, sir.

Q. He got the old hangers, picked them up around the place and put them in the windows, didn't he?

A. Yes, sir; he did.

Q. How long ago was that?

A. I cannot say; he can tell you about that.

Q. They didn't stay there very long, did they.

A. No, sir.

Q. Why did you order them down again?

A. Yes, sir; I did order them down.

Q. You did not have, as I understand it, any siphons with a label on it?

A. No, sir; the printer wanted to make an attractive little picture, and he took one of our half pint labels and put it on the siphon, and that did service for one week; and then there was another one got up, which I think I gave to Mr. Corbin, and that went on the next week; that hanger right there went on next (indicating), and that is the way they went along; different ones week after week.

MR. COLLINS—I offer that form of advertisement in evidence.

Marked Exhibit C 60.

Q. Now, this label marked D 7 for identification, your company did not issue, but, as I understand you, the people out in Columbus, Ohio, on their own account did it?

A. Yes, sir.

Q. As a matter of fact, does the water go to Columbus direct from the springs or not?

A. Yes, sir; it does.

Q. In what packages?

A. In glass demijohns, in car-load lots, and one car-load went while, I think, Mr. Estes was at the springs, or one of their representatives was at the springs, recently.

Q. They are ten or twelve gallon carboys?

A. Ten or twelve gallons: I don't know exactly; they are large glass carboys.

Q. The Trinity Spring Water that you sent out to fill this emergency, you sent out to your customers in the Trinity Springs packages, didn't you?

A. Yes, sir.

Q. The identical packages?

A. Yes, sir.

Q. They were not in any way marked as Bear Lithia Water, were they?

A. No, sir; it was just to keep our customers going for a day or two, until we could get our own water.

Q. And one of your cars had been in an accident, as I understand?

A. Yes.

Q. And you informed your customers that one of your cars had been in an accident, and that you would supply them with that water from Trinity Springs to keep them going until you could get your own water?

A. Yes, sir.

Q. Did you charge for it; did you charge for all of it?

A. I do not remember about that.

Q. Did you have corrugated glass coolers before you had Mr. Rose make a cooler for you?

A. The Appert Glass cooler we had before Mr. Rose made the cooler, and before that we had a wood and charcoal cooler before that corrugated glass cooler.

Q. And then you had the corrugated glass?

A. Yes, sir.

Q. And all this was before the Rose cooler?

A. Yes, sir; before I ever heard of Mr. Rose.

Q. How long before?

A. I cannot say; I shou'd think—well, now, Mr. Rose—I heard of him first about three or four years ago, I think, although I am not sure; I cannot give the years with any certainity; in 1899 we put out the coolers.

Q. Now, what percentage of your water is the sparkling water that bears the label that has the words "Bottled at the Springs" on it; what percentage?

A. Well, I figure it out that for the last three years it was less then seven per cent.

Q. Of the whole business?

A. Of the whole business.

Q. And, of course, when you speak of having used less than 300,000 labels, you mean the labels on that water?

A. Yes, sir; the quarts and the pints of the sparkling water.

Cross-examination by Mr. Lichtenstein.

Q. When did you say you got this booklet out which has been marked Exhibit C 42; when did you have that printed and first distributed?

A. I think we started work on it in the year 1899; when the printers turned them over to us; I cannot say, but I should think probably in 1900.

Q. They are used still?

A. No, sir; they are not.

Q. Did you stop before the suit was started?

A. Oh, we ran out of that ad. many years ago; we kept bringing out different advertisements all the time.

Q. Was it not used up to a year ago?

A. No, sir; we got out this new booklet, that I think is a very handsome booklet; we got that out in 1902, and I think we have not used that other one since?

Q. Do you know of an ice-cream man of the name of Miller residing in Hoboken?

A. No, sir; I don't know him.

Q. Don't you know that he has been using this very same kind of an advertisement in his business?

A. No, sir; I don't know it.

Q. How did it happen to have this printed with the words on it "Bottled at the Springs?"

A. That was printed in 1899, and we were bottling at the springs then.

Q. And you continued to use it for several years?

A. No, we certainly did not use it after 1902; when we got our new one out, that took the place of it.

CHARLES REUSCH, recalled in behalf of the complainant, saith:

Examined by Mr. Corbin.

Q. Did you recently look for the old copies of the medical monthly?

A. Yes, sir.

Q. The Medical Monthly of Virginia, to see if you could find advertisements of Bear Lithia Water?

A. Yes, sir.

Q. Did you find any old copies with advertisements in them?

A. Yes, sir; there is one (handing to counsel).

Q. What is the date of that one?

A. January 1889.

Q. What page is the advertisement found on?

A. Page 53.

Mr. CORBIN—I offer that copy of the Medical Monthly; with particular reference to page 53, in evidence.

Marked Exhibit C 60a.

Q. What is the date of this one (handing book to witness)?

A. November, 1888.

Q. What page is that advertisement found on?

A. Page 2.

MR. CORBIN—I offer that Medical Monthly in evidence, especially referring to page 2.

Marked Exhibit C 61.

Q. What is the next one (handing book to witness)?

A. The issue of December, 1888.

Q. On what page is the advertisement found?

A. On page 2.

MR. CORBIN—I offer that Medical Monthly in evidence, especially referring to page 2.

Marked Exhibit 62.

Q. Did you find a copy of a paper published at Richmond, Virginia, called "The State," dated October 13th, 1888?

A. Yes, sir.

Q. Containing the advertisement of the Bear Lithia Water Co.?

A. Yes, sir.

Q. Where did you find this paper?

A. At the Capital Library of Richmond, Va.

Q. They permitted you to have a photographer go there and take a photograph from the original?

A. Yes, sir.

Q. Is that the photograph taken from the original?

A. Yes, sir.

MR. CORBIN—I offer that photograph in evidence.

Marked Exhibit C 63.

NO CROSS-EXAMINATION.

NEWCOMBE B. COLE, a witness produced in behalf of the complainants, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are Treasurer of the Bear Lithia Springs Co.?

A. Yes, sir.

Q. How long have you been such?

A. Ever since it has been organized.

Q. You have been Treasurer all that time?

A. Yes, sir; I was acting Treasurer of the Bear Lithia Water Co.

Q. I show you a quantity of advertising matter and ask you whether these advertisements were put out by the complainant or its predecessor (handing to witness)—describe them and give the dates?

A. This is a transfer that has been used on our coolers ever since we used the Rose Cooler, and this is the likeness of it or the result of the transfer, and that is what it is before it is transferred (indicating); it is what they call a calcamannia.

MR. CORBIN—I offer the transfer in evidence.

Marked Exhibit C 64.

Next I offer the result of the transfer.

Marked Exhibit C 65.

Q. Those are all old advertisements (indicating a number of cards and clippings)?

A. Yes, sir; all the advertisements we have been able to collect.

COURT—Is it at all disputed that you advertised this water under a black bear, as far as back as the year 1888?

MR. LICHTENSTEIN—No, sir; it is not.

MR. COLLINS—This evidence is intended to show not merely that we did it then, but it is intended to show that it has been continued ever since, and to a very much greater extent than heretofore.

COURT—Why cannot you prove by this wit-

ness that the water was generally advertised and then let them contradict it.

MR. COLLINS—That would be all right, I think—we might put them in all in a lump.

By Mr. Collins.

Q. What was the extent of your advertisements of Bear Lithia Water under that name and in connection with the symbol of a bear?

A. Do you mean in dollars and cents.

Q. You may give us that?

By the Court.

Q. In what territory and how many years have you been advertising it?

A. Ever since we have been in control of the company we have advertised the Bear Lithia Water.

By Mr. Corbin.

Q. Since 1899?

A. Yes, since 1899 we have advertised it.

Q. How about prior advertising?

A. I don't know anything about that?

Q. You have the advertisements in your possession, a large number of them which you say you have collected?

A. Well, I don't know about it personally.

By Mr. Collins.

Q. You have collected a large number of the old advertisements?

A. Yes, sir.

Q. And they are in that scrap book?

A. Yes, sir.

Q. And it shows the old advertisements?

A. Yes, sir.

MR. COLLINS—I offer in evidence that scrap book.

Marked Exhibit C 66.

Q. Then your own company, since you have been in it, has continuously advertised in newspapers and magazines and by pictures and every other general way of advertising this water as Bear Lithia Water, and with the figure of a bear in connection with it?

A. Yes, sir; always.

Q. To what extent, in money?

A. Well, about in the years 1901 and 1902, I think, we expended nearly or a little over—well, approximately about $8,000 in those two years.

Q. And since then how much?

A. Oh, yes, in the various booklets and otherwise, and in sending out pamphlets and letters.

Q. I mean in amount, the value?

A. I cannot give it to you, it has always been—I cannot give a list or amount.

By the Court.

Q. What territory did you undertake to cover?

A. I undertook to cover this territory in New York and around Washington, and in the earlier history of the Bear Lithia Springs Co. we advertised in Cleveland, Ohio, extensively, in the various newspapers.

By Mr. Collins.

Q. By New York you include Brooklyn, do you?

A. Oh, yes, sir; I said in this territory, I mean around New York, in this section of the country.

Q. And Boston.

A. Yes, sir; Boston and Philadelphia.

Q. Anywhere out of the country?

A. Well, yes, some of the southern countries; we

have advertised down in Guatemala, and I think we advertised in some of these other southern American countries.

Q. And in the West Indies?

A. Yes, sir; in the West Indies and Cuba.

Q. You have in front of you quite a number of examples of your advertisements, haven't you?

A. Yes, sir.

Cross-examination by Mr. Lichtenstein.

Q. Do you know the extent of your advertisements for the present year?

A. No, sir.

Q. Well, within the last three or four years?

A. No, sir; I do not know it.

Q. You advertised quite extensively in 1902 and 1903, didn't you?

A. Yes, sir; in 1902 and 1903, and in 1899 also.

By Mr. Collins.

Q. And this cork you show, even on the cork you have the bear, haven't you?

A. Yes, sir.

MR. COLLINS—I offer that cork in evidence.

Marked Exhibit C 67.

DENNIS SWARTZ, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are of what age?

A. I am 31 years old.

Q. Where do you live?

A. Hoboken.

Q. Were you formerly in the employ of the Great Bear Spring Co.?

A. Yes, sir.

Q. Up to what time.

A. I first went with them in 1901 and I left them in 1904.

Q. And you went back again?

A. Yes, sir; I went back again—I believe I was away about seven months, and I went back again to them.

Q. And worked there until when?

A. Until three weeks ago.

Q. What was your work?

A. Well, when I first went there to work I went to work as a driver.

Q. And afterwards what did you do?

A. I worked on the inside for them.

Q. What doing at that time?

A. Well, they call it down there "juggling the cases;" that is a kind of word they use for that kind of work; that is, handling these cases of water and putting them on the trucks.

Q. When you first went to work, which I understand you to say was in 1900—what month was it?

A. February.

Q. Did they use the figure of a bear on anything they put out?

A. On the bottles or five gallons, which?

Q. On anything they put out?

A. No, sir.

Q. They did not use the figure of a bear on any package at all?

A. No, sir.

Q. Or in any other way that you know of?

A. Not as I know of, no, sir.

Q. What was the first seal they used on the cork, that is, on the five gallon demijohn?

A. The first seal that they did use was a sort of a thing to cover the cork with; just a little top piece.

Q. That was the first method of sealing them—put on any package, was that?

A. Yes, sir.

Q. Beginning on the five gallon demijohns?

A. Yes, sir.

Q. Did it have any bear on it?

A. No, sir; it was plain.

Q. A piece of paper—was there any name on it?

A. Yes, sir; there was a name on the inside "Great Bear."

Q. What was the next they used?

A. On the five gallon or the small bottles?

Q. On anything?

A. Well, the things they used, I believe, from the date I went to work there, or about three years ago, say, they began with a strap seal—now, this was three years or three and a half years ago, after I began to work there; as I say, they used a "strap" seal; there is a paper first that covers the whole top of the bottle, that is, the neck of the bottle, and then comes the strap seal that binds that.

Q. The paper goes over the cork?

A. Yes, sir.

Q. And then the strap is put on over that?

A. Yes, sir; the strap is put on over that, rounded on the neck; just to hold the paper down; that is what it looks like.

Q. Now, the label—had it a name on it?

A. Just had the name or signature of "Great Bear" on it.

Q. Did it have any picture of a bear?

A. No, sir.

Q. How long did they use that strap label?

A. Well, now, let me see—I think it was a year afterwards.

Q. When did they begin to use a strap label with the picture of a bear on it?

A. Well, I guess it was about 15 months after.

Q. About how long ago was it that they began to use it?

A. From this date?

Q. Yes, from the present time back?

A. Well, I have been working pretty near four and a half years for them, so you can figure it out yourself.

Q. It would be inside of two years from now, would it?

A. Yes, sir.

Q. The shoulder label on the five gallon demijohns, when first was that used—that has a bear on it?

A. It has a bear on it?

Q. Yes, has it not—I will show it to you—I show the witness Exhibit M annexed to the answering affidavit?

A. When I first noticed that bear, on the demijohns first, they had a plain band on the side first.

Q. Similar to this?

A. No, sir; it was more squarer than that.

Q. When did they begin to use this one?

A. Well, I told you that they may have begun to use that—you see I left them one time, and I was away four months—

By Mr. Collins.

Q. I thought you said you were away seven months?

A. Yes, sir; it was seven months, and in that time they might have begun.

Q. I think you said you were away seven months, is that right?

A. Yes, sir.

Q. And you think they might have introduced that while you were away that time?

A. Yes, sir; I was away seven months; I was in business for myself.

Q. And when you came back to work there, had

they introduced it, or was it introduced afterwards?

A. Well, now—I started in to work for them—

Q. Can you tell about how long it was ago that they started to use that label?

A. On the demijohns?

Q. On the five gallon demijohns?

A. Well, I had been working for them for about 11 months on the inside, and you can figure between that time and the seven months that I was away—that would figure about sixteen months, or maybe a little less time than that.

Q. Now, the long-necked label was used how long—I show the witness Exhibit H annexed to their affidavits—when did they begin to use that on the long-necked half gallon bottles?

A. I guess about twelve months ago.

Q. Has the use of the labels with a bear on them been increasing within the last two years; has that use been increasing during that time; that is, getting more of them?

A. Yes, sir; I dare say it has, because their business has increased so.

Q. The business of the Great Bear Spring Co. has increased to such an extent that they do use the labels with a bear on it more than they did?

A. Oh, yes, after I first went there.

Q. When you first went there they did not use it at all, as I understand you, but after that, on and up to the time you left, did they use it more or less?

A. They used it more.

Q. Do you know of any customers ordering water by telephone to your place; that is, ordering the Bear Lithia Water?

A. Yes, sir.

Q. What do you know about that?

A. Well, sometimes we used to have to go into the office as much as three or four times a day, and

while you were in there maybe a telephone message would come over to the office for a case of water, and the man who took the telephone message he would not know whether it was a Great Bear Spring Co.'s customer or whether it was a Bear Lithia Water customer.

Q. Were you there at the time?

A. I was there when he gave me the order.

Q. That is, the man would come to you from the telephone with an order?

A. Yes, sir.

Q. Well, what would happen?

A. I would take the order and go and deliver the water.

Q. You delivered the Great Bear Spring Co.'s water?

A. Yes, sir.

Q. How did you know what water it was that was ordered?

A. I cannot exactly tell you what water was ordered, because the message it was "just bring up a case of spring water."

Q. You did not get the message yourself?

A. No, sir.

Q. Did you ever personally get a message yourself over the telephone for a case of water where you did not know whether the customer was ordering Great Bear Spring Co. or Bear Lithia Water?

A. No, sir; but I got an order one time from 220 Broadway.

Q. From whom?

A. A party on the 25th floor of that building; I cannot tell you the name of the party, but he asked for a case of water, and when I fetched it up there he said: "We don't want that; we wanted the Bear Lithia Water."

Q. Were you in the building at the time?

A. Yes, sir.

Q. How did he come to give you any order at all?

A. I believe he telephoned—

Q. Did he come out of his office to tell you that, or were you in his office when he told you that he did not want that water—that he wanted the Bear Lithia Water?

A. Oh, no, sir; he came out of the office to me.

Q. Were you in the corridor?

A. I was in the passageway.

Q. Did you have any sign on your cap or on the package?

A. No, sir.

Q. Then how would he know that you were delivering the water?

A. Well, I had a case of water in my hand.

Q. You say that he told you to bring him up a case of water?

A. Yes, sir.

Q. And then when you got there he said he didn't want it?

A. No, sir; he said that "he didn't want that water at all—he wanted Bear Lithia Water."

Q. You did not get the message yourself at the telephone, as I understand?

A. In one instance I did, but you told me that you would not take my evidence on that.

Q. In one instance you got one telephone message yourself?

A. Once one of their employees got a message by telephone—

Q. That is not what we are wanting; I understand now we would not let you testify as to what you had been told; that has been all stricken out, but I ask you now if you had ever received a message yourself?

A. No, sir, I did not.

Q. You left of your own accord the business of this defendant company?

A. I always did; yes, sir.

Cross-examination by Mr. Lichtenstein.

Q. You say that they were not particular about the signs; you always wore a little cap with the Great Bear Spring Co.'s name on it; you wore a cap, didn't you?

A. Sometimes I did and sometimes I didn't.

Q. They usually have caps with the Great Bear Spring Co.'s name on it?

A. Yes, sir; sometimes.

Q. And you are supposed to wear them?

A. Yes, sir; but we don't all the time.

Q. What kind of a case of water was it you took up to this man on the 25th floor of this building you speak of?

A. A case of six bottles.

Q. Put in a crate?

A. Yes, sir; six bottles in a crate.

Q. And are not the words "Great Bear Spring Co." on the outside of the crate?

A. Sometimes they have them words on, and sometimes they haven't.

By the Court.

Q. Well, what had this case on it?

A. I cannot exactly tell you what it did have on it?

By Mr. Lichtenstein.

Q. What kind of labels were on these bottles that you took up there?

A. I don't believe it had any labels on at all.

Q. It had the neck labels on; how did the man know that it was or was not the water that he wanted?

A. Because he saw it was the wrong man that came there with the water.

Q. Didn't he look at the bottles at all?

A. No, sir.

Q. Didn't you know that he was a regular Bear Lithia Water Co. customer?

A. No, sir; I didn't, but he knew it wasn't the water he wanted, and he knew that I was not the man that delivered his water—(interrupted).

Q. How came he to know that you were not the man that delivered his water—this was the first time that he had ever seen you?

A. He did order water of me once.

Q. But he would not know you the first time you went there with water; he might have known you the second time.

A. Well, he only ordered once of me.

Q. Didn't all these bottles have neck labels on?

A. No, sir; they did not.

Q. The bottles were without neck labels on?

A. Yes, sir.

Q. Those bottles that were in the case of water that you delivered, they had those neck labels on, hadn't they?

A. No, sir; they didn't have them neck labels on, not in the three years that I worked there.

Q. When was it you delivered this case of water to this man on the 25th floor of this building in N. Y.?

A. I think it was about three years ago.

Q. Did you get inside of the office with this water?

A. Yes, he opened the door for me himself.

Q. And he said then that he didn't want this kind of water?

A. Yes, sir; he didn't want that water; it was Bear Lithia Water he wanted.

Q. He wanted Bear Lithia Water?

A. Yes, sir; he wanted Bear Lithia Water.

Q. He didn't want Great Bear Spring Water?

A. Yes, sir; that is what he said, he didn't want Great Bear Spring Water.

Q. Did he say that he wanted Bear Lithia Water —are you sure he said that?

A. Yes, sir; I am sure he said that; he said he didn't want that water; that Great Bear Water; he wanted Bear Lithia Water.

Q. And he didn't want the Great Bear Spring Co. Water?

A. Yes, sir; he said he didn't want the Great Bear Water; he wanted the Bear Lithia Water; that is just what he said.

Q. Well, but how did he know that it was not Bear Lithia Water, if there was no label on it or any other means of identifying the package?

A. Well, he asked me what company I came from.

Q. Oh, he didn't look at the box then?

A. No, sir; he looked at me.

Q. The label marked Exhibit H annexed to the defendant's affidavits shown the witness, and he is asked—don't you know as a matter of fact that these labels were used on all of the green bottles at the time you first went to work there for them?

A. No, sir; I do not.

Q. What were the large labels used for—(showing witness exhibit annexed to the same affidavit)?

A. On the green bottles or on the large bottles?

Q. On the green and on the large bottles?

A. When I first went to work for them.

Q. Yes?

A. I never seen it.

Q. Was it afterwards used on the green or large bottles?

A. About three or four years afterwards that was used on the demijohn.

Q. It was only a few months ago they used this large label (showing witness Exhibit I annexed to defendant's affidavit)?

A. Yes, sir; according to my testimony.

Q. Don't you know that they did not use that label on any bottles at all now, they having dispensed with it entirely?

A. I don't transact any of their business now; I cannot tell.

Q. Don't you know that you have handled some of their business lately?

A. Well, sometimes I handle it.

Q. When did they dispense with the use of that label entirely?

A. I cannot tell you that; I was merely a laboring man and doing work for them.

Q. You were working in their warehouse, were you not?

A. Yes, sir.

Q. Where they bottled and handled their water?

A. I had my own department to attend to.

Q. Didn't you know what kind of labels they used?

A. No, not when I was hard pushed with my work; no, sir.

Q. So you don't know whether they used these labels or not; is that your testimony?

A. When? About three afterwards; after I went there to work I began to take notice of it but not before.

Q. When did you begin to see the label, Exhibit M annexed to the same affidavits, on the packages?

A. As I told you before, I thought it was about twelve months ago.

Q. When did they use the big one, if they used this one twelve months ago?

A. I guess they used the big one sometime—

Q. Putting them on the small bottles, that is the

small labels, and putting the big one on the five gallon demijohns?

A. Putting both kinds of labels on.

Q. You were discharged by these people for dishonesty, were you not?

A. No, sir; I always left them of my own accord.

Q. Didn't they discharge you this last time?

A. No, sir.

Q. Didn't they discharge you on the first occasion?

A. No, sir.

Q. Are you working for the Bear Lithia Springs Co.?

A. I am working for nobody.

GEORGE W. MILLER, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. What is your age?

A. I will ask to be excused in stating that—I am over 21 years of age.

Q. I want it to appear that you are a middle aged man?

A. I will plead guilty to that.

Q. And you are a business man of some years standing?

A. Yes, sir.

Q. What business?

A. I am manager for Leuties Bros. in the mineral water department.

Q. They are very large dealers in mineral waters, are they not?

A. Yes, sir; we think so.

Q. How long have you been with them?

A. I have been with them for seven months, as manager, and before that; about a year altogether—

about a year before that I was interested in distilled water for a number of years.

Q. Are you familiar with the Bear Lithia Water?

A. Yes, sir.

Q. And also with the Great Bear Springs Co.'s Water?

A. By reputation, and from a business standpoint.

Q. Can you tell us, in the business dealings in waters for Leuties Bros., whether there has been any confusion between these two waters?

A. Yes, sir; there has been considerable confusion, not in my mind at all, but on the part of my customers; there is no confusion in my mind of course, in regard to them.

Q. Among your customers?

A. Yes, sir.

Q. Can you give any illustrations?

A. Well, usually people speak of Bear Lithia Water or Great Bear Spring Water as "Bear Water." It is a particular trade name. When, for instance, I would get a telephone message, as I often do, for "Bear Water" I would naturally protect myself and ask them "do you want Bear Lithia Water or do you want Great Bear Spring Water? And sometimes they would say they wanted Great Bear Spring Water, and at other times they would want the Bear Lithia Water. Well, if they said they wanted Great Bear Spring Water I would tell them that I did not have it, as I did not keep it. But sometimes, as I say, they would ask for "Bear Lithia Water" and I would send it. Now, as I said before, in order that I shall not send the wrong water, when they telephone for water, and they say they want "Bear Water" I would ask them what kind of bear water do you want, as we have several kinds of Lithia water, and I do not know how

many kinds of mineral water; as I say, I would ask them what kind they want, as there is a Bear Lithia Water and there is a Great Bear Spring Water; I do that to protect myself so that there would not be any mistake made on my part.

Q. Well, do you find out that they always know the difference?

A. No, sir; they do not always know the difference; they very frequently asked me what it is, and I would say to them, in reply, that the Bear Lithia Water is a Virginia spring water and I would also tell them that the other water, that is, the Great Bear Spring Water, is the spring water from New York State somewhere.

Q. Can you give us any direct illustration?

A. Any particular illustrations, detailed illustrations?

Q. Yes?

A. Well, no; nothing more than this, that I can say within the last five or six months, I have had as many as twenty or more calls over the telephone asking me for "Bear water," and of course where we have so many customers, several thousand customers, of course I cannot look up and see what particular kind of water that person had had before—

Q. Will they ask for Bear Water?"

A. Yes, sir; as I say, if it is a new customer I call him up again by the telephone, and I would ask him what water it is that he wants, and explain about the two kinds of water, the two kinds of "Bear Water." But if it is an old customer, I would look up and see what he had before and I would send him what he had had before. If it is a new customer sending a telephone message or a postal card, and asking for Bear Water, I would find out by telephone what it is he wants first, before sending

him the water,—I do that to protect myself of course.

Q. When they speak of it as "Bear Water," you have to find out what they want, and in these cases you speak of, you have explained, as you have told us, what the difference in the waters are—now, is it ever necessary to resort to the prices, that is, to tell them the different prices so as to find out what water it is they want?

A. Oh, yes, sir; sometimes they will say—well, now, perhaps I can give you an illustration. There is one drug store, a man by the name of Reich, at 91st street and Columbus ave., he sent an order for some "Bear Water" by telephone, and I said to him, "which do you want?" and he said, "I don't know, my customer did not say." And I said to him, "well, what price is he in the habit of paying for it?"—I forget the price they said at the time—but I said, "well, you do not mean the Bear Lithia Water, because the price was so low that I knew that that was not one of the particular forms that they put up now; that is one of the tests I make.

Cross-examination by Mr. Lichtenstein.

Q. You say there is one particular form of water that sells for a higher price?

A. Yes, sir; I cannot tell you just now what it was, that is the price, but there is one particular water that I sell that I have a call for; it is a mineral water, and I don't know of my own personal knowledge, but I believe it is of a higher price than some or most of the rest of them—I do not say that as a fact, but that is my belief at all times—

Q. I show you a Bear Lithia Water bottle heretofore marked C 15, is that the bottle that sells for the higher price?

A. Well, it does not look like the bottle; the

bottle I mean, the label on it is in a higher position on the bottle than that.

Q. It is the same kind of a label is it?

A. Yes, sir; it is the same kind of a label. You will remember out of some 250 kinds of water it would be impossible for me to tell everything that is printed on it, yet this label seems to be set up a little higher and appears to be a little bigger than the label I am thinking of.

Q. That is a mineral water, is it not?

A. That is one form of it, yes.

Q. I show you another style of it, with the porcelain stopper; you sell that, don't you?

A. No, sir.

Q. Well, why did you say there was one water that sold for more than the other?

A. Because over the telephone people have asked me for the cheaper kind of water.

Q. The cheaper kind of Bear Lithia Water?

A. Well, they do not say Bear Lithia Water; it might be Great Bear Spring Water, but they have asked me for the cheaper kind of water when they have called me up on the telephone and I have told them that I did not sell the cheaper water.

Q. You do not sell the Great Bear Spring Co. Water?

A. I do not keep it for sale; I buy some sometimes for customers perhaps if they order it.

Q. These telephone messages you received—

A. And by postal cards.

Q. Yes; if they asked you for Bear Water, you would ask them if they wanted Bear Lithia Water, or Great Bear Spring Water?

A. Yes, sir.

Q. And if they wanted the Lithia Water you would send them the Bear Lithia Water, would you?

A. Well, I would ask them if they wanted the

Bear Lithia Water, and sometimes they would say no, and sometimes they did want it.

Q. You say you would not have any difficulty in knowing one from the other by looking at the bottles and the labels, would you?

A. At the first glance I cannot say that I would have great difficulty, although I might have some.

Q. Would you have any difficulty between these two bottles (exhibiting to the witness, Exhibits D 5 and C 15)?

A. No, sir; if you got the color and size of the Bear Lithia labels.

Q. Would there be any difficulty for you to determine the difference between Exhibit C 15, and this bottle that I show you of the Great Bear Spring Company (the bottle being marked with a bluish label)?

A. I am just answering the question as you put it to me.

Q. Would you have any difficulty in distinguishing one from the other (exhibiting the same bottles)?

A. Yes, I should.

Re-direct by Mr. Collins.

Q. Assuming a bottle like Exhibit C 16, and one of the same size, you say this is larger, but in your mind, assuming the same size, you can in your own mind assume that they are the same size; you understand me?

A. Yes.

Q. Now, these labels, one on the green bottle—would a person unaccustomed to the waters be liable to mistake one for the other?

MR. LICHTENSTEIN—I object to the question, that it is not the test—a person unaccustomed to the water.

A. Well, I have no knowledge or means of knowing what other people would think about it, but I can tell you what I think.

By Mr. Collins.

Q. What would you think?

A. I should look twice at the bottle before I decided.

Q. In your opinion can a person be misled?

MR. LICHTENSTEIN—I make the same objection.

Objection sustained.

WITNESS—I cannot answer that question—I can answer for myself, but not for anyone else. I say I would look twice at them before I decided.

By Mr. Collins.

Q. The water that you buy comes in cases or demijohns, and you sell the whole thing as it is, do you not?

A. I buy unbroken packages, but I sell it often in broken packages.

Q. You buy the package and the bottle also, don't you?

A. Yes, sir.

Q. And that brings a higher price than where the bottler delivers the package and he expects to take back the bottles?

A. I presume so; we sell nothing but mineral water; we do not sell drinking water, you know.

Further cross-examination by Mr. Lichtenstein.

Q. If you had seen a bottle with the label of the Bear Lithia Water Company, and with a black bear on it, and had used that water, would you be mis-

taken or would you mistake the water for that put up in the bottles of the Great Bear Spring Company, with the label they use, and a white bear?

A. I might.

Q. After you had once seen it?

A. I have seen both of them a number of times, and I tell you I would look twice at them again before I decided.

Q. Do you mean to say you do not know the difference between the Bear Lithia Water and the Great Bear Spring Water packages without looking at them twice?

A. In that form I should have to look at them twice.

Q. Why would you have to look at them twice?

A. Because of these color schemes—to my mind they are generally confusing.

Q. The color scheme is entirely different between them?

A. That is a matter of opinion.

Q. The label of the Great Bear Spring Company is a yellowish green, is it not?

A. I don't know what you call the color; it is a yellow green, yes.

Q. Do you know the difference in the color at all?

A. Fairly well.

Q. Do you find any difference in the color?

A. There is quite a difference in the color.

Q. The Bear in the Great Bear Springs Company's label is a white bear, and that on the Bear Lithia Springs Conpany's label is a black bear, is it not?

A. Yes, sir.

Q. Is there any difference in that?

A. Well, one is white and the other is black.

Q. Do you mean to say that by using the Bear Lithia Company's label once, you could not dis-

tinguish it from that of the Great Bear Springs Company's label?

A. I refer you to my last answer?

Q. Could you distinguish it?

A. I could by looking more than once.

WILLIAM GANDERT, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are, I think, a druggist?

A. I am in the drug business.

Q. Wholesale or retail?

A. Wholesale.

Q. Where?

A. 91 Fulton street; I am with the firm of McKesson & Robbins.

Q. McKesson & Robbins do a very large business.

A. Yes, sir.

Q. Do they sell Bear Lithia Water and Great Bear Spring Water on orders?

A. They do.

Q. They do not keep it in stock?

A. No, sir.

Q. But on orders they sell it?

A. Yes, sir.

Q. How long have you been with them?

A. About twenty-five years.

Q. Do you know whether, within the last few years, there has been any confusion as between these waters, and if so, explain it and give illustrations?

A. Yes, sir; there has been confusion; there have always been mistakes made between the Lithia Water and the water they call, I think, the Spring Water.

Q. The Great Bear Spring Water?

A. Yes, sir.

Q. Explain how it comes about?

A. Well, they will order the Great Bear Spring Water, and they will also order Great Spring Lithia Water, and they get them all mixed up—all mixed in together. I cannot tell what they want when they order it, and, so as to make sure that there is no mistake made, I generally look up the last order, to see what it was they had before. Of course, I must do that to protect myself from error and the trouble of having it sent back again; now, that is about the only way that we can distinguish it—by looking up and seeing what it was they had before.

Cross examination by Mr. Lichtenstein.

Q. There is considerable confusion between all the lithia waters, is there not?

A. There seems to be.

Q. A man would come in who had been a customer, who had been using Bear Lithia Water, and he would ask for Buffalo Lithia Water, wouldn't he?

A. Well, no, sir; Buffalo—you cannot get confused in that.

Q. Well, don't they ask for Buffalo Lithia Water instead of Bear Lithia Water at all?

A. No, sir.

Q. Usually when a person wants a lithia water he could come and ask for a lithia water, would he not?

A. He would say what kind he wanted.

Q. And he would say he wanted "lithia water?"

A. He would say what kind of a lithia water he wanted.

Q. If a man wanted lithia water he would not take spring water, would he?

A. If he wanted lithia he would not take vichy.

Q. Sometimes people would ask you for Great Bear Spring Water, would they?

A. Yes.

Q. Do you have Great Bear Spring Water on hand?

A. No, sir; we do not stock it.

Q. Therefore, you would not sell them any?

A. If he orders Great Bear Spring Water he would get it.

Q. From whom—from you?

A. We will order it from the people that have it.

Q. What confusion is there if a man calls you up on the telephone and asks for a case of Great Bear Spring Water?

A. Because sometimes they would call for Great Bear Lithia Water;" that is the reason of the confusion; they would call for "Great Bear Lithia Water;" that is the two points; there, how do you know whether they want Great Bear or Lithia Water?

Q. You ask them then if they want Great Bear Spring Water or whether they want Bear Lithia, do you not?

A. If a man calls up on the telephone and gives us an order we turn up to their last order usually and find out what it was they had before, and we send them the same kind.

Q. If he calls up on the telephone and asks for Great Bear Lithia Water, would you not ask him whether he wanted "Great Bear Water" plain, or Lithia Water?

A. We find out what it is he does want.

Q. And if you tell him that one was a lithia water and the other was not a lithia water, he would set you right, would he not?

A. He certainly would.

Q. These waters that you sell are sold to people

of considerable refinement and education; is that not so?

A. Well, most everybody buys them.

Re-direct by Mr. Collins.

Q. I call your attention to a mistake made by yourself—I call your attention to your own order; how did you write that order first?

A. It was written "Great Bear Lithia."

Q. Was this an order sent yesterday to the Bear Lithia Water Co.?

A. Yes, sir.

Q. And how was it first written?

A. It was written "a case of Great Bear Lithia."

Q. And then the word "Great" was erased?

A. The word "Great" there confused me, and I scratched it out.

MR. COLLINS—I offer that order in evidence.

Marked Exhibit C 69.

Further cross-examination by Mr. Lichtenstein.

Q. When were you asked to come here to testify?

A. Yesterday.

Q. What time yesterday?

A. Oh, I don't know about that; I don't know whether it was in the morning or the afternoon.

Q. Was it not in the morning when you were told?

A. I don't recall whether it was in the morning the afternoon.

Q. Who came to see you about coming here to testify?

A. This man here (indicating).

Q. Mr. Reusch?

A. Yes, sir.

Q. You cannot recall when it was he called upon you to testify, and yet it was only yesterday you

say, and yet you cannot say what time he came there?

A. I don't know whether it was morning or afternoon, I say.

Q. What time did you send this order out, Exhibit C 69?

A. In the morning.

Q. Was it before or after you saw this man?

A. It was before.

Q. Before you saw him?

A. Yes, sir.

Q. Did you send any other orders out to these people yesterday?

A. No, sir.

Q. Haven't you been spoken to about coming here to testify before yesterday?

A. No, sir; I never knew until yesterday there was a suit at all on.

Q. The Great Bear Spring Co. has refused to deliver water to your people, has it not?

A. Not that I know of.

Q. Is it not a fact that you requested them to deliver water to your house, and they refused to do it.

A. No, sir.

Q. Because you were in the habit of sending the bottles away and they refused to do it.

A. No, sir; I don't know anything about that.

Q. Do you know what kind of labels the Bear Lithia Springs Co. has?

A. No, sir; I don't know one label from another, either Bear Lithia Springs Co. or any other Lithia Co.; I do not use the water, I only handle it.

Q. I notice that you addressed it correctly, "Bear Lithia Springs Co., 62 New street;" where did you get that address from?

A. From the directory; the order is written by

another party, and I signed it and put the name on the top.

Q. What name?

A. The Great Bear, or this Bear Lithia Co.; I got it from the telephone directory.

Q. Did you receive the order over the 'phone or by letter to deliver a case of water?

A. By letter.

Q. And from whom did this letter come?

A. I cannot tell you just now who it is from; it is an out-of-town man, I know.

Q. Is there anything on this notice or order that would indicate from whom this order came?

A. I can tell you who to send it to; it has on it "Ship to New Brighton, Conn."

Q. "Ship to C. Dickinson;" who is he?

A. One of our customers.

Q. Have you his letter?

A. No, sir.

Q. Do you know what kind of water he usually bought?

A. He had a whole string of goods on it, and that was ordered on it.

Q. Who filled out the Bear Lithia Springs Co.'s name?

A. I did.

Q. Where did you get that from?

A. From the telephone directory.

Q. You looked up the telephone directory for the purpose of finding out what the address was, didn't you?

A. Yes, sir.

Q. Where did you get the name "Bear Lithia Springs Co." from?

A. From the telephone directory.

Q. Can you tell me this, how it came that you wrote the body of the order in black lead pencil?

A. I did not write that; that is written by a Requisition Clerk.

Q. The blue pencil portion you say is written by the Requisition Clerk?

A. Yes, sir; it is an indellible pencil.

Q. What was the necessity of putting on there "one case of Bear Lithia Water," or "Great Bear Lithia Water?"

A. Because the words "Great Bear," and "Bear" is confusing to me.

Q. That is not an answer to my question—why did you not fill out in this order, what you wanted, when you sent it to the clerk?

A. The order was sent to me by the Requisition Clerk, and I changed it.

Q. Do you mean to say the blue pencil writing was in there before it reached you?

A. Yes, sir; it was.

Q. Where did your firm get the order from?

A. Where did who get the order from?

Q. I mean how did your Requisition Clerk know that he was to order a case of water—from what did he get that?

A. How does the Requisition Clerk know?

Q. Yes?

A. He don't know; he doesn't know the first thing about it; he is just a copyist, that is all.

Q. He does not know anything about it?

A. No, sir; he doesn't know the first thing about it, all he is a copyist.

Q. What does he copy it from?

A. From the original order.

Q. And this order came to you for "one case of Great Bear Lithia?"

A. Yes, sir.

Q. And you erased the word "Great" yourself?

A. Yes, sir.

Q. And put in the true address?
A. Yes, sir.
Q. Of the Bear Lithia Springs Co.?
A. Yes, sir.
Q. And you wrote the address on there?
A. Yes, sir.
Q. And then sent the order on?
Q. Yes, sir.

CARROLL P. DUVAL, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are the steward I think of the Calummet Club, New York city, a social club?
A. Yes.
Q. Did you have occasion to recommend water to a friend?
A. Yes.
Q. Who?
A. The Superintendent of the Philadelphia and Reading Dining Car Service.
Q. What was his name?
A. Mr. S. W. Durr.
Q. You use the Bear Lithia Water at the Calummet Club, do you?
A. Yes, sir.
Q. What water did you recommend to your friend?

MR. LICHTENSTEIN—I object to the question as immaterial.

Question allowed.

A. Bear Lithia Water.

By Mr. Collins.

Q. Did you learn the result—what happened?

A. Yes, sir; I did; this was last summer, and he had just been appointed to a position—the position had just been inaugurated, and he wanted a table water for the dining car, and he asked me if I knew of a good one; I said yes, and I mentioned the water and a couple of months after that he was—

Q. You cannot tell what he said—now, what was the result; what water did he get?

MR. LICHTENSTEIN—I object to it as immaterial, and incompetent.

COURT—Unless he saw it, I cannot allow it.

By Mr. Collins.

Q. His Honor does not want you to state what you were told; unless you know yourself what water it was he did get you cannot tell?

A. I do know.

Q. What did you see of it?

A. I didn't see it either.

Q. Do you know of your own knowledge what water he did get?

A. I do.

Q. How do you know?

A. He told me so.

Q. Well, you are not permitted to tell what anyone told you—now, did any case happen that you know of in regard to causing a confusion in relation to water—did any such occurrence take place in your own family?

A. Yes, sir.

Q. State it?

A. Well, we were using the Crystal Spring Water in our apartments and I told my wife that I would

rather she would get the Bear Lithia Spring Water, and she said all right, and in about two weeks after that she said to me, "well, I have got that Bear Lithia Water," and she brought out a bottle which was just like the little bottle there (indicating).

Q. Well, that is the Great Bear Spring Water bottle?

A. Yes, sir; and that was the Great Bear Spring Water, it was sent there to me as a sample and since then we have been using it.

Cross-examination by Mr. Lichtenstein.

Q. You have been using it?

A. Yes, sir.

Q. You did not know whether your wife ordered any water at all did you?

A. Well, no, sir; the first order she didn't order it, it was sent by way of a sample, but she ordered the second lot.

Q. You don't that of your own knowledge, do you?

A. I certainly do.

Q. How do you know it?

A. That she ordered the second?

Q. Yes?

A. Because I was sitting there in the room when she ordered it from the front door; she ordered it from a man at the front door.

Q. What water did she order?

A. The same kind she had received before.

Q. And she had received a sample case of Great Bear Spring Water, and when a man came around there subsequently she said she wanted another case of the same water, Great Bear Spring Water?

A. Yes, sir.

Q. And she got it?

A. Yes, sir; she got it.

Q. And you used it?

A. Well, we have used part of it.

Q. You saw immediately that it was not the water you wanted though?

A. Certainly I did.

Re-direct by Mr. Collins.

Q. Did you tell her so?

A. Yes, sir; I did, I told her so.

Q. And you haven't taken any more.

A. No, sir.

WALTER E. WELLS, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are in the employ of the Bear Lithia Spring Co.?

A. Yes, sir.

Q. In what capacity?

A. Salesman.

Q. How long have you been employed by them?

A. Six years.

Q. Do you know anything about these coolers?

A. I know everything that has transpired in the past six years about them.

Q. Were they begun to be used before that?

A. No; when I started with the Bear Lithia Springs Co., I commenced soliciting trade through the various offices of the city; well, it was a very hard proposition—

Q. Now, tell us about the coolers, please?

A. Well, now, really the first cooler that we used, that we represented was what they called the Appert glass cooler, and long before the Rose cooler was known of it was in existence although it

was not on the markets at that time, and there was only a few to be had; we have a great many of them now; it is a wooden cooler, and it is charcoal lined and with an aluminum container.

Q. And then the Rose cooler was put on the market?

A. Yes, sir; the Rose cooler then came on the market, but we had them before they came on the market.

Q. Can you explain when there was a time, any time, when there was not a "Bear" on the cooler—that is, the figure of a bear on the cooler?

A. There was a time when we happened to be out of transfers; we had to get them from Chicago, and Mr. Cole ordered them as soon as he knew that we were out of them, but in the meantime we had to have coolers; it was right in the heat of summer, and so we got a dozen from Mr. Rose; I put them out myself and they were out without the figure of a bear on, because we were out of transfers, but they were only out for three or four days without any bear on, and just immediately we got the others, the other transfers, I had the men come down from the factory and put the new transfers on those coolers, but it was only a matter of three or four days that that condition of affairs existed; that those coolers were out without the figure of a bear on them.

Q. Do you know or remember of the use, at the time the car broke down, that your company for a few days sent out and used the water of the Trinity Spring?

A. Oh, yes; there was not a demijohn nor a package of water of that water put out, that I did not see; our foreman spoke to me about it, and asked me when I expected this water, and he told me about our trouble, and so to avoid inconvenience to our customers when we could not get our own

water, we procured the water from the Trinity Springs, and put it out to our customers. Now, that was only for a day or two, and indeed in a great many cases we did not charge them at all for it, and I know that out of 300 and over of demi-johns that went out, half of them came back—sent back by the customer who was in the habit of using the Bear Lithia Water, and they said they didn't want that water, and sent it back.

Q. In no case did you send it out or sell it as Bear Lithia Water, did you?

A. No, sir; in no case did we ever sell any of that Trinity Spring Water as Bear Lithia Water; why, no, sir.

Q. Do you know whether it has ever come to your notice in your business there, whether there has been any confusion between the Bear Lithia Springs Co. and the Great Bear Spring Co.?

A. I can safely say that there is not a day transpires; I do not believe a day, unless there is one or more instances of confusion.

Q. Explain it?

A. Well, I am in the office a great deal of the time, and repeatedly answer the 'phone. One day the Guarantee Trust Co. called me up on the 'phone, and said they wanted to see me, and they said "will you come up here and see about these Great Bear coolers." "Well, I said "this is not the Great Bear Spring Co.; this is the Bear Lithia Springs Co." And they said "I mean the Bear Lithia Springs Co." That is one instance. Now, I will cite a case to you. The Kentucky Refining Co. called up our office one day through the 'phone, that they were out of coupons—they used a great many of those coupons—you understand we sell coupons so many for $10—well, I delivered the coupons myself, and I called there one day afterwards to collect for the coupons, and I collected the $10.

Q. Those coupons are really tickets for the water?

A. Yes, sir; the coupons are tickets we sell for the water. As I say, I called there one day to collect for the coupons, and when I went in and told them my business, he called the cashier and told him to draw a check for the "Great Bear Spring Co.;" and I had to put them right on that, and yet, at the same time, they had one of our coolers right there in the office and they had a Great Bear calendar hung up right there in the office, and before I left that day they requested me to give them another calendar same as that one, and then I had to go to work and explain the difference between the two waters and the two companies.

Q. What cooler was there?

A. It was our cooler, but they had a Great Bear Spring Co.'s calendar hanging up in the office, and they requested me to give them another.

Q. And they were going to give you a check drawn to the order of the Great Bear Spring Co.?

A. Yes, sir; as I told you; he called up the cashier and he told him to draw a check to the order of the Great Bear Spring Co. and I had to go to work and explain.

Q. Proceed, any others?

A. The American Locomotive Co., a corporation whom we have had on our books for the last eight months and who use considerable water and have in use a dozen coolers or more. Well, the purchasing agent of the American Locomotive Co. called to me over the 'phone and asked me to call on him to see about using water at his residence, and getting a cooler for his residence. I called, and he told me that he was using water in a glass stoppered bottle, quite a small bottle, and he wanted to know if I could loan him a cooler so that he could use it in the same way that he was using it in his

office; and I told him, when he mentioned the half gallon bottle, that he was not using this water—that is, he was not using our water in his residence, the same as he was using in his office, and he insisted that he was; well, I told him that I was entirely familiar with the business and I knew that we didn't have him on our books, and I told him so, and he said, "well, he thought he was using the Bear Lithia Water all the while."

Q. And he was purchasing the water for the American Locomotive Co.?

A. Yes, sir; and he put the coolers and this water of ours into that office.

Q. And you have no glass stoppered bottles?

A. No, sir; we have no glass stoppered bottles, in fact, in most of the cases where there has been confusion caused, I have discovered it myself by the bottle.

Q. Well, go on?

A. Calling on the Cotton Exchange one day, to collected a bill, the cashier paid me the check; after handing out this check to me—I don't know whether he drew the check himself or not, but he must certainly have seen the name "Bear Lithia Springs Co." on the check, and yet he said "Great Bear Spring Co." will you send me over some of those calendars; well, at that time, we didn't have a calendar, and I took it for granted that he referred to the Great Bear Spring Co.'s calendar; that was another case.

Q. Well, go on?

A. Mr. Baker, of the Carnegie Steel Co., was requested by a friend of mine, a Mr. French, to put in Bear Lithia Water in his office; Mr. Baker whom I called on afterwards with a letter from Mr. French to put in Bear Lithia Water, he told me that he was using the Bear Lithia Water; well, I knew very different, and so I made an investiga-

tion, and I found out that he was using the water of the Great Bear Spring Co., and I went to work and explained the matter to him, and he then immediately gave me an order and I put in the cooler the very next day.

Q. Go, on.

A. Claude Nott, Manager of the Hotel Somersett, whom I have known for four or five years, and have been personally acquainted with the man; he used Bear Lithia Water in the Somersett Hotel for the past two years; one day he called me in his office—now this is within say the course of a month or six weeks, to see an automatic machine; I don't know what is its name, but at all events it was a machine attached to a telephone desk, and it had a switch board, so that for instance, a person taking an order from a department at one end she writes it down on a sort of pad, and at the same time it is recorded downstairs; well he called me in to show it to me, and he wrote my name, "Mr. Walter E. Wells, representative of the Great Bear Spring Co." and he wrote that out to show me how this machine worked.

Q. He wrote your name "Walter E. Wells" as representative of the Great Bear Spring Co., when he knew that you were the representative of the Bear Lithia Co.?

A. Yes, sir; now, I have lived with that man in his house for two years or over, and I have supplied Bear Lithia Water there, and you couldn't get him to drink anything else, if you gave it to him, he thinks so much of it, and yet he was so confused on this day that he wrote my name as the representative of the Great Bear Spring Co.?

Q. What next?

A. Mr. Charles H. Evans, the President of the Brooklyn Base Ball team, who uses the Bear Lithia Water in the suburban bowling alley and he

repeatedly addresses me as the Great Bear Spring.

Q. Any others?

A. Miss Utz, of Jersey City, I was calling on her and she asked me—

MR. LICHTENSTEIN—I object to what he said to Miss Utz or what Mr. Utz said to him.

By Mr. Collins.

Q. Is it what someone else told you?

A. Oh, no, sir; I was right there and she asked me if I would have a drink of Bear Litha Water, and she brought out a Great Bear Spring Co.'s Water bottle; now, this was in Jersey City; I don't know just the address, but at all events it was in Jersey City; another one, Henry Spraul & Co., of 30 Broad Street, N. Y.; they use Bear Lithia Water, and moving to 74 Broadway some one of the firm, I could not trace who, ordered Great Bear Spring Water and a cooler; they had coupons of the Bear Lithia Springs Co. that were not used, and shortly afterwards they 'phoned for me to come up there; I cannot tell the man's name who said it, but I will tell you of a man that overheard it; Mr. Kerr, who does our printing, and he was in the office at the time, and he it was, I believe, that brought the fact out that they were not using Bear Lithia Water; well, they put out the Great Bear Spring Water and put in the Bear Lithia Water, and have used it to this day; it was someone, I cannot remember the name.

Q. Well, it was some one representing Sproul & Co.?

A. Yes, sir.

Q. Go on, any other?

A. William Paleonenberg, of the firm of Paleonenberg & Sons, 710 Broadway, a personal friend of

mine, who has lived in the same hotel with me where he did reside, he called up the Great Bear Spring Co.

Q. You cannot tell unless he told you about it?

A. He did; he told me he called up the Great Bear Spring Co. and asked for Mr. Wells; that is myself, and they said I was not there any more.

MR. LICHTENSTEIN—I object to that.

MR. COLLINS—You cannot tell that.

A. Well, I will cut it down to the fact that he called up the Great Bear Spring Co. instead of the Bear Lithia Co.; he was looking for water in his office.

Q. How do you knew?

A. I have been there and saw it; I went there to the office and I found Great Bear Spring Water there.

Q. Go on?

A. Well, the next time I saw it he put the Great Bear Water out and put in the Bear Lithia Water.

Q. Did he tell you that he was using the Bear Lithia Water?

A. Yes, sir; he told me before that, that he thought he was using the Bear Lithia Water when in fact he was using the Great Bear Spring Water.

RECESS.

Q Go on.

A. Well, I put in the Bear Lithia Water coolers and he is now using the Bear Lithia Water altogether.

Now, this confusion that I have given you, these cases have all transpired within the last year, but, of course, previous to that time, I had many similar cases, but not thinking, of course, that there would ever be a suit, or ever any need to record

them, or that they would ever be of any service to the company, I never kept any memorandum of it.

Q. Are there any others?

A. Here is one that happened last week: Naylor & Co., in Wall street, No. 41, I think it is, a Great Bear Spring Co. customer have a Great Bear cooler, they 'phoned to us twice last week; the first 'phone; well, I knew it was not our customer; but they 'phoned again and so I went over there and explained to them that we represented the Bear Lithia Water Co., and they were a customer of the Great Bear Spring Co.; and they called us up instead of the Great Bear Spring Co.; but then they 'phoned again and their message was for us to exchange their cooler; they said they wanted a new one, and so I went over there and gave them my card, and they then insisted that it was our cooler; well, they showed me the cooler and I said, "This is not our cooler; it is a cooler of the Great Bear Spring Co." "Well, he didn't know the difference," and I had to explain it all to him; that they were two different companies; well, of course, I did my best to land him, and he claimed that if they didn't attend to the matter at once after he had 'phoned he would let me in, and so I went out of the office and I haven't heard of him since.

Here is one that happens almost every day: H. Truman & Co.; I state this case because it happened on April 9th, 1906; they have been on our books for four years, and they telephoned to us and called for Great Bear Spring Water, and said that they were all out of water; well, I knew it was our customer, and I told them that this was the office of the Bear Lithia Co. and that they were customers of ours, and that they didn't want the Great Bear Spring Water; that they wanted our water, and then they said, "Why, that is so; that is what they meant."

Another case, Effingham Lawrence: They have been on our books for two years; they sent down to our office a note addressed to the Great Bear Co., asking for a couple of calendars; now, that happened only week before last.

Another case was at the Hippodrome; I went there with my mother, and during the intermission we were walking in the corridor or lobby, and my mother remarked—

MR. LICHTENSTEIN—I object to what his mother said.

MR. COLLINS—You heard it?

A. Yes; I was walking in the corridor with my mother and she made the remark to me that they were serving the Bear Lithia Water, and I had to tell her the difference.

Q. Were they not serving the Bear Lithia Water?

A. No, sir; it was the Great Bear Spring Water, and they had Great Bear coolers.

Q. Go on?

A. Mr. Wier, who lives at the Longacre Hotel; I dined with him the other night, and he remarked that he was a user of the Bear Lithia Water, and I questioned him and found out that it was the Great Bear Spring Water he was using; I have known this gentleman for over a year.

Halle & Stiglitz 'phoned to the office complaining of bad service; I immediately went up there to their office at 30 Broad street, and when I went in they said, "Now, Great Bear, if you don't give us better service, we will discontinue the use of the water; they were using the Bear Lithia Water.

Well, last winter (I thought of this one at my lunch): A gentleman came to the office complaining about the driver outside turning the corner of

Beaver and New street for abusing the horse on our water wagon, and he said to me as he came into the office—well, he made a complaint and so I went out of the office with him, and when we got to where the wagon was, we found that it was a Great Bear wagon; I guess that is about all; no, I have one more, pardon me.

Logan & Bryant of 11 Broadway; they moved to 18 Wall street; we supplied water to them at 11 Broadway, and on their removal they 'phoned to us requesting that we would put in two coolers in their new office instead of one; I put the coolers in and made the first delivery; at that time we made a change of driver on the Wall street route, and I did not sign the name in the order book and did not deliver any coupons there, and I asked the stenographer if Logan & Bryant had gotten any coupons, and she told me they had not, and I went up there and called for the manager, and I found one of the Great Bear Coolers there and two Bear Lithia Water coolers, and in each cooler was Great Bear Spring Water; I spoke to the manager about it, and he said that they had 'phoned for the Great Bear Spring Co.'s cooler and that he thought it was all the same thing; well, I immediately started them in the use of Bear Lithia Water and they still are continuing the use of the Great Bear Water, but the gentleman who had it in charge and whom I saw at 11 Broadway was ill at the time and I expected to have it straightened out before now, but I haven't.

Q. I show you a hanger, marked D 8 for identification; explain how Mr. Estes came to get that?

A. Mr. Estes admitted, in fact, in the office a short time ago, that a certain gentleman employed by some law firm or advertising agency called there to get it, and he stated that he wanted it as a joke to give to a friend who claimed he was on the water

wagon, and Mr. Sykes gave it to him and that is the way it came into his possession. But now, as to the way these things came into the window, I can explain that. I was rummaging around and I found them in a back room, and I thought we had better trim the window and I did so, and then Mr. Jennings came along down and he told me to take them out.

Q. There was a great quantity of them?

A. Five or six—well, they were not there more than a week.

Q. Mr. Estes said that he was sent down there for one?

A. Yes, sir; he admitted that in the office, and Mr. Cole and Mr. Jennings was there at the time.

Cross-examination by Mr. Lichtenstein.

Q. You did not intend to put up this particular hanger in the window at all, did you?

A. I don't just catch your meaning.

Q. Where did you say you got it from?

A. In the back room; we had them all stored away there.

Q. And you wanted to make a show, a display, and put all of the various kinds in the window?

A. Not all the various kinds; I wanted to make a show, or a display as you call it, and I put one of each kind in the window.

Q. You had more than one of this particular kind in the window, hadn't you?

A. Yes.

Q. How many did you have?

A. Six, I believe—three in each window.

Q. Did you look at the figure before you put it in the window?

A. Naturally.

Q. Did you read it?

A. Not at the time being.

Q. Did you notice that it had the words "Bottled at the Spring" on it?

A. No, sir; I did not, at that time, yet I knew it was on the bottle when it was called to my mind; I knew how the label came to be put on this picture.

By Mr. Collins.

Q. How was it?

A. They were first put on the green bear, and that green bear did not show up very well on the bottle, and so it was suggested that we get it out by putting this split label on it, and that is the way it was put out in that shape.

By Mr. Lichtenstein.

Q. You never go over your advertising matter before it is put in the press, do you?

A. That is not up to me.

Q. Who is it up to?

A. I think Mr. Sykes has charge of that, he gives out all the advertising.

Q. He has charge of all the advertising matter?

A. Yes, sir; he has in fact for a year in May, but previous to that time Mr. Lewis did it.

Q. Do you know whether he goes over all that matter before it is printed or not?

A. That is not up to me to say; I don't know, sir.

Q. Your company and the Great Bear Spring Co. have been actively competing for business in these markets, have they not?

A. Well, no more so than the Great Bear Spring Co. or the Crystal Spring Co. and others; yes, sir; we are competitors.

Q. If you can get one of their customers to change from taking water from them you try to do it?

A. That is what I am paid for.

Q. If you can get one of their customers to change to your water, you do it, don't you?

A. Yes, sir; certainly; that is what I am paid for; I haven't any hesitation in saying that I get all the trade I can get.

Q. And you are in the habit of sending your water to their customers, gratis, are you not?

A. No, sir; we are not.

Q. Don't you send a case of water to their customers and make no charge for it—is not that your habit, if you think you can thereby get them away from the Great Bear Spring Co.?

A. No, sir; well, very rarely.

Q. They have solicitors in their business have they?

A. Yes, sir.

Q. And you are one of the solicitors for the Bear Lithia Springs Co.?

A. Yes, sir.

Q. And the duty of the solicitor is to go from office to office and from house to house, and get these various people to purchase your water, is not that so?

A. Yes, sir.

Q. And if you get to a house where they are using the Great Bear Spring Water, you will explain to them that you are selling water called or by the name of "The Bear Lithia Water?"

A. Yes, sir.

Q. And endeavor to tell those people of the good qualities of your water?

A. Yes, sir; naturally.

Q. And for the purpose and with the object of getting them to change?

A. Yes, sir; in my soliciting trade if I come in contact with the Great Bear Spring Company's customers, I merely state one thing.

Q. And what is that?

A. That our water is very much softer water, and I can say truly that I do not and that I have not misrepresented in any way anything about the water being brought here in tank cars or anything of that sort; I have never done that.

Q. You make it a practice of telling every person whom you may go to see that you bring your water here in tank cars, don't you?

A. No, sir; not necessarily; I do not tell any person anything at all about bringing the water here in tank cars or anything of that sort unless I find it absolutely necessary; if they commence to question me about it, why then I do tell them; I do not avoid the question.

Q. In what instances is it necessary?

A. Well, up to two years ago it was not necessary to say anything at all about it, but just about that time the Crystal Springs were making a great display about their bottling the water at the springs, and we were bringing our water from the springs in tank cars, and piping it from the tank cars into the warehouse, and then piping it to put it in the various bottles and receptacles for the water, and since that time it has become absolutely necessary or it has come to a point now where we have to tell the customer the way that the water is handled, and to show them how carefully it is handled so as to avoid the possibility of contamination, and so for that reason I find it necessary on occasions to tell them that it comes here in these glass lined tanks.

Q. That seems to be quite an important thing in the water trade, is it not?

A. Our competitors have made it so.

Q. Oftentimes these people you go to see, would say, "Now, the Crystal Springs Company bring their water here in bottles from the springs?

A. Yes, sir.

Q. And you would have to go into an explanation as to how your water is brought from the springs?

A. Not necessarily, I merely state to them that they do, and if they ask me a pointed question, "Do you," I tell them the way we handle our water.

Q. They sometimes ask you if you bring your water in glass bottles, don't they?

A. They ask me if we bottle it at the springs.

Q. And you then enter into an explanation telling them, "We do not bottle our water at the springs, but we send out water up here in glass-lined tanks," don't you?

A. Yes; I have sent for a letter—now, it has come to a point where the Crystal Springs Co. have misrepresented the fact that we do not bottle the water as we should, and I can state what they said.

COURT—How is all this necessary?

By Mr. Lichtenstein.

Q. Now, these various people you have spoken of, for instance—Logan and Bryant—you have supplied those people with water, have you not?

A. Yes.

Q. And they sent to you and asked you to send them two coolers when they moved their offices?

A. Yes, sir; when they moved their offices they sent for two coolers.

Q. And after you had sent them two coolers there, on a visit you made to the office, you found a Great Bear Spring Co.'s cooler there, too?

A. No, sir; that is not the way it was; I filled their order for coolers, and supplied them with water; I did not go there for a month after that, because I supposed there was nothing to bring me there, but when I found out that our water was not going there, and that the name was not appearing

on our books, I undertook to look into the matter, and I found out the reason why it was not; I went up there, and I found that the Great Bear Spring Co.'s Water was on in all our coolers—now, that was about three weeks after our coolers were put in the office.

Q. You mean that your coolers were being filled with Great Bear Spring Water?

A. Yes, sir; our coolers were being filled with the Great Bear Spring Water; that is, they were using Great Bear Water in our coolers.

Q. Didn't you say that you found two Bear Lithia coolers there and one Great Bear cooler?

A. Yes, sir; I did.

Q You found a Great Bear cooler there?

A. Yes, sir; but the cooler I did see was ordered by mistake.

Q. How do you know?

A. Because the cashier told me so; he wanted another cooler he said (interrupted).

By Mr. Collins.

Q. The Great Bear cooler was ordered by mistake?

A. Yes, sir.

By Mr. Lichtenstein.

Q. The cooler put out by your concern had the figure of a black bear on it?

A. Yes, sir.

Q. And had the words "Bear Lithia Springs Co., above it?

A. Yes, sir.

Q. And the cooler of the Great Bear Spring Co. was an ordinary white cooler and no bear on it at all?

A. Not an ordinary white cooler—it was same as the rest.

Q. Did it have a bear on it?

A. No, sir; well, the coolers are so similar to-day that they cannot tell one from another; they do not bother with the words "Great Bears"—

Q. You do not know of your own knowledge whether these people knew exactly what they were doing; that is, they were using the Great Bear Spring Water in all three of the coolers?

A. I do from what they said.

Q. Were they all standing together?

A. Oh, no; one cooler was up by the cashier's department, another cooler was in the operating department, and another cooler was in the hall in the rear of the office.

Q. Now, as to Halle & Stiglitz that you speak of, the man said, "now, Great Bear Spring Co. if you don't attend to me better, I will have to change my water?"

A. Yes, sir.

Q. That is his exact language, is it?

A. Yes, sir.

Q. And you don't know that he had not been using Great Bear Water, do you?

A. Yes, I positively do; I had him on the books, and I had supplied him for two years.

Q. But he might have been using the Great Spring Co. Water?

A. He never did, no, sir; he never used the Great Bear Spring Co.'s Water.

Q. Do you know how he came to use that term "Great Bear" to you?

A. No, sir; I am not a mind reader.

Q. Your mother has seen the coolers your company used?

A. Yes, I am almost sure she has.

Q. You use one at the house, don't you?

A No, sir; my mother does not use a cooler at the house.

Q. Of course she reads?

A. Yes, I have seen her read.

Q. And this cooler you saw in the Hippodrome, that cooler had on it the words "Great Bear Spring Co.?"

A. Yes, sir.

Q. And you were passing right by the cooler?

A. Yes.

Q. And she looked at it?

A. Yes.

Q. And she said to you, "why, you are supplying water here?"

A. Yes, sir.

Q. And that was after she had looked at the cooler?

A. Yes, sir; I think it was—it was a very large cooler; one of those three or four bottle coolers.

Q. And the letters on it were an inch and a half in height, were they not?

A. I cannot recollect that; I know they were on there but I cannot tell you the size of them.

Q. Have you a cooler anywhere else similar to the cooler you use or saw at the Hippodrome?

A. Yes, sir.

Q. What cooler?

A. The cooler we had at the Belasco Theatre, it was made by Mr. Rose, it is a three or four bottle cooler.

Q. And you never had any other cooler of that description?

A. Not that I remember; I would not say positively; I know of that one.

Q. This gentleman you dined with, so far as you know he might have been using Great Bear Spring Co.'s Water?

A. He was using Great Bear Water.

Q. He was using Great Bear Water?

A. Yes, sir; but he thought he was using "Bear Lithia Water."

Q. How do you know he thought he was using Bear Lithia Water?

A. Only by what he told me.

Q. You remember having a conversation with Mr. Estes at your office?

A. Yes.

Q. Some days ago?

A. Yes.

Q. And telling him a little story of the conversation of two little boys about your wagon, and the Great Bear Spring Co.'s wagon?

A. Yes, sir; I do.

Q. You recall telling him that those two little boys had seen your wagon in the street, and one of the boys called the attention of the other boy to the wagon, and said they were using the Black Bear water?

A. That was only hearsay, you know.

Q. And the little boy said to him, "why, we don't use the black bear, we use a clean water, the white bear water;" do you recall telling him that?

MR. COLLINS—I object to the question as not cross-examination, and also on the further ground that it is incompetent.

COURT—I do not think that it is competent.

By the Court.

Q. You said something about the coolers being alike—is it your idea, from your observation, that the fact that these coolers are alike in color and size is confusing, or likely to lead to deception, irrespective of the words on it, and the figures?

A. I do, yes, sir; both being bears.

Q. Leaving that out, I am speaking of the color and their similarity in other respects, irrespective of the lettering or the ornamentation, if that is what you meant when you said they were confusing—

that the coolers being alike in color and in size and shape tends to mislead people irrespective of the ornamentation?

A. No, sir; I do not mean that; I meant the name more than the color, but that also helps.

KATIE BRAY, a witness produced in behalf of the complainant, being duly sworn according to law, on her oath, saith:

Examined by Mr. Collins.

Q. You are a stenographer in the employ of the Bear Lithia Springs Co.?

A. Yes, sir.

Q. How long have you been such?

A. Pretty nearly five years.

Q. Have you had any experience tending to confusion or to show confusion in the minds of customers between your company and the water it furnishes, and the Great Bear Spring Co., and the water it furnishes?

A. Yes, sir; a great deal.

Q. Kindly explain to the Court how it arose and give illustrations?

A. Well, on the telephone almost every day, people call us up and ask me "is this the Great Bear Water Co." and is this the "Great Bear Lithia Water Co." and the "Bear Water," and I tell them —well, I have to explain to them the difference and tell them that they have the wrong company. A great many times it is our own customers, and sometimes it is the customers of the other company they want; I have some entries here or memorandums of illustrations of the kind I mentioned.

Q. Give them to us?

A. There was one on January 25th, 1906; Edward Violet & Co., one of our customers, they called us up one morning and asked me to deliver

some water to them, the Bear Lithia Springs Co.'s water, and the driver did not get there in time during the day, and later on in the afternoon the girl at the telephone called me up again and said, "we did not get your water yet;" she said, "I have called the Great Bear Co. six times to-day, and I thought it was the same people, and the Great Bear water was delivered to me here, and when I found out the difference, I told them at the office about the mistake, and we sent the water back, and we want some of yours now."

Then, on April 4th, 1906, a lady and gentleman came into the office to me there and asked me for a drink of water from the cooler that I had there, and I told them they could have one; so he said, "you have a very nice exhibit at the Brooklyn Food Show;" and I said, I think you are mistaken, we haven't any exhibit over there just now," and I asked them, "was the show going on at the present time," and they said, "yes," and he said, "it is the same water as this here, the Bear Water;" and I said, "no, sir; I guess you are mistaken, it is not our water, probably it is the Great Bear Spring Co.'s water;" and then the lady spoke up and said, "why, you have the same picture they have over there, it is the same picture that you have in the window here;" and I said, "is it just the same as that?" And she said, "yes, it is exactly the same"—so it was very hard to make them believe it was not the same water as our water, that they had a drink of.

Q. What was the picture they referred to in the window?

A. It was a very large picture we had.

Q. What kind of a picture did you have in the window?

A. A very large picture of a black bear looking over a rock.

Q. Did you afterwards see the picture of the Brooklyn Food Show?

A. No, sir; I did not.

Q. Proceed?

A. On April 4th, 1906, Fowler Bros. & Co., one of our customers, called me up on the telephone and asked, "is this the Great Bear Spring Co.," and I told them "no;" and I sent some water over to them.

And on April 4th and April 17th, 1906, F. R. Pemberton & Co., one of our customers, called up on the 4th, and said, "is this the Great Bear Spring Co.?" And on the 17th of April, they called up again and said, "is this the Great Bear Spring Co. —the Bear Lithia Co."—that is the way the message came over the 'phone, all those names—I sent them over some water.

And on April 9th, 1906, Guyterman and Rosenthal, also one of our customers, called us up and asked me, "is this the Great Bear Spring Co;" I explained to them that it was not; that it was the Bear Lithia Springs Co., and that was what they wanted.

On April 9th, 1906, Fisher, Kennedy & Co., one of our customers, called us up and asked me, "is this the Great Bear Lithia Co.; I told them it was the Bear Lithia Springs, but I said there was another company called the Great Bear Spring Water Co.

On April 12th, the Metropolitan Tobacco Co., one of our customers called me up on the telephone, and asked, "is this the Bear Co., and one day, last week, they called me up again and asked me the same thing.

Q. The "Bear Co.?"

A. Yes, sir; the "Bear Co."

And then, on the 13th of April, a firm by the name of J. A. McGinness & Co.—we haven't them

on the books at all—they called us up and asked me to deliver some water to Roselle, N. J., and I said, "We do not deliver out there, but can send it by express to you—we do not deliver water out at Roselle, N. J., but we could send it by express to them." Well, he said, "We see your wagons here every day." And I said, "It is not our wagon, it is the Great Bear Spring Co.'s wagon you mean," and he said, "Well, probably it is."

And one day, last week, a boy came in from "Trowbridge & Co.," they are our customers, and he had a statement with him of the Great Bear Spring Co., a Great Bear Co.'s statement, and he wanted me to correct it in some way, and I told him that he had the wrong company; he was at the wrong place; I showed him the address on the statement, as being No. 10 Barclay street. Well, he said, "I know that, but I thought this was a branch office of the Great Bear Spring Co.'s." And I told him "No," he was mistaken, it was the office of the Bear Lithia Water Co.; the Bear Lithia Springs Co."

On April 13th, Day, Adams & Co., one of our customers, called us up on the 'phone, and asked, "Is this the Great Bear Lithia Co.?"

And I received a message on the 13th of April. I asked the name of the person that had 'phoned twice, but they wouldn't give me the name at all, and he asked me, "Is this the Great Bear Lithia Springs Co.?" And I said, "No, this is the Bear Lithia Co.," and then he asked me, "Is not this the same as the Great Bear Co.?" And I said, "No, it is not; they are two different companies."

On April 17th, Cummings & Co., 96 Wall street, one of our customers, asked me over the 'phone, "Is this the Little Bear or the Great Bear?" I told them that it was the Bear Lithia Springs Co.; that it was neither the one nor the other."

And this morning, I got a message through the 'phone from a man named Butler, in 40 Wall street, and he asked me, "Is this the Great Bear Co.?" And they wanted me to call for some empty bottles that he had there, and I told him that it was the Bear Lithia Springs Co.

Q. He is not your customer?

A. He is our customer.

Yesterday, I got an order from McKesson & Robbins. I think it was marked "Great Bear Lithia Water.

Q. Is this it (handing witness Exhibit C 69)?

A. Yes, sir; that is the one.

Q. It came to you in that shape?

A. Yes, sir.

Q. With the word "Great," erased?

A. Crossed out; yes, sir.

Q. When did you receive that?

A. Yesterday morning.

Q. What hour?

A. I guess it must be about eleven or half past eleven or something like that.

Q. Did you call any one's attention to it?

A. Yes, sir; I did.

Q. Whose?

A. I showed it to Mr. Jennings.

Q. You see McKesson & Robbins, it is signed "Gandert?"

A. Yes, sir; I called Mr. Jennings attention to that.

Q. Now, Miss Bray, these incidents you have noted down are comparatively recent—why did you note them—were you asked to note them by any one?

A. Yes, sir; I was, on account of the trial coming up, and I had ever so many before I would have had a whole book full, if I had kept them for it.

Q. And you were requested to do so?

A. Yes, sir; and that is why they were so late.

Q. Did similar cases come up before?

A. Oh, yes, sir; always; almost every day since I have been in the company.

Q. Since you have been in the business?

A. Yes, sir; almost every day since I have been in the business.

Q. I show you a letter and an envelope, did that letter come in that envelope (handing witness papers)?

A. Yes, sir; it did.

Q. Did you open it?

A. No, sir; I did not.

Q. Did you see it?

A. I saw it when it was opened; I saw it when the letter came in the mail, but I did not open it myself.

Q. This envelope is addressed "Great Bear Spring Company, 62 New street?"

A. Yes, sir.

Q. 62 New street is your company's address?

A. Yes, sir.

Q. Inside the envelope is also "Great Bear Spring Company," without any address?

A. Yes, sir.

Q. Now, this "Mylius," was he a customer of your company's or not?

A. I telephoned up to the bookkeeper and I asked him, and he said "He is a customer of ours, and has been for some time."

MR. LICHTENSTEIN—I have not objected to conversations or to incidents or questions that related to or had reference to a time after the commencement of this suit. Now, here is a letter addressed and dated April 16th. I insist, your Honor, that that cannot be evidence in this cause. It relates to circumstances

that have arisen since the starting of the suit.

COURT—I will admit it; it is quite in line with everything else that has been taken to-day on the subject.

MR. COLLINS—I offer this letter and envelope in evidence.

Letter marked Exhibit C 70.

Envelope marked Exhibit C 71.

MR. COLLINS—I will read the letter so that it may go on the record—

"GREAT BEAR SPRING CO.,
"New York, April 16th, 1906.

"GENTLEMEN:

"This is the third time that I have been compelled to notify you to keep me supplied with water. Up to a month ago your inspector always came around and saw the demand.

"Kindly send me a case of water down and keep me supplied hereafter, or I will have to discontinue your patronage.

"Yours truly,
"P. F. MYLIUS."

Cross-examination by Mr. Lichtenstein.

Q. All of the other instances you have spoken of, these conversations over the telephone, you are quite certain they were all from your own customers—you knew that, did you?

A. I knew that.

Q. You have access to the list of the customers of the company, have you?

A. Well, from having them so often—getting them so often.

Q. Why was it necessary for you to call Mr.

Mylius up on the telephone or to call your bookkeeper up on the telephone to ascertain whether he was a customer or not?

A. I called up our own bookkeeper, not Mr. Mylius' bookkeeper.

Q. You did not know then whether Mr. Mylius was actually a customer of yours or not?

A. Not until I called up the bookkeeper.

Q. Had Mr. Mylius called you up on the telephone before, or written to you about this matter?

A. Not that I remember.

Q. Did you receive all telephone messages over the wire during the daytime?

A. Nearly all; once in a while I do not.

Q. If he had called you up, or written several times, you would have known that, would you not?

A. If he had called us up on the telephone I would, yes, sir.

Q. Is it possible that Mr. Mylius was a customer of the Great Bear Spring Company, and not a customer of yours?

A. It might be, before we had him.

Q. This order from McKessner & Robbins, did that come by mail or by hand?

A. By hand.

Q. Can you explain how it is that all these people would call you up on the telephone and have your right telephone number, and still ask you whether this is the "Great Bear Spring Company?"

A. I cannot understand it, unless it was that the word "bear" made them, or they seemed to think that it was all one water.

Q. In looking up the telephone directory, your name there appears as "Bear Lithia Springs Co." with your telephone number right opposite, does it not?

A. Yes, sir.

Q. Can you explain how a person, looking up

that telephone directory, could immediately call you up on the telephone, and would make a mistake, and ask you whether that is the Great Bear Spring Company?

COURT—What would her explanation be worth; I do not think it is material.

By Mr. Lichtenstein.

Q. Oftentimes people would call up your place, and ask you for "Great Bear," and they do not intend their message to be for your company at all.

A. Sometimes that happens.

By Mr. Collins.

This Mr. Mylius is in the Flatiron Building, on Twenty-third street, is he not?

A. Yes, sir.

Q. Would not his natural place of inquiry be at an uptown branch?

A. Yes, sir; that is the reason I was not so familiar with it.

CHARLES REUSCH, being recalled, in behalf of the complainant, saith:

Examined by Mr. Collins.

Q. Do you happen to know whether Mr. Mylius is a customer of the Bear Lithia Springs Co., or not?

A. He is one of our customers and he is uptown, and that is the reason Miss Bray does not know that he is one of our customers.

NO CROSS-EXAMINATION.

PHILIP P. JENNINGS, recalled in behalf of the complainant saith:

Examined by Mr. Collins.

Q. Did you go over to the Food Show, at Brook-

lyn, after Miss Bray had called your attention to this occurrence she has spoken of?

A. I did.

Q. Did you see the bear?

A. Yes, sir; I did.

Q. Describe it?

A. It was a very large bear in a rather icy bath, and meant to be a polar bear. I thought it a poor imitation of a polar bear, standing as ours did apparently; it was standing as our bears stand; it appeared to me that it looked very fresh and very new—

MR. COLLINS—Never mind that.

Cross-examination by Mr. Lichtenstein.

Q. Did they have a big advertisement of their bottles?

A. Yes.

Q. With their labels on them?

A. Yes.

ANNETTE O. JENNINGS, a witness produced in behalf of the complainant, being duly sworn according to law, on her oath saith:

Examined by Mr. Collins.

Q. You are the wife of Philip P. Jennings?

A. Yes.

Q. When did you marry him?

A. It will be two years the 1st of June.

Q. Did you formerly live in Cleveland, Ohio?

A. Yes, sir; I did.

Q. Were you there acquainted with the family of Newcombe Cole who has been a witness here?

A. I was.

Q. Did you know of Newcombe Cole becoming an employee of the Bear Lithia Springs Co.?

A. Yes, sir.

Q. Did you hear the name of the company?

A. Yes, sir.

Q. What was it?

A. The Bear Lithia Springs Co.

Q. Did you use the Bear Lithia Water in Cleveland?

A. Yes, sir; we used the sparkling water; it never was delivered there in anything but in quarts and pints, and we used it at the clubs, at the Roadside Club and the Union Club in Cleveland.

Q. As a sparkling water?

A. As a sparkling water only.

Q. And you only knew it as a sparkling water?

A. That is all I knew of it.

Q. When you moved, you moved to New York?

A. Yes.

Q. When was that?

A. Well, permanently to live here, in November, 1902.

Q. Now, then, please state your experience with table water in New York?

A. I think it was possibly the first week after I arrived here, and after I was established in the home, that I realized I must have a table water; I don't know how to bring this in quite, but my uncle, who was dining with me one day, I asked him what table water I should use, and he said "The Bear Water;" and that called to my attention the "Bear Water" and I said, "yes, I know that water because Newcombe Cole represents that water company, or that water, and I said, "I will take that water;" and he sent me some coupons, I cannot tell you how many, but I think it was $10 worth. I used those coupons up and then gave my butler an order to get more and I think he bought them of the driver, because I do not remember ever having a bill from any one. I then found out that

it was the Great Bear Spring Water that I had been drinking, I never knew it, although I had drank the Great Bear Water all that winter—

Q. You found out, after the coupons were used up that you had been drinking the Great Bear Water?

A. Yes, sir; I found out that it was the Great Bear Water that I had been drinking; I had been drinking that water all winter (interrupted)

Q. Now, of the coupons that your uncle gave you, did you not see those?

A. No, sir; I did not see them at all; when they came there they were all given to my butler and they were kept in the butler's pantry, and they never came to my notice at all.

Q. Well, how did you find out that you had been drinking the Great Bear Water instead of the Bear Lithia Water?

A. I went to Bennington for a month in the summer, and Newcombe Cole came there; his mother was staying there, and when Newcombe Cole came up to visit his mother, it was the first time that I had seen him since I left Cleveland, and it was there that he informed me he was employed by the Bear Lithia Co., and I said to him then: "Oh, I have been drinking Bear Water all winter, and then it was for the first time that I found out that it was not their water that I had been drinking, because when I told him that he said, "No, you have not been drinking our water, because I know you are not on our books," and then it was that I learned the difference between the two companies, and thus ascertained that it had been the Great Bear Water that I had been drinking instead of the Bear Lithia Water which I supposed I had been drinking.

Cross-examination by Mr. Lichtenstein.

Q. When was it you were married?

A. I married Mr. Jennings on the 1st of June, 1904, but this incident I have related was before I ever knew of Mr. Jenning's existence.

Q. What kind of bottles were they you received at your home in New York?

A. The bottle which you have there with the glass stopper (indicating).

Q. Did it have any labels on it?

A. It had no labels; just the clear glass bottle?

Q. Your uncle, you said you asked him what kind of water you should drink or you should use?

A. Yes.

Q. You had been in the habit of buying Bear Lithia Water?

A. Never.

Q. In Cleveland?

A. No, sir; I said we used it at the clubs simply as a sparkling water.

A. Yes, sir.

Q. Didn't you know that the Bear Lithia Water was being sold in New York?

A. Oh, yes; certainly I knew it was being sold in New York, but I did not know that there was any other Bear Water.

Q. Why was it you asked your uncle what kind of water to use, if you knew that the Bear Lithia Water was being used and sold in New York?

A. Simply because I was in great difficulties at the time, and I referred to my uncle for everything.

Q. This Bear Lithia Water was used in Cleveland entirely, was it not?

A. As sparkling water only.

Q. Didn't you make any inquiry when you came to New York about it?

A. No, sir.

Q. You don't know what kind of water your uncle was using?

A. I do.

Q. What kind?

A. Great Bear.

Q. Great Bear Water?

A. Yes, sir.

Q. And he told you you ought to use Bear Water?

A. Yes, sir; when I asked him what table water I should use, he told me to use the Bear Water.

Q. When the water came to your place you did not look at the bottles?

A. No, sir.

Q. You did not look to see whether it was Great Bear Water or Lithia Water?

A. No, sir; I did not.

Re-direct by Mr. Collins.

Q. You had supposed that the water the Bear Lithia Spring Company was selling was sparkling water always?

A. Always; yes, sir.

Q. Did you not know that they had any still water?

A. No, sir.

Q. When your uncle spoke to you about using Bear Water, did you say anything on that subject?

A. Yes.

Q. What did you say?

A. I said, "I don't like sparkling water," and he said, "This is a still water; they put it up in still water too."

JOSEPH W. GREEN, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are in the employ of the Bear Lithia Springs Co.?

A. Yes, sir.

Q. I want to call your attention to one case, to a matter of Mr. King, the President of the Bank Restaurant, Brooklyn; just state the circumstances in regard to this matter?

A. I called on the gentleman in question relative to selling him water, and he thought it very stupid of me to call on him from the fact that he claimed he was using our water, and I told him that "if such was the case we did not know it, as we did not have him on our books."

Q. Who did you tell him you represented?

A. I told him I represented the Bear Lithia Springs Co., and presented him with my card, and he said, "Why we are using your water now; it is useless for you to call here and trying to sell it to us;" and I said that "if such was the case then we did not know it, as we did not have him on our books, and I thought that he must be mistaken about it;" and he said "I will prove to you we are using your water," and he went to his ice box and brought me out a Great Bear Spring Co.'s package.

Q. Now, when was it?

A. I made a little note of it at the time, because I kept an account or all the people I called on; it was on December 13th, 1905.

Q. And he brought out a so-called half gallon bottle, as I understand you?

Cross-examination by Mr. Lichtenstein.

Q. He looked at the bottle then, did he?

A. Yes, sir; he looked at the bottle after he brought it out.

Q. And then saw it was not the same company that you represented?

A. I explained to him that it was not, and showed him the difference; I said that is not our water, it is the water of the Great Bear Spring Co.

MR. COLLINS—I give the other side notice to produce a letter written by a man by the name of C. E. Arnaud. We will later give you the exact date of it. We have an answer to that letter but that would not be intelligible without the production of the original to which it is an answer. I now give them notice to produce it.

Now, with the exception of calling a witness to make proof as to that letter, the complainant rests.

WILLIAM T. EASTERBROOK, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. Where do you reside?

A. Washington D. C.

Q. What is your business?

A. I am in business in Washington.

Q. What business?

A. The water business, the Great Bear Spring Co.

Q. Are you a stockholder of the Great Bear Spring Co.?

A. Yes, sir.

Q. And do you conduct one of the branches of that company?

A. Yes, sir.

Q. When did you first become connected with the water business?

A. In 1890; I bought and sold the water; I was

running a grocery store in Syracuse, N. Y., at the time.

Q. How did you become connected with it?

A. I saw it advertised in the paper, and ordered it and drank it; and then some of my customers wanted it, and I bought it for them.

Q. What water was it that was advertised at that time?

A. Only the Great Bear Spring Water.

Q. Where was it advertised?

A. I think in the Syracuse Standard.

Q. How was it advertised?

A. It was advertised as "The Great Bear Spring Water."

Q. Was that the first knowledge that you had of the existence of such a water?

A. Yes, sir.

Q. What did you do after you saw the advertisement of this water?

A. Well, I bought it for my own use, and then I bought it for some of my customers for about two years.

Q. Where did you order the water?

A. From the Great Bear Co.'s office.

Q. Whereabouts?

A. At Walton street, Syracuse.

Q. What was the name of the concern from whom you ordered it?

A. The "Pure Water Supply Co.," and the water was known by the name of the "Great Bear Spring Water."

Q. Who had charge of that branch at that time?

A. A Mr. Youngs.

Q. Was that water used extensively in Syracuse at that time?

A. Well, it commenced to be used extensively in 1891, 1892 and on.

Q. What connection did you have with the company after that time?

A. Well, in 1891—December of 1891—I took charge of the Syracuse plant.

Q. And did you sell water for the company?

A. Yes, sir.

Q. What was the company known as then?

A. The "Pure Water Supply Co."

Q. And what was the water known as?

A. "Great Bear Spring Water."

Q. How was the water advertised at that time?

A. As "Great Bear Spring Water."

Q. How was it advertised?

A. Well, as a drinking water.

Q. I refer you to a copy of the Syracuse Standard, which is already in evidence, under date of March 24th, 1893—do you recall having that advertisement put in the newspaper?

A. Yes, sir; I was acquainted with the agent acquainted with the Standard, and the water was very pure at that time, in Syracuse City, and I asked him to put in an article for a few days, and suggested a "bear" to call attention to it; I did not know anything about the bear, because we didn't own it.

Q. Who was it suggested the putting in of a "bear?"

A. The newspaper man.

Q. Did you have any cuts of bears at that time?

A. No, sir; the only cuts of bears that we ever had was that of a head of a polar bear or head of a polar bear—

Q. How long had you been using the head of a polar bear or any other cut of a bear, at that time?

A. After this time?

Q. Yes?

A. None before.

Q. How long did you continue the advertisement you see there (showing witness paper)?

A. Probably two or three days, or it might possibly be a week, but not more than that, I don't think.

Q. Did you ever insert an ad. in any newspaper or journal after the 30th of March, 1893, with the picture of a black bear in it?

A. No, sir.

Q. Did you ever at any time prepare or see any ad. of your water having the picture of a black bear in connection with it?

A. I never have outside of this.

Q. When did you first notice the cut of a black bear in the newspaper?

A. That is the first I ever saw or ever noticed of it.

Q. Did you ever receive the cut of that bear from the printer?

A. No, sir.

Q. After this insertion?

A. No, sir.

Q. How long did you continue in business in Syracuse?

A. In the water business?

Q. Yes?

A. About four years; that is two years in the store and about two years with the Water Company.

Q. You gave up the grocery business, however?

A. I sold out the grocery business, after I came to New York.

Q. What year did you come to New York?

A. 1894.

Q. And for what purpose?

A. To introduce the Great Bear Spring Water.

Q. Where?

A. In New York and surrounding places.

Q. Do you recall where you first opened any office?

A. The first place was in Jersey City, where we put up a building for the business, and then we opened an office at 10 Barclay street, New York, after a little while, and then another one at 99 Liberty street.

Q. Was that in 1894?

A. That was previous to that.

Q. This Liberty street office, was that in N. Y. or Brooklyn?

A. Brooklyn.

Q. Immediately upon opening these offices and branches, did you start in to sell your water?

A. Yes, sir.

Q. Under what name was it sold?

A. "Great Bear Spring Water."

Q. Under what name did you run your business first in Jersey City and surrounding locality?

A. The "Pure Water Supply Co." for three years or something like that.

Q. How was the water advertised, under what name?

A. "Great Bear Spring Water."

Q. Was it ever advertised, from the time of your first connection with this company or its predecessor, by any other name?

A. No, sir; not that I ever knew, by any other name.

Q. When in business in Syracuse, selling water for the "Pure Water Supply Co." or yourself, did the company use any labels in connection with their packages?

A. I do not remember seeing any labels, in connection with our packages in Syracuse, but we did very soon after we got to New York.

Q. I show you a label marked Exhibit F, annexed to the original affidavits in this cause, and ask you whether you ever saw a label of that kind before or not?

A. We used it when we put up the Sparkling Great Bear Water in New York here.

Q. Do you recall getting up this design?

A. No, sir; I don't think I got it up, some one of the company got it up; that is some manufacturer of labels probably got it up, or submitted different designs.

Q. I show you a booklet, marked Exhibit V, annexed to the original affidavit and will ask you whether you ever saw that booklet and cut before?

A. Yes, sir; that was made in New York.

Q. Do you recall the cut on it, do you remember where you had that prepared or made?

A. I could not give you the name of the party, it was over in New York; they submitted a number of them, and I think that was one of them.

Q. I call your attention to the name, "Binghamton N. Y.?"

A. Yes.

Q. Does that refresh your memory?

A. No, sir; we had some printed up there and they were used for a short time; we got the cut and had the name put on afterwards.

Q. Do you remember using this cut in Syracuse?

A. No, sir.

Q. I show you Exhibit Z and Y, annexed to the same affidavit in behalf of the defendant; do you recall using those cuts and cards?

A. Yes, sir.

Q. Do you remember where you first used them?

A. We used them in New York.

Q. Was that when you first started in business?

A. A short time after I came down.

Q. Do you recall the registration of the trademark of the Pure Water Supply Co.?

A. In Washington?

Q. Yes?

A. I knew that one of the company, a member of

the company, registered it in New York; I think it was Mr. Nichols—it was registered in Washington.

Q. You spoke of the head of a white or polar bear being used by you in Syracuse?

A. It was used here; we never used it in Syracuse.

Q. You do not recall using it in Syracuse?

A. No, sir; I do not remember it.

A. What was the extent of your business within a year after you started in New York?

A. Well, we had three wagons within about six months, and have increased every year, a wagon or two.

Q. When you came to New York, did you know that the Bear Lithia Springs Co. were in business here?

A. I knew that the Bear Lithia Water was sold at the drug store, I did not know that they did any office business, or that they had any office, I understood that it was simply sold at the different drug stores; the same as the Buffalo Lithia and other lithia waters were sold.

Q. Was there any water company selling water in the same kind of packages you were selling water in at that time?

A. No, sir; there were none; they were simply the half gallon bottles and half gallon demijohns.

Q. What kind of bottles did you sell your water in when you first came to New York?

A. The glass stoppered bottle.

Q. The style of bottle which I now show you (handing bottle to witness)?

A. Yes, sir.

Q. And it had no label on it at that time?

A. No, sir; there was no label on it at that time.

Q. Was the reading on it, "Great Bear Spring Co. trade-mark, Fulton, N. Y.?"

A. It had "Great Bear Spring" and some other

matter; I cannot just tell what it was, but the "Great Bear" was there on it.

Q. Was this the character of a bottle you used from the beginning?

A. Yes, sir.

Q. Was there any other water company, doing business in the vicinity of New York, or New York, selling water in packages of this kind at that time?

A. No, sir.

Q. What other kind of bottles did you put it up in?

A. After a short time we put it up in the "Poland" bottle.

Q. What do you mean by that?

A. The green bottle, that is.

Q. Did you used any label?

A. Just the common printed label, "Great Bear Spring Water."

Q. Did you use any label with the picture of a bear upon it at that time?

A. I don't remember, at first I don't think it was, at first—I don't remember—it might have been afterwards.

Q. When did you commence using the label as it appears on the bottle at the present time?

A. Well, we used it for about two years before I left New York.

Q. And when did you leave New York?

A. I left New York in 1899, I think—yes, sir; 1899, I left N. Y. for Washington.

Q. What other packages of water did you put up in New York?

A. We put up five gallon demijohns and then after that time we put up the two gallon.

Q. Was there any one in New York selling water in five gallon packages at that time?

A. Yes, sir.

Q. Who?

A. The Higeia Water Co., they were selling a

distilled water, and there was a water from Pine Ridge; they were selling water in five gallon jugs.

Q. Pinelawn, was it not?

A. Yes, sir; and then there was water sold here in Jersey in five gallon demijohns, I cannot remember, I cannot think of the name now; they were very prominent at that time, but we bought some of their equipment, and they went out of the business afterwards.

Q. When did you first find out that the Bear Lithia Springs Co. was selling water for table use?

A. Only within the last two or three years; it has not been considered as being sold for table use when they charge two or three dollars for a five gallon demijohn or 50 cents for a half gallon bottle; it is considered mineral water at that rate by any one.

Q. What rates did you sell your water at?

A. In Jersey City, forty cents, and New York fifty cents; that was on account of the ferriage.

Q. For a five gallon demijohn?

A. No, sir; four gallons in six glass bottles.

Q. And five gallons in one demijohn?

A. Yes, sir; there was five gallons in one demijohn for the same price.

Q. When did you go in charge of the Washington branch?

A. In the spring of 1899.

Q. During your connection with the defendant company and its predecessors, do you know why they always made the words, "Great Bear Springs, near Fulton N. Y.," prominent upon all their advertising matter?

A. Yes, sir.

Cross-examination by Mr. Collins.

Q. I think you stated, but to make sure I will ask you when you, came to Jersey City?

A. In 1894.

Q. I mean the date?

A. In May, 1894.

Q. That is when the company started business here?

A. Yes, sir; we started business very soon after that; I came down and got everything ready and in a short time we started in business here in Jersey.

Q. I call your attention to an advertisement on page 5 of the "Evening Herald," of Syracuse, May 26th, 1893, and ask you if that was your advertisement?

A. Is that the Herald?

Q. Yes?

A. Yes, sir.

MR. COLLINS—I will read it into the notes:

"NOTHING LIKE IT.

"The famous Great Bear Spring is the finest table water in this city. Pure and soft. Used by the doctors and recommended in cases of fever and kidney trouble. Growing in favor every day.

"PURE WATER SUPPLY CO.,
"259-261 Waldon street,
"W. T. Easterbrook, Manager.
"Tel. 180-00."

Q. You say that no water was sold in New York when you came here, in half gallon bottles—I show you a bottle that has been marked Exhibit C 15, and ask you if this is not what is called a half gallon bottle?

A. Did I say there was none sold in half gallon bottles? I do not remember saying that; I did not say that, I think.

By Mr. Corbin.

Q. I understood you to say that only your company did so?

A. No, sir; I am speaking of the Great Bear Spring Co., not of the other company.

Q. The Great Bear Spring Co. was only selling in that way?

A. That was at first, when I first came down here.

By Mr. Collins.

Q. Didn't you consider your glass stoppered bottle a half gallon?

A. It was more than a half gallon.

Q. You call it a half gallon, don't you?

A. No, sir; it holds five pints and one third of a pint. This bottle held four gallons (indicating). They were made expressly for us, and those were made for the trade (indicating).

Q. There were waters sold in New York in what is known as half gallon bottles, were there?

A. Oh yes, sir; the Bear Lithia Water Co. and the Buffalo Lithia Co., the Londonderry Lithia Co. and the Geneva Lithia Co. and half a dozen other so-called Lithia Waters were sold in drug stores in bottles that were half gallon bottles.

Q. Now, I think you said that you called yourselves the "Pure Water Supply Co." here in New York?

A. For a little while; yes, sir.

Q. You did not know, you told us, of the Bear Lithia Water Co. selling water except through drug stores?

A. I did not know that they had an office in New York; they did not for two or three years that I know of, but if they did they were not to be seen on the street; they might have had an office in some little out-of-the-way place, but not where it could be seen from the street; they might have had for

some time an office up in the second or third story of some building, somewhere up in Broadway, and had a cut of a bear up on the window—

Q. You do not profess to know all the offices they occupied, do you?

A. No, sir; I do not.

Q. You did not know of the No 68 Broad street office?

A. No, sir.

Q. You saw the advertisements of the Bear Lithia Water, didn't you?

A. I have seen it in the magazines, I was not much acquainted with the water business, until I took hold of the Great Bear Spring Water; afterwards I saw this Bear Lithia Water advertised as a mineral water, and I saw it sold through the drug stores as a medicinal water; that is what I saw in travelling around New York.

Q. That is your inference from what you did see, that it was sold as a medicinal water?

A. Yes, sir.

Q. But did you see the advertisements of the Bear Lithia Springs Co. with a bear in it?

A. Yes, sir; and with the words "Bear Lithia Water" right across, so that no one could be disappointed by the looks of it.

Q. And the words, "Bear Lithia Water" across it?

A. Yes, sir.

Q. And the figure of a bear?

A. Yes, sir.

Q. You knew of the Bear Lithia Water being sold at drug stores before you came to New York at all, didn't you?

A. I cannot say that I ever remember anything about it, I might have, but I was not much acquainted with the water business at all, until I took hold of the Great Bear Spring Water.

Q. When did you first become acquainted with Col. Dickinson?

A. I don't know that I ever did become acquainted with him.

Q. You do not know him?

A. No, sir.

Q. Or his son Henry Dickinson?

A. Are they connected with the Bear Lithia Water Co.; were they the people that opened up in Washington?

Q. They are the ones that had the office you speak of in 945 Broadway—you did not become acquainted with them?

A. No, sir; I did not.

Q. I call your attention to an advertisement in the "Evening Herald of Syracuse," of Thursday, June 29th, 1893—is that your advertisement?

A. Yes, sir.

MR. COLLINS—I will read it into the notes:

"IMPORTANT NOTICE.

"The doctors say that Great Bear Spring Water is better for children in hot weather than milk, and it makes the finest cup of tea, coffee and chocolate, being pure and soft.

"PURE WATER SUPPLY CO.
"259-261 Waldon St.
"W. T. Easterbrook, Manager.
"Tel. 180-00."

Re-direct By Mr. Lichtenstein.

Q. Did your company, the present company, or its predecessors, at any time after the year 1893, ever advertise their water in any other manner, other than as an ordinary table water?

A. No, sir.

Q. Have you seen all the literature put out by this company?

A. No, sir.

Q. Have you seen any part of it?

A. I have seen the greatest part of it, but of course I have been in Washington, and there has been considerable issued that I have not seen, I have no doubt.

Q. All of the literature you have ever seen put out by this company, was there any reference to this water having any medicinal value?

A. No, sir; simply a pure spring water.

Q. At the time these ads. appeared in the Syracuse papers, do you recall that there was a fever epidemic at that time?

A. There was; yes, sir.

Q. On account of the poor city water?

A. Yes, sir.

Q. Before you came to New York, were you in the habit of shipping Great Bear Spring Water?

A. Yes, sir; we shipped a few cases here and other places through the State.

Further cross-examination by Mr. Collins.

Q. You did not see all the advertisements they used since you went to Washington?

A. I saw some of them, because they sent some of them to me.

Q. I mean the newspaper advertisements?

Q. Well, I don't know; they might have had some advertisements in the papers that I never noticed, that I never saw, in fact there might be a great deal of advertising done that I do not know anything about.

ARTHUR G. GILBERT, a witness prouced in be-

half of the defendant being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. Where do you live?

A. I live in Allentown, N. Y.

Q. You are also connected with this company?

A. Yes, sir.

Q. What is your age?

A. I think I was born in either 1847 or 1848; I cannot recall at this moment.

Q. Have you lived in Fulton all your life?

A. No, sir; I was born just to the east a few miles, in Gilbertsville.

Q. How long have you lived in Fulton?

A. 34 or 35 years.

Q. While a boy were you in the habit of visiting relatives at Fulton?

A. Yes, sir.

Q. Where did you attend school?

A. I attended school—as I grew up I attended school in the Academy there in Fulton.

Q. Do you know where the course of the Oswego River is in that County?

A. Yes, sir.

Q. What is it?

A. I know the source—

Q. The course?

A. Why, it runs north and south.

Q. And empties into what?

A. Empties into Lake Ontario.

Q. During your boyhood days, do you recollect visiting any springs at or near Fulton?

A. Yes, sir; I do.

Q. Do you recollect what these springs were known as?

A. Yes, sir.

Q. What?

A. "The Bear Springs," or "Great Bear Springs;" that is what I have known them as.

Q. Was there one or more springs?

A. There were several.

Q. Where were they located?

A. Why, along the bluff, near the Oswego River; a "breast" will describe it.

Q. How long back can you remember that spring or springs being known as "Bear Spring," or "Great Bear Spring?"

A. Why, as early as 1860 I remember it distinctly.

Q. Did you ever drink the waters from that spring?

A. Yes, sir.

Q. At that time?

A. Yes, sir; and along during all these years.

Q. Do you remember when the waters in that spring were first utilized for public use?

A. I will have to refer to a memorandum that I have; I have a poor memory for names and dates.

By Mr. Collins.

Q. What are you referring to?

A. To an affidavit that I have made heretofore.

Q. In this case?

A. Yes, sir.

Q. Where did you get the information to put in that affidavit?

A. From the books in the old water office.

Re-direct by Mr. Lichtenstein.

Q. I can prove the dates by some one else—

MR. COLLINS—That would be wiser, I think.

By Mr. Lichtenstein.

Q. Were you instrumental in the utilizing of the waters of this spring or springs for public use?

A. Yes, sir.

Q. With whom?

A. With Mr. Nichols; Henry Nichols, F. A. Emerick and Charles Piper.

Q. Were they all gentlemen residing in that locality?

A. Yes, sir; in the town of Fulton.

Q. About how many years back?

A. Well, it began as early as 1883, I think.

Q. What did you do, just tell us?

A. We organized a water company for the supply of the village.

Q. And what was the name of the company?

A. "Fulton Water-works Co."

Q. And there was a plant erected?

A. Yes.

Q. Where was that plant erected?

A. At the springs.

Q. And after the plant was erected, was the water from that spring used?

A. Yes, sir.

Q. And you saw it used?

A. It was pumped into a stand-pipe by steam power and then fed by gravity to the village.

Q. And supplied to the inhabitants of the village?

A. Yes, sir.

Q. In what manner—through mains?

A. Yes, sir; through mains.

Q. And what was the water known as, to the villagers?

A. "Great Bear Spring Water."

Q. Do you recollect what year it was when you first started in to send your water through the mains, how long after you started in; in 1883 or after 1883?

A, I think it was in 1885, in that fall; I cannot recollect exactly.

Q. What other connection did you have with the

company after the organization of the Fulton Waterworks Company?

A. After the organization of the Fulton Waterworks Co. what relation did I sustain to the waterworks Company?

Q. No; in any other branch of the business?

A. Oh, afterwards we organized a partnership of the Pure Water Supply Co. and took the water to Syracuse.

Q. What water did you take?

A. The Great Bear Spring Water.

Q. And what year did you take the water to Syracuse?

A. Well, I don't remember the day; I have it here (indicating a paper).

Q. Was it after you started in to supply the villagers of Fulton?

A. My impression is, it is within two years—two or three years.

Q. And how was your water sent to Syracuse?

A. In tank cars—well, first off we bottled it at first and afterwards we sent it in tank cars.

Q. What was the name of the concern selling the water in Syracuse?

A. The Pure Water Supply Co.

Q. Were you a member of that partnership?

A. Yes, sir.

Q. Did you sell your water at Syracuse under the name of the "Great Bear Spring Water?"

A. Yes, sir.

Q. Was it ever known as anything else?

A. I never knew it as anything else.

Q. Were you connected with any other partnership or firm subsequent to the Syracuse co-partnership?

A. Yes, sir.

Q. Where?

A. In New York.

Q. And did you send your water from Fulton to New York?

A. Yes.

Q. And did you sell your water in the market of New York?

A. Yes.

Q. Under what name was it sold here?

A. "Great Bear Spring Co.'s water," through the Pure Water Supply Co., as I recollect it, at first.

Q. Do you mean "Great Bear Spring Water?"

A. Yes, sir; "Great Bear Spring Water."

Q. Do you remember establishing the warehouse in Jersey City?

A. Yes, sir.

Q. Were you connected with any other co-partnership firm for the sale of this water in any other cities?

A. Yes, sir.

Q. Where?

A. In Albany.

Q. Any other city?

A. Well, we are established as a plant for a little while in Binghampton.

Q. Did you sell "Great Bear Spring Water" in those cities?

A. Yes, sir.

Q. Do you know whether that was before or after you came to New York?

A. Well, we got started in New York before we opened up at Binghampton, or the Albany plant.

Q. Were you connected with the Philadelphia branch?

A. I was not, at that time.

Q. Did you take an active part in the management of the business for the sale of the water yourself?

A. Not for the sale; no, sir.

Cross-examination by Mr. Collins.

Q. The principle spring of those you mention was located on the farm of a man named Osgood, was it not?

A. Yes, sir; that it was.

Q. And that was the one that was called "Bear Spring" or "Great Bear Spring?"

A. Well, some would call it that, and others called several of them, any of those springs along there were looked upon as the same quality of water.

Q. Yes, but I am speaking of the name?

A. Well, perhaps technically that might be so.

Q. That is the one they called "Bear Spring," or "Great Bear Spring?"

A. Yes.

Q. Every one didn't call it by that name, did they?

A. Any one that I heard did; I never heard it called anything else since I knew it; since 1860.

Q. Was it not called the " Osgood Spring?"

A. "Osgood Farm"—yes, I guess it was.

Q. It was called "Osgood Spring," was it not?

A. Yes, sir; I guess perhaps it was.

Q. Now, which was it, the "Bear Spring" or "Great Bear Spring?"

A. I always called it "Great Bear," because I thought the lesser one was "Bear Spring."

Q. Your idea was that the lesser one was called "Bear Spring;" but that this being a big one, that was called "Great Bear Spring?"

A. Yes, sir; that is the idea.

Q. How large was this spring?

A. I can tell you how it was finished; after I go to put a caison in it, we got from 400,000 to 500,000 gallons of water a day from it.

Q. It was from that spring that the "Fulton

Water Works Co." pumped the water into the standpipe for the city of Fulton, was it not?

A. Yes, sir.

Q. How far away from that spring were these smaller ones?

A. Well, extending up until we tapped the supply; that spring, as Fulton's wants grew, I think about two miles further up, that we took springs in along to feed this particular caison.

Q. But I want to know which ones were called the Bear Springs?

A. Well, there was quite a number of them, and really I suppose they were all "Bear Springs," and the big one was the "Great Bear Spring."

Q. Well, the nearest one to the "Great Bear Spring" that you thought was in the group, was how near?

A. Well, there was a small one that we put a caison to, first, that is perhaps 50 rods or maybe a hundred rods.

Q. In what direction, according to the points of the compass?

A. South.

Q. Now, the next one?

A. The next one we took in, having a large proportion of the smallest springs that we might have got some water from; we did not tap at all; I think that was up more than a mile.

Q. In what direction?

A. South.

Q. And then the next one?

A. Yes, sir; that is up not over 100 or 200 yards further south of that.

Q. And the next one?

A. That is all the springs that we sunk caisons in for the Fulton supply.

Q. You spoke of one, I think you said more than a mile away—now, these are the only ones con-

nected with the caisons for the water supply of Fulton?

A. Yes, sir.

Q. And those are the only ones that could fairly come within the group known as "Bear Springs?"

MR. LICHTENSTEIN—This witness was called for the purpose of testifying as to his knowledge of the name of a certain spring or springs. It does not seem to me that it is at all material how these springs were connected. The Judge has the right to ask which particular one was called or how they were connected, and I object to the evidence as immaterial.

THE COURT—I will take it.

By Mr. Collins.

Q. Those were the only ones that you heard were connected, were they?

A. I should not think so.

Q. Were they not the only ones that you ever heard called "Bear Springs?"

A. I cannot recall my mind to that; I don't recollect.

Q. If you cannot recall any other that you ever heard called "Bear Springs," you may say so.

A. Well, this is a good deal of it my own impression or my own interpretation of the situation, based on my impressions.

Q. Did you ever hear anybody, prior to 1885, call any spring other than the one which you have designated as the "Great Bear Spring," by the name of "Bear Spring?"

A. I do not know that I ever did; I cannot recollect.

Q. Did you ever hear this large spring called "The Great Bear Spring," before 1885?

A. Yes, sir; oh, yes.

Q. When?

A. Why, all through my boyhood; it was known then as the "Great Bear."

Q. Was it not called the "Bear Spring?"

A. It was called both ways.

Q. Now, the water that you partners, calling yourselves the "Pure Water Supply Co.," took to Syracuse, you bought from the Fulton Water Works Co., didn't you?

A. Yes.

Q. And conveyed it to the city of Syracuse in a pipe?

A. No, sir; in tank cars.

Q. Now, that I think you have not given me the date, but in your affidavit in this cause, you said that that was in the year 1890; is that the date according to your recollection?

A. If in my affidavit I said it was 1890, it must be right.

Q. (Reading). "In the year 1890 a co-partnership was formed under the name of 'Pure Water Supply Co.,' of which I was a member, for the purpose of shipping waters from said springs, and said co-partnership entered into an agreement with the Fulton Water Works Company, to purchase 'Great Bear Spring Water' and sell the same under that name, and said co-partnership did thereafter conduct the business of bottling and shipping 'Great Bear Spring Water,' from Fulton to Syracuse and to advertise 'Great Bear Spring Water"— I read that from your affidavit —is that correct?

A That is probably correct; I should think it was.

Q. You got that date when you made this affidavit, from some reliable data, did you not?

A. Yes, sir.

Q. Now, you know of another spring in that County, about three miles away or more, called "Woodworth Spring," don't you?

MR. LICHTENSTEIN—I object to that as immaterial.

THE COURT—There is no harm in that question. Counsel just asks him if he knows that spring.

A. I know there are several springs on the "Woodworth" farm; there are several of them.

Q. And they are not in any way connected with this system of which you have spoken?

A. Not by an iron pipe; no, sir.

Q. And the water from these springs is piped direct to the Delaware, Lackawanna and Western Railroad station, called South Grandby, is it not?

MR. LICHTENSTEIN— I object to the question as immaterial.

THE COURT—I will take it.

A. Yes, sir.

By Mr. Collins.

Q. And it is that water that is brought to Jersey City in tank cars, and has been for many years, is it not?

A. Yes, sir.

Q. And sold by the "Great Bear Spring Co.?"

A. Yes, sir.

Q. And the water that is shipped to Buffalo by the Great Bear Spring Co. is taken from still another spring, along the line of the Central Railway, is it not?

A. Yes, sir.

Q. I forget the name of it—what is the name of that spring?

A. It is the same as the rest of them; the same quality of water.

Q. What farm is it on?

A. Oh, I don't know; I don't recollect.

Q. How far away is that spring?

A. How far away from where?

Q. From Fulton?

A. I should think five miles.

Q. How far from the Great Bear Spring?

A. I should think three and a half miles—perhaps that spring is three miles or three and a half miles away, maybe.

Q. The spring itself is right near the station, is it not?

A. Yes.

Q. What is the name of that station?

A. I don't know that it has ever been named.

Q. It is, I understand, a little station on the Central Railroad?

A. Yes, sir.

Q. And from there the water is shipped by the Great Bear Spring Co. to Buffalo, is it not?

A. Yes, sir.

Q. How far is this "Woodworth Spring" from what is called the "Great Bear Spring?"

A. The "Great Bear Spring"—why, two or three or say three miles.

Q. And it is sold, both the water that is brought from South Grandby, and the water that is brought from this other station that you don't know the name of, and which water is sent to Buffalo, is sold by the defendant under the name of the "Great Bear Spring Water," is it not?

A. Yes, sir.

Re-direct by Mr. Lichtenstein.

Q. You said that the "Woodworth Springs" were not connected by pipes with the other springs used by the Fulton Water Works Co.?

A. No, sir.

Q. Is it connected in any other way?

A. We were told it was.

MR. COLLINS—I move that that should be stricken out. I object to it.

COURT—What do you mean by that, Mr. Lichtenstein?

MR. LICHTENSTEIN—He says he was told that it was—I will consent to its being stricken out.

Q. The land along the Oswego River slopes from south towards the north, does it not?

A. Yes, sir.

Q. In what direction does the land slope?

A. Well, it is lowest near the river; the distance from the east side of the river to the river is where we have the series of "breasts" that yield up the water.

Adjourned to Thursday, April 19th, 1906, at 10 A. M.

APRIL 19, 1906.

FREDERICK A. EMERICK, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. Where do you live?

A. At Oswego, N. Y.

Q. How long have you lived in Oswego County?

A. All my life.

Q. Did you ever live at Fulton?

A. I did.

Q. When?

A. Why, from the time I was born, practically, until twelve or thirteen years ago.

Q. And have you made a study of the mineral water business?

A. I made a study of the spring and mineral water business.

Q. In what particular form have you made a study of springs?

A. Chiefly in Oswego County.

Q. And for what purpose?

A. Why, originally from an inborn interest in springs.

Q. Were you instrumental in organizing the Public Water Works Company at Fulton?

A. I was.

Q. Do you recall what year that company was organized in?

A. In 1883.

Q. And by whom?

A. Must I name all the incorporators?

Q. No; were you one of the parties?

A. Yes, sir; I was one of the incorporators.

Q. What was that company organized for?

A. For the purpose of supplying pure and wholesome water to the village of Fulton.

Q. Prior to the organization of this company, had you examined any springs?

A. I had; a great many.

Q. Will you describe to the Court, please, where those springs were, and what those springs were called?

A. Do you mean the particular springs in question?

Q. Yes?

A. Why, they were known as the Bear Springs, or Great Bear Spring.

Q. And where were these springs located?

A. They are south of Fulton.

Q. And how long have you known or have you known springs in that locality called Bear Springs, or Great Bear Springs?

A. Why, it is a boyhood matter; it would be hard to say just how long.

Q. How old are you?

A. Fifty-four.

Q. What springs were utilized in supplying water to this village?

A. The springs lying on the Osgood farm and the Connors farm.

Q. How many springs were there there?

A. It would be very difficult to say; that is always a difficult question to answer.

Q. Why do you say it is difficult to answer that question?

A. Well, there might be a hundred outcroppings of water, and I presume there were, but there were four or five which were more prominent; if you please, it is a springy section.

Q. Have you made a study of the entire section around Fulton?

A. I have.

Q. Just describe the lay of the land and the manner in which this water crops out?

A. Well, there is a ledge or height of land at a point about five miles south of Fulton; that is the high ground; it dips to the north and it dips to the south; there are springs which crop out at that point.

Q. Now, what point?

A. At a point five miles from Fulton; some crop out at intervals, at a point two miles from Fulton;

in that area, I presume, there is a hundred springs or outcroppings of water.

Q. And is that a continuous chain of springs?

MR. COLLINS—I object to that question as irrelevant. I do not understand the question, "continuous chain of springs." I do not understand it.

COURT—I will take it.

A. The springs appear at intervals in that district.

Mr. Lichtenstein.

Q. Between the high land that you have described and a distance of two miles from Fulton?

A. Yes, sir.

Q. And that is where the springs end?

A. That is where the springs end, there are none beyond the five mile point south or the two mile point north that I know of.

Q. What waters were used in supplying the village of Fulton by the public Water Works Co.?

A. The waters on the Osgood and Connors farm.

Q. Were there more than one spring used, or only one spring used?

A. They were all used.

Q. How were they connected?

A. A portion of them were originally—originally they were not connected on the surface or by means of pipes, only by their natural arteries beneath the surface.

Q. Did you sink caisons?

A. At first a caison.

Q. At different springs or outcroppings?

A. Right at one place.

Q. What was the water known as which was sold by the Fulton Water Works Co.?

A. May I finish my answer?

Q. Yes?

A. I will say that taking the water from this caison dried up all the springs.

By Mr. Collins.

Q. On the Osgood and Connors farm?

A. Yes, sir; with no pipe connection.

By Mr. Lichtenstein.

Q. Have you made a diagram of the location of the general plan of the springs?

A. Yes, sir; I have got one.

Q. Will you kindly describe that diagram?

A. It is drawn closely to a scale; I consider each line or ruling of the paper a quarter of a mile; I have located the village, now the city of Fulton, at the north, giving its name under it; these points marked "Fulton Water Works" we built a pump house there which took water from a caison not over thirty feet from the pump house; that caison was located at a point where there was an outcropping of water on the so-called Connors property; there were outcroppings of water on this Connors property, and also a number on the Osgood property, which is on this side of the line.

Q. Mark it?

A. I will mark it "Osgood and Connors."

Q. Go on?

A. There were at least half a dozen well defined springs or outcroppings of water there, some of them with a surface of several yards; we connected our pumps to the water surface in this caison, the one near the pump house; we pumped water needed for the city supply from this caison, and the water disappeared, if not entirely, largely from all the surrounding outcroppings, some of them we made no connections with them whatever; of course they

were connected internally by their natural arteries.

This point here (indicating) which is about five miles from Fulton—here is a five mile line and here is a town line road, runs up here (indicating); this line is the dividing line, the high point between Fulton and the village of Phoenix further up; all of the water rising anywhere in this country, and there is a great deal of it, all dips this way towards Fulton, towards the north, and the current of this Oswego River is in this direction; there is a fall between the elevation of land near the pump house, and a point near the town line road of fully ninety-five feet; all the water from these outcroppings run in this direction towards the north; the highest point of land is here; there is here also a sort of "hogs-back" between this point, that is, between the railroad and the vicinity of this railroad.

Q. As I understand the topography of the land is such that there is a considerable elevation between these spring outcroppings and the river, is that so?

A. No, sir; this is the river, and the dip of the land, the decline of the surface is from the heights towards the river, and also from the height of land to this point (indicating); it is quite 95 feet of a drop from the five mile line to the pump house; there is a dip towards the river and towards the town. Did you subsequently acquire any land south of the village of Fulton, and if so, where?

A. I bought a farm at this point (indicating), known as the Keller farm; it is so shown on the diagram, which was 6,000 feet from the caison, practically a mile; I also bought a farm—

Q. You may describe what connection, if any, were made?

A. After sinking this first casion, from which the Fulton Water Works took its supply of water more particularly for additional storage, in case of

fire, at a distance of about 500 feet, we sunk a second caison, which also filled up with spring water; I later acquired this Keller farm, upon which there was also outcroppings of water, and I laid a twelve inch vitrified pipe at grade for a distance of 6,000 feet connecting up the caisons which were sunk upon that farm; that Keller farm.

In purchasing this Keller farm—this may be foreign to this case, but I will state it—in purchasing this Keller farm, I also acquired the land upon which the outlet from numerous springs in this direction to the south, that is, the outlet to the river, giving me by the law of riparian rights—interrupted—

Q. Never mind that?

A. Well, I bought that, and also the outlet into the Oswego River to all of these springs lying to the south.

I also bought the highest up or furthest spring in this series of springs which was at a point near the town line road.

Q. What was the name of the farm?

A. I bought it of one Woodworth; all of these springs were so located at increasing elevations that by gravity they would all flow together at this point (indicating the caison on the Connor farm), they would all flow by gravity to that outlet.

At that time I was interested in and president of the Fulton Water Works Co.—

By Mr. Collins.

Q. Do you mean then that the Fulton Water Works Co. bought these Keller and Woodworth farms?

A. I bought them personally; but I, at that time, practically owned the Fulton Water Works Co.

By Mr. Lichtenstein.

Q. Now, the water from these number of springs,

was it of the same general character as the water—

MR. COLLINS—I object to the question as irrelevant.

MR. LICHTENSTEIN—I will withdraw the question.

WITNESS—I have not finished yet. I also acquired a piece of property at this point (indicating) of one King, upon which there was no outcropping of water whatever. I bought it upon the theory—

MR. COLLINS—I object to the theory.

WITNESS—Well, I bought it.

By Mr. Lichtenstein.

Q. For what purpose?

MR. COLLINS—I object to the question as irrelevant.

A. I bought it upon the firm belief—

COURT—What was the reason you bought it?

A. Because of the connection between these series of springs, the theory by which all these were dried up from one point—

By Mr. Lichtenstein.

Q. Was there any other land acquired by you aside from that you have described?

A. I also bought this land at this point (indicating). It was deeded to me by one named Brown (marked Brown on the diagram).

Q. What was the full name of Mr. Brown?

A. Damuth Brown.

Q. Damuth farm was purchased for you by Mr. Brown?

A. Yes, sir. I also bought fifty acres there south of the five mile point and east of Chapman. There was 150 acres of this Woodworth farm, forty-six acres of the Brown and fifty of Chapman; twelve acres, I believe, of King, 171 acres of the Keller, and probably not more than five or six acres apiece of the Osgood and Connors farms.

By the Court.

Q. Now, you have on that diagram what is intended to indicate a stream flowing into the Oswego River?

A. Yes, sir.

Q. What supplied that stream of water, if you know?

A. Springs.

Q. What springs?

A. The springs on this farm; a portion of them are on this diagram.

Q. Then the springs that you bought south of the Osgood line naturally fed that stream which emptied into the river?

A. Yes, sir; some of them flowed directly to the river—quite a number of them.

Q. The water that went into that stream was fed by these springs?

A. Yes, sir.

Q. So that before you begun operations none of the water rising in these springs south of that stream reached the Connors' lot?

A. No, sir; that is, not on the surface.

Q. Then did you take the water from the stream or from the spring?

A. We took it from the caison.

Q. I know; but when you got beyond the stream, how did you get the water on the Keller farm?

A. From the caison.

Q. Under the stream?

A. Well, caisons adjacent to the stream.

Q. From the Keller springs down to the water works, was there a pipe laid there?

A. A pipe was laid at grade for 6,000 feet.

Q. And ran under this little stream?

A. Yes, sir; it ran under this little stream to the caison. We also—

Q. There is no pipe there yet?

A. No, sir.

Q. Then I don't want anything that is not upon the ground.

A. Very well sir.

Q. Now, the tract that you have marked "Damuth" has some springs on it?

A. Yes, sir.

Q. Where does that water go now?

A. It follows this creek and empties into the stream that runs into this river—it is called the "Keller Creek."

Q. Well, do you now get any water from the Keller Springs by direct connection?

A. No, sir.

Q. You do not?

A. No, sir—of course the Fulton Water Works do.

Q. That is what I mean—how do they get it?

A. They get it through this pipe laid 6,000 feet.

Q. I mean what you call the "Damuth track;" does that water go down to the town?

A. No, sir; not at present.

Q. We are talking about the thing as it is now?

A. No, sir; the town owns it, I may say that.

MR. LICHTENSTEIN—I offer that diagram in evidence.

Marked Exhibit D 9.

By Mr. Lichtenstein.

Q. After the organization of the Fulton Water Works Co., were you interested in any concern in Syracuse for the sale of water?

A. I was.

Q. And what was that a partnership or corporation?

A. It was a partnership.

Q. Composed of whom?

A. Composed of A. G. Gilbert, H. E. Nichols, J. H. Case, and F. A. Emerick.

Q. When was water from the springs that you have described first sold in Fulton?

A. In 1885.

Q. And when was it that you first started in to sell water at Syracuse?

A. In July, 1890.

Q. Prior to the formation of this co-partnership, was any Great Bear Spring Water shipped from the springs to Syracuse for sale?

A. Why, it was shipped; I don't know that it was shipped for sale.

Q. Under what name was the water sold in Syracuse?

A. "Great Bear Spring Water."

Q. How did you come to start in to sell water at Syracuse?

A. Well, by reason of the admiration expressed for that water by the Syracuse people.

Q. How long did you continue in business at Syracuse?

A. Six years.

Q. And was Great Bear Spring Water sold under that name during all these years at that place?

A. It was.

Q. Was there any other co-partnership formed for the sale of this water; if so, where?

A. At Jersey City and New York.

Q. And were you a member of those firms?

A. I was.

Q. When was your local firm established?

A. In 1893 or 1894.

Q. And under what name?

A. The "Pure Water Supply Co."

Q. And you established your warehouse at Jersey City?

A. Yes, sir.

Q. And do you recall what the extent of your business was at the time, after you started in business, say a year in Jersey City?

A. It was large, comparatively.

Q. You have no figures with you?

A. No, sir; I do not; I perhaps have the number of cases shipped, if that is any indication.

Q. Mr. Estes I suppose can give that—now, under what name was the water sold in this locality?

A. "Great Bear Spring Water."

Q. How did you ship your water here?

A. In tank cars.

Q. Did you subsequently establish branches at any other place. I mean of these co-partnerships?

A. Yes, sir; that or similar partnerships, one at Binghampton, N. Y., and one at Albany, N. Y.

Q. And at these places, was the water sold under the same name?

A. Under the same name at Philadelphia and at Washington.

Q. Was it ever sold under any other name?

A. It was never sold under any other name.

Q. Do you recall the organization of the defendant company under the laws of this State?

A. Yes, sir.

Q. And you were one of the incorporators?

A. Yes, sir; I was.

Q. And was the interests in these various co-partnerships sold out to the New Jersey corporation?

A. They were.

Q. Did these various co-partnerships acquire any rights from the Fulton Water Works Co., and if so, in what manner?

A. They were granted leases by the resolution of the Board of the Fulton Waterworks Co.

Q. Were you a member of the board of directors of that company?

A. I was.

Q. At the time these resolutions were passed?

A. Yes, sir.

Q. Have you the minutes of that corporation here?

A. Yes, sir; I have them here.

Q. Just read that resolution right into the minutes?

A. There are a number.

Q. Refer to the first resolution granting whatever rights were granted to these various co-partnerships?

A. They are uniform in each case.

Q. Read the first one?

A. Agreement made this twelfth day of January, 1897, between the Fulton Water Works Co. of Fulton, N. Y., a corporation organized under the laws of the State of New York, party of the first, and the Pure Water Supply Co., a partnership composed of H. E. Nichols, H. G. Gilbert of Fulton; W. T. Easterbrook, T. H. Wheeler of Orange, N. J., and F. A. Emerick of Oswego, N. Y., doing business at 650 Henderson street, Jersey City, N. J., and elsewhere, party of the second, as follows:

The party of the second part agrees to purchase and sell exclusively within the territory hereafter named, the water pumped at Great Bear Spring by the party of the first part at Fulton, and the

party of the first part agrees to sell and supply such water to the party of the second part, or its successors, only for sale or use within such territory, to wit: A radius of twenty-five miles from the City Hall of said Jersey City.

Party of the first part also agrees not to increase price beyond present maximum rate for 1,000 gallons without the consent of the party of the second part. Water to be delivered from the water mains at a convenient place for shipping by railroad in the village of Fulton or at Oswego, N. Y. Payments to be made quarterly. This contract to continue so long only as second party shall be diligent and prosecute its said business in said territory, as fully as it can reasonably do, but shall not in any event continue beyond 10 years from this date.

Second party shall sell such water under the name of Great Bear Spring, and may use the trademark as registered by such first party.

(Signed) Fulton Water Works Co.

By H. E. Nichols, Pres.

Also signed by F. A. Emerick, W. T. Easterbrook, T. H. Wheeler, A. G. Gilbert and H. E. Nichols.

Q. Give the page of the book?

A. Page 268.

Q. Now, you say there are other resolutions in that book?

A. There are other resolutions in this book of the same purport.

Q. Turn to the various pages?

A. There are a number precisely like that; the same wording, which relate to the different partnerships.

Q. Give the date and the page?

A. Of each?

Q. Yes?

COURT—I think you had better say with whom the contracts are made.

A. There is one bearing January 12th, 1897, which relates to Albany, and it is signed by the Fulton Water Works Co.

By the Court.

Q. They are all signed alike?

A. No, sir; they are not all signed alike.

Q. They are all properly executed?

A. Yes, sir; they are all properly executed.

By Mr. Lichtenstein.

Q. What page is that on?

A. Page 269.

Q. What is the next?

A. On page 273 we have another contract, or rather another resolution, under date of May 30th, 1898.

Q. With whom?

A. It is between—may I read it so as to explain it?

Q. This is not of the same character of resolution as the other, is it?

A. No, sir.

Q. This is a final resolution?

A. Yes, sir.

Q. Read it?

A. It is on page 273, dated May 30th, 1898, 7 o'clock, P. M.; the Board of Trustees met as per call of Secretary; the call is shown here:

Present H. E. Nichols, F. A. Emerick, J. T. Chauncey, A. G. Gilbert and Thomas Hunter, 2nd. Minutes of last meeting read and approved. The Secretary read a proposed contract with the Great

Bear Spring Co. of Philadelphia, composed of T. H. Wheeler, J. H. Emerick and F. A. Emerick, such contract being similar to contracts made with similar companies at Albany and Jersey City.

On motion of Mr. Gilbert the President was authorized to execute the same on the part of this company.

Application was made by the members of the Great Bear Spring Company of Albany, Jersey City and Philadelphia, for transfer of trade-mark (Great Bear Spring) to them, on the ground that the value of the same has been made by their effort and expense, and that the same was made and filed by the Fulton Water Works Company, at their request and for their benefit, and that the same is of no legal value or use.

On motion of Mr. Hunter, seconded by Mr. Chauncey, the President was authorized to make such assignment and transfer upon payment to this company of the expense incurred in making and filing such trade-mark.

On motion the Board adjourned.

(Signed) F. A. EMERICK, Secretary."

MR. LICHTENSTEIN—I offer the minute book referring to these resolutions in evidence.

Marked Exhibit D 10.

Q. I show you the registry of the trade-mark by the Fulton Water Works Company, and ask you if that is the trade-mark referred to in this resolution?

A. Yes, sir.

MR. LICHTENSTEIN—It is dated the seven-

teenth of September, 1894, numbered 25391, and issued to the Fulton Water Works Company of Fulton, N. Y.

COURT—Read the effective part.

A. (Reading) The trade-mark of said company consists of the words "Great Bear Spring." These words have generally been used as shown in the accompanying fac-simile, in connection with a picture of a polar bear on a cake of ice, and the words "Fulton, N. Y." and "Pure Water Supply Co." These words have been formed of capital letters in black, and have been grouped as illustrated.

The words "Great Bear Spring" being arranged in a curve over the picture of a bear, and the words "Fulton, N. Y." in a straight line immediately under said picture, and the words "Pure Water Supply Co." in a straight line immediately under the latter.

The style of lettering, the coloring thereof, and the arrangement of the words and picture are not important; such lettering, coloring and arrangement of both words and picture may be greatly varied. Also either or both of the last two lines of words may be omitted, and the representation of the bear may also be changed or omitted without materially affecting the character of the trade-mark, the essential feature of which is the words "Great Bear Spring."

Said essential feature of this trade-mark has been continuously used in business by said corporation since November 1st, 1905.

MR. LICHTENSTEIN—I offer that trade-mark in evidence.

MR. COLLINS—It is of course a trade-mark

and as to the Fulton Water Works Company I think it is sufficiently proved. I object to it on the ground that they have not proved any transfer of it to the defendant, and I also object to it as no evidence of what was recited there of a use of the trade-mark since November 1st, 1885. Its own date is A. D. 1894.

COURT—I think the paper is entitled to be admitted—it may be marked in evidence.

Marked Exhibit D 11.

By the Court.

Q. That is the trade-mark of the Fulton Water Works Company?

A. Yes, sir.

By Mr. Lichtenstein.

Q. I show you three papers and ask you whether they were executed by you as President of the Fulton Water Works Company (handing papers to witness)?

A. They were.

Q. I show you a paper dated May, 1893, and ask you whether that was signed by all the various members of the co-partnership spoken of and referred to in the minutes that you have read?

A. It was.

MR. LICHTENSTEIN—The three papers are all alike and of the same date. They are each dated May 30th, 1898.

Q. All of these co-partnerships for Albany, Philadelphia and Jersey City, were they known as the

"Great Bear Spring Company," as referred to in these papers?

A. They were.

Q. But not incorporated?

A. Not incorporated.

MR. LICHTENSTEIN—I offer these papers in evidence.

Paper referring to Albany co-partnership marked Exhibit D 12.

Paper referring to Jersey City co-partnership marked Exhibit D 13.

Paper referring to Philadelphia co-partnership marked Exhibit D 14.

COURT—Are they all executed in the same way?

MR. LICHTENSTEIN—They are all executed in the same way; the one marked Exhibit D 12 is to the same effect, but executed to the Great Bear Spring Co. of Albany; the one marked Exhibit D 13 is to the same effect, but executed to the Great Bear Spring Co. of Jersey City, and the one marked Exhibit D 14 is to the same effect, but executed to the Great Bear Spring Co. of Philadelphia, Pa.

COURT—One of them should be copied into the record as sample of the rest.

KNOW ALL MEN BY THESE PRESENTS, That the Fulton Water Works Company, of Fulton, New York, a corporation organized under the laws of the State of New York, for a valuable consideration to it duly paid does hereby assign and transfer unto the Great Bear Spring Company of Albany,

New York, the right to use, and traffic in water under, the name "Great Bear Spring," in connection with a picture of a polar bear, as the same have generally been used by the Fulton Water Works Company or otherwise as a trade-mark and to use, and traffic in water under the trade-mark "Great Bear Spring" in connection with a picture of a polar bear, registered and mentioned in Certificate of Registration in the United State Patent Office No. 25391, bearing date the 23rd day of October, 1894.

IN WITNESS WHEREOF, the Fulton Water Works Company, has caused these presents to be signed by its President and its corporate seal to be hereunto affixed this 30th day of May, 1898.

THE FULTON WATER WORKS COMPANY,
BY F. A. EMERICK,
President.

[Seal—Fulton Water Works Company, Fulton, N. Y.]

MR. LICHTENSTEIN— I have an assignment of all the individuals of these various co-partnerships to the New Jersey corporation and assigns all the property, good-will and trade-marks of the several co-partnerships doing business under the name of "Great Bear Spring Co." of Jersey City, N. J., New York, Brooklyn, Albany and Troy, N. Y., and at Philadelphia, Pa., and I offer that paper in evidence.

Marked Exhibit D 15 and reads as follows:

Know All Men By These Presents, That we, Fred A. Emerick, Fred A. Emerick,

agent, and George B. Sloan, Jr., of Oswego, N. Y., Arthur G. Gilbert and Henry E. Nichols of Fulton N. Y., John H. Emerick of Philadelphia Pa., Thomas H. Wheeler, and William T. Easterbrook of East Orange, N. J., of the first part, for and in consideration of the sum of fifty-five thousand dollars ($55,000.00), lawful money of the United States, to them in hand paid, at or before the ensealing and delivery of these presents by Great Bear Spring Company, a corporation duly formed and organized under the laws of the State of New Jersey, of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents doth grant and convey unto the said party of the second part, its successors and assigns, all the plants, property, assets, good-will and trade-marks of the several co-partnerships doing business under name and style of Great Bear Spring Company, at Jersey City, N. J., New York, Brooklyn, Albany and Troy, N. Y., and at Philadelphia, Pa. and other places contiguous to said places, the above named parties of the first part being all of the co-partners of said several co-partnerships, whose several individual interests in the whole thereof, they have agreed upon, to be as follows, viz.: Fred A. Emerick $15,000., Agt. $5,000, Thomas H. Wheeler $10,000., George B. Sloan Jr. $5,000, John H. Emerick $15,000, William T. Easterbrook $5,000, Arthur G. Gilbert $5,000 and Henry E. Nichols $5,000 all of whom have accepted the capital stock in the corporation of the second party, in the amounts

as above stated in full of the purchase price of said property &c. as above recited. To have and to hold the same unto the said party of the second part, its successors and assigns forever.

And we do covenant to and with the said party of the second part, that we are the owners and have the right to sell and transfer the said property, and will defend the same against any person or persons whomsoever claiming the same.

In Witness Whereof, we have hereunto set our hands and seals the 1st day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Fred A. Emerick, [L. S.]
Fred. A. Emerick,

In the presence of Agent [L. S.]
Henry E. Nichols, [L. S.]
Arthur G. Gilbert, [L. S.]
George B. Sloan, Jr., [L. S.]
John H. Emerick, [L. S.]
T. H. Wheeler, [L. S.]
W. T. Easterbrook. [L. S.]

Q. Before coming to Jersey City, did you investigate as to the water companies, that were doing business in this locality and elsewhere?

A. Yes, sir.

Q. Did you make any extensive investigation?

A. I did.

Q. Did you find that the Bear Lithia Spring Co. was selling water in this locality?

A. In what manner do you mean?

Q. What did you find out?

A. I never saw any of their water offered for

sale here; I have seen it advertised; I had seen it advertised.

Q. What was the first you saw of that water on the market?

A. I may have seen it in the drug store windows possibly, but I don't know that even.

Q. The advertisements that you saw, were they to the effect that it was a water of medicinal qualities or a table water?

A. A water of medicinal qualities always.

Q. Do you know who originated the plan of selling water in return packages?

A. I am afraid I shall have to plead guilty to that.

Q. Will you tell us what you did in that connection in that business at first?

A. I first suggested it to Mr. Gilbert and to Mr. Nichols.

Q. Was there any water on the market at that time, which was sold in bottles and the bottles to be returned?

A. No spring water to my knowledge.

By Mr. Collins.

Q. The question was, was there any water sold in that way?

A. Not in the manner we sold it.

By Mr. Lichtenstein.

Q. What sort of bottle did you first use?

A. I don't know that there was any; I do not profess to know what may be going on all over the world; I did not go abroad to see.

Q. What was the character of the bottle you first used?

A. The character of the bottle we are using today.

Q. That is the glass-stoppered bottle?

A. It is a glass-stoppered bottle from Gilbert's original design.

Cross-examination by Mr. Collins.

Q. You made an affidavit that is filed here in the cause, and you said in that affidavit that it was about the year 1884 that the advisability of the adoption of the Great Bear Springs and the source from which the supply came occurred to you; you testify to it that the company was organized in 1883; how did you get the date?

A. Why, I think I have the exact date here, Mr. Collins; you will find it in that book.

Q. December 28th, 1883?

A. Yes, sir; December 28th, 1883; it was very late in 1883.

Q. The minute book will show that the company was organized on December 28th, 1883?

A. Yes, sir; it will show that the company was organized on December 28th, 1883.

Q. Now, were all these farms which you say you acquired taken in your own individual name?

A. Not all of them.

Q. Not all the property?

A. No, sir.

Q. The Connor and Osgood farms; whose name was that taken in?

A. Not in my name; I am unable to say, but possibly Mr. Moffett's.

Q. Was not the title eventually vested in the Fulton Water Works Co.?

A. Yes, sir.

Q. So that the Osgood and the Connor property became vested and still remains vested in the Fulton Water Works Co.?

A. Yes, sir.

Q. I think you said that you took title to the Keeler property?

A. I did.

Q. Did you eventually convey that to the Fulton Water Works Co.?

A. I did; I was President of the Fulton Water Works Co. at the time.

Q. So that you took title for the Fulton Water Works Co.?

A. In their interest; yes, sir.

Q. When was that Keeler property purchased?

A. I thought I had everything down here, but I do not believe I have got that, Mr. Collins.

Q. Was it soon after the Connor and the Osgood farms were purchased?

A. No, sir; it was some time; some years after that.

Q. Some years after?

A. Yes, sir.

Q. Won't the minute book show?

A. I do not think it does; I held it myself, for a long time, you know; I recollect that I carried the title; the title was in my name for some time.

Q. But really in the interests of the company?

A. Well, I won't be sure of my first statement there; I don't know but that it was transferred very soon but I do not recall the date, but I know I took the title originally, and transferred it to the water company.

Q. When was the twelve inch vitrified pipe laid, connecting the caison you sunk on the Keeler property, with the Osgood caison?

A. In 1899.

Q. When was the King property purchased?

A. Why, it must have been about that time; I have no memorandum.

Q. About 1899?

A. About 1899, I should think it was.

Q. That I think you said was in your name also?

A. Yes, sir.

Q. In whose name is the title now?

A. The Fulton Water Works Co.; that is, it went to them, but what they may have done in the last number of years, I do not know.

Q. You bought it for the Fulton Water Works Co.?

A. Yes, sir; I bought it for the Fulton Water Works Co.

Q. When was the "Damuth" farm purchased by Mr. Brown?

A. I haven't that date?

Q. Cannot you tell whether it was before or after the King purchase?

A. Oh, it was after the King purchase.

Q. And in whose name is that title now?

A. The Great Bear Spring Co.

Q. The Great Bear Spring Co.?

A. Yes, sir.

Q. When was the "Woodworth" farm purchased?

A. Well, I should say in about 1898 or 1899.

MR. COLLINS—I have a copy of the deed from Woodworth to you dated May 13th, 1899; it is a certified copy.

Q. And that property you transferred January 27th, 1900, to the Great Bear Spring Co., a corporation of N. J., did you not?

A. Yes, sir.

Q. And you bought it for the company?

A. Yes, sir; it was first offered to the Fulton Water Works Co.

Q. And they did not want it, or did not take it?

A. They voted upon the proposition to take it.

Q. And voted against it?

A. They voted against it at that time.

Q. And you bought it for the Great Bear Spring Co.?

A. Yes, sir; I bought it for the Great Bear Spring Co.

Q. When was the "Chapman" farm purchased?

A. Well, some time after the Woodworth farm; I cannot give you the date.

Q. That title was taken in your name also?

A. I would not be positive about that now.

Q. But in whosesoever name it was taken in, it was for the Great Bear Spring Co.?

A. Yes, sir.

Q. And is now owned by them?

A. Yes, sir.

Q. These documents marked Exhibits D 12, D 13 and D 14 they are all alike. excepting as to the names; they are dated in May, 1898—when were they actually signed—they bear your signature, do they not?

A. Well, they were signed recently; somewhat recently.

Q. About when?

A. I cannot give the date, but they were signed since this suit was brought.

Q. Since this suit was brought?

A. Yes, sir.

Q. The other paper which bears date in 1899, and which was marked Exhibit D 15, when was that signed?

A. That was signed at the time of its date.

Q. Were these minutes actually written at that time, in May, 1898?

A. Yes, sir; they were put in the book at that time, probably the next day.

Q. These papers marked Exhibits D 12, D 13 and D 14 have been executed since the suit began, you say?

A. Yes, sir.

Q. In order to conform to the minutes?

A. Yes, sir; for convenience to avoid bringing this book here.

Q. Well, not recently—let us put it exactly as it is—the minutes are an authority to make an assignment and the documents purport to be the assignment, do they not?

A. Well, I don't know about that.

Q. The minutes authorize an assignment and the documents purport to be the assignment—that is a fact, is it not?

A. Yes, sir.

Q. How near is the closest caison on the Keeler farm to the Keeler creek?

A. Ten feet, I should say; it might be thirty feet, but it is very close.

Q. You said that some of the springs near the five mile limit discharge directly into the Oswego River—that is true, is it?

A. I don't think that I did say that, but however I am willing to admit it; I don't think it is in evidence though.

Q. You did say it?

A. I did—excepting the five mile limit; I do not think I mentioned that.

Q. Oh, you did not mean that, but up in that vicinity?

A. Yes, sir.

Q. Does not that one on the Woodworth Farm do that?

A. Well, the Woodworth Spring does that.

Q. Empties into the Oswego River?

A. Yes, sir.

Q. Mr. Gilbert did not give the names exactly right, and did not know the names of the stations, so I will get the facts from you, if you can give them—the water that is pumped from the springs on the Damuth land, which is nearer the Central

Railroad, is shipped west by your company to Buffalo, is it not?

A. It is shipped to Buffalo.

Q. From what station?

A. From "Great Bear;" the railroad people finally called it "Great Bear."

Q. And the water from the Woodworth Spring is piped to Grandby?

A. South Grandby.

Q. And from there shipped to Jersey City?

A. Yes, sir; and other points.

Q. And it is the water you sell here in Jersey City and New York?

A. Yes, sir.

Q. Some of the water from the "Damuth" farm is shipped to New York on the Central Railroad, is it not?

A. Yes, sir.

Q. To Jersey City I mean, not New York?

A. Yes, sir; to New York City.

Q. I call your attention to page 53 of the minute book, in which there is a contract between the Fulton Water Works Company and the contracting firm for the building of their works, is there not?

A. Yes, sir.

Q. And on page 65, the specification commences to that contract and appears in the minutes?

A. I know those are in the book, yes.

Q. Does not that specification read as follows?

MR. LICHTENSTEIN—I object to this line of examination as not cross-examination. I do not know that the Judge has any right to use any other parts of the book in question, except those that were referred to on direct examination.

COURT—I will admit it.

MR. COLLINS—(Reading) "Fulton Water Works Company specications.

First source of supply. Water will be taken from springs located at what is known as the "Connors lot" and "Osgood farm," and conducted from the various springs through a vitrified drain pipe into a well or storing basin, not less than twenty feet in diameter and twenty feet deep, or its equivalent. Said well to be welled up with a dry stone wall to admit of percolation of the water at the bottom, and with a cement wall at the top to percolate surface water."

Q. It is dated July 23d, 1885?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Re-direct by Mr. Lichtenstein.

Q. All this land on which these various streams on the high land are situated, what are they known as, the natural clear springs; what are the farms known as?

A. It is a plateau, an elevated plateau.

Q. Are they known by any particular name?

A. Yes; "as the Great Bear farms."

Q. How long have they been known as the Great Bear farms?

A. I cannot answer that; I can answer when I first knew them by that name.

Q. How long have they been known as the Great Bear farms, so far as your knowledge goes—I am speaking now of the farms owned by the Great Bear Spring Company?

A. I think about 1899, when I first heard them called that name.

Q. Is there anything more you desire to say?

A. It seems to me in justice I should say something. Now, permitting the reading of this contract or specifications—I will say that these specifications were not followed in the building of the Fulton Water Works Company in any particular—

Further cross-examination by Mr. Collins.

Q. The mechanical part of that, you mean?

A. No, sir; they were really a dead letter altogether.

Q. How deep are your caisons on the Keeler farm?

A. I have no caisons on the Keeler farm.

Q. Well, the Fulton Water Works Company?

A. Why, probably not more than ten feet; there are two of them, and I think one is a little deeper and one is a little shorter.

Q. Do they draw down the water from the creek?

A. They do from one branch of it; yes, sir.

Q. Your company does not now, and has not for years, taken water from the Fulton Water Works Company?

A. No, sir.

Q. I will refresh your memory; you were uncertain in who took the title for the Fulton Water Works Co. of the Osgood farm; I show you a certified copy of a deed dated the 6th of May, 1885, from Calvin Osgood and wife to Hind, Lovett & Co.?

A. Yes, sir.

Q. That is correct; do you recollect that deed now?

A. I recall that those people were the contractors, but I forgot who took that deed or in whose name it was taken; I know it is all right; I know it by heart; go ahead.

By Mr. Collins.

Q. This conveys the "right to take all the water from the spring known as Bear Spring, and all the other springs located on the farm of said party of the first between the highway and the Osgood farm;" is that correct?

A. If you say it is a copy, I am ready to believe it.

Q. You state you knew it by heart; is that right, according to your memory?

A. I knew it was purchased.

Q. What I read to you, is that correct? Have I read it right, do you think?

A. I think so; yes, sir.

Q. Do you identify that as one of the Fulton Water Works Co.'s deals?

A. Yes, sir.

MR. COLLINS—Page forty-seven of the minute book, which has been referred to by the witness under date of July 23rd, 1885, contracted between the Village of Fulton with the Fulton Water Works Company provides "that the water to supply the mains is to be derived from the springs and streams upon what is known as the Connors farm and the farm of Calvin S. Osgood, just south of said village."

ELLIS L. ALDRICH, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. You are a lawyer in New York City?

A. Yes, sir.

Q. And were you requested to purchase water from the Bear Lithia Bear Springs Co.?

A. I was.

Q. I show you three bottles and ask you whether you purchased this water, and if so, when and under what circumstances (handing witness bottle)?

A. On the 12th of April I telephoned to the Bear Lithia Springs Co.'s warehouse in New York, asking them to deliver to me a dozen bottles of their sparkling water the following morning, and on the 13th of April a dozen bottles were delivered of which these are three; I gave them $1.80 for the dozen bottles and I produce the receipt.

Q. Is this the receipt you received from whom?

A. From the driver who delivered the water.

MR. LICHTENSTEIN—I offer in evidence the receipt.

Marked Exhibit D 16.

Q. Did you initial each bottle as you received it?

A. Yes, sir.

Q. What warehouse did you telephone to?

A. To the warehouse of the Bear Springs Lithia Co.

Q. On 11th avenue?

A. Yes, sir; on 11th avenue; No. 467 11th avenue.

MR. LICHTENSTEIN—I offer the bottle with the label on it in evidence.

Marked Exhibit D 17.

NO CROSS-EXAMINATION.

THOMAS B. STILLMAN, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. What is your profession?

A. Professor of Analytical Chemistry in Stevens Institute of Technology.

Q. How long have you been connected with Stevens Institute?

A. Thirty-two years.

Q. Have you made a special study of the analysis of waters?

A. Yes, sir.

Q. And for how many years?

A. Twenty-five years.

Q. How many specimens of water have you analyzed?

A. Hundreds and thousands probably.

Q. Were you requested to analyze water by the Great Bear Spring Co.?

A. Yes, sir.

Q. Did you analyze any water for them?

A. I analyzed some water they wished me to secure of the Bear Lithia Springs Co.

Q. Where did you secure the water from?

A. From their headquarters at their office in Eleventh avenue.

Q. In what manner did you procure it?

A. I sent my messenger and secured a half gallon bottle under seal, which I submitted to analysis.

Q. When did you analyze the water?

A. Between the 13th of this month and yesterday.

Q. What is the result of your analysis of that water?

A. You mean the chemical statement?

Q. Yes?

A. Do you want this read, this report read.

Q. Yes?

A. Or just a summary?

Q. Read it?

A. "According to instructions I have secured samples in the market of the Bear Lithia Springs

Co.'s water, and made a comparative chemical analysis of the same."

By Mr. Collins.

Q. A quantitative analysis?

A. Yes, sir; a quantitative analysis. "The special—

By the Court.

Q. Give the result of your analysis?

A. The principal object was to ascertain the amount of lithium salts—

Q. What was the result of your analysis in that respect?

A. I found the amount of lithium chloride to be present—the amount to be ten thousandths of one part in one million parts of water.

By Mr. Lichtenstein.

Q. How many gallons of water did you use in making this test?

A. One and one-half gallons.

COURT—What does that mean—you started in to have him make a statement, then you stop him and now you just ask him a single question?

MR. LICHTENSTEIN—That is all I want to know; to ascertain the amount of lithium salts in the water.

By the Court.

Q. Is that all you wanted to get?

A. And the total solids that I found in the water.

By Mr. Lichtenstein.

Q. What did you find such total solids to be?

A. 81 parts in a million part of water; about four grains in half a gallon.

Q. Is it proper to call a water containing the quantity of lithium salts that this water contains, a lithia water?

MR. COLLINS—I object to that as immaterial and incompetent.

Objection sustained.

By Mr. Lichtenstein.

Q. How many grains do you say there was in the water?

A. I used a gallon and a half of water in making my analysis; it is quite a large amount of water.

Q. And what did you find?

A. Ten-thousandths of one part in one million parts of water; I can state it a little plainer if you will take it in grains per gallon.

Q. Do that, please?

A. That would correspond to five ten-thousandths of one grain.

Q. In a gallon of water?

A. Yes, sir; in a gallon of water; a U. S. gallon.

By Mr. Collins.

Q. 81 solid parts in a million is a very low proportion, is it not?

A. Yes, sir; it corresponds to about four grains to half a gallon.

By Mr. Lichtenstein.

Q. Is the water that you analyzed a lithia water?

MR. COLLINS—I object to that question.

COURT—What do you mean by a lithia water?

By Mr. Lichtenstein.

Q. How are waters classified and how are they named?

A. Well, there you go.

Q. By chemists and the profession generally?

A. Well, it is a pretty broad question for the reason that there are different ways of classifying water; the medical profession will classify them one way, and as they claim they should be; I do not think we classify them other than as carbonate waters or alkaline waters or sulphonated waters, &c.

Q. Are the waters not classified according to the quantity of the chief salts present in the water by chemists?

A. Yes, sir.

Cross-examination by Mr. Collins.

Q. You do not mean to say, Prof. Stillman, that the lithium was present in the natural water as lithium chloride, do you?

A. No, sir; that is to say, Judge Collins, that that is the usual form in which the profession says that lithium exists in the lithium waters.

Q. Did you get it in that form by means of your analysis?

A. We get it in the form of a sulphate; we get the sulphates and then calculate the chloride in it.

Q. You get it by your chemical operation into sulphates, and then calculate that as the equivalent in chloride?

A. Yes, sir; that is it; by our chemical analysis we get the sulphates and then we calculate the equivalent in chlorides.

Q. You have analyzed other water to determine the amount of lithium salts in them?

A. Yes, sir.

Q. Now, what is the largest amount of lithium

salts you ever found in any water that you knew to be a natural water?

MR. LICHTENSTEIN—I object to the question as immaterial. The question before the Court here is the quantity of lithium in this particular water, not any other waters.

Objection sustained.

JOHN C. SPARKS, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. What is your business?

A. I am an analytical chemist and water expert.

Q. Have you a place of business in this locality?

A. Yes, sir.

Q. Whereabouts?

A. 16 Beaver street, New York.

Q. Where were you educated for your profession?

A. The London University.

Q. Any other places?

A. The Imperial Institute, and P———Technical Institute; a Fellow of the Chemical Society, a member of the American Chemical Society, and a member of the Society of Chemical Industry.

Q. What is your chief work?

A. My chief work is water analysis.

Q. And by whom are you employed?

A. I am one of the experts for the State and city of New York; I have been employed as an expert for the city of Philadelphia, Pa., the city of Catasauqua, Pa., and I am the official chemist for the refrigerating trade in regard to water, and an expert for the bottling trade and distilled liquor trades; I am expert also for the city of Mereida, and——,

Mexico, for various counties in Pennsylvania and New York, the official chemist for the ice trust and the whiskey trust, and for a great many other water companies.

Q. Are you a member of any chemical societies in this country?

A. I am a member of the American Chemical Society and the Society of Chemical Industry.

Q. Have you published works on water?

A. A great many in the technical papers.

Q. Were you requested by the Great Bear Spring Co. to make an analysis of water?

A. I was.

Q. What water did you make an analysis of?

A. Of the Bear Lithia water; a water put up by the Bear Lithia Springs Co.

Q. Where did you obtain that water, and in what manner?

A. I bought that water from the office on New street, I think No. 26.

Q. I show you a receipt, is that the receipt you obtained?

A. It is.

Q. Did you receive the original package of water?

A. I did.

Q. And was that water under your charge and control from the time you received it until the time you made your analysis?

A. It was.

Q. What kind of an analysis did you make?

A. I made a full quantitative and qualitative analysis.

Q. I show you a certificate of analysis, and ask you whether that is the result of your investigation as to this particular water (handing witness paper)?

A. It is.

Q. Will you just read it right into the record?

A. Sample of water marked "Bear Lithia Water," bought from the Bear Lithia Springs Co.

"Lithium Chloride.....Trace
"Sodium Chloride 1.26
"Sodium Nitrate 1.01
"Sodium Bicarbonate.....10.26
"Potassium Chloride.....3.28
"Calcium Bicarbonate 69.18
"Magnesium Bicarbonate.....64.12
"Iron Oxide & Alumina.....0.012
"Silica.....12.83
"Free Ammonia 0.021
"Albuminoid Ammonia.....0.037
"Nitrogen as Nitrates 0.022
"Nitrogen as Nitrates.....Trace
"Oxygen required.....0.621"

Q. The total quantity of solids was how much?
A. 161.952.
Q. Now, have you reduced the quantities of the various ingredients to grains, parts per gallon?
A. Yes, sir.
Q. Give us the result of that, please?

MR. COLLINS—State the kind of gallon.

A. U. S. Gallon; —— grains per U. S. Gallon.
"Lithium Chloride.....Trace
"Sodium Chloride.....0.061
"Sodium Nitrate.....0.059
"Sodium Bicarbonate.....0.601
"Potassium Chloride.....0.193
"Calcium Bicarbonate 4.054
"Magnesium Bicarbonate.....3.757
"Iron Oxide & Alumina.....0.001
"Silica.....0.752"

Q. The total amount of solids per gallon is what?

A. The total solids were 9.478 grains per gallon.

Q. What is the smallest quantity that can be measured in your profession?

A. About a thousandth of one part per million, that is about the smallest.

Q. And there was less than that amount of lithium in that water?

A. There was an immeasureable amount of lithium in the water I tested.

MR. LICHTENSTEIN—I offer that certificate of analysis in evidence.

Marked Exhibit D 18.

Q. What quantity of water did you use in your test?

A. I used altogether, about three gallons.

Q. Is that a large amount of water to use in a test of that kind?

A. That is about the usual amount; it is a large amount; you could analyze the water on less.

Cross-examination by Mr. Collins.

Q. You purchased a crate of half gallon bottles of still water?

A. Yes, sir; I did.

Q. How many bottles were there?

A. I think eight.

Q. What is the difference between the U. S. gallon, and the Imperial gallon?

A. The difference is the size of the gallon. An Imperial gallon has 70,000 grains and the U. S. gallon has 58,000 grains.

Q. What is your age?

A. Twenty-nine.

Q. You spoke of being the chemist for some water companies?

A. Yes, sir.

Q You did not name them?

A. Oh, I named a lot of them, I think.

Q. Not water companies—I want to know whether you did name them or not?

A. I named a few.

Q. Describe what you did in attempting to determine the amount of lithium in the Bear Lithia Water?

A. I took—now, this is technical and you will have to follow the detail.

Q. Give it technical?

A. I took two thousand cubic centre-metres of water and added a few drops of hydrochloric acid and reduced the whole thing to dryness, added hydrochloric acid and redried it in a platinum vessel, thereby making the silica insoluble. I wish first to get rid of the silica. I then re-dissolve this matter all that was soluble, filtering out what was insoluble, the insoluble matter being silica. The filtrate contained the matter that was soluble, besides lime. Chemical analysis is a method of elimination and one has to eliminate the salts that would get into the way of the determination of whatever you wish to determine. I then added barium chloride to precipitate the sulphuric acid base of the salts present. This precipitate is separated by means of filterization and washed and dried and the amount of sulphates determined from the amount of barium sulphates that was collected. The filtrate is then treated with barium hydrate to get rid of the magnesia, and the precipitated magnesia is taken out in the same way exactly, without giving the parts, the details. It is then necessary to precipitate the calcium and barium, and to do this ammonia, amonium carbonate and oxalate is used. It is very important, in a lithium determination, that this process shall be repeated at least twice. Now, to make sure, I repeated it three times

so as to get rid of all the barium and all the calcium. And it is also important that the quantity of the solution shall be kept down as low as possible, so that any magnesium that was not precipitated with the barium hydrate will come down.

Having got the water from which the silica and the sulphate barium and calcium is removed, the last filtrate from the determination in which the ammonia, amonium and oxalate and carbonate is used is allowed to flow into a platinum dish and dried, a few drops of hydrochloric acid being added. The platinum dish weighed and the solid matter represents the amount of chlorides of potassium, sodium and lithium.

The lithium is separated from the combined salts by the standard method which is the "Gooch" method dependent on the fact that the chloride of lithium is soluble in amyl alcohol, whereas the other chlorides are not soluble to any degree.

The water is almost entirely driven off and amyl alcohol added, not more than thirty cubic centre-metres. Then the amyl alcohol is boiled and the water driven off until there are about fifteen cubic centre-metres of the solution left, when it is filtered into a platinum dish with amyl alcohol and the filtrate treated with a drop of sulphuric acid dried and heated and dried, and the result is the sulphate of lithium. It is easy to determine the sulphate of lithium from the chloride of lithium, and you have then the means by which you could determine the chloride of lithium contained in the water. The chloride is more insoluble and more volatile than the sulphate.

The correction has to be made for the partial solubility of potassium. And the chlorides in amyl alcohol dependent on the amount of amyl alcohol

used. Using the quantities that I have stated, it is about seventeen ten-thousandths of a gramme.

By Mr. Collins.

Q. How many parts per gallon is that?

A. It all depends on how much water you take.

Q. Seventeen ten-thousandths of a gramme, is how many?

A. It all depends on how many cubic centremetres you start with.

Q. How many is seventeen ten-thousandths of a gramme to a million gallons, that is my question?

A. That would be seventeen parts in a million.

Q. Assuming the amount of lithium stated by Prof. Stillman in your presence here this morning, in a million parts, how would your correction compare with that?

A. It all depends on how much water you take to start with; you cannot compare two things that are entirely unalike.

Q. Compare it with the parts of a million?

A. How much water did he use?

Q. One gallon and a half?

A. I will tell you in a minute. It will make a difference of about 17/100 of a part per million, that is, taking a gallon and a half of water.

Q. And how much lithium did Prof. Stillman say was present?

A. Well, you can probably tell me that, I do not have to remember. Well, as a matter of fact I think he said ten one-thousandths of a part per million.

Q. Then the correction you made for the solubility of the potassium and the sodium salts is a good deal more than the amount of lithium salts that Prof. Stillman said was in the water?

A. The correction is more, yes, sir; oh, yes, sir.

Q. What more did you do then; you have stated to determine the presence of lithium?

A. I took the residue that I obtained and weighed it; I weighed it as a sulphate, and changed it back to a chloride so that it would be more volatile. I then tried the framme test and the spectroscopic test. The framme test for lithium is not so satisfactory, but with the spectroscopic test, which is much more delicate and not so personal, the indication of lithium showed, but my correction for the solubility of potassium and sodium in the amount of amyl alcohol I used, took up the total weight that I got, but I was shown a trace of lithium in the spectroscopic test. I did not have to explain the spectroscope, I suppose, but the characteristic lines were there—

Q. You need not explain that?

A. It showed that there was nothing.

Q. What further did you do to show the presence of lithium?

A. Nothing else was necessary.

Q. You did nothing else?

A. No, sir; nothing else was necessary.

Q. You made no further examination than those you have stated?

A. I did not have to.

Q. You did not?

A. I did not do it.

Q. Is it most a fact that when barium is used to remove the sulphates it is apt to carry some of the lithium down with it?

A. No, sir.

Q. Is not that your experience?

A. No, sir; I have taken salts that I have made up myself and put it through the same thing myself, and checked it off.

Q. But not in this case?

A. Oh, no, sir; water that I manufactured myself; not in this case, no, sir; not this water.

Q. Did you make any tests of the barium sulphite precipitate to show or to see if it had carried down any of the lithium?

A. No, sir; I did not; it was not necessary.

Q. Did you make any tests of the sodium or the potassium chloride residue from the amyl alcohol to see if that contained any lithium?

A. Yes, sir; I did.

Q. What was it?

A. I did not get any lithium in that test.

Q. What was the test?

A. For lithium.

Q. Yes, but what was the test?

A. I made a framme test and the spectroscopic test.

Q. I asked you if you made any test to learn what I stated and you said you did?

A. I did.

Q. Now, what was it?

A. The framme test and the spectroscopic test.

Q. That is what you have already spoken of?

A. No, sir; I made it on another part of the water.

Q. Is it not a fact that chemists are accustomed to use much larger quantities than two thousand cubic centre-metres when they desire to determine the presence of these elements?

A. No, sir; it is not. You asked me for a general statement, and I can show by other statements than my own—

Q. You say they do not?

A. No, sir; they do not. Two thousand cubic centre-metres is quite enough.

Q. You are the man who went to the office and got this hanger, are you not?

A. No, sir; I am not.

Q. The picture of the siphon?
A. No, sir; I am not.

Re-direct by Mr. Lichtenstein.

Q. The tests that you made of this water, is that the standard and recognized test by the U. S. Government?

MR. COLLINS—I object to that as incompetent.

COURT—I will take it.

A. That is the standard, yes, sir; U. S.
Q. Do you know what the standard or usual quantity of water is that is used in making the tests in the U. S. Government?
A. The amount I used.
Q. Lithium salts are very soluble, are they not?
A. Yes, sir; they are soluble salts.
Q. And the barium sulphates are most insoluble?
A. Almost absolutely insoluble.
Q. And is that the reason why it was not necessary for you to make the test of the barium sulphates to see if you had allowed any of the lithium to go down?
A. That is one reason, and also because of the fact that any of these precipitates, as they are precipitated and put in filter papers and so on, are most carefully and thoroughly washed so that only the insoluble matter resides on the filter paper.
Q. The corrections that you spoke of as necessary to make, is that the usual method of making an analysis for the ascertainment of the presence of lithium salts?
A. That is the usual and best method.
Q. Is that the method prescribed by the U. S. Government officials?

A. It is; yes, sir.

Q. What is the usual method of classifying waters in your profession.

A. Water is classified according to the mineral matter present.

Q. Yes?

A. The most prominent mineral salts are taken first in regard to their quantity and also their distribution, whether they are sulphates or chlorides or carbonates or bicarbonates. It is also said whether the water is alkaline or acid.

Q. This is an alkaline water, is it not?

A. Yes, sir; it is an alkaline water.

Q. And the most prominent ingredient is calcium?

A. Yes, sir; the most prominent ingredient is calcium and the next magnesium. This water is a calcium magnesium bicarbonate alkaline water; that is the true discription of their lithium water.

Further cross-examination by Mr. Collins.

Q. You spoke of the U. S. Government recommending these methods—I think you said the official methods—now, the U. S. Government has no official methods, have they?

A. Oh, yes, sir.

Q. For this purpose, for the purpose of testing the water?

A. For a great many purposes.

Q. Where do they publish these official methods?

A. In the Bureau of Chemistry, the Department of Agriculture, the official methods of analysis of whiskey and all sorts of things.

Q. And of water?

A. Yes, sir; there are of waters also.

Q. There are official methods of the U. S. Government on water?

A. There are official methods of the U. S. Government for the analysis of water in the De-

partment of Chemistry, and Bureau of Agriculture at Washington; you can take that as being the U. S. Government.

Q. On water?

A. Yes, sir.

Q. Where are they found?

A. They are to be found in the bulletin issued by the Department of Chemistry.

Q. They have what you call official methods, and they also recognize other methods that are not official, do they not?

A. They give no evidence of recognizing any method that they do not state.

Q. They state other methods, don't they?

A. No, sir.

Q. They do not state other methods?

A. As a general rule, no, sir; they do not.

Q. They publish official methods of investigation and where those methods are insufficient, they use other methods, do they not?

A. The methods as published are not insufficient; they do not publish a method they do not believe in

Q. That does not answer my question?

A. Yes, it does.

Q. There is no official method for the determination of lithium; they recognize other methods that are not official—now, is not that a fact?

A. No, sir; it is not.

Q. It is not?

A. No, sir.

Q. Where will we find the U. S. official method for the determination of lithium as contained in water?

A. In a bulletin issued by the Department of Chemistry, in the Bureau of Agriculture, in the city of Washington, D. C.

Q. Where, what bulletin?

A. The Bulletin No. 91.

Q. When was it issued?

A. Recently.

Q. Does not Hayward in that very bulletin say that he issued the U. S. Government methods; that he has issued previous methods, but he does not say that they are official?

A. He discarded all other methods for the official method; that is what he says.

Q. He says he did?

A. Yes, sir.

Q. And states an official method?

A. Yes, sir.

Q. And you regard them as official methods simply because Hayward says they are?

A. No, sir; certainly not; I do not regard Hayward as official; I regard the Bureau of Chemistry, Department of Agriculture as official, but he stands behind them.

Q. They simply publish the bulletin, don't they?

A. The subject of the President of Congress is not official.

Q. They do publish a method of analysis that are official, and are so styled, don't they?

A. There are one or two special determinations in regard to fire insurance, in connection with law, a few official things like that, in which it says it is thus and so—

Q. And is this not one of this kind?

A. Yes, sir; it is; it does not say that it is not legal to do it some other way, but it says that you shall do it in this way thus and so.

Q. That is in Bulletin No. 91?

A. Yes, sir.

Q. Find it for me, where you say you shall do it (handing witness paper).

A. You claim what is not here.

Q. That an official analysis to determine the

presence of lithium in the way you say the Government gives—

A. It is found on page 29 in this particular book and it says—

By Mr. Collins.

Q. That is all I want; I want you to identify the place?

A. It is on page 29.

Q. Is it not a fact that all the official methods of analysis of the Department of Agriculture of the U. S. Government, in the Bureau of Chemistry, are published in Bulletin No. 46?

A. Not to my knowledge; no, sir.

Q. You don't know that it is not so?

A. I think it is quite possible that they are not all there.

Q. Well, they profess to be there?

A. Well, produce the bulletin.

RALPH O. BROOKS, a witness produced in behalf of the defendent, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. What is your profession and age?

A. I am an analytical chemist, and my age is twenty-eight years.

Q. You are a graduate of what institute?

A. I am a graduate of the Rhode Island State College in 1899, and during my service as State Chemist in New Jersey, I took a post-graduate course in Princeton University.

Q. When were you connected with the State Department here?

A. I will give my experience; immediately after graduation I went into the employ of Billings Clapp & Co., of Boston, Mass.

Q. What is their business?

A. Manufacturing chemists and druggists.

Q. What work did you do there?

A. A general research and testing work on drugs.

Q. Proceed?

A. After staying there two years, I was appointed chemist for the State Board of Health of New Jersey, and I was placed in charge of the inspection and analysis of foods, drugs and public water supplies: during my time I examined thirty different foods, forty different drugs, constantly, and several thousand samples in all of the water supplies of about eighty different localities; I also furnished testimony in 105 cases, involving thirty different foods and drugs in this State; I served as chemist for this State for the period of two years.

Q. Prosecutions for the adulterations of drugs?

A. Yes, sir; I served in the capacity of chemist for the Board of Health for two years; I was then appointed Food Inspection Expert for the Pennsylvania Dairy and Food Commision, being located at the State College in Center County, Pa.

Q. Do you have your laboratory in New York now?

A. I have my laboratory at Franklyn street, New York.

Q. Do you do public work?

A. I do general analytical work for the trade, and am consulting chemist for druggists and the drug business.

Q. Have you analyzed any waters in this country?

A. During my service in Pennsylvania or New Jersey?

Q. You may answer yes or no?

A. Yes.

Q. What waters?

A. The public water supplies of about eighty different New Jersey towns and about half a dozen

mineral waters sent to the Board of Health Laboratory.

Q. Were you requested to make analysis of the water of the Bear Lithia Springs Co.?

A. Yes, sir; I was.

Q. When did you receive any such request and under what circumstances?

A. On the 29th of March last, I bought up by telephone order from the office of the Bear Lithia Springs Co., 62 New street, a case of eight half gallon bottles of Bear Lithia Water. It is what they call the "still water," not the charged or sparkling water; on the following day I received this case of eight bottles, all of which were sealed, and from the driver I got this receipt, No. 32.

Q. Have you the receipt with you?

A. I have (produces).

MR. LICHTENSTEIN—I offer that receipt in evidence.

Marked Exhiibt D 19.

Q. Did you make an analysis of this water?

A. I made an analysis of the water; first I should say that this water was under my control at all times, the seals were broken by myself, and the bottles were without doubt the regular Bear Lithia Springs Co.'s bottles, having the name and the trade mark, and the box had the name and the trade mark on it, on all sides; each bottle was sealed by a wire stopper something like a beer bottle stopper, and it had this paper lap over it, and you had to break this lap of paper to open each bottle, and as I say, each bottle was sealed in this way.

Q. What was the result of your analysis of this water?

A. I have expressed my result in the same method

adopted by the U. S. Government, in which there is no attempt made to say what salts are present, but merely what minerals and what sodas, &c., are present, which, if the water were evaporated to dryness, would unite and form different salts.

Q. What is the result?

A. Chlorine, that is the soda element, the soda forming the element present two and one-half parts per billion.

Q. Give the grains per gallon?

A. Which is equivalent to .1458 grains per gallon, parts per million.

Bicarbonic acid radicle was 120.51 parts per million, which is equivalent to 7.030 grains per gallon parts per million.

Sulphuric acid radicle present 1.64 parts per gallon, equivalent to .0956 grains per gallon, parts per million. This work is carried out to the fourth part of a grain per gallon and the ordinary hundredths of one million part.

Nitric acid radicle present 1.03 parts per million, equivalent to .060 of a grain per gallon, parts per million.

Nitrous acid radicle present a mere trace.

Metal Potassium was present, that is the potassium "Ions" in the water 1.52 parts per million, equivalent to .0886 grains per gallon, parts per million.

Metal Sodium is present 5.79 parts per million, equivalent to .3377 grains per gallon, parts per million.

Metal Lithium was present in a faint trace.

Metal Calcium was present in 18.80 parts per million, equivalent 1.096 grains per gallon, parts per million.

Metal Magnesium was present 10.51 parts per

mil'ion, equivalent to .613 grains for gallon, parts per million.

Iron and Aluminium together are present .07 parts per million, equivalent to .004 grains per gallon, parts per million.

Silica was present 14.15 parts per million, equivalent to .825 grains per gallon, parts per million.

The total mineral matter in solution adds up to 176.52 parts per million, equivalent to 10.2957 grains per gallon.

Q. Now, the further result of the ammonia nitrate and nitrites, what have you?

A. Free ammonia was present in an amount .01 parts per million.

Albuminoid ammonia .03 parts per million.

Nitrogen as nitrates .23 parts per million.

Nitrogen as nitrites a trace.

Q. Now, that is the result, as I understand it, of the analysis in sodas and metals?

A. Expressed as the U. S. Government expresses their analysis.

Q. Now, have you the particulars of the various salts supposed to be present in that water?

A. Yes, I have it according to the latest published methods.

Q. Well, give the results in salts?

A. Potassium Chloride 2.90—will you let me give my previous statement first?

Q. Go on?

A. I say here "Supplementary Report of Analysis of composite sample Lab. 128, on Bear Lithia Water, showing proportions of various salts supposedly present as based upon analytical data already given." There is no guarantee that these salts are present as such, in fact, in salts there not as such.

Potassium Chloride 2.90 per million, equivalent

to .169 grains per gallon, said chloride per million .84 parts per million, equivalent to .107 grains per gallon.

Lithium Chloride is a trace.

Sodium Bicarbonate 14.21 parts per million, equivalent to .829 grains per gallon.

Calcium Bicarbonate 76.14 parts per million, equivalent to 4.441 grains per gallon.

Magnesium Bicarbonate 63.15 parts per million, equivalent to 3.683 grains per gallon.

Sodium Sulphate 2.426 parts per million, equivalent .1415 grains per gallon.

Sodium nitrate 1.41 parts per million, equivalent to .082 grains per gallon.

Sodium Nitrite trace.

Iron Oxide and Alumina .10 parts per million, equivalent to .0058 grains per gallon.

Silica 14.15 parts per million, equivalent to .825 grains per gallon. These quantities of salts add up to practically the same quantity of sodas and metals found previously, indicating that apparently all the metals and sodas are accounted for in the grouping, that is, in this hypothetical grouping.

Q. Have you given the details?

A. I have; it varies a trifle; I will give it again. "Parts per million 176.326 grains per gallon 10.-2833.

Q. In making your analysis, Mr. Brooks, it is necessary to go through the formula as expressed by you first, by every chemist, is it not?

A. I do not understand your question.

Q. In making your analysis—

A. No, it can be calculated anyway.

Q. It could be calculated?

A. It could be calculated directly to this last grouping.

Q. In making your analysis as you went along, the result would be the same?

A. Yes, sir.

By Mr. Collins.

Q. How much water did you use?

A. 2,000 centre-metres, a little over half a gallon.

Q. If you used a great deal more water, say 25 gallons, you would presumably have found a measureable quantity of lithium, would you not?

A. I might have found more lithium if I had used more water, but the quantity, even if I used 25 gallons would have been extremely small in proportion to the amount of water taken.

Q. But if you had had more water you could have measured the lithium, couldn't you?

A. Yes.

Q. Is it not a fact that the use of a large quantity of water is recommended by chemists?

A. As large a quantity as is found necessary in the judgment of the chemist; he decides that.

Q. Look at the analysis of Prof. Mallet as published on the bottles of water, is not your analysis substantially the same as Prof. Mallet's?

A. No, sir; it is not; there is a great deal of difference; in the first place, the amount of lithium carbonate, as he calls it, that he found, although it is the very smallest quantity of any salt that he expresses here, is considerably more than I found any indication of.

Q. You did not measure the quantity?

A. I had a quantity too small to measure by the most delicate methods, methods that would measure to a millionth of one per cent.

Q. You don't know how much water Mr. Mallet used?

A. That would not increase the proportion; it would only increase the amount that he had to work with.

Q. He recommends the 25 gallon, does he not?

A. I don't know the amount of dust that you would get into the water during the time that he would be evaporating 25 gallons; that would make quite a considerable difference?

Q. I did not say that he evaporated it?

A. Well, he would have to do it.

Q. All of it?

A. Yes, sir.

Q. It would take such a long time?

A. It was such a long time that I would not dare to repeat such an analysis as that.

Q. Except in the manner you speak of; his analysis is substantially like yours?

A. No, sir; there is considerable difference.

Q. You said that was hypothetical?

A. Yes, sir.

Q. Now, take the actual finding?

A. With the exception of the lithium, they are practically similar, practically the same.

Re-direct by Mr. Lichtenstein.

Q. The expressions of Prof. Mallet are "parts per imperial gallon?"

A. Yes; that is somewhat larger than our gallon.

Q. So that there would be a less quantity of lithium salts, really?

A. This is the smallest quantity that he gives anywhere.

Q. How many more times more lithium does he express in his analysis than the largest quantity of lithium which cannot be weighed?

A. My analysis carries it out to the third decimal point in each case, and the fourth in one case; the

third decimal point of a grain per million, one thousandth of a grain per gallon.

Q. What is the smallest quantity that you can measure of lithium salts that can be measured on any ingredient?

A. If there had been enough lithium present I could have determined one ten-thousandth of a grain present.

Q. Taking the smallest amount that can be measured, how much more lithium does he express in his analysis?

A. About 120 times.

Q. 120 times?

A. Yes, sir; 120 times.

Further cross-examination by Mr. Collins.

Q. Let me see if I understand that—you say he expresses 120 times as much lithium as the smallest amount of lithium that can be measured?

A. Yes, sir.

Q. Now, do you mean that?

A. I was able to determine the ten-thousandth of a grain, if it had been present; it was not there, and I had to call it less than that, and say "a mere trace."

Q. You did not find as much as a ten-thousandth of a grain?

A. No, sir.

Q. And how much does he find?

A. He claims he found a twelve-thousandths of a grain.

Re-direct by Mr. Lichtenstein.

Q. And you go one decimal point further than he does?

A. I go one decimal point further in my estimate than he does.

Q. That is, you can go one decimal point further?

A. Yes, sir; I go one decimal point further than he does.

Q. And that makes it 120 times more?

A. Yes, sir.

Q. Were you one of the official referees for the association of official chemists?

A. I was one of the referees for the association of official chemists, on official methods of analysis in the commission for official chemist for three years; 1902, 1903 and 1905.

Q. Are you familiar with the classification of drugs in the U. S. Pharmacopœia?

A. I am familiar with the general classification, the standard and doses, of drugs in the Pharmacopœia which is the official standard, for Pharmacopœia products universally recognized, the legal standard in drug inspection work.

Q. Are you familiar with the quantities of lithium of various kinds designated in the U. S. Pharmacopœia?

A. Designated as what?

Q. For use?

A. As the average dose?

Q. As the average dose?

A. I am.

Q. Are you familiar with the various kinds of lithium mentioned in the U. S. Pharmacopœia and the quantities and the usual doses prescribed?

A. The U. S. Pharmacopœia—

By Mr. Collins.

Q. You are asked if you are familiar?

A. Yes, sir; I am.

By Mr. Lichtenstein.

Q. Do you know the quantities therein expressed as the usual doses of lithium?

A. I am familiar with the average doses of various lithium salts.

Q. In what manner is lithium expressed or in what chemical compositions is lithium expressed in the U. S. Pharmacopœia if you know?

MR. COLLINS — I object to the question, the Pharmacopœia is the best evidence of what it is.

COURT — I think you may prove that that book is standard sufficient to qualify it and then bring your book. I will overrule the question.

By Mr. Lichtenstein.

Q. Do you know what the usual doses of lithia carbonate is?

MR. COLLINS—I object to that on the ground that he is not an expert.

COURT—He can state whether he knows or not.

A. I do.

By Mr. Lichtenstein.

Q. What is the usual dose—what is the minimum dose of lithium carbonate which is used in the treatment of diseases of any kind?

MR. COLLINS—I object to the question; he is not a doctor, and he cannot know that.

COURT—You will have to prove that another way; you have presented by this witness the contents of this water and how it is made up, and you have their analysis and you have proved by the previous witnesses the analysis of the water and the

ingredients of it; now, that is a fact you have established. Now, when you have called a physician accustomed to treating the diseases, then they can tell you in a minute what those doses should be. I will over-rule the question.

By Mr. Lichtenstein.

Q. Prof. Mallet gave as his analysis, Lithium Carbonate ".012 grains per imperial gallon," you heard Prof. Stillmann, this morning, testify here?

A. Yes, sir.

Q. And he gave his result as to lithium, he calling it as the chloride at .010, for the U. S. gallon?

A. No, sir; that was parts per billion.

Q. Did he give the grains?

A. No, he gave it as .0005.

Q. Oh, what he gave as .010 was parts per million?

A. He gave the gallons as five ten-thousandths to one grain.

Q. Did you test your residues?

A. Which residues.

Q. In your analysis or sulphates residues?

A. I do not understand—"or sulphate residues" we have the sulphates come down to one point—

Q. Don't you call that a residue or a precipitate sulphate precipitate; did you test those?

A. It is unnecessary.

Q. You did not do it?

A. No, sir.

Q. Why is it not necessary?

A. Lithium is a very soluble salt; Barium sulphate is very unsoluble, and it is washed very thoroughly under a filter to carry through any lithium salt that may be associated with it.

RECESS.

By Mr. Collins.

Q. I would like to ask Mr. Brooks another question or two—How many quantitative analysis for lithium have you ever made, where you found a determinable quantity of lithium in natural water?

A. In natural water?

Q. Yes?

A. Six samples in which I determined the amount of lithium.

Q. What amount did you find?

A. I could not answer that question, it is over five years ago, it was in New Jersey for the State Board.

Cross-examination by Mr. Lichtenstein.

Q. What water did you analyze for the purpose of ascertaining the amount of lithium?

MR. COLLINS—I object to the question as not rebuttal.

Objection sustained.

By Mr. Lichtenstein.

Q. What water did you examine?

MR. COLLINS—I object to that as not rebuttal and as immaterial.

Question allowed.

A. I remember examining the Saratoga Vichy Water especially.

Q. What quantity of lithium did you find in that water?

A. I cannot answer as to the exact quantity now.

Q. Was it more than half a grain per U.S. gallon?

A. Yes, sir; it was.

Q. What other water did you examine?

A. Saratoga Kissenger Water.

Q. Did you find lithia in that water?

A. Yes, sir.

Q. Was it more than half a grain that you found or less?

A. Yes, sir; it was more than that.

Q. What other water did you examine?

A. I cannot tell from memory any others.

Q. Is there any water that you examined that contain more than a grain of lithium?

A. Yes, sir; several of them.

Q. Which waters were they?

A. I think both of those waters I examined and mentioned contained considerably more than a grain.

By the Court.

Q. When you say a grain, you mean per gallon?

A. Yes, sir; when I speak of a grain I mean grains per gallon.

By Mr. Collins.

Q. You say you think so?

A. Yes, sir; to the best of my memory—I haven't the date with me.

JOHN C. SPARKS, recalled in behalf of the defendant, saith:

Examined by Mr. Lichtenstein.

Q. Have you made a calculation to determine the number of gallons of water required to furnish one grain of lithium according to the published analysis in evidence here by the complainant?

MR. COLLINS—I object to the question on the

ground that it is fairly an arithmetical proposition.

Question allowed.

A. I have.

By Mr. Lichtenstein.

Q. What is the number of gallons required?

A. About 111 gallons.

Q. Have you also made a calculation to determine the number of gallons of water required to furnish one grain of lithium according to the analysis of Prof. Stillman?

A. About 2,000 gallons.

Q. United States Gallons?

A. Yes, sir; U. S. Gallons.

Cross-examination by Mr. Collins.

Q. How many quantitative analysis of lithium have you made, of natural water, where there was a determinable quantity of lithium found?

A. About ten.

JOHN F. MORRIS, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. Where do you live?

A. 521 West 156th street, New York.

Q. What is your business?

A. Mineral waters?

Q. How long have yon been in that business?

A. Nineteen years.

Q. Where?

A. On Broadway, at 19 Beekman street, and No. 8 Barclay street.

Q. What kind of mineral water do you sell?

A. At the present time and for the past seven years I have sold medicinal waters.

Q. Do you know the water put up by the Bear Lithia Springs Co.?

A. I do.

Q. Have you handled their water?

A. I have.

Q. For how many years?

A. Well, I started in about 1899.

Q. At the time that you first started to handle their water, was it put out as a mineral water or a table water?

MR. COLLINS—I object to the question that must be evidenced by advertisements and circulars; it is calling for a conclusion of the witness.

COURT—You can cross-examine the witness about that.

WITNESS—I can qualify that by saying that I have dealt in medicinal waters and mineral waters and also what we know as table waters, such as carbonate waters. They are table waters in the sense of the trade, is the carbonate waters, and the medicinal water is a water that comes in different packages—

By Mr. Collins.

Q. When was it first learned that the Bear Lithia Springs Co. was putting out their water as a table water?

A. Between three and four years ago; I cannot say exactly.

By the Court.

Q. That is, putting it out in the shape as you call it a carbonate water?

A. No, sir; but what we now know as a cheap drinking water.

By Mr. Lichtenstein.

Q. And that was three or four years ago?

A. Yes, sir.

Q. Did you continue to handle that water since that time?

A. I haven't handled it myself; I have been in the business as Morris & Schraeder for three years this April—

Q. Did you discontinue the sale of their water at the time they reduced their prices on it?

A. Yes, sir.

Q. Do you recall when the Great Bear Spring Co.'s first came into this market?

A. My first recollection of the Great Bear Spring Co. was at Albany, either 1893, 1894, or 1895, I cannot give you the exact year.

Q. Do you remember when they opened their branches in this locality?

A. Well, around about ten years ago, I should judge.

Q. And in what kind of business did they engage, how did they sell their water?

A. In five gallon demijohns and in cases, ordinarily of less than a gallon each, and a little larger than half a gallon.

Q. The Bear Lithia Spring Co. water that you handled, was it all put up in wooden stoppered bottles, with a label on it such as you see on this bottle which I now show you, marked Exhibit C 15?

A. Cork stoppers with labels over the top of the cork and label on the front.

Q. Do you remember when they started in to

sell their water in a bottle with a procelain stopper?

A. I do not remember, because I never handled it; no, sir.

Q. Did they charge the same price for their water in the cork stopper bottles that they did for their water in the porcelian stoppered bottle?

A. I can explain that if you will permit me. When they charge you three dollars a gallon for water, then you may know that it is being sold as medicinal water; of course I would never identify that as the same water that they were selling eight bottles to the consumers for one dollar. Of course, as I say, when they came down in their prices for their water, with the same identical bottle, except that they were not packed in the same sort of a case, then I concluded it was not a medicinal water, and I did not continue to handle it.

Q. They were charging for the bottle with the cork stoppers and with this label on, three dollars a case to the trade?

A. Yes, sir; when they called it the medicinal water, they were charging three dollars a case to the trade for it, and then they came down when they commenced to sell it to the consumers for one dollar for identically the same case, except that it was not packed in the same way; that is, it was the same amount of water.

Q. That is, they were selling the same water in the same bottles with the same labels with the exception of having this porcelain stopper in it instead of a cork stopper?

A. No, sir; it had a cork stopper in it at first when they commenced selling it to the consumers.

Q. And how much were they selling that same water for to the consumer?

A. Well, if I remember aright, it was one dollar for eight bottles; I may not be right about that, though; it was either that or less.

Q. During your experience of this business, has there any confusion arisen between the Great Bear Spring Co.'s water and the Bear Lithia Springs Co.'s water, in the minds of people ordering it?

A. Not to my knowledge.

Q. Did you ever have calls at your place for the Bear Lithia Water?

A. Yes, sir.

Q. And do you have up to the present time?

A. Yes, sir.

Q. And do you have calls at your place for the Great Bear Spring Water?

A. Yes, sir.

Q. How large and how extensive is your business?

A. We have been in business at the present time for about three years under the name of the firm of Morris & Schraeder, and we sell about $50,000 worth of water a year.

Q. Your firm is the largest dealers in mineral waters in New York and agents for mineral waters, are you not?

A. Yes, sir; I suppose we are as large as any.

Q. Now, Acker, Merrill & Condit, do you sell to them?

A. Well, Acker, Merrill & Condit do not usually buy by the case; they own or control the firm of Leuties Brothers, and therefore they only very occasionally ring me up for information—

Cross-examination by Mr. Collins.

Q. You do not handle the Great Bear Spring Water?

A. No, sir; it is not a medicinal water.

Q. Now, this difference in the prices you speak of, between what it was to the trade and what it was when the water was furnished to customers, was this when you bought the water by the case and retained the bottles?

A. Yes, sir.

Q. And the private customers who were furnished with water, they only got the water and they had to return the bottles?

A. That didn't make any difference.

Q. I only ask you the question, is that so?

A. Yes, sir; that is so.

By Mr. Lichtenstein.

Q. What is the price or value of these bottles?

A. Not above seven cents apiece.

By Mr. Collins.

Q. Where is your place of business now?

A. No. 8 Barclay street.

Q. And the Great Bear Spring Co. is next door to you?

A. No. 10; yes, sir.

MR. LICHTENSTEIN—I desire to offer in evidence the papers heretofore marked by me for identification, D 1, D 2, D 3, D 4, D 5 and D 6.

Marked Exhibits D 1, D 2, D 3, D 4, D 5, D 6 respectively.

JOHN J. BRODERICK, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. You are a physician?

A. Yes, sir.

Q. Where do you practice your profession?

A. 355 Pacific avenue, Jersey City.

Q. How long have you been a physician in Jersey City?

A. A little over sixteen years.

Q. And have you always practiced in this County?

A. Always in Hudson County, Jersey City.

Q. What institution are you a graduate of?

A. A medical institution?

Q. Yes?

A. Bellevue Hospital Medical College.

Q. Were you requested by the Great Bear Spring Co. to examine the analysis of Prof. Sparks?

A. I was.

Q. And also of the analysis put out by the Bear Lithia Springs Co.?

A. Yes, sir.

Q. Made by Prof. Mallet?

A. Yes, sir.

Q. Did you make a careful study of those analysis?

A. I did.

Q. For the purpose of testifying in this cause?

A. Yes.

Q. You also made a special study of the diseases, or certain diseases, which were called to your attention?

A. Yes.

Q. As being contained in the published literature of the Bear Lithia Springs Co.?

A. As published in—what was it you said?

Q. As being contained in the published literature of the Bear Lithia Springs Co.?

A. Yes.

Q. Are you familiar with the thereapeutical and chemical effect of all the ingredients of Bear Lithia water as shown by both analysis?

A. Yes, sir.

Q. Is the water of the Bear Lithia Springs Co. a cure for kidney or bladder troubles?

MR. COLLINS—I object to the question as incompetent.

COURT—It is in the nature of a hypothetical question. The doctor understands the effect of these different ingredients as are contained in the water of this company—now he is asked whether in his opinion, water containing those ingredients will cure a certain disease or diseases. Of course the question is applied to the water with all the ingredients it is supposed to contain. Now, it seems to me that the question ought to be changed, so as to add when speaking of the Bear Lithia Water, by adding the words to the question, "if it contains the ingredients as advertised."

By Mr. Lichtenstein.

Q. I will change the form of the question—

MR. COLLINS—My objection is further on the ground that that assumes the fallibility of the analysis.

THE COURT—That is practically a hypothetical case, because the doctor does not know that the things are in there.

By Mr. Lichtenstein.

Q. I will change my question: Is the water of the Bear Lithia Springs Co., as appears by analysis of Prof. Mallet and as contained in the literature of the Bear Lithia Springs Co., a cure for kidney or bladder troubles?

MR. COLLINS—I make the same objections to the question in that form.

Question allowed.

A. I answer no.

By Mr. Lichtenstein.

Q. Is there any particular ingredient in the water, as appeared by Prof. Mallet's analysis, which is in sufficient quantities to be beneficial in the treatment of kidney or bladder troubles?

MR. COLLINS—I object to that as immaterial, as well as the same objection to the last questions.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Could this water, after having examined the analysis of Prof. Sparks, be a cure for kidney or bladder troubles if it contained those ingredients?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Would it be a cure or beneficial in the treatment of uric acid troubles?

MR. COLLINS—Same objection.

Question allowed.

A. No; it would not.

By Mr. Lichtenstein.

Q. Would it be a cure, or would it be beneficial in the treatment of gout or rheumatism?

MR. COLLINS—Same objection.

Question allowed.

New Jersey State Library

A. No.

By Mr. Lichtenstein.

Q. Would it be beneficial or useful in the treatment of phosphatic deposits or inflammation of the bladder?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Would it be beneficial or useful in the treatment of dropsical affections?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Or brick-dust deposits?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. All forms of dyspepsia?

Mr. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Or in any form of dyspepsia?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Would it be useful, or beneficial, or a cure in the treatment of all forms of dyspepsia that arise from a non-assimilation of food, such as heartburn, flatulence, sick headaches and a sense of fullness after eating?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. If this water contains all of the ingredients mentioned in Prof. Mallet's analysis, or in Mr. Spark's analysis, in the same quantities that are there mentioned, would it be a remedial agent in the treatment of diseases of the urinary organs?

MR. COLLINS—Same objection.

Question allowed.

A. No, sir.

By Mr. Lichtenstein.

Q. Would it have any effect in the treatment of any of those diseases?

MR. COLLINS—Same objection.

Question allowed.

A. No; no effect at all.

By Mr. Lichtenstein.

Q Would this water be beneficial or useful in the treatment of nervous dyspepsia?

MR. COLLINS—Same objection.

Question allowed.

A. Not at all.

By Mr. Lichtenstein.

Q. Is it a cure, or would it be useful or beneficial in the treatment of a person suffering from albuminuria?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. If this water contained all the ingredients that are mentioned in the analysis of Prof. Mallet or in Mr. Spark's analysis, would it be a solvent for stone in the bladder?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Does this water, speaking now from your knowledge of both of these analysis' mentioned, contain any element which peculiarly adapts it to the relief of liver diseases?

MR. COLLINS—Same objection.

Question allowed.

A. No, not at all.

By Mr. Lichtenstein.

Q. Would it have any effect in the treatment of any liver disease?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Would this water, or could this water, be used with any beneficial effect in any disease where an alterative is required?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Would this water be of great beneficial effect in consumption cases?

MR. COLLINS—Same objection.

Question allowed.

A. Not at all.

By Mr. Lichtenstein.

Q. Would it have any effect in the treatment of that disease?

MR. COLLINS—Same objection.

Question allowed.

A. None whatever.

By Mr. Lichtenstein.

Q. Is this water a solvent of stone in the bladder or a cure, or of beneficial effect in the cure of phosphoric deposits or gravel?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Is there anything in this water which would make it beneficial for teething children?

MR. COLLINS—Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Would this water be a cure for cholera infantum?

MR. COLLINS—Same objection.

Question allowed.

A. Not at all.

MR. COLLINS—I will ask your Honor's permission to have it understood or considered that I object to all of this line of examination to avoid the necessity of renewing the objection at each question.

COURT—It will be considered as objected to.

By Mr. Lichtenstein.

Q. Is Bear Lithia Water, that is, this water in

question, the only thing that can be used to neutralize uric acid?

MR. COLLINS—I object to this for the same reasons as the previous objections, but on the further ground that this is in no sense, and cannot even be argued to be a proper question here, as a matter of fact, whether it is the only thing or not —interrupted.

COURT—The question is whether you say it is the only thing.

MR. LICHTENSTEIN—I am using the language from their own circulars.

MR. COLLINS—That is so clearly a matter of opinion, that it cannot possibly be held to be deceptive—what is the exact language of our circular in that respect?

MR. LICHTENSTEIN—The language is as follows: "Bear Lithia Water must be used to neutralize uric acid"—

MR. COLLINS—Well, that is a very different thing—altogether different to the question you asked.

COURT—I shall overrule the question in the shape it was first put.

By Mr. Lichtenstein.

Q. I will amend my question—must Bear Lithia Water be used to neutralize uric acid?

MR. COLLINS—I object to the question.

COURT—On what ground? On the ground that that is not a correct statement as contained in the circular?

MR. COLLINS—The question is not put in a way that meets the fair meaning of what is stated in the circular. It does not follow that no other water of the same character could do it—the use of the Bear Lithia Water is for that purpose, is all that that means.

By Mr. Lichtenstein.

Q. I will read the entire language as it is contained in the circular: "Our belief in the water is founded on a rock, and whatever is claimed for other Lithia waters can be without question claimed for this. Other pure waters may lack this, but Bear Lithia Water must be used to neutralize uric acid and cure indigestion, gout, gravel, &c." That is the statement contained in one of their public circulars—you have heard the language I have just read—is that statement true or untrue?

MR. COLLINS—I object to that.

COURT—The question is overruled as it is stated.

By Mr. Lichtenstein.

Q. Is it a fact that Bear Lithia Water must under those cirsumstances be used to neutralize uric acid?

MR. COLLINS—I object to the question as not being within the statement contained in the circular.

Question allowed.

A. Not at all.

By Mr. Lichtenstein.

Q. Or to cure indigestion?

Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Gout or gravel?

Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Is this water a remedy for incipient Bright's disease?

Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Is it useful in the treatment for Bright's disease in any manner?

MR. COLLINS—I make the same objection to that question as my former objection, that is, that it is immaterial.

Question allowed.

A. Not at all.

By Mr. Lichtenstein.

Q. Exhibit C 42 contains this statement—"if you have urinary troubles, Bear Lithia Water will absolutely eradicate them; if you are whole, it

will keep you whole; it is a certain preventive as well as a positive cure of fever germs. Typhoid, malarial or others cannot affect the delicate inner organism of one whose drinking water is exclusively Bear Lithia Water"—will the drinking of Bear Lithia Water exclusively, eradicate urinary troubles?

MR. COLLINS—I make the same objection to that as my original objection.

Question allowed.

A. No, it will not.

Q. Is it a certain preventive?

MR. COLLINS—Same objection as last.

Question allowed.

A. It is not.

By Mr. Lichtenstein.

Q. As well as a positive cure in the treatment of that disease?

MR. COLLINS— I make the same objection to that as originally made.

Question allowed.

A. It is not.

By Mr. Lichtenstein.

Q. Will the drinking of that water exclusively prevent the inner organs from becoming contaminated with fever gems, typhoid, malarial or others?

MR. COLLINS.—I object to to the question for the reasons previously stated and also on the ground that it is empirical and

cannot possibly be a matter for medical opinion; it is entirely too obscure.

Question allowed.

A. I would answer "No" to that.

By Mr. Lichtenstein.

Q. Is it a cure, or is it useful in the treatment of neuralgia?

Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Acid stomach, female complaints, eczema and gall-stone?

Same objection.

Question allowed.

A. I answer "No" to all of them.

By Mr. Lichtenstein.

Q. Would it be effectual in restoring a person to health after utter exhaustion by complications following typhoid fever?

Same objection.

Question allowed.

A. It would not.

By Mr. Lichtenstein.

Q. Is it useful in the treatment of ulcerations of the stomach?

Same objection.

Question allowed.

A. Not at all.

By Mr. Lichtenstein.

Q. Would the quantity of lithium which is contained in this water, according to their own analysis, dissolve and wash away uric acid or tendencies towards liver, bladder or kidney trouble?

Same objection.

Question allowed,

A. No; it would not.

By Mr. Lichtenstein.

Q. Would the use of this water, by a person, keep his system free from contaminating influences?

Same objection.

Question allowed.

A. Not any more than any pure water would.

Mr. Lichtenstein.

Q. Does Bear Lithia Water possess any remarkable medicinal qualities?

MR. COLLINS—I object to the question on the ground that it does not at all contain any statement of fact.

COURT—I think this question is quite as competent, and perhaps more so, than some of the others we have had, because he is a physician, and he has before him what this thing is made of. Now, in

that view he would be perfectly competent to form an opinion as to whether that thing would cure a certain disease, or tend to cure a disease or diseases—I will allow the question.

A. It does not; it has not any at all, no.

By Mr. Lichtenstein.

Q. Has it any more medical qualities than any ordinary pure water would have?

Same objection.

Question allowed.

A. No; it has not.

Mr. Lichtenstein.

Q. Will this water, or the use of this water, prevent the progress of Bright's disease in its incipiency?

Same objection.

Question allowed.

A. No; it will not.

By Mr. Lichtenstein.

Q. Will it revive the organs and make them fit for their natural offices, any more than any other ordinary pure water would?

Same objection.

Objection sustained.

Mr. Lichtenstein.

Q. Will it prevent the progress of Bright's disease

in its incipiency and revive the organs and make them fit for their natural offices?

Same objection.

Question allowed.

A. No.

By Mr. Lichtenstein.

Q. Does Bear Lithia Water teem with any chemical quality?

MR. COLLINS—I object to the question for the reasons above given, and also on the further ground that it is not within the range of medical expert testimony

Question allowed.

A. It does.

By Mr. Lichtenstein.

Q. Are any of the claims made by the Bear Lithia Springs Co., which I have enumerated, well founded?

MR. COLLINS—I object to that for the reasons above given.

Question overruled.

By Mr. Lichtenstein.

Q. Is a water, such as Prof. Mallet has analyzed, a lithia water?

MR. COLLINS—I object to that.

THE COURT—You want to know whether the Bear Lithia Water, as Prof. Mallet has analyzed it, is a lithia water?

By Mr. Lichtenstein.

Q. That is what I intend to ask: Is the Bear Lithia Springs Co.'s water, which was analyzed by Prof. Mallet, a lithia water?

MR. COLLINS—I object to the question on the ground that this witness has shown no qualification which would entitle him to characterize this water that is not open to your Honor.

Question allowed.

A. I do not consider it.

By Mr. Lichtenstein.

Q. In the treatment of these various diseases which I have enumerated to you, is it necessary to have the guidance of a physician?

MR. COLLINS—I object to that for reasons above given.

Question overruled.

By Mr. Lichtenstein.

Q. Is it necessary to be acquainted with the quantity of water to be used in the treatment of diseases by the use of mineral waters?

Same objection.

Question overruled.

THE COURT—The question is, whether they have misrepresented their water to the public; that, as I understand it, is what you are trying to prove.

MR. LICHTENSTEIN—Yes, your Honor, but still, bearing on the question of fraud, they make a general statement that this

water will cure all these diseases and they direct people in a certain manner as to how it should be used and the quantities that should be used generally.

THE COURT—You have not said anything about that yet.

MR. LICHTENSTEIN—Well, your Honor, they give certain directions, and they say that no general rule can be laid down which will apply to all cases. "We will simply say, to get at the real benefit to be derived from the use of a mineral water it should be used freely; just as you would use it if you visited the springs. The best general directions we can give are, that you will, to the exclusion of all other water while using this, drink several glasses during the day and one on retiring at bedtime—"

THE COURT—That is all very good advice, but that does not prove the competence of this question. I will overrule the question.

By Mr. Licheenstein.

Q. What is the minimum dosage of lithium in the treatment of any disease?

MR. COLLINS—I object to that question as irrelevant.

Objection sustained.

By Mr. Lichtenstein.

Q. What is the minimum dosage of lithium that would be used in the treatment of uric acid troubles?

MR. COLLINS—I object to the question as irrelevant, and also because it assumes that the doctor would prescribe lithia for uric acid troubles. He has not said so and physicians differ, and we don't know what his opinion may be as to the value of lithium in such troubles, or as to how his opinion may accord with the opinion of some other doctor; some other doctor might consider minimum dose as not material at all.

THE COURT—I will overrule that question. You have a witness here who testifies practically that none of the representations made in the circular are true. I do not see how you can make that any stronger by ascertaining how much lithium he would or would not prescribe for any particular case.

MR. LICHTENSTEIN—I am speaking now of the minimum quantity.

THE COURT—That is too indefinite. I will overrule that.

Cross-examination by Mr. Collins.

Q. Dr. Broderick, you do not mean us to understand that the use of a pure water, pure and soft water, may not be highly beneficial in many of the diseases that have been enumerated, do you?

A. Certainly; it would be beneficial in many of them.

Q. In nearly all of them, or perhaps all, would it not?

A. Not at all; no, sir.

Q. What ones would it not be?

A. Well, in incipient Bright's disease it would be very harmful to use water ad. lib.

Q. That is, too much water?

A. Yes.

Q. It would be all right to use in that disease; it would be beneficial to use a pure and soft water if you used water at all, would it not?

A. Yes; without any reference to the quantity, of course.

Q. I mean, without reference to the quantity, that it would be beneficial to use a pure and soft water if you use water at all?

A. Yes.

Q. And the human system requires some water, even in incipient Bright's disease, does it not?

A. Yes, indeed.

Q. This water is an exceptionally pure and soft water, is it not?

A. So they claim.

Q. You have looked at the analysis, haven't you?

A. Yes.

Q. And it shows that, does it not?

A. It seems to; yes, sir.

Q. Then the matter of the beneficial effect of pure and soft water is larely a matter of degree, is it not, of this one? It is largely a matter of degree?

A. Oh, yes.

Q. Have you ever prescribed Bear Lithia Water?

A. No; and no other lithia water.

Q. No other lithia water?

A. Well, I would say, so-called lithia water.

Q. You do not believe in the use of any natural lithia water?

A. Not if I want to get the benefits of lithia; no, sir.

Q. And you do not, in fact, believe very much in lithium, do you?

A. Well, in select cases I do; yes; I use it in select cases.

Q. What cases?

A. In cases of uric acid troubles such as gout and rheumatic affections, but never in the form of a natural lithia water.

Q. Many physicians are coming to the opinion that lithium salt is not of any therapeutical value, are they not?

A. They are getting somewhat more to the idea that it has not got as high therapeutical value as they thought it had ten years, or so, ago.

Q. And that the benefit to be derived from the use of so-called lithia water, or any water in which lithium salts have been dissolved, has been in the use of a good pure water in which the salt itself is dissolved?

A. No; I would say in regard to that that I would divide that into two parts, so as to say as to the effects of a natural or so-called lithia water the effect would be nil, but the effect of dissolved lithium in the shape of a lithium tablet in a glass of pure and soft water would certainly be of some value.

Q. So far as the therapeutical value is concerned, I understand you to say that you do not know of any natural lithia water that has any therapeutical value?

A. That is what I want to say; that I do not know of any natural lithia water that has any therapeutical value, or is of any therapeutical value.

Q. Yes?

A. And personally I don't believe any of them have.

Q. Mention all the qualities of a water to be considered in determining its value as a remedial agent?

MR. LICHTENSTEIN—I object to the question as being too general: remedial for what purpose?

MR. COLLINS—He can limit his answer.

A. Remedial agent for what?

By Mr. Collins.

Q. I do not have to specify for what remedial agent; water to be considered as a remedial agent; I want you to mention the qualities of it.

THE COURT—To cure what? He says as to some diseases the water may be good; it may have some remedial effect or agency about it, but if you put the question in that omnibus way, I do not see how he can answer it.

MR. COLLINS—He can mention the qualities that a water should have to make it remedial in his judgment; what qualities would enter into a natural water to make it into a medicinal water; I want to know what qualities in a natural water would make it a remedial or medicinal water.

THE COURT—He would have to go through them all; the water to cure a Bright's disease must have some salt or something of some kind in it, and to cure another disease it would have to have something else in it; he would have to go through the whole gamut of diseases to answer that question.

MR. COLLINS—He may do that; I want to know; I am examining him by way of testing him; he must know whether a

water is or is not medicinal, and what it is that makes any water medicinal.

A. A water is made medicinal by a certain quantity of that particular medicine, or by a sufficient quantity of that medicinal quality added to it, necessary to produce effects as a medicine.

Q. And what are those qualities that make it medicinal?

A. The presence of the necessary drug to make it medicinal.

Q. I want to know the names of them; there cannot be so many—do you mean the mineral constituents of the water?

A. Certainly.

Q. To make it medicinal?

A. Yes.

Q. Well, is there anything further to be considered than the medicinal constituents of the water?

A. To make it medicinal water?

Q. Yes?

A. Not necessarily.

Q. Well, largely.

A. No, as long as it contains the mineral which makes it medicinal, that makes it medicinal water.

Q. Does the mineral contained in the water or the constituents of the water make it a medicinal water?

A. If it had the necessary medicine in it, it certainly would be a medicinal water.

Q. What do you mean by the necessary medicine?

A. Well, to produce a certain effect, you have to have a certain medicine. Now, I limit it to the necessary medicinal constituents. Now, if I take a glass of water, and in that glass of water I dissolve some sulphate of quinine in it, I would make it a medicinal water, of course.

Q. That is not what I want to know—I am speak-

ing of natural water—what I want to know is, whether what makes a natural water a medicinal water is the mineral constituents in that natural water?

A. The presence of natural mineral constituents would make it a natural mineral water.

Q. For example, what we know as Hunyadi Janos is a medicinal water?

A. Yes.

Q. And that is due to the presence, in large quantities, of a certain mineral salt, is it not?

A. Yes.

COURT—Is that a natural water?

MR. COLLINS—That is a natural water.

Q. Is it not true that the medicinal use of waters is indicated in conditions in a patient, where the heavy mineralized water is objectionable, and consequently where lightly mineralized water is preferred.

A. Yes, but there might be simply a difference of degree again—you have simply a difference of degree as to what would constitute sufficient medicinal qualities.

Q. That is true—and I want you to tell us—describe the physiological action of the slightly alkaline lightly mineralized water in the stomach?

A. When taken into the stomach the alkaline qualities of the water would neutralize any hyperacidity or excessive secretion of the gastric acid, and in that way would produce the physiological effect of reducing the over supply of said acid in the stomach.

Q. And that would be medicinal?

A. Undoubtedly.

Q. Do you recognize such a condition as a uric acid diathesis?

A. Yes.

Q. Will you explain to the Court what that condition is?

A. It is a condition of super-fluidity of uric acid in the system.

Q. The drinking of water freely is prescribed by physicians for that diathesis, is it not?

A. Not in every case.

Q. In many cases?

A. Not in very many cases.

Q. Well, how does the drinking of water tend to correct or cure that condition?

A. By the dilution of the urine and in giving the kidneys plenty of fluid to work upon; it is supposed to carry off a great deal of the solid excreta from the system.

Q. And that is a medical fact, is it not?

A. Yes.

Re-direct by Mr. Lichtenstein.

Q. Is Bear Lithia Water, as it is shown to have been analysed by Prof. Mallet, alkaline enough to have any effect upon the system?

MR. COLLINS—I object to the question; the witness has never used it—he has never prescribed it, and has had no experience whatever with it, and therefore his judgment is of no value at all.

COURT—It is a hypothetical question—I will take it.

A. It is not at all; it is not sufficiently alkaline to have any effect, in my estimation.

By Mr. Lichtenstein.

Q. Is it not the fact that quantity and quality of

the ingredients in a mineral water is necessary to determine whether it is of any therapeutical value?

MR. COLLINS—I make the same objection.

Question allowed.

A. Undoubtedly it is so.

Re-cross by Mr. Collins.

Q. Is it not a fact that the opinion of the medical profession, in regard to the medicinal value of natural waters, is contradictory among themselves?

A. Of course, I cannot answer that question categorically;

I never had discussions with any physician over it.

Q. But you have read works on the subject?

A. I have studied the subjeet somewhat, and as I stated before, our opinion as to the medicinal value of lithium is becoming less than it used to be.

Q. Take the profession at large; are there not some who adhere to it?

A. To the lithium treatment?

Q. Yes?

A. Oh, yes.

Q. And is it not a fact that the opinion as to the medicinal value of natural waters is very varying in the profession of medicine?

A. Well, as far as I know, the consensus of opinion is against the use of natural waters.

Q. Of late?

A. Yes.

Q. The consensus of opinion for the last few years is against natural mineral waters?

A. Yes.

Q. So far as you know?

A. Yes.

Q. But yet there are those of your profession

who adhere to them as medicinal in value, are there not?

A. I presume there are some.

Re-direct by Mr. Lichtenstein.

Q. Adhere to what mineral waters? Natural waters that have sufficient quantities of medicinal qualities—

MR. COLLINS—I object to the question as leading.

Objection sustained.

GEORGE E. MCLOUGHLIN, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. You are a practicing physician?

A. Yes, sir.

Q. And practice your profession where?

A. In Jersey City.

Q. How long have you practiced your profession in Jersey City?

A. Fifteen years.

Q. You are a graduate of what medical college?

A. The University of New York.

Q. Have you examined the analysis of Bear Lithia Water submitted to you, made by Prof. Mallet, and also by Mr. Sparks?

A. I have.

Q. Have you examined, or did you examine this analysis for the purpose of testifying in this cause?

A. Yes, sir.

Q. Did you make a study of them?

A. Yes, sir.

Q. Are you familiar with the therapeutical and

chemical effect of the ingredients of Bear Lithia Water as analyzed by Prof. Mallet?

MR. COLLINS—I object to the question as irrelevant and immaterial.

Question allowed.

A. I am.

Q. Are you familiar and do you know the therapeutical and chemical value of Bear Lithia Water from an examination of that analysis?

A. Yes, sir.

Q. Is Bear Lithia Water a cure for kidney, bladder troubles, uric acid, gout, rheumatism, phosphoric deposits, inflammation of the bladder, dropsical affections, brick-dust deposits, all forms of dyspepsia, which arise from non-assimilation of food, such as heartburn and flatulence, sick headache and a sense of fullness after eating?

MR. COLLINS—I object to the question as incompetent and irrelevant, and immaterial and not the subject in view of the alleged advertisements made by the complainant. It may be a matter of opinion, and on the face of it they are assertions of fact not open to this kind of evidence, I think, your Honor, and I object to it on the further ground that the witness is not experienced in the use of Bear Lithia Water.

Question allowed.

A. No, sir; it is not.

By Mr. Lichtenstein.

Q. Is it of any value in the treatment of any of those diseases?

MR. COLLINS—I make the same objection.

Question allowed.

A. Not more than an ordinary water would be.

By Mr. Lichtenstein.

Q. And speaking of an ordinary water you mean what?

A. The average water one might drink anywhere.

Q. Ordinary city water?

A. Yes, sir; I should say so.

Q. Is Bear Lithia Water a remedial agent in the treatment of diseases of the urinal organs, nervous dyspepsia and albuminuria?

MR. COLLINS—I make the same objection.

Question allowed.

A. It is not.

MR. LICHTENSTEIN—I am willing that a general objection shall stand to all this line of evidence if Mr. Collins prefers it, instead of making the objection to each question.

COURT—I will overrule your objection and the general objection may be noted.

By Mr. Lichtenstein.

Q. Is it a solvent of stone in the bladder?

A. It is not.

Q. Does this water contain any element which peculiarly adapts it to the relief of liver diseases?

A. No, sir.

Q. Is this water of beneficial effect in the treatment of consumption?

A. No, sir.

Q. Is this water a solvent of phosphoric deposits and gravel?

A. No, sir.

Q. Is there anything in this water which would make it beneficial for teething children?

A. Nothing except the calcium salts, and they are very little; nothing more than we would find possibly in ordinary city water.

Q. Would the calcium salts in that water be of any benefit for teething children?

A. I should say not.

Q. Is this water useful in the treatment of cholera infantum?

A. Is this water specially useful?

Q. No; useful as a cure?

A. No, sir, it is not; no more so than the average water, which a child could have when it needs a water.

Q. Is it a cure for cholera infantum?

A. No, sir.

Q. Must Bear Lithia Water be used to neutralize uric acid and cure indigestion, gout and gravel?

MR. COLLINS—I object to the question; the text of the pamplet shows that they do do not mean to make any such assertion. They contrast their water with other like waters; it is not limited to their water.

Objection sustained.

By Mr. Lichtenstein.

Q. I read you a statement from Exhibit C 42, as follows: "If you have urinary troubles, Bear Lithia Water will absolutely eradicate them"—will it have that effect?

MR. COLLINS—I object to the question. That

has been overruled before. He has stated that he did not know that; he never used Bear Lithia Water; he can only testify as to what his opinion is.

THE COURT—That is based entirely upon analysis, of course. Neither of these witnesses have testified that they used the water, and in fact did not know it. But the question is put upon the assumption that the analysis on the bottle made by the complainant is true, and basing his opinion on that, he is asked whether it will cure what they there say it will cure. I think it is entirely competent.

A. It will not.

By Mr. Lichtenstein.

Q. Is it a certain preventive as well as a positive cure for urinary trouble?

A. It is not.

Q. By the exclusive use of this water, will it prevent fever germs, typhoid malarial and others from affecting the inner organism of a man?

A. No, sir.

Q. Does Bear Lithia Water possess any remarkable medicinal qualities?

A. No, sir.

Q. Will the use of this water prevent the progress of Bright's disease in its incipiency?

A. No, sir.

Q. Will it renovate the organs and make them fit for their natural offices?

A. No, sir.

Q. Does Bear Lithia Water teem with any chemical qualities?

A. No, sir; I should say, not in the ordinary sense.

MR. COLLINS—All water has chemical qualities.

THE WITNESS—He said "teem with chemical qualities," and I said "no, not in the ordinary sense."

Cross-examination by Mr. Collins.

Q. Typhoid germs are most frequently carried in the water, are they not?

A. Yes, sir, I should say they were.

Q. And if a person exclusively uses such a water that this analysis of Prof. Mallet discloses, uncontaminated, he is not likely to get typhoid fever, is he?

A. Mr. Mallet's analysis does not show anything from a bacteriological standpoint.

Q. I said "uncontaminated?"

A. Do you mean "uncontaminated" bacteriologically?

Q. Yes?

A. Oh, yes, sir.

GEORGE N. CULVER, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. Where do you practice your profession?

A. Jersey City.

Q. How long have you practiced in Jersey City?

A. Almost thirteen years.

Q. You are a graduate of what institution?

A. Bellevue Hospital Medical College.

Q. Have you made a study of the analysis of Prof. Mallet of Bear Lithia Water?

A. I have.

Q. And also examined the analysis of the same water by Mr. Sparks?

A. I have.

Q. Did you examine the analysis of that water for the purpose of testifying in this cause?

A. I did.

Q. A list of diseases was submitted to you as being claimed to be cured by that water?

A. They were.

Q. Did you prepare yourself for testifying in this cause?

A. I did.

Q. On these particular diseases?

A. Yes, sir.

Q. Is Bear Lithia Water, or are you familiar with the therapeutical and chemical effect of the ingredients of this water as appears by Prof. Mallet's analysis?

A. Yes, sir.

Q. And also that of Mr. Sparks?

A. Yes, sir.

Q. Is Bear Lithia Water a cure for kidney or bladder troubles, uric acid, gout or rheumatism, phosphoric deposits, inflammation of the bladder, dropsical affections, brick-dust deposits, all forms of dyspepsia which arise from non-assimilation of food, such as heartburn, flatulence, sick headaches and a sense of fullness after eating, and dyspepsia generally?

A. No, sir.

Q. Is it a cure for any of those diseases?

A. No, sir.

Q. Is it a remedial agent in the treatment of diseases of the urinary organs?

A. No, sir.

Q. Nervous dyspepsia or albuminuria?

A. No, sir.

Q. Is it a solvent of stone in the bladder?

A. No, sir.

Q. Does this water contain any element which peculiarly adapts it to the relief of liver diseases?

A. No, sir.

Q. Is this water of beneficial effect in the treatment of consumption?

A. No, sir.

Q. Is this water a solvent of the phosphoric deposits, or gravel, or either of them?

A. No, sir.

Q. Is there anything in this water which would make it beneficial for teething children?

A. No, sir.

Q. Is it a cure for cholera infantum?

A. No, sir.

Q. Or useful in the treatment of that disease?

A. No, sir.

Q. It is a remedy for incipient Bright's disease?

A. No, sir.

Q. Would it have any effect in a case of Bright's disease?

A. None whatever.

Q. Is it a remedy for dyspepsia?

A. No, sir.

Q. Is it a cure or useful in the treatment of neuralgia, acid stomach, female complaints, eczema, and gall stone?

A. No, sir.

Q. Would it in any way be effectual in restoring a person to health after utter exaustion by complications, following typhoid fever?'

A. No, sir

Q. Is it in any way beneficial in the treatment of ulcerations of the stomach?

A. No, sir.

Q. Would the lithium in this water dissolve and

wash away uric acid or the tendency towards liver, bladder or kidney troubles?

A. No, sir.

Q. Would the use of this water by a person keep his system free from contaminating influences?

A. No, sir.

Q. Does Bear Lithia Water possess any remarkable medicinal qualities?

A. No, sir.

Q. Does it contain any medicinal qualities?

A. No sir.

A. Is there anything in its composition in sufficient quantities to be of medicinal value?

A. No, sir.

Q. Will it prevent the progress of Bright's disease in its incipiency?

A. No, sir.

Q. Will it renovate the organs and make them fit for their natural offices?

A. No, sir.

Q. Will the drinking of this water exclusively in any way prevent fever germs, typhoid malarial or others, from affecting the system?

A. No, sir.

Q. Will this water neutralize stone in the bladder?

A. No, sir.

Q. Or preclude ills?

A. No, sir.

Q. Are there any chemical qualities with which Bear Lithia Water is teeming?

A. No, sir.

Q. Would this water be of any more use in the treatment of any of the diseases which I have enumerated than any other ordinary drinking water?

A. No, sir.

Cross-examination by Mr. Collins.

Q. I think I observed you hesitate on dyspepsia, did you or not?

A. I was not thinking at the time about this water; it has no effect.

Q. You have never prescribed the use of Bear Lithia water, in your practice, have you?

A. No, sir.

Q. You do not believe in the natural lithia waters, as medicinal agencies, do you?

A. No, sir.

By Mr. Lichtenstein.

Q. Why do not you believe in the use of natural lithium waters?

A. Because there is not enough ingredients in it to do any good.

ELDRIDGE W. ESTES, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. You are the General Superintendent of the Great Bear Spring Co.?

A. General Manager.

Q. And you live where?

A. In Jersey City.

Q. How long have you been General Manager of the company?

A. Well, I have been General Manager about six years, I think.

Q. What position did you hold with the company prior to that time?

A. Manager of the Greater New York branch.

Q. Located where?

A. We had our headquarters in Jersey City, and other branches in this vicinity.

Q. When first did you become connected with the company?

A. About ten years ago.

Q. Where?

A. I became Manager of the Albany branch of the company first.

Q. What year was that in?

A. That was in 1896 or 1897.

Q. Was Great Bear spring water being sold at that time?

A. Yes, sir.

Q. Where?

A. In Albany and Greater New York, in Philadelphia; that is, our branches there, and then the water was shipped to other points throughout the eastern part of the country.

Q. Was it sold under that name?

A. Yes, sir.

Q. How long have you been in the water business altogether?

A. I have sold water since I was eighteen years old.

Q. And how old are you now?

A. Thirty-nine.

Q. When did you first learn of the existence of the Bear Lithia Water Company?

A. When I entered the employ of the company; of this company.

Q. What kind of business were they doing at that time?

A. They were selling medicinal water.

Q. How was it put up?

A. In half gallon bottles with a wooden cork and a seal over the top, and a label upon the side.

Q. The label such as is shown by Exhibit C 15?

A. Yes, sir.

By Mr. Collins.

Q. And a ground glass bear on it?

A. I do not recollect that; it may have been.

Q. Was that the only kind of a bottle they had out at that time?

A. That is the only one I saw.

Q. When you first started in business with this company, how did they sell their water—I mean in what manner?

A. I only saw it in drug and grocery stores.

Q. Your own company, I mean?

A. Oh, our own company—we sold it in what is known as the five pint glass stoppered bottles, pints and quarts carbonated, five gallon demijohns, two gallon demijohns, long necks, half gallon green bottles, called long necks.

Q. Did any of those bottles, when you first started in business with this company bear any labels?

A. Yes, sir.

Q. Which bottle and what kind of a label?

A. The pints and the quarts of the sparkling had an oval label; it is filed in our answer.

Q. I show you Exhibit F, annexed to the answering affidavit in this cause, on the part of the defendant, and ask you whether that is the label which was used by your company at that time?

A. On the sparkling bottles at that time, yes, sir.

By Mr. Collins.

Q. What time?

A. 1896 and 1897.

By Mr. Lichtenstein.

Q. What other labels, if any, were used, and on what bottles?

A. We have, or rather, I found at Albany—

THE COURT—I did not understand that you are claiming that there is a similarity of packages.

MR. COLLINS—No, sir; not at all.

THE COURT—I understand that the defendant makes serious objection to the label; they say on this label that the Bear Lithia Water Company's water was put up in the bottles at the springs; now they say it is not put up at the springs.

MR. LICHTENSTEIN—I understand that the complainant objects because there is confusion, because of our label and the label of their company.

THE COURT—They do not claim that you put up the same color or label, or the same package to deceive; they only complain that you have used the figure of a bear.

MR. LICHTENSTEIN—I will show the kind of packages we put up and use the bear on.

THE COURT—There is no dispute about that.

MR. LICHTENSTEIN—If your Honor please, I understand that there is—they claim that we do not use the figure of a bear.

THE COURT—Well go on—I will take the evidence.

WITNESS—When I took charge of the Albany branch, the principal business of the company was the sale of water in a case of six glass stoppered bottles, and there is a case in Court here to show what it is like. This case is a distinctive case, and for a number of years after I entered

the company's employ, I never saw any other case like it. That case is sold in that shape, and has been from that time to this.

Q. Describe it.

A. It is a case of six one gallon stoppered bottles with an opening at the side—on each side—and a cover or a removable cover on the top, with open handle holes at either end, and stenciled on the ends, "Great Bear Spring Co., New York Branch."

We have a number of those cases, and they are usually stencilled with the name of the branch where the case hails from. There is almost invariably a distinguishing number on each one of these cases. Sometimes a letter and a number. On the side is the stenciling "Loaned—not sold; when empty, notify Great Bear Spring Company," and the proper address usually follows.

On the inside is also stencilled the same reading, or something similar to it, "Property of the Great Bear Spring Co. Loaned, not sold. When empty please notify Great Bear Spring Co." These cases were delivered to private customers only, and the six bottles were plain, that is, unsealed.

There was a cheap looking label at the Albany branch, with the figure of a bear on it, a polar bear on a cake of ice, which was used for labeling green bottles, half gallons, known as "long necks;" it was something like that; it was a cheap paper.

Q. With the figure of a white bear standing upon a cake of ice, similar to the one which appears here on the card you now have in your hand?

A. Yes, sir; the cake of ice is floating in the sea.

MR. LICHTENSTEIN—I offer this card in evidence.

Marked Exhibit D 20.

THE WITNESS—These long-neck bottles were usually shipped to out of-town points and were sold to the trade. The demand for them grew very fast in my territory, Albany, and soon after I took charge of that branch I took the oval label and adopted it.

Exhibit F, annexed to the answering affidavits of the defendants shown witness, and he is asked if that is a copy of the old label to which he referred, and he said:

A. Yes, sir; I took it to the firm of Austin & Co. of Albany, and had them make the label Exhibit I on the annexed answering affidavit.

Q. That is on Exhibit I, annexed to the same affidavit?

A. Yes, sir; it is annexed to the same affidavit; as I say, I took it to the firm of Austin & Co., of Albany, and had them make the label.

MR. LICHTENSTEIN—I offer in evidence Exhibit F, annexed to and part of the answering affidavits on the part of the defendant.

Marked Exhibit D 21.

I also offer in evidence a large label marked Exhibit I, also annexed to the answering affidavit on the part of the defendant.

Marked Exhibit D 22.

Q. Go on.

A. This label, that is, the large label marked Exhibit D 22, came into use not later than the late

summer of 1897; that is my recollection; I haven't looked up any papers, but it was soon after I took charge of the Albany branch; I used this label for some time on the half-gallon green bottles and on the five-gallon demijohns; it proved a little too large for our purposes, and I then had a small square label, which is the facsimile of it, as shown in Exhibit H, made.

By Mr. Collins.

Q. In Albany?

A. Yes, sir; in Albany.

MR. LICHTENSTEIN—I offer Exhibit H, annexed to the answering affidavits on the part of the defendant, in evidence.

Marked Exhibit D 23.

Q. Go on.

A. I want to correct myself; I will not say that I had it made in Albany.

By Mr. Collins.

Q. That may have been after you came to New York, you think?

A. I don't think so; it was not very long after that that I came to New York, though.

By Mr. Lichtenstein.

Q. Proceed.

A. The reading of the large label, Exhibit D 22, is, "This is Spring Water from the famous Great Bear Springs (plural), situate at Fulton, N. Y."

Adjourned to Monday, April 23rd, 1906, at Jersey City, 9.30 A. M.

ELDRIDGE W. ESTES, recalled in behalf of the defendant, saith:

Examined by Mr. Lichtenstein.

Q. From the time when you first began to do business with the Great Bear Spring Co., did you ever change the form or character of your labels?

A. They have been changed, yes, sir.

Q. For what reason?

A. They have been changed in shape.

Q. Have you ever dispensed with any particular label from the time you first went with the company, up to the present time, for any reason?

A. No, sir.

Q. What year did you say you first went with the company?

A. I find that I first went with the company in June, 1897, the second day of June; I thought it was June, 1896, but I find it was the second of June, 1897.

Q. And when you first started with this company what sort of labels were they using?

A. The oval labels; we were actually using those oval labels with the polar bear on.

Q. What character of bottles were they used on?

A. On pints and quarts of sparkling.

Q. That is a picture of a white bear upon a floating cake of ice?

A. Yes, sir; and then we had another label of the same character and design, and then I stated on Saturday that we had a cheap label with that bear outline as shown on the exhibit on very thin paper, and no coloring, and those labels were used on the half-gallon green bottles.

Q. When you entered the employ of the company, did you find letter-heads, circulars and labels at the office in Albany?

A. Yes, sir; they were the property of the Syra-

cuse branch of the company; upon this piece of printed matter, there was the head of a polar bear.

Q. What were they printed on?

A. Bill heads, receipts, and I believe letter heads.

Q. When did you first begin the use of seals on the tops of your bottles?

A. January 1st, 1902.

Q. I show you a paper, and ask you when that first went into use by your company?

A. I find that when I came to New York on the 22d of April, 1899, I took charge of the branch here —when I say New York I mean Jersey City.

By Mr. Collins.

Q. You found it in Jersey City?

A. I found it in use in Jersey City, April 22d, 1899; that was eight days before the Great Bear Spring Co. corporation took over the Great Bear Spring Co.'s partnership at this point; the name of the copartnership was at that time "Great Bear Spring Co.", and from the records in the office, had been such I believe from two to three years; this printed matter had been used—it is a circular—it had been used and almost been exhausted; that is, the printed law, and we only had a few left.

MR. LICHTENSTEIN—I offer that circular in evidence.

Marked Exhibit D. 23.

Q. I show you a card, and ask you when you first saw that card in use by the company?

A. I found a few of these at the Jersey City office at that time.

MR. LICHTENSTEIN—I offer that card in evidence.

Marked Exhibit D. 24.

Q. I show you a "Lithia water" label, and ask you whether your company ever used that label?

A. Yes, sir.

Q. Were you selling an artificial lithia water at that time?

A. Yes, sir; we tried to.

Q. How long ago was that?

A. In 1899.

Q. Was that water put up in bottles?

A. In half gallon bottles.

Q. And was this the label you used upon those bottles?

A. Yes, sir.

MR. LICHTENSTEIN—I offer that label in evidence.

Marked Exhibit D. 26.

WITNESS—The sale of that water was limited, and it was discontinued.

Q. And it was sold under the name of "Fulton Lithia water," was it not.

A. Yes, sir.

Q. When was it discontinued?

A. Very soon after I came here; the business was quite large when I came here, and it reached the capacity of our warehouse in Jersey City, and during the next winter I had a great deal of trouble in serving our customers, and this was a kind of side line, and we abandoned it.

Q. I show you a circular, and ask you when that was put out by your company.

A. That was put out, I should judge, in the fall of 1899, soon after I came here; I discovered that some of our competitors were getting hold of our cases and bottles, and this circular was printed and sent to our customers, not only then but continuously since that date, for the purpose of preventing any-

thing of the kind; I distinguished the year when this circular was printed by the number of the address which is upon it; the next year late in the fall we moved across the street into a new building, and kept our stables only on the opposite side of Henderson street, and since that time all of our literature has had No. 653 Henderson street upon it, instead of 648.

Q. Part of the language in that circular is as follows: "All water sold by us is from the company's springs (plural) near Fulton, Oswego Co., N. Y., and from no other source whatever"—in your literature ever since you have been using the springs on the Woodworth farm, have you been designating your springs in the plural?

A. Before that time.

MR. LICHTENSTEIN—I offer that circular in evidence.

MR. COLLINS—I object to the offer as irrelevant.

THE COURT—I do not see that it is a particle of good, except to lumber up the record. You may put it in to take the benefit of it, but I do not see that it is of any value whatever.

Marked Exhibit D 26.

Q. I show you another circular which reads: "In naswer to questions sometimes asked regarding Great Bear Springs we say, 'These springs are located at a point five miles south of Fulton, Oswego Co., N. Y., upon a tract of 246 acres which this company owns in fee, and are remote from any building,'" was that circular issued by your company?

A. Yes, sir.

Q. And has been in use for how long?

A. I would say five years, it may be four—I will say between four and five years.

MR. LICHTENSTEIN—I offer that circular in evidence.

MR. COLLINS—I object to it as irrelevant.

THE COURT—I will allow it to be put in.

Marked Exhibit D 27.

By Mr. Lichtenstein.

Q. What is the extent of your business at the present time?

MR. COLLINS—I object to that as irrelevant.

THE COURT—I will allow you to prove the extent of your advertisements.

Question withdrawn.

By Mr. Lichtenstein.

Q. What has been the extent of your advertisements since your connection with the company?

A. I will give you the figures for the corporation:

From May 1st, 1899, to January 1st, 1900	$9,240
In the year 1900	14,300
" " " 1901	15,475
" " " 1902	21,492.61
" " " 1903	31,187
" " " 1904	39,513
" " " 1905	40,772

We do not include in this expense any expense for coolers, which are oftentimes considered advertisements.

Q. What has been the general scheme of coloring

of your wagons, since you have been in this business?

A. Bright canary has been the color of our wagons.

Q. Who manufactured them?

A. Most of them have been manufactured by John Brede and Sons, of Hoboken.

Q. Was that wagon original in construction, so far as the water business is concerned?

A. We have never seen any like them since we built them first.

Q. Since the use of these wagons, have you noticed that the Bear Lithia Springs Co. has been using the same kind of wagon?

MR. COLLINS—I object to the question as immaterial and irrelevant.

THE COURT—The construction of the wagon is not material, I think.

Question withdrawn.

By Mr. Lichtenstein.

Q. What was the color of the wagons of the complainant company when they first started in business?

A. A cream color, I should say.

Q. Have they changed since that time?

A. Yes, sir.

Q. What color are they now?

A. They have become more yellow.

Q. I show you Exhibit A A, attached to the original affidavits in this cause, also Exhibit B B and C C, and ask you whether you saw these exhibits before, and where—they are heads of white bears?

A. Yes, sir.

Q. Where did you first see them?

A. I found them in our office in Jersey City, when I took charge there.

Q. Exhibit A A is postmarked "Jersey City," sometime in 1897; I think it is December 22d, 1897?

A. It is Pure Water Supply Co.

MR. LICHTENSTEIN—I offer those Exhibits in evidence.

Marked respectively Exhibits D 28, D 29 and D 30.

Q. You were shown a label with a picture of a white bear on it; will you tell us when you first began to use that label, and if so, when and upon what character of bottles?

A. The large square label which I had made in Albany, and which we used there, and then later in Jersey City, proved too large, especially when the construction of the demijohn crates was changed; the label was scratched off, being on the side of the bottle, and I think in the year 1900 this label was made; none of these are in evidence; the color was not our ordinary color, and so a little later we changed to the yellow label of the same size which is in evidence; I only found this on Saturday.

MR. LICHTENSTEIN—I offer this label in evidence.

Marked Exhibit D 31.

THE WITNESS—This label is worded in the same way as those of the same shape, "From the famous springs located near Fulton, N. Y. (springs in the plural).

Q. I show you a card showing a copy of a five-gallon demijohn, with a large label, which has al-

ready been offered in evidence, and will ask you to tell us when this card was gotten up?

A. That card was printed either in the fall of 1897 or in 1898.

Q. Where was it printed?

A. At Albany.

Q. Were you using this small label when the young man who was on the stand to testify the the other day, was working for you, Mr. Swartz?

A. The square label?

Q. Yes?

A. We had abandoned that in 1900.

Q. And were using that label?

A. And we were putting in this odd shaped label, what we call a "shield" label.

Q. The just offered?

A. Yes, sir; and we have also continued to use the small square label up to the present time.

MR. LICHTENSTEIN—I offer that seal in evidence. Marked Exhibit D 32.

Cross-examination by Mr. Corbin.

Q. You said, if I remember rightly, that prior to 1899, for several years, the trade name under which this water company operated had the "Great Bear Spring Co.," and that the partnership was operating under that trade name?

A. I said that from indications I find on the books it had been for several years.

Q. Yes; I show you the Exhibit A A, which has already been offered in evidence and marked as Exhibit D 28, will you tell me if there is anything about the Great Bear Spring Company on that?

A. No, sir; there is not.

Q. What is the printed matter upon this letterhead, that was apparently used at that time?

A. It is not a letterhead, it is an envelope, "Pure Water Supply Company, 648-650 Henderson street, Jersey City."

Q. It says nothing about the Great Bear Spring Company, there is no printing of the name of Great Bear Spring Company, and this is postmarked in 1897.

A. Yes, sir.

Q. These labels which you have identified this morning were used upon what bottles?

A. Name the labels, please.

Q. First the shield marked Exhibit D 31?

A. The demijohn.

Q. The square labels, both the large and the smaller labels?

A. Demijohns on the large square label.

Q. And the smaller square label?

A. On what we call the long necks as a rule.

Q. These three oval labels which you have spoken of, what were they used on?

A. They were Mr. Easterbrooks labels; gotten up by him before my time.

Q. And I believe you said that the seal label had only been used since 1902?

A. I said 1900.

Q. January, 1900?

A. I said 1900, and my explanation was that the large square labels scratched up when they were placing the demijohns in the crates, and that I soon discovered that after they went into use.

Q. The seal labels?

A. The seal labels went into effect January 1st, 1902; I do not mean by that, that on that very day we used a seal label such as has been placed in evidence here, but we used a label of the same shape, and applied for a patent on it; but prior to January 1st, 1902, for a number of months we had been selling our cases with the wire and leaden seal, and that

proved unsatisfactory, and so after experimenting for a while, we invented this "T" shaped seal label, and the first lot were printed—we were in a hurry to get them in use—on the first of January, 1902, and so they were printed, and we had immediately given an order for them to be lithographed, and it was only a matter of perhaps a few days, or it might have been a few weeks, before we began to use the yellow seal label as shown in the Exhibits.

Q. The first one had no bear on it?

A. No, sir.

Q. Nor the second ones either?

A. There were no second ones, except the one in evidence. I am now referring to the "T" shape seal labels used on glass stoppered bottles at that time, and later used upon the long necks and demijohns.

Q. When did you first use one of these "T" labels with the figure of a bear upon it?

A. I say it was a few weeks after the first of January, 1902; that is my recollection; it was as soon after that date as we could get them lithographed.

Q. How large a portion of your business is done in these half gallon bottles, without any label upon them, except the seal label?

A. You are talking now of our five pints—not the half gallon bottles—I presume?

Q. The same question I asked with regard to the five pint glass stoppered bottles?

A. Do you want the exact figures?

Q. Yes, if you have them.

A. In my affidavit on that point—the affidavit was made out on a Saturday afternoon, in a very great hurry in trying to get it to your office—and I guessed at the proportion. Now these are the exact figures—

Q. We do not want the figures—we want the proportion.

A. I don't know.

Q. You can calculate, cannot you?

A. I don't know.

Q. You can get at it by arithmetical process, you can give the proportion, cannot you?

A. I don't know the proportion—do you want me to figure it out?

Q. Yes.

A. We sell one five gallon demijohn to forty-five glass stoppered bottles.

Q. Don't you know the percentage of the whole business; you said in your affidavit that it was 99 per cent.?

A. Yes, sir; I said 99 per cent.

Q I want you to tell us the percentage, if you can?

A. I do not pretend to be a mathematician.

Q. It is about 97 per cent., is it not?

A. It is about 97 per cent.; I was not far off.

By Mr. Collins.

Q. I notice in your literature you publish an analysis by Dr. William Manuels Smith, dated September 5th, 1890, and continue that analysis right down to now?

A. With others.

Q. You haven't shown any other?

A. That was printed in 1898.

Q. But it was made in 1890?

A. Yes, sir.

Q. I want to know what spring that water was taken from?

MR. LICHTENSTEIN—I object to the question as not material.

THE COURT—I will take it.

A. That was from the main springs at the lower end of our property.

Q. Down at what you call—

A. It was the original group of springs.

Q. The Osgood and Connors' properties?

A. I don't know what you mean by Connors'; I do know what you mean by Osgood.

Q. They adjoin, do they not?

A. That is something I do not know anything about.

Q. Well, the Osgood farm, then?

A. Yes, sir; the Osgood farm.

Q. Give me that little circular that shows your springs are on 246 acres that you own, which has been marked Exhibit D 27—your attention was directed to the fact that the springs were located five miles south of Fulton, on a tract of 246 acres owned by the company in fee. That tract was the original Woodworth farm, was it not, once so spoken of by Mr. Emerick?

A. I don't know anything about it except what I heard in evidence.

Q. That is the farm he spoke of—

A. No other farm.

Q. That is the farm that he has been speaking of?

A. I think he spoke of six or seven farms.

Q. I mean up there about five miles from Fulton, that is the Woodworth and the Damuth farms?

A. He spoke of several pieces of property—one over on the Central Railroad, which he purchased and upon which there was a spring.

Q. That is not the tract referred to in this circular, is it?

A. I think that being 246 acres includes every acre of land that were at that time owned in that vicinity, but I don't know.

Q. I call your attention to this fact on the third page at the top of the third page, "we have been

selling this water extensively since 1888;" it says so, don't it?

A. Yes, sir.

Q. Well, the company was not selling water from this set of springs five miles away in 1888, was it?

A. We said we were selling this water.

Q. This water?

A. Yes, sir.

Q. You were not selling water from this spring five miles away in 1888, were you?

A. That depends by what you call a spring.

Q. You were not selling water from these springs five miles away—drawn directly from the springs five miles away—in 1888, were you?

A. We believe we were selling the same water all the time.

Q. Will you answer the question, please—(Question repeated). You were not selling water from these springs five miles away—drawn directly from the springs five miles away—in 1888, were you?

A. I cannot answer it.

Q. You were not selling water directly taken from these springs situated five miles away, in 1888, were you?

A. If you mean we were not selling—what is the date?

Q. 1888?

A. Yes, sir, we were ; we—you say 1888—what is the date of this leaflet—

Q. The leaflet which you have given a date to, the earliest date I see on it is 1901; you gave a date from that number?

A. No, sir, not on that; no, sir, I did not; I said that was printed four or five years ago.

Q. This was printed four or five years ago?

A. Yes, sir; that is my recollection.

Q. Now, about five years ago you said you had

been selling this water which you had theretofore indicated as located at the five miles south of Fulton, since 1888?

A. Heretofore you say—that is not right.

Q. You have been selling this water extensively since 1888—four or five years ago you said that, and designated the source of your supply, as the springs five miles from Fulton, did you not?

A. Yes, sir.

Q. Is it a fact that you had been selling water taken from these springs at the point five miles from Fulton, Oswego County, N. Y.,—directly taken?

A. It is the same spring of water.

Q. It is the same spring of water?

A. Yes, sir.

Q. But not directly taken from the particular spring?

A. We say yes, sir.

Q. Directly?

A. Yes, sir; springs do not mean a hole in the ground, it means water; if you speak of the river, you mean the water in the river; you do not mean the river banks, and when you refer to a spring you mean the water coming from the ground, out of a particular hole in the ground; at that time five miles south of our present source? No, sir; do not misunderstand me.

Q. Do not argue the case—will you produce the letter which we asked for of Mr. Arnaud's?

A. I have not been able to find it.

Q. Was Mr. H. A. Nichols at one time the manager of Great Bear Spring Co.?

A. Yes, sir.

Q. In 1904?

A. Yes, sir.

Q. Do you recognize his signature (handing witness paper)?

A. That looks like it.
Q. Now, you have no doubt about it, have you?
A. Not much.
Q. Have you any?
A. No, sir.

MR. COLLINS—I will ask that this letter be marked for identification.

Marked C 73 for identification.

Q. If I understand it rightly, this bulk of your trade which you think now is 97 per cent. has no label on, except the seal label, has it?
A. Yes, sir.
Q. And the bottles on which you put shield labels are the long necks, as you call them?
A. No, sir; carbonate water, and on the shoulders of our five and two gallon demijohns.
Q. And you put something on what you call the long necks, didn't you?
A. That is a square label; a collar label and a seal label.
Q. This collar label of which you have spoken, has been very recently adopted, has it not?
A. Yes, sir.
Q. How long ago?
A. I should judge, a year ago, and it took the place of another label, a colored label which had three bears on instead of two.
Q. Have you got it?
A. (Produces).
Q. When was that adopted?
A. I cannot tell you; many years ago.
Q. And in use?
A. Yes, sir; it was.
Q. It was not in use at the time of the new one, was it?
A. What do you mean by that?

Q. I mean what I say.

A. Not in use at the time of what?

Q. That you adopted the one very recently—you say it took the place of one, but this one was not then being used, was it?

A. Yes, sir.

Q. Do you mean that this was continuously used?

A. For several years.

Q. And dropped for how long?

A. It was not dropped at all, until we got the new collar label, with that label on it in the store within two weeks.

Q. What do you mean by several years—when did you begin to use it?

A. It is difficult for me to remember or to state that; but I believe four years ago; now perhaps I can explain that this way; when the corporation took charge of the business, in May 1st, 1899, excepting for the oval label on the sparkling water and the square cheap label on the long necks, we did not have a nice line of labels, and we immediately began to prepare a full line of labels, so that all of those labels dated from about that time; and these new labels dated from about that time.

Q. About what time?

A. Immediately following May 1st, 1899; do not misunderstand me; prior to that date we were using the oval labels on our sparkling water, which had the figure of a polar bear on a cake of ice, and the cheap printed label with the figure of a bear on a cake of ice.

Q. On what?

A. On our long necks, those were used.

Q. And those were all you used labels on?

A. I believe so.

Q. You have put out long necked bottles within

the last year, without any neck label or collar label, as you call it?

A. If so, it was a mistake, and I do not believe it.

Q. What do you do in the percentage of your business in five gallon demijohns?

A. Three per cent., practically.

Q. And you say 97 per cent. in the case of bottles and three per cent. for the demijohns; that leaves nothing at all for those other bottles?

A. Well, I say practically.

Q. Practically the whole business is in your case bottles, yet you send out in cases and in demijohns, also.

A. I will say that our sales of carbonate water are small, and our sales of long necks—well, I find we sold last year 5,871 cases of long necks.

Q. Your five gallon demijohns are the ones that you send out with the coolers, are they not?

A. Partially.

Q. Well, mostly; is it not?

A. No, sir.

Q. What do you send out with your coolers?

A. We have more small coolers in use for the ground glass stoppered bottles than we have of five gallon demijohns.

Q. I mean coolers you send out to various offices, to have a bottle on the top of them; they are mostly the five gallon demijohns, are they not?

A. I would not say so; I know that there is more small coolers for the ground glass stoppered bottles than there are for our five gallon demijohns.

Q. That is what the coolers are made for; the five gallon demijohns, are they not?

A. The coolers are made also for the smaller bottles, too.

Q. The five gallon demijohns are designed for use with the coolers, are they not?

A. No, sir; the coolers are designed for the five gallon demijohns, but most of them are for the smaller bottles; these five gallon bottles are shipped all over, and we did not put out a cooler but to about one customer in ten, I should say, where we shipped these five gallon demijohns to.

Q. But you do use the five gallon demijohns chiefly with the coolers, don't you?

A. I did not say that; I told you no.

Q. I do not think you understand me—what do you use chiefly with the coolers?

A. The small ground glass stoppered bottles.

Q. I mean the big coolers?

A. Of course you must use a five gallon demijohn on a big cooler; yes.

Q. Well, what I want to know is this, the bulk of your cooler trade is in the five gallon demijohns?

A. I say no to that.

Q. You say you put out more small coolers than you do large ones?

A. Yes, sir.

Q. Those are for family use, are they not?

A. We do not send any to families.

Q. Only for offices?

A. Offices and business places; well, when I say we never send any to families, perhaps I ought to say we have sent about six altogether; very few, anyway.

Re-direct by Mr. Lichtenstein.

Q. How many small coolers have you, with which you use the half gallon bottles?

MR. COLLINS—I object to that as incompetent.

THE COURT—This witness has not said anything that made that question pertinent.

Question withdrawn.

By Mr. Lichtenstein.

Q. I find here a seal label gummed, with a picture of a bear on it, and I will ask you when that was in use, by your company?

A. Immediately upon coming here from Albany I had made a seal label, the size of this one with the head of a polar bear on it, similar to the one that you have put in evidence; it looked like a bull's head, and our President objected to it, and we made that one in 1900.

MR. LICHTENSTIEN—I offer that seal in evidence.

Marked Exhibit D 33.

WITNESS—That was used on our five gallon demijohns, that was, and then commenced on January 1st, 1900, we placed in use these "T" shaped seal labels.

HARRY P. BETTS, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. What is your business?

A. Attorney-at-Law.

Q. Where do you practice?

A. At Phoenix, N. Y.

Q. How far is Phoenix from Fulton?

A. Nine miles.

Q. How long have you lived in Oswego Co.?

A. Off and on for all my life.

Q. Do you know where the Woodworth farm is?

A. I do.

Q. How far away from the Woodworth farm do you live?

A. I live on the adjoining farm; I was born and virtually brought up there.

Q. Are you familiar with a certain spring or springs on that farm?

A. Yes, sir.

Q. Do you know what those springs were known as in your early days?

A. Yes, sir; I know the name of those springs.

Q. What were the springs known as?

A. They were known as the "Bear Springs."

Q. How many springs were there on that farm?

A. Well, I cannot tell you; I can say that there was many.

Q. More than one?

A. Oh, yes, sir.

Q. Were there any other springs known as "Bear Springs" or "Great Bear Springs" in that locality?

A. Yes, sir.

Q. Where were the "Great Bear Springs" to your knowledge?

A. They were about a mile and a half or two miles south of the village of Fulton then, now it is the City of Fulton.

Q. These springs on the Woodworth farm were known as the "Bear Springs?"

A. Yes, sir; I have heard them called that.

Q. And the springs lower down were the "Great Bear Springs?"

A. Yes, sir.

Cross-examination by Mr. Collins.

Q. How old are you?

A. I will be thirty-nine years old in August next.

Q. When did you hear the springs on the Woodworth farm called the "Bear Springs?"

A. I cannot give you the exact date, but the first

time was when I was a small boy, as far back as I can remember almost anything.

Q. Who called them so?

A. I heard different people around call them so.

Q. Was it not the "Great Bear" people that bought the farm that you heard called them the "Bear Springs?"

A. No, sir; I heard them called the "Bear springs" long before that.

Q. Can you name a man or anyone you have heard them call them so?

A. Yes, sir.

Q. Who?

A. I heard my father and my uncle talking about the "Bear Springs."

Q. That is on the Woodworth farm?

A. Yes, sir.

Q. What did they call them on the Damuth farm?

A. I did not hear them call them anything.

Q. They did not have a name?

A. No, sir; not that I know of.

Q. What did they have on the Connor lot?

A. I don't know which lot you are now speaking of, but those springs situated near the pump station were known as the "Great Bear Springs."

Q. And on the Woodworth farm the springs were called the "Bear Springs?"

A. Well, I don't know exactly as to the Woodworth farm, but there was a group of springs on my father's farm; they were all known as the "Bear Springs."

Q. What was your father's farm?

A. The next farm north towards Fulton, adjoining the Woodworth farm.

Q. Did the Great Bear Spring Co. buy that farm?

A. No, sir.

Q. Who owns it now?

A. My mother.

Q. You heard the springs on that farm called the "Bear Springs?"

A. I heard the group of springs, that is, the group of springs not far from the Woodworth farm called "Bear Springs," and there is a stream of water that runs from this canal—

Q. Which canal are you speaking of?

A. The Oswego Canal, that lies between the river and these springs there; it runs right parallel with the river.

Q. Mr. Woodworth never called the springs on his farm "Bear Springs," did he?

A. I never heard them called that by him.

Q. Did you ever hear the springs on the Woodworth farm called that?

A. Yes, sir; I have.

Q. By whom?

A. My father and my uncle when they came there, and I would hear them talking and they called them the "Bear Springs," and I have heard other people that I cannot name now call them the "Bear Springs."

Q. I thought you said your father and your uncle were talking about the springs on your farm?

A. No, sir; the Woodworth farm, and on the back end of our farm, and there was another spring on another farm owned by a man named Chapman; they were all called "Bear Springs."

GEORGE D. HENDERSON, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. Where do you live?

A. Phoenix.

Q. How long have you lived at Phoenix?

A. About thirty-six years.

Q. Are you familiar with the Woodworth farm?

A. Yes, sir.

Q. Where is that located?

A. It is located about four and a half miles north of Phoenix.

Q. Are you familiar with the springs upon that land?

A. Yes, sir; some years ago, not of late years.

Q. What were they generally known as, to you?

A. "Bear Springs."

Q. How long have you known them as "Bear Springs?"

A. Ever since 1870.

Cross-examination by Mr. Collins.

Q. Who did you hear them called "Bear Springs" by?

A. I heard the Dingmans call them the "Bear Springs."

Q. Who were the Dingmans?

A. There was Minor Dingman, Ephraim Dingman and Benjamin Dingman.

Q. Where did they live?

A. They all lived at Newmanville.

Q. And where did you live?

A. At Phoenix.

Q. Then?

A. Yes, sir.

Q. That is three miles away, or more?

A. Yes, sir.

Q. Did you ever hear the Connors people call them the "Bear Springs?"

A. No, sir; I don't know the original owner of the Connors lot; Mr. Ellis he did, or rather I have heard his sons call them the "Bear Springs."

Q. Whose sons?

A. Mr. Ellis'.

Q. What farm did Mr. Ellis own?

A. The Woodworth farm.

Q. He owned it before Mr. Woodworth owned it?

A. Yes, sir.

Q. And you heard Mr. Ellis' sons call the springs on the Woodworth farm the "Bear Springs?"

A. Yes, sir.

Q. What were the springs down at the Osgood place called—do you know that?

A. "The Great Bear Springs."

Q. There was only one "Great Bear Spring" was there?

A. Well, there was one original spring years ago, but I guess the city of Fulton has two or three in there now, but years ago—

Q. But there was one spring they called the "Great Bear Spring," was there?

A. Yes, sir; but years ago it was one original spring.

FRANK HYDEN, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath saith:

Examined by Mr. Lichtenstein.

Q. Where do you live?

A. I reside at West Phœnix.

Q. How far away from the Woodworth farm?

A. About three miles.

Q. Were you a trapper in your early days?

A. I have trapped a great deal, yes.

Q. How long have you known the Woodworth farm?

A. I have known the Woodworth farm for the last forty years.

Q. Do you know of the existence of springs on that farm?

A. Yes, sir; of a great many up through there.

Q. Do you know what those springs were called?

A. They were always called "Bear Springs."

Q. How long back have you heard them called "Bear Springs?"

A. For the last forty years, that I know of.

No Cross-examination.

Mr. Lichtenstein—I offer in evidence the certificate of incorporation of the Great Bear Spring Co.

Marked Exhibit D 34.

Defendant rests.

Charles Wheelhouse, a witness produced on behalf of the complainant, in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. How old are you?

A. Thirty-seven years.

Q. Where were you born?

A. I was born in the town of Scruple.

Q. In the town of Scruple?

A. Yes, sir; I was born in the town of Scruple.

Q. Where is that with reference to the Woodworth farm?

A. Well, it is the adjoining town to Volney; there is a road divides them.

Q. A road divides the town in which the Woodworth farm is situated from the town in which you were born?

A. Yes, sir.

Q. Where is your birth-place as regards the Woodworth farm?

A. Right across the road.

Q. You were born there?

A. Yes, sir.

Q. And have lived there ever since?

A. Yes, sir; until I was nineteen years old.

Q. Where did you go then?

A. To the City of Fulton; it was a village then.

Q. Have you lived there ever since?

A. No; sir.

Q. Then where did you go to?

A. To the town of Volney.

Q. But in the same neighborhood?

A. Yes, sir.

Q. You have lived in that neighborhood all your life, have you?

A. Yes, sir.

Q. Do you know the springs on the Woodworth farm?

A. Yes, sir; I do.

Q. Were they ever called or known as "Bear Springs?"

A. Not to my knowledge.

Q. I am speaking of the spring, the water from which is now pumped to Grandby, are those the springs you are now speaking of?

A. Yes, sir; those are the ones I am now speaking of.

Q. How far are those springs from the springs that the Fulton Water Works Company got their water from?

A. Three miles or a trifle over, I should say.

Q. Were there any springs up in that country called "Bear Springs?"

A. No, sir.

Q. I do not mean on the Woodworth farm, but elsewhere?

A. No, sir; not to my knowledge.

Q. Nowhere?

A. No, sir.

Q. When was the first you heard of the word "Bear Spring," or "Great Bear Spring?"

A. Well, something about five years ago.

Q. You used to work on the Woodworth farm, did you?

A. Yes, sir; I have.

Q. Well, what did they call that spring when you were a boy, that the Fulton Water Works Company pumped from down on the Osgood farm?

A. "The Bear Spring."

Q. Then you misunderstood me—you never heard it called the "Great Bear Spring?"

A. No, sir.

Q. Then I misunderstood you—there was a spring called "Bear Spring?"

A. Yes, sir.

Q. And that was down on the Osgood place?

A. That was down on the Osgood place.

Q. Did you ever hear that called "Great Bear Spring" in your boyhood days?

A. No, sir.

Q. Did you ever hear of any other "Bear Spring" than that one down there?

A. No, sir.

Q. When did they begin to call the Woodworth Spring "Bear Spring" or "Great Bear Spring?"

A. Well, something about five years ago was the first I heard of it.

Q. The pumping works of the Fulton Water Works Co.; the pumping works?

A. Yes, sir.

Q. What date does it bear?

A. That bears the Fulton Water Works Co.'s name.

Q. What date?

A. 1885.

Cross-examination by Mr. Lichtenstein.

Q. William King is a relative of yours, is he not?

A. Yes, sir; I believe so.

Q. An uncle is he not?

A. No, sir.

Q. How is he related to you?

A. Well, he is a relative through my mother.

Q. Quite an old man, is he not?

A. William King?

Q. William King, Sr.?

A. Yes, sir.

Q. Have you ever heard him speak of these springs on the Woodworth farm as "Bear Springs?"

A. No, sir.

Q. Did you ever inquire of him?

A. I cannot say as to that.

Q. Do you know that he made an affidavit to that effect?

MR. COLLINS—I object to that as immaterial and incompetent.

Question withdrawn.

By Mr. Lichtenstein.

Q. William King, Sr., is over eighty years of age, is he not?

A. I think he is.

Q. You are a relative of Mrs. Hackett, are you not?

A. Yes, sir.

Q. She lives right in that locality?

A. Yes, sir.

Q. And she is a lady that is in litigation with the "Great Bear Spring Co.?

MR. COLLINS—I object to that as immaterial.

Question allowed.

A. I believe so.

MARY E. HACKETT, a witness produced in behalf

of the complainant, in rebuttal, being duly sworn according to law, on her oath saith:

Examined by Mr. Collins.

Q. May I ask you your age?

A. I am forty-two last October.

Q. Where were you born?

A. Well, I was born, I think, on the farm where we live now, where we live at present.

Q. And have lived there ever since?

A. I have lived there ever since—well, not wholly, all the time, I lived at Minnetto, Oswego Co., for a short time.

Q. Near by?

A. Well, it is about eleven miles away.

Q. But most of your life, you have spent there, on the farm?

A. Yes, sir.

Q. Where do you live now, with regards to the springs on the Woodworth?

A. I should say about a quarter of a mile away.

Q. Have you known those springs all your life?

A. I have.

Q. Did you ever know them to be called "Bear Springs?"

A. No, sir.

Q. Where was the spring called "Bear Spring?"

A. On the Osgood farm.

Q. Did you ever know that to be called "Great Bear Spring" in your early days?

A. No, sir; not until this other spring was developed.

Q. Have the springs on the Woodworth farm been called some name with a "Bear" in it lately?

A. Yes, sir.

Q. When first?

A. About five years ago, I should say.

Q. What name was given to it then?

A. The "Bear Spring."

Q. You never heard that before?

A. No, sir.

Q. Are you referring to the springs on the Woodworth farm, the water of which is piped to Grandby?

A. Yes, sir.

Cross-examination by Mr. Lichtenstein.

Q. The springs are now known as "Bear Springs," are they?

A. Yes, sir.

Q. Are they not known as "Great Bear Springs?"

A. I never heard them called "Great Bear Springs."

Q. The people in that locality merely call them "Bear Springs," do they?

A. "Bear Springs" that is all.

Q. The farm is known as the "Great Bear Spring" now, is it not?

A. Yes, sir.

Q. You have been litigating with this company for a number of years past, over your land, have you not?

A. Yes, sir; for three years.

Q. And you are in litigation now with them?

A. Yes, sir; well, I cannot say exactly, but I presume so.

WILLIAM R. GORE, a witness produced in behalf of the complainant, in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. How old are you?

A. Sixty-six years past.

Q. Where were you born?

A. In Scotland.

Q. Then you came to this country when?
A. When I was six years past.
Q. And went to live where?
A. I landed in St. Lawrence County.
Q. When did you come to Fulton to live?
A. In 1855.
Q. And you have lived in that neighborhood ever since?
A. Yes, sir; oh, no; I have been out of the town and out of the county once or twice.
Q. You lived in the town of Grandby for a while, didn't you?
A. Yes, sir.
Q. That is in the same county, is it not?
A. Yes, sir.
Q. And you came to the neighborhood of Fulton in 1855?
A. I came to Fulton in 1855.
Q. And then lived there how long?
A. I think to 1859 or 1860.
Q. And then went where?
A. I was away about a year.
Q. And then when did you come back to Fulton?
A. I think I was gone a year, or maybe a little over, or less; it was not much.
Q. Did you vary from that on, sometimes in Fulton and sometimes in other places?
A. Yes, sir.
Q. How long have you continuously lived in Fulton now?
A. Twenty-five years this April.
Q. Did you become acquainted with the spring on the Osgood farm?
A. Yes, sir; the first summer I boarded there in 1855, I became acquainted with the spring on the Osgood farm.
Q. It was called then the "Bear Spring?"
A. Yes, sir.

Q. Did you drink water out of it?

A. Yes, sir.

Q. When did you first hear it called "Great Bear Spring?"

A. I think it was in 1899; I would not be too positive on that point, but I think that was the year.

Q. Do you remember when you first had your attention called to that thing, what circumstances, and where it was?

A. Yes, sir; it was on the Oswego Fields Fair ground.

Q. What was up there?

A. There was a banner up there, and it said "Great Bear Spring Water."

Q. Did you give the date about that?

A. That was the date.

Q. Do you mean 1899 or 1889?

A. I think it was 1899; it might have been 1898, but it was 1898 or 1899; I would not be too positive which.

By the Court.

Q. Counsel wants to know whether you are not mistaken, and whether it was not 1889 or 1890 instead of 1898 and 1899?

A. It could not have been.

By Mr. Collins.

Q. About how long was it since you were at the Fair?

A. That is the nearest answer I can give you.

Q. I want to know whether you were at the fair seven years ago or seventeen years ago?

A. Well, I was at the fair on that date; one of those years; I was working for the Fulton Water Works Co., and doing their pumping at the Water

Works, and I got a man to relieve me, so that I could go to this fair.

Q. Cannot you tell whether it was ten years ago, or whether it was seventeen years? Cannot you bring to mind how many years ago it was? 1899 would only be seven years ago?

A. Then I miscalled the year unintentionally.

Q. I thought you did; you mean what year, now?

A. 1888 or 1889?

Q. Did you ever hear of any Bear Spring up to the present time, except the original one on the Osgood farm?

A. Not that I know of.

Cross-examination by Mr. Lichtenstein.

Q. The boatmen coming along the Oswego River would stop there frequently along the springs, along the river front, would they not?.

A. Yes, sir.

Q. And that is for many years back, is it not?

A. That is in 1895; that I can speak of for certain.

Q. And that is called a springy country?

A. Yes, sir.

Q. And there is a number of springs right south of the spring you call the Bear Spring, is there not.

A. Well, not immediately in that neighborhood.

Q. The boatmen used to stop at all the springs, didn't they?

A. No, sir; there was but one then that the boatmen stopped at at that time.

Q. Do you remember when the Fulton Water Works Co. commenced first the pumping?

MR. COLLINS—I object to that question as not cross-examination.

THE COURT—I will take it; I think the ex-

amination is fair, because he was mistaken as to the date.

By Mr. Lichtenstein.

Q. The building was completed in 1885, was it not?

A. Yes, sir.

Q. And they had been working on it for two years?

A. I cannot tell you that.

Q. Was not the water sold to the village known as Great Bear Spring Water?

A. No, sir.

Q. What was it called?

A. Bear Spring Water.

Q. You never heard it called Great Bear Spring?

A. No, sir.

MR. COLLINS—I want to put in evidence our certificate of incorporation; I notice they do not admit it.

Marked Exhibit C 74.

I also offer in evidence this letter which was heretofore marked C 73 for identification. The letter marked Exhibit C 73, and being read is as follows:

Mr. J. McGrath,
8 West 123rd St.,
N. Y. C.

Dear Sir—The writer called to see you yesterday in regard to your discontinuance of our service, and learned that you were using Bear Lithia Water; we have no criticisms to make about that water, with the exception of calling your attention to the fact that this is a pure and simple medicine, and should never be drunk except upon the advice of a

physician; you are undoubtedly aware of this fact, and it may be that you have some ailment which makes the drinking of a lithia water necessary for your health; if this is true, we would suggest that you purchase lithia tablets and dissolve them in Great Bear Spring Water. In this way you know to a certainty just how many grains of the drug your system is absorbing, and at the same time you may be sure that the water is absolutely pure and wholesome; for fear that you might think our arguments are intended as a scare to regain your patronage, we would respectfully refer you to your family physician for corroboration of what we say.

Yours very truly,
Great Bear Spring Company,
Per H. A. Nichols,
Manager.

Next I offer in evidence the letter which we gave the other side notice to produce, written by Mr. Arnaud, which reads as follows:

It is addressed 574 Fifty-seventh street.

Brooklyn, N. Y.
Dated January 15th, 1903.

Messrs. Bear Lithia Water Co.

Dear sirs:

Having sampled your water at the Orphium Theatre last night, I would like to have you leave me a five-gallon demijohn at my house on the second floor of the above address and oblige

Yours truly,
C. E Arnaud.

Marked Exhibit C 75.

Mr. Collins—I next offer in evidence the

answer made by the Great Bear Spring Co. to that letter which reads as follows:

MR. LICHTENSTEIN—I object to the offer of that letter.

THE COURT—I shall sustain the objection.

MR. COLLINS—I will then ask to have it marked for identification.

Marked C 76 for identification.

MR. COLLINS—Next I offer in evidence a copy of the advertisements of the Syracuse Standard for March 24, 1893, and we will have a photograph of the page in question made and put in, instead of leaving the book here.

It is agreed between counsel that the photograph may be made of that page instead of leaving the original.

Marked Exhibit C 77.

JOSEPH T. HALL, a witness produced in behalf of the complainant, in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. Where do you live?

A. 143 West 142nd street, Borough of Manhattan.

Q. Where did you live in January, 1895?

A. At Hyannis, Mass.

Q. What is your occupation?

A. I am a bank cashier.

Q. What bank?

A. First National Bank of Hyannis.

Q. Did you in that month and year, have a bad attack of grippe?

A. Yes, sir; I did.

Q. How were you left after that attack?

A. I was left with an acute attack of Bright's disease.

Q. How bad were you?

MR. LICHTENSTEIN—I object to the question. He is not qualified to state how badly he was afflicted—he can say that he was suffering from something—interrupted–

COURT—He can state what his condition was.

By Mr. Collins.

Q. What condition were your kidneys in—state it so that we can form an opinion of what your condition was?

A. They were inflammed and painful and my water was all bloody.

Q. How bloody?

MR. LICHTENSTEIN—I object to the question. The witness cannot state that his water was bloody; it might be colored red from a variety of causes.

Question withdrawn.

By Mr. Collins.

Q. Did you call in a physician?

A. Yes, sir.

Q. Did you get any relief from his treatment?

A. Not from the physician.

Q. What did you finally take?

A. Bear Lithia Water.

Q. How did you come to take that?

A. It was recommended to me by a friend of mine.

Q. On that occasion, or on a previous occasion?

A. I had had trouble before, of a similar kind, and this friend of mine had recommended it to me previously.

Q. Under what circumstances?

A. On account of my being ailing, and somewhat in the same condition that I then was; it was after an attack of grippe although not so bad as this one.

Q. What effect did that have upon you?

A. It relieved me very soon after I commenced taking the Bear Lithia Water; in fact, before I had taken one case of it I felt relief, and before I had taken four bottles, out of the last case that I bought, I was greatly relieved and at the end—after I had taken the first case, I might say I was completely recovered.

Q. You continued until you were completely cured?

A. I continued the use of the water after the first case; I took another case, and so was completely cured.

Q. Did you ever have any attack since that time?

A. No, sir.

Q. You are a temperate man?

A. I never drink any liquor of any kind.

Q. Did you give a testimonial which has been printed by the Bear Lithia Water Co.—are you the Joseph T. Hall whose letter is printed in Exhibit C 41?

A. That is a copy of a letter which I gave them.

Cross-examination by Mr. Lichtenstein.

Q. Where were you living at the time you took this water?

A. In Hyannis, Mass.

Q. How did you come to sign that testimonial and send it to New York?

A. I was living at New York at that time.

Q. How long did you give your testimonial after the time that you used the water?

A. Oh, several years.

Q. How did you come to give it?

A. I had a friend that asked me for it, and I gave it in that way.

Q. Who was that friend?

A. Mr. Harry Dickinson.

Q. One of the proprietors of the company?

A. At that time, yes, sir.

Q. And he was a friend of yours?

A. Yes, sir.

Q. Was he the man that recommended the water to you?

A. No, sir.

Q. Can you recall how many years it was, after you used it, that you first gave your testimonial as to it?

A. I think it was about three years afterwards.

Q. Prior to that, you had not written to the company at all, about the beneficial effect of the water upon you, had you?

A. No, sir.

Q. How did you know that you had Bright's disease?

A. I got it from my physician, whom I thought was a capable man.

Q. Was it not in this way, and is not this the fact, that the physician told your wife that you had Bright's disease, and that she told you—is not that the fact, according to your own testimonial?

A. No, sir; the physician told me, and he told her also—I think he told her first, and then he told me that I had Bright's disease.

Q. You say in your testimonial that your physician told your wife that you had Bright's disease?

A. Well, I say so now, and I also say that he told me besides.

Q. Who was your physician at that time?

A. Dr. Edward E. Hawes.

Q. And you say he was a capable physician?

A. Yes, sir.

Q. And yet he was unable to do you any good?

A. Yes.

Q. You were using medicines during the same time that you were taking the water, were you not?

A. Well—while I was taking water?

Q. Yes.

A. No, sir; I didn't use any medicine.

Q. Was not your physician prescribing for you at the same time you used the Bear Lithia Water?

A. I didn't take any medicine at all, after I commenced taking the water.

Q. But previous to that you had been taking medicine as was prescribed by your physician, hadn't you?

A. Yes, sir.

Q. How long?

A. Several weeks.

Q. And then you stopped taking medicine suddenly, and commenced the use of this water?

A. No, sir.

Q. Did you go to the bank during that time?

A. No, sir; I was in the country.

Q. How long had you been to the country, away from the bank?

A. I had been in the country twenty-one years.

Q. Well, how much blood or bloody urine were you passing at the time, when you first began to doctor, with your physician, I mean?

A. Well, very considerable.

Q. Well, about how much?

A. I never measured it.

Q. Well, about how many ounces; do you know that?

Q. No, sir.

Q. Well, with reference to an ordinary cupful, how much did you pass at a time?

A. I should say fully a cupful at a time.

Q. And how many times a day would you pass as much as a cupful of bloody urine?

A. I should say four or five times.

Q. A full cupful each time?

A. Yes, sir.

Q. And how many days did that continue?

A. For at least two or three weeks.

Q. And did you have to get up at night to urinate?

A. I did.

Q. And how often during the night?

A. Sometimes once and sometimes more than once.

Q. How long did the doctor treat you?

A. He treated me for that trouble for over three weeks.

Q. You don't know whether this blood came from your kidneys or from your bladder, do you?

A. I only know what the doctor told me.

Q. And after three weeks treatment by your physician, you say you began the use of this water?

A. Yes, sir.

Q. And you used just one case of it?

A. I used two cases of it.

Q. How much a day did you use of the water?

A. I drank it very freely.

Q. Did the physician tell you how much to drink a day of this water?

A. No, sir.

Q. Did anyone else tell you how much you should drink a day of this water?

A. Nothing more than to use it the same as I would any other water.

Q. Who told you to do that?

A. The party that recommended it to me.

Q. How much did you actually drink a day?

A. I should think, possibly, pretty near to one of these bottles.

Q. Was that one of the quart bottles?

A. No, sir; a two quart bottle.

Q. How much urine did you pass then after drinking this water?

A. I don't think it decreased very much.

Q. How about the bloody condition of the water?

A. That stopped immediately.

Q. The bloody urine stopped immediately you started to use the water?

A. Well, no, sir; not perhaps exactly immediately—

Q. Well, how long after you first commenced using it?

A. I should think within less than a week; at least within ten days.

Q. Entirely?

A. It gradually decreased, until it ceased altogether.

Q. But the quantity of urine did not increase, did it?

A. No, sir.

By Mr. Collins.

Q. Counsel put the question to you, he asked you if you passed pure blood and you answered yes; now, you mean by that, that it was bloody urine, not pure blood?

A. Yes, sir; I mean bloody urine.

Q. And after you took the water, the bloody condition of the water gradually decreased?

A. Yes, sir; very soon after I commenced with

the water, the bloody condition of my water gradually decreased; that is, it became lighter and lighter.

BRICE A. MARTIN, a witness produced in rebuttal on behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. Where do you live?
A. 486 Eleventh avenue, N. Y.
Q. What is your business?
A. I am in the drug business.
Q. A druggist?
A. Yes, sir.
Q. How long have you been in that business?
A. All my life.
Q. That is, since you have been old enough to be anything?
A. Yes, sir.
Q. Did you give your age?
A. Not yet.
Q. How old are you?
A. 32 years.
Q. And you are familiar with diseases to some extent, are you?
A. Well, as far as a druggist can be familiar with them.
Q. What trouble have you had, what have you suffered from?
A. I had trouble with uric acid, and a slight attack of albuminuria, and the uric acid was greater than the albuminuria, and it used to cause a great number of blisters on my body in various places, where the urine would strike; it would then cause little water blisters, wherever it would strike my body.
Q. On your body?

A. Yes, sir; down on the lower organs of my body.

Q. Were you able to get your life insured?

A. No, sir; I was not; on account of the albuminuria from which I was suffering at that time.

Q. When was that?

A. Some years ago; I tried to obtain insurance, and in fact I tried almost every company there was, I suppose, in the United States, but I have never been able to get any insurance.

Q. And you always failed because of that one reason?

A. Yes, sir; that was the reason that I always failed to obtain insurance.

Q. Have you had occasion to use Bear Lithia Water, or have you used it?

A. Yes, sir; I have used it.

Q. How came you to do it?

A. How I came to do it was in this way: Some three months or more ago, when in New York, we had some very poor water; during that time the city water was very very bad, and I went across the street to a place where they were selling it, and I took some of this water, that is, the Bear Lithia Water, and after I had used it a little while I found that this water blisters that I was troubled with, and the heat or irritation through the kidneys which this uric acid had caused improved; that is, I began to get rid of it; well, not thinking that it was the Bear Lithia Water that I had been drinking that had done it, and I suppose at that time I drank as much as a bottle a day of it, that is, a two quart bottle, I persisted in drinking of it and I gradually got better and better and finally I got entirely rid of those water blisters, and got rid of this uric acid trouble; I really didn't have any confidence in the Bear Lithia Water, not knowing anything at all about it, so a friend of mine, he was troubled with

the same sort of thing that I had been troubled with, and I told him my experience, and I asked him to use it; as I say he was troubled exactly the same as I was, and I asked him to use it, and after drinking a good deal of the water, and especially drinking a lot of it when I was going to bed at night, and I told him to do the same, as I knew, or at least I told him that it would do him a great deal of good, and he did it, and it had the same effect on him as it had on me.

Q. Do you continue to use it?

A. I use it every day.

Q. Do you find any benefit from it?

A. Yes, sir; I certainly do.

Q. And have the water blisters returned.

A. No, sir; they have not.

Q. And you don't know about the albuminuria?

A. I have very, very little of it now; I had my urine tested only a short time ago—

MR. LICHTENSTEIN—I object to that as immaterial.

Q. What you mean is that you have a less quantity of albuminuria than you ever had before?

A. Yes, sir.

Q. How long ago was it since you began the use of Bear Lithia Water?

A. Three or four months ago.

Q. And you keep it up constantly?

A. Yes, sir; I have never been without it.

Cross-examination by Mr. Lichtenstein.

Q. You had been in the habit of using Croton Water in New York, had you?

A. Yes, sir.

Q. And doing that right straight along?

A. Yes, sir.

Q. And when was it you were examined for your urine?

A. I have been examined every year for the last ten years.

Q. How did you know that you had albuminuria, or albumen in your urine, outside of what the physician told you?

A. My own knowledge of it.

Q. Did you ever test your urine to find out whether you had albumin in it or not.

A. Yes, sir.

Q. How did you test it?

A. I had three tests made.

Q. How did you test your urine to find out whether you had albumen or uric acid in your urine?

A. Well, I tested it for uric acid by the use of nitric acid and boiling.

Q. Is that the test whereby you find out whether there is albumen in your water or not?

A. No, sir; that is the test for uric acid.

Q. Well, did you find out whether there was albumen in your urine?

A. Yes, sir.

Q. How did you find out?

A. By testing it with a Rochelle salts and blue-stone test.

Q. Is that the test for albuminuria, or do you use Rochelle salts and blue-stone to test whether you have albumen in the urine or not?

A. Yes, sir; that is the test.

Q. Where did you ever read, or where did you get it from, that such was the test to ascertain that albumin was in the urine?

A. You can get it in the pharmacopoeia.

Q. Do you say that that test appears there—in the pharmacopoeia?

A. Yes, sir.

Q. How do you know that it appears in the pharmacopoeia?

A. Well, I don't know exactly that it appears—

Q. When did you see it in the pharmacopoeia?

A. I don't know when I saw it last; but it is there.

Q. How do you know that it appears there; when in fact you say you never saw it there?

A. How; what do you mean?

Q. You say that that test was to be found in the pharmacopoeia?

A. Yes.

Q. And then I ask you how do you know that it is to be found in the pharmacopoeia, and then you state that you don't know exactly when it appeared there or when you last saw it there—now, I want to know how it is you know that that test, that is, the Rochelle salts and bluestone test appears in the pharmacopoeia for albumen in the urine—how do you know that it was there?

A. Because I saw it there.

Q. How do you know that it was the test for albumen?

A. It is the test.

Q. The test for what?

A. For urine.

Q. Yes, you test your urine to find out whether there was sugar in it, or whether there was uric acid in it, or albumen, whichever you looked for—what did you look for?

A. I always looked for uric acid; that is all I was ever afraid of.

Q. Now, is it not, as a matter of fact, that you never tested for albumen at all—is not that a fact?

A. No, sir.

Q. Now, what did you mean when I asked you the question, whether you had ever made a test of your urine to ascertain whether there was albumen

in it or not, and you said yes—now, I want to ask you if that is true or not?

A. No, sir, not albumen; I always tested for uric acid; that is the only thing that I am afraid of.

By the Court.

Q. You don't answer the question—you have already testified that you tested your urine to ascertain whether you had albumen in it or not, and you testified to the character of the test, and you said that you had tested by means of the Rochelle salts and bluestone test, to ascertain whether there was albumen in your urine or not—now the question is whether that is true or not?

A. Well, the test for albumen, I never used that test before. I never tested for albumen; the only thing that I was ever afraid of was uric acid, and I tested for that.

By Mr. Collins.

Q. Do you wish to make any correction in your testimony?

A. No, sir; I don't know that I want to make any correction.

By Mr. Lichtenstein.

Q. Don't you know, as a matter of fact, that no tests appear for the urine in the pharmacopoeia at all; don't you know that?

A. Why, I know that in the latter pharmacopoeia there is not any tests shown, that is, in this last year, 1906, there are no tests of the urine shown in that pharmacopoeia, but in the pharmacopoeia for 1900 and for over ten years before that, there was tests shown in the pharmacopoeia, but in the new pharmacopoeia of 1906 they do not appear, and in the year 1900 there was the tests shown and for years before that.

Q. In the year 1900, you did not have uric acid trouble at that time, did you?

A. In 1900?

Q. Yes?

A. I didn't test for it; I might have had that same trouble, but I didn't test for it; it didn't bother me, and I didn't bother my head with it; if I did have it, I didn't know it?

Q. You did not look at the pharmacopoeia for a test, did you?

A. No, sir; I did not bother at all about it.

Q. You did not then know what percentage of albumen you had, or whether in fact you had any albumen at all then?

A. No, sir; I did not know that I had any albumen in my urine at all then; I never knew anything at all about it, not until I went to get insured.

By the Court.

Q. Did you make a test to ascertain whether there was albumen in your urine or not?

A. I did not test myself for it, that is, for albumen; the only thing that I tested for was uric acid, because I was very much afraid of uric acid.

By Mr. Lichtenstein.

Q. What did you mean when you said you had used Rochelle salts and bluestone—what had you used that as a test for?

A. That is the old test for albumen.

Q. Did you use that test?

A. No, sir, I did not. When I was examined for the insurance, they said that I had albumenuria, and that they had tested for it and found albumen, and they also told me that I had uric acid trouble, and I could not get insured.

Q. Now, don't you know, as a fact, that the test

that you have just spoken of as being a test for uric acid is the test for ascertaining the amount of albumen in the urine?

A. Is it not a test for uric acid?

Q. Well, is it?

A. Yes, sir, I think so; I have always used it.

Q. You have always used it for what?

A. Uric acid.

Q. But you were using the albumen test for the purpose of finding out whether you had uric acid or not?

A. Well, we use nitric acid and boiling for the purpose of finding albumen, don't we?

Q. That is not what you said; do you usually use that in your work for the purpose of finding out whether you had uric acid or not?

A. I don't know that, but I do know that I have used it for the purpose of finding out whether I had uric acid or not.

Q. So that in using that test, that is the nitric acid and the boiling, you thought you were determining the amount of uric acid in your urine, that is, you thought that it was the test for uric acid?

A. Well, if you have uric acid and the urine comes in contact with the heat, it will turn red—

Q. When you were telling us about these water blisters that appeared on your body, which you said you thought came from the presence of uric acid in your blood, or in your urine, you said that some one had prescribed a mineral water for you?

A. No one prescribed it at all.

Q. How came you to stop using Croton Water?

THE COURT—He says he took a mineral water because a friend of his had recommended it to him, and he found a benefit from it at first, and he continued it until he was cured.

Question withdrawn.

By Mr. Lichtenstein.

Q. Did any one tell you that you ought to change your water and didn't they tell you to drink this mineral water?

A. No, sir.

Q. You didn't have any particular reason for going to get this particular kind of water, did you?

A. No, sir; it was only because it was handy; right across the street.

Q. And immediately you started in to drink it, you experienced a change—relief?

A. Yes, sir.

Q. That is, by drinking pure water?

A. I was drinking the Bear Lithia Water.

Q. Did you take the specific gravity of your urine when you tested it?

A. No, sir.

Q. Is it usual to test your urine as you have described it, without first taking the specific gravity of the urine? Did you ever hear of a test of urine being made without first doing that—taking the specific gravity of the urine?

A. Now, if a test was made by a doctor, or someone in the insurance company's employ, I suppose they would take the specific gravity of it, but if you want to know if you had uric acid or Bright's disease or something of that kind, you need not do it; you would test for uric acid.

Q. You are a druggist; you know all about these things, and you are using them almost every day, are you not

Q. Well, we get a little rusty on these things sometimes; we don't use them every day, in fact we don't use them very often.

Q. Have you tested your urine yourself since you first began the use of this water?

A. I have tested it in this way, that is, by the nitric acid process, to see if it went red after I had boiled it.

Q. When did you do that?

A. About two weeks ago.

Q. You have not applied for admission to any insurance company lately, have you?

A. Not as yet.

Q. Was there any precipitate in your urine the last time when you tested it?

A. Well, hardly any.

Q. You have not made any test to determine whether you had any albumen in your water at the present time, have you?

A. No, sir.

Q. What was the report of the insurance company's examiner, when you were examined for insurance, that you had albumen in your urine?

A. Yes, sir; he reported that I had albumen in my urine.

Q. So you don't know that there has been any change, so far as the albumen is concerned?

A. Only by the odor of the water.

Q. What is there about the odor of your water that demonstrates to you that there is any albumen in it?

A. Well, the odor of the water is much better than it was two months ago, and there is some change for the better in that respect; the odor of the water used to be very offensive.

Q. Can you describe it? Can you describe the odor of your water?

A. Oh, I don't know that I can; you might say there was a sort of aromatic odor about it, or something like that.

Re-direct by Mr. Collins.

Q. You made no personal tests of your own urine yourself, did you?

A. No, sir; not myself.

Q. But when you were examined by the doctor for the insurance company, he said you had albumen in your urine?

A. Yes, sir.

Q. And among the tests that he used was this test you have explained of Rochelle salts and bluestone?

MR. LICHTENSTEIN—I object to that on the ground that it is leading, and also on the further ground that he did not say what counsel implies in his question.

THE COURT—He did not say that; he said that he used these things in making the tests.

Question withdrawn.

By Mr. Collins.

Q. Well, do you know the tests that they used?

A. No, sir; I do not know the tests they used.

Q. Then it was yourself that did use the Rochelle salts and bluestone tests?

A. Yes, sir.

Q. But what did you use that for? How did you come to use that test?

A. How I came to use that test was this way: There was an old German test; there was a German that worked with me, and he said one time, "Do you know the best test for albumen?" and I said, "No;" now, that is during the time that I was getting or trying to get insured, and he says, "I know an old German test," he says, "the very finest thing in the country," and he then described that

I should use twenty grains of bluestone and thirty-fivegrains of Rochelle salts and dissolve each before I used them, and then mix themtogether with the urine.

Q. And that is the way that he made that test?

A. No, sir; he gave me that test.

Q. And you used it?

A. And I used it and never bothered my head since about it, and the only thing I ever bothered my head about was the uric acid.

By the Court.

Q. And you thought that cured the albumen, did you?

A. Yes, sir.

By Mr. Collins.

Q. The test cured it?

A. No, sir; no, we used that for the test for albumen.

Q. You tried it as a test for albumen?

A. Yes, sir; we used it as the test for albumen.

Q. Do you know anything about the result of the test, what it showed or anything about that—do you know anything about it yourself, at all?

A. It showed I had albumen.

Q. Now, irrespective of the tests, is or is not your general condition, better since you began to use this water?

A. Yes, sir; it is a great deal better.

Further cross-examination by Mr. Lichtenstein.

Q. Do you know or do you make any tests for glucose in your place of business?

A. No, sir.

Q. Is it not a fact, and don't you know it to be a fact, that this test you have spoken of here, as having been prescribed by this German chemist

that is, this bluestone and Rochelle salts, is the well known and recognized test for glucose?

A. No, sir; I don't know whether it is or not.

ALFERD H. BISCHOFF, a witness produced in behalf of the complainant, in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. What is your age?

A. Forty.

Q. What is your business?

A. Pharmacist and chemist.

Q. Where?

A. 134th street and St. Ann's avenue, N. Y.

Q. Have you ever been afflicted with urniary troubles?

A. Yes, sir.

Q. When?

A. Since October, 1905.

Q. Have you or not used Bear Lithia Water?

A. Yes, sir; I have.

Q. State to the Court your experience, both before and after the use of this water?

A. I acquired kidney trouble through over-exertion; it was caused or the trouble came, in lifting a heavy barrel of flax-seed out of the water in our cellar, and I had a violent pain and cramp in the kidneys, and it continued for a few days, I thinking that it was only a little trouble, in the lumbago glands, that I had strained myself, and that, with the cold weather coming on caused me this trouble. Well, I tried all kinds of liniments, and various household remedies, but noticing that there had come a change in the appearance of my urine that drew my attention to the fact that there might possibly be something the matter with my

kidneys, as I had such pain in the region of the kidneys.

Having several tests of various kinds in the store, and thinking that on account of their age that they were not reliable, that is, not being reliable on account of their age, I sent over to Squibb, and got Dr. Squibb's outfit for testing urine. It is a tartrate of potash and soda solution and a solution of sulphate of copper, chemically pure. This tartrate and sulphate test is put up for the purpose of testing for sugar in the urine and the like of that, it is put up at E. S. Squibb & Sons in Brooklyn, New York, and as I say, I sent and got the outfit. I naturally went through the process of testing the urine, and I boiled it, and examined it for the usual coagulation, and I proceeded with the test in the usual manner, and after a while I found that there was an excess of phosphates in my urine, with a decided precipitate. I then made a nitric acid test, the usual test for albumen. I then made a test for bile, and finding no results, I took another sample of urine, that is of the came quantity or rather another portion thereof, and I made the sugar test again. I made that test by the use of the Fehling solution. That is a solution where a Mr. Fehling was the discoverer, of this test for the detection of sugar in the urine. It is called "Fehling's Solution" to shorten it. Well, I made this test, and in the making of it, I found that there was a small brick red precipitate, there was not very much at the time, but I though there might possibly be come superficial injury—

By the Court.

Q. Tell me what you did?

A. Well, a few days afterwards, as I say, I continued to make these tests every day, and I found an increase of sugar deposited by the Fehling test—

By Mr. Collins.

Q. What effect did it have on your general health?

A. Well, at the time none, but as soon as I noticed this indication of sugar in my urine, and having read up on the subject some articles in relation to the matter, and as I say after having found sugar precipitates, I dieted myself for probably a week or two, and during this time I fell away a great deal, that is, I lost considerable weight; I continued making these tests for sugar, and I found as much as four or five per cent., or thereabouts, as far as my rough judgment could give me an idea of the matter, and I thought that the drinking of pure water, and of my own volition, I ordered Bear Lithia Water; I thought that the drinking of a pure water would assist me, and I ordered the Bear Lithia Water, having before that been accustomed to drinking a great deal of the carbonic and gas water, the ordinary carbonate water, and also the Croton Water, and the like of that; but wanting a pure water as I thought, and a water that would facilitate my condition, or help me, as I had read some pamphlets on it, I thought that I would apply the Bear Lithia Water to my case, and I have since consumed from three to five cases of Bear Lithia Water a week.

Q. With what result?

A. With a very good result, and with the dieting I have subjected myself to, the sugar has diminished to-day, so that I cannot find any trace of sugar in my water at all.

Cross-examination by Mr. Lichtenstein.

Q. When was it you had this strain you speak of?

A. About October, 1905.

Q. This last October?

A. Yes, sir.

Q. And the tests that you made, that showed a diabetic condition, didn't it?

A. Yes, sir; most decidedly.

Q. From your general knowledge, you know that that condition could not have resulted from a strain, and being brought on in the way you describe?

A. Well, yes, sir; it could, because you know as well as I know, that there is no medical science can attribute diabetes to any disease; there is a great deal of talk about this diabetic condition; no one knows how it is brought on any more than the patient themselves do; that is to say—

Q. The appearance of sugar in your urine would be an indication that there existed a disease that had had been in your system for some time, would it not?

A. Oh, well, it might have been lurking in my system for some time; yes, I will admit that much.

Q. When you found the presence of sugar in your urine, it occurred to you then that you ought to use a pure water, is that so?

A. Yes, sir; that is what I said.

Q. And you had been using the Croton Water before that?

A. Yes, sir; and various carbonate waters.

Q. And you knew that there would be something that would be injurious to your health, from the fact that you knew that you had some sugar in your urine?

A. I felt so, under the condition; yes, sir.

Q. And you would have taken almost any ordinary pure water—

A. Well, I had been chiefly drinking carbonate water, that is what we generally consumed.

Q. You had no special preference for this water any more than for any other water, had you?

A. No, sir; not in the beginning.

Q. You thought that by drinking a pure water that that would help you?

A. Yes, sir.

Q. Any pure water?

A. Yes, sir.

Q. How much water did you drink every week?

A. Probably from three to five cases.

Q. And there are eight bottles in a case?

A. Yes, sir.

Q. Eight bottles of five pints in each bottle of water?

A. Yes, sir; every two bottles contain a gallon, 128 ounces.

Q. And how many gallons would that be in a week, that you drank?

A. Eight times 72, in one case; I probably consumed a bottle at noon-time, and probably during the afternoon, another bottle, or two or three bottles perhaps of the water, and then in the evening another bottle or two.

Q. In addition to the drinking of this pure water you dieted yourself, I understood you to say?

A. Yes, sir.

Q. And you did that very faithfully, did you?

A. Yes, sir.

Q. How much urine would you pass in a day?

A. Well, it was quite copious; the quantity was quite large; within the last forty-eight hours I have passed a gallon and a half.

Q. Within the last forty-eight hours you have passed a gallon and a half?

A. Yes, sir; the last forty-eight hours—no, the last twenty-four hours, I should say.

Q. Do you drink the water at your place of business?

A. Yes, sir.

Q. And by drinking so much water, don't you have considerable trouble in attending to your

business at all, that is, by going from one place where you attending to your business to the toilet?

A. Most assuredly I do.

Q. You drink it every day?

A. Yes, sir; I tell you I drink it every day, and I tell you that I have drunk as much as from three to five cases of that water a week, or ten days or something like that; I cannot say exactly the length of time.

Q. That passes off very freely, does it?

A. Yes, sir; it passes off quite freely, just about as I have told you.

Q. And does it not keep you running to the closet almost continuously?

A. Oh, no, sir; I have time enough for that.

Q. Every five or ten minutes at least?

A. No, sir; I drink a bottle of water in an hour or two—

Q. How much sugar is there in your water now?

A. Nothing, there is not a sign of it. I drank a bottle of water between seven and nine o'clock this morning; I am a great water drinker, especially so since I have been affected in this way.

Q. And you still continue to drink a great deal of water?

A. Yes, sir.

Q. And does not that show in itself that you are still troubled with this diabetic condition, your drinking of this large quantity of water?

A. Well, I get no perceptible tests in the matter, and I have my urine in the hands of examiners now for microscopical examination.

Q. You are not sure then?

A. Well, as far as I or anyone else can make a quantitative or qualitative test, I am, yes, sir.

Q. Then, why send it to another man to make a microscopic test if you are able to make a quantitative and qualitative analysis yourself?

A. Because I haven't got a microscope.

Q. You say you consume from three to five bottles of water in a week?

A. No, sir; I consume as much as three to five cases of water in a week or ten days, say.

Q. You did not drink as much water as that three or four years ago, did you?

A. Well, three or four years ago I used to enjoy a glass of beer, and would drink other beverages, but now have given that up altogether.

Re-direct by Mr. Collins.

Q. And your general health is better, is it?

A. Yes, sir.

JOSEPH H. WOLFE, a witness produced in behalf of the complainant, in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are a physician and surgeon?

A. Yes, sir.

Q. And how many years have you practiced?

A. Since 1868.

Q. Where have you practiced?

A. Elkton, Va.

Q. All your practice has been there?

A. Yes, sir.

Q. Are you a general practitioner?

A. Yes, sir.

Q. That is in the neighborhood of this Bear Lithia Spring, is it not?

A. Yes, sir.

Q. Where do you board?

A. Right at the spring, within half a mile of the spring.

Q. Half a mile from the spring?

A. Yes, sir.

Q. What is your age ?

A. I am sixty-four.

Q. You have known that spring all your life?

A. Yes, sir.

Q. Has that spring had a traditional reputation for curative properties?

A. To some extent, it has; yes, sir.

Q. Do you know whether or not people sought it, before there was any attempt to sell water from it commercially; came there to drink of the water?

A. A few I think, not many; it was not known much at that time.

Q. After it came to be known more generally, did you give special attention to it?

A. Yes, sir.

Q. Have you or not prescribed it in your practice?

A. Quite frequently.

Q. In what diseases, if any, have you found it particularly effecatious?

A. In kidney and urinary troubles.

Q. By urinary troubles, do you include bladder troubles?

A. Yes, sir.

Q. What other diseases?

A. The kidney and bile troubles.

Q. How about dyspepsia?

A. It is very good for dyspepsia.

Q. And how about diseases—

MR. LICHTENSTEIN—I think the gentleman ought to testify what it is good for. I object to the questions as leading.

THE COURT—Yes, it is quite leading.

By Mr. Collins.

Q. Proceed, tell what the spring or the water is good for?

A. I have a memorandum here (witness produc-

ing a paper reading) dyspepsia and diseases, such as the diseased conditions of the intestinal tracts.

By Mr. Lichtenstein.

Q. What are you reading from?

A. A little memorandum which I made.

By Mr. Collins.

Q. Proceed?

A. I use this water to remove all effete matter from the general system; I use it as a general alterative more or less; to remove the effete matter from the general system; I have used it in cases of incipient gout, rheumatism, and the other uric acid diathesis.

Q. Uric acid diathesis—you have used it?

A. Yes, sir.

Q. In those cases you have given us, how have you found it as to its operation?

A. I have found that it acts quite freely; if you keep up the water for some time, say from three to four or six months, it acts quite freely, it has great advantages, and I have found great benefit from it in the treatment of the diseases I have mentioned.

A. Do you find cures from it?

A. Yes, sir; in some instances I do.

Q. Have you had favorable experiences in some other cases of disease or diseased conditions?

A. Well, in some cases, for instance in neuralgia, if I use it as a hot water I find it of very great advantage; it is of especial advantage for the stomach and bile.

Q. What else?

A. And in some mild cases of eczema, I have used it too with advantage.

Q. Taken internally?

A. Yes, sir.

Q. Proceed?

A. And in one or two instances of gall stone, where a party drank the water for a period of six months, and the gall stone passed off, or at least they said it did; I don't know myself, as to that; I am only telling you what they said was the case; and it is very fine in conditions arising from kidney troubles, or anything of that kind —convalesence from any illness where you require a light soft water; the water is very light and it don't depress the stomach, taken in moderate quantities.

Q. In convalescence from fevers?

A. Yes.

Q. How about convalescence from typhoid fever?

A. It is very good.

Q. Have you had any experience in respect to consumption?

A. Very little.

Q. Have you examined as to the value of this water in cases of ulceration of the stomach, cholera infantum and teething children, or female complaints?

A. No, sir.

Q. How long and extensively have you made use of it?

A. Well, in 1879 was the first case I had that I used the water in.

Q. And how extensively since then have you used it?

A. I have prescribed it indiscriminately, because people could get it easily, and I could tell them to drink Bear Lithia Water just the same as our water, and instead of our Water, I told them to drink the Bear Lithia Water; now, in our country it is a lime-stone formation, and there was quite a quantity of lime-stone water, and I would tell them to use the Bear Lithia Water or the Elk Lithia Water.

Q. The Elk Lithia Water is another spring?

A. Yes, sir; right in my town there.

Q. And have you continued to prescribe it right down to the present time?

A. Yes, sir.

Q. Do you or not in some cases prescribe it without medicines, that is, that the patient should just use the water and nothing else?

A. Well, now, if my family and my friends come to see me, I get them Bear Lithia Water to drink, and I tell them to drink that; that is about all.

Q. The particular benefit you have found lies mostly in what direction?

A. Well, in the kidney and bladder troubles.

By the Court.

Q. What is the different constituents, that is, the water in this Bear Lithia Spring and the ordinary water in the neighborhood?

A. I don't know that there is any particular difference except, as I said before, we have a great deal of limestone in our country—

By Mr. Collins.

Q. And the Bear Lithia Water has no limestone in it?

A. There is limestone in all our country around there; now, that is very hard water—

Cross-examination by Mr. Lichtenstein.

Q. Don't you know that the predominating ingredient in this water is lime?

A. Yes, sir; lime.

Q. The Bear Lithia Water has lime in it as one of the predominating ingredients, has it not?

A. Yes, sir; but limestone in our country is very hard, but this is not so; that is the difference.

Q. There are a number of springs around there, are there not?

A. No; only one.

Q. I thought you mentioned the Elk Spring?

A. No, sir; that is up above ours.

Q. Do you treat the inhabitants there too?

A. Yes; if I am requested to do so.

Q. You have not taken patients coming there particularly to this spring, then?

A. Years ago I did.

Q. How do you treat the inhabitant for urinary troubles?

A. Why, I recommend them to go down and get the Bear Lithia Water, and they very frequently go down there and haul it up to their own homes; you know they can get it very easily.

Q. How do you treat people in your neighborhood that have kidney troubles, that is, the old residents?

A. I give them Bear Lithia Water.

Q. Well, what old-time resident or residents have you had under treatment that had kidney troubles there of your own knowledge?

A. Oh, many people have had the water that never had any kidney trouble, that I know of.

Q. But you have treated people that live right around that neighborhood for kidney troubles, have you?

A. I don't know as I have; I have treated people that come in there from other places.

Q. Do you mean to say that no person in Rockingham County have had any kidney or bladder troubles for you to treat?

A. I don't say that I haven't treated them for that trouble, but whenever I do have anything of that kind, I recommend them to go and drink that water; I recommend that to all the people that have any trouble with their kidneys—everybody.

Q. You have then, as a matter of fact, prescribed this Bear Lithia Water to people that live in Rock-

ingham County for many years for kidney troubles, have you?

A. No, sir; I haven't.

Q. Oh, people living in that neighborhood around there, are they any more immune than any other people to kidney and bladder troubles?

A. No, sir; I don't think so; I have sent it to Harrisonberg.

Q. When a person comes to you suffering from Bright's disease, you certainly do not cure them, do you?

A. I don't know that I have ever had any Bright's disease to have done that.

Q. You don't claim that this water is a cure for all diseases you have mentioned, do you?

A. No, sir; and nothing like it; no remedy is a cure for all the diseases I have mentioned.

Q. Don't you know that the Bear Lithia Water people claim that it is an absolute cure?

A. I don't know that they do; if they do, they are claiming that which cannot be true.

Q. You don't know that it is true, and you don't consider such a statement as that to be true, do you?

A. I would hardly think so.

Q. You would not undertake or guarantee to cure anybody by the use of Bear Lithia Water, who was suffering from any kind of consumption, would you?

A. No, sir; not consumption; because I don't believe there is any cure for it at all.

Q. You don't think it would be of any effect in the treatment of consumption, do you ?

A. It might, in this way, that is, in the use of this water, it might aid in consumption, as a light water taken by a patient would have the effect of keeping the patient from having a congestion of the stomach.

Q. Then you would recommend it as you would recommend any other good ordinary light drinking water, would you not?

A. Yes, I suppose so.

Q. Now, doctor, would you guarantee to cure anyone suffering from gout, with the water alone?

A. Well, now, it might mitigate the symptons.

Q. But you would not guarantee to cure?

A. Not unless it was a very mild case.

Q. Now, doctor, would you guarantee to cure anyone suffering from rheumatism by the use of that water alone?

A. If used freely the water would have a decided benefit upon the patient, but I would not undertake to cure—

Q. I want you to answer my question fairly, would you guarantee to cure a case of rheumatism by the use of that water alone?

A. If it is a recent case, I would.

Q. But if it is a chronic case, would you?

A. Well, that's a different thing altogether.

Q. You would not say that this water would cure a chronic case of rheumatism, would you?

A. Well, my experience is—

Q. Will you be kind enough to answer my question first and then you can give your experience?

A. I am answering your question—my experience is that it has been so mitigated, that they would go off from there almost free from their affection, or it would be so mitigated that they would not suffer any more at all from it.

Q. Then your idea is that it would so radically cure rheumatism without any medicine—

A. I would say that it would help a medicine.

Q. But my question was whether the water alone without any medicine would be a sufficient cure itself?

A. Well, sometimes I have known it to be, when we have used other medicines with it.

Q. But why do you say with other medicines—my question was whether it would cure without other medicines just the water alone?

A. Well, because I could not get the water to the patient in sufficient quantities—

Q. You are not a water cure physician, are you?

A. No, sir.

Q. You use medicines in all these diseases that you treat?

A. In some of the cases we have to use other medicines in connection with the water.

Q. Which disease or what diseases have you cured, that you used the medicines in connection with the water?

A. Well, if I have a case of rheumatism of a mild type only, I would use Bear Lithia Water alone.

Q. Well, now in a severe case—well, let it stand?

A. Now, in such a case as acute cystitis I would use Bear Lithia Water exclusively.

Q. In which cases do you use medicines in connection with the water?

A. In chronic rheumatism I use iodide of potassium entirely.

Q. Well, what do you use in kidney troubles?

A. Well, if I cannot get the Bear Lithia Water I use Basham's mixture or some spirits of nitre or something about like that.

Q. Do you mean to say that in all kidney cases that you treat in that locality, you use nothing but this water?

A. No, sir; I use sometimes other remedies as well.

Q. What do you use; what kind of troubles of the kidneys, for instance, do you use medicine in connection with the water?

A. Well, when there is a superation of the kidneys I would not use any medicines in that; just the water.

Q. You d agnose each case as it comes to you?

A. Yes, sir.

Q. And by your diagnosis you know whether to use the Bear Lithia water alone, or to use the water in connection with other medicines?

A. Yes, sir.

Q. Now, in uric acid troubles, what do you use outside of the water?

A. I generally use Bear Lithia Water exclusively for that.

Q. "Generally"—what do you at other times when not generally?

A. Well, then I would have to use some drug—I use a tincture or a chloride of iron.

Q. And why not use Bear Lithia Water?

A. Because we cannot get it.

Q. You are close by the spring, I understood?

A. Well, sometimes we are ten miles away from there or more than that.

Q. It would be easy to go to the spring and get it, would it not?

A. Sometimes it is and other sometimes you cannot get it, not in time to do any good.

Q. Sometimes you use the chloride of iron when you cannot get the water you say?

A. Yes, sir.

Q. How far do your medicines come from that you give your patients?

A. About 18 miles.

Q. Is it not just as easy or easier to get the Bear Lithia Water than it is to get your medicines?

A. Well, sometimes we are not able to go after them—I always have medicines with me whenever I go to visit a patient.

Q. Now, for phosphatic deposits, what do you use for that?

A. Bear Lithia Water.

Q. When you don't use the Bear Lithia Water, what do you give your patients?

A. Basham's mixture.

Q. And I suppose the chance of cure is about equal?

A. Well, now, I had it myself, and I used Bear Lithia Water exclusively, and I didn't get cured altogether.

Q. You had what?

A. I had phosphatic deposits just a few weeks ago, and I used the Basham's mixture, and I didn't get any relief at all, and I sent and got five gallons of this water, and I was better right away.

Q. Why did you use the Basham's mixture at all?

A. I did that evening.

Q. Well, don't you think the mixture will do you as much good as the water?

A. I don't think it did in my case.

Q. You use that water all the time, don't you?

A. Not all the time.

Q. What other water do you use?

A. We use the Elk Lithia Water; I have it in my house.

Q. Is there any difference between them?

A. There is some difference; I cannot tell you.

Q. You never made a chemical analysis of Bear Lithia Water, have you?

A. No, sir.

Q. Do you prescribe the Elk Lithia Water for the same diseases that you prescribe the Bear Lithia Water for?

A. In some cases I do.

Q. Which cases do you prescribe the Elk Lithia Water and not the Bear Lithia Water?

A. In some cases I use one and then I use the other.

Q. Well, you prescribe it because it is a pure water, don't you?

A. A pure water and a convenient water.

Q. Now, you say you use an Elk Lithia Water, that is the water that supplies your town system, is it not?

A. Yes, sir.

Q. Now, doctor, with regard to dropsical troubles, what have you done with those cases?

A. I don't know that I have had any dropsical cases.

Q. Never?

A. Never—well, not in about twelve or fourteen years—about twelve or fourteen years ago I had one quite severe case of dropsy, but he didn't use the Bear Lithia Water.

Q. You would not use Bear Lithia Water in the treatment of cases of that kind; dropsical affections, would you?

A. Well, the more water you drink, the more active you can make the kidneys, the better it is for you.

Q. That is not an answer to my question—you would not use Bear Lithia Water in the treatment of dropsical affections, would you?

A. Yes, sir; I would.

Q. Then why didn't you use it in this case you mentioned?

A. It was not convenient to use it; it was too far off.

Q. Where was this patient of yours?

A. About ten miles from the Bear Lithia Spring.

Q. What did you prescribe for him?

A. I prescribed a pill composed of calcium, gamboge, and elaterinum and calomel.

Q. Where did you get the mixture from, that is,

the medicines; how do you get them made up?

A. I formulate them myself.

Q. You have them right with you, or do you have to send for them?

A. I had it at my home with me.

Q. You live as far away from this patient's house as it was from the patient's house to the springs?

A. Yes.

Q. Then why was it not just as convenient for this patient of yours to get the Bear Lithia Water, if you thought it was a cure for it, as it was for you to get the medicines to him?

A. I recommended it to him and he would not send after it.

Q. Did you tell him that it would cure his affection?

A. Well, now, I don't pretend to say that anything will cure anything; we lose patients up there just as well as you do down here.

Q. Then you don't now say that Bear Lithia Water will cure any of these diseases, do you.

A. No, sir; I would not say that.

Q. What you do say is, that they might be useful in aiding in the cure of any particular disease?

A. Yes, sir; I might say that.

Q. That is, Bear Lithia Water would be just as useful in that respect as any ordinary pure water would be?

A. Yes, sir.

Q. And that is true, is it not?

A. Yes, sir.

Q. You are related to the Bears?

A. Yes, sir.

Q. The original owner of the spring?

A. Yes, sir.

Q. Now, when people come there troubled with diabetes, you would not prescribe Bear Lithia Water exclusively for their use, would you?

A. I have.

Q. You would diet them, too, would you?

A. Yes, sir; you would have to diet them.

Q. You would think that would be indispensable, wouldn't you?

A. Yes, sir.

Q. The dieting?

A. Yes, sir.

Q. Certainly you will admit the drinking of the water would not cure diabetes without the dieting, would it?

A. No, sir.

Q. Now, there are various kinds of dyspepsia, are there not?

A. Yes.

Q. Each case you have to diagnose, and to prescribe a certain medicine for it, have you not?

A. Yes, sir.

Q. Now, you would not use Bear Lithia Water in all forms of dyspepsia?

A. I have done so.

Q. Well, what else did they use outside of the water?

A. Well, if I found that the Bear Lithia Water is too slow, I would then have to give them something else; I generally put them on Bear Lithia Water, and I keep them on it for three or four weeks or longer, but understand now, I give it to them hot.

Q. Do you feed them with anything outside of that?

A. I put them on a light diet.

Q. You put them on a light diet?

A. Yes, sir.

Q. It would not cure a person who was suffering from dyspepsia without dieting, would it?

A. They would have to have something to eat, of course.

Q. But a person suffering from dyspepsia cannot eat everything?

A. No; of course not.

Q. This water, in the treatment of all these diseases that you have spoken of, you use it and prescribe it as a variety, so to speak?

A. Yes, sir.

Q. And nothing else?

A. Well, now, I give it to them with a view of curing the patient, and sometimes they get better, and I use it myself in my own immediate family, and have used it only a few weeks ago.

Q. Have you ever treated any liver diseases with this water?

A. I recommended for it.

Q. Have you ever treated any liver diseases with this water?

A. I am troubled myself with it; and since I have come up here, I have had some trouble, and I am going to drink it when I go back home, I can tell you that.

Q. What liver disease did any one ever suffer from that you have prescribed this water for?

A. Acute congestion.

Q. When did you treat any one for that ailment?

A. I cannot tell you exactly; within the last few years.

Q. What did you do for them?

A. In the first place, I gave them a few doses of calomel, and then I put them on the water exclusively.

Q. I thought you said you gave them the Bear Lithia Water exclusively?

A. I did afterwards; I say I gave them a few doses of calomel, and then I kept them on the Bear Lithia Water; that is a fact.

Q. Do you say you never used it for teething children?

A. No, sir.

Q. Didn't you have a lot of children down there to take this water for that purpose?

A. I never treated them for that.

Q. Did you ever treat or cure any children suffering from cholera infantum with this water?

A. I treated them, but I did not give them the water.

Q. Why not?

A. I didn't think about it; they were only children, small, and I didn't think of it.

Q. Is it not a cure, in your estimation, for cholera infantum?

A. Not in my experience; I never used it; I cannot testify to anything that I don't know anything about.

Q. What female complaints did you ever use that water for?

A. None.

MR. COLLINS—He said that he had no experience in that.

By Mr. Lichtenstein.

Q. This quarter of the country is rather healthy, is it not?

A. Some seasons of the year it is, and some others it is not.

Q. And the surroundings of the country have quite a beneficial effect upon the treatment of these various diseases?

A. Yes.

Q. You do not attribute the cure of any of these diseases to this water alone; don't you attribute the cure of a great many of these diseases that you have

enumerated, as much to the healthful surroundings, pure air, &c., of the country?

A. Well, it has a beneficial effect, too.

Q. Now, what diseases can you enumerate that you consider it a cure for, this water?

A. Well, take acute bladder trouble, it is a specific for those troubles; why, just a short time before I came up to New York I cured—

Q. Why is it specific?

A. Well, because I suppose it eliminates all the effete matter from circulation—

Q. By virtue of what property in the water does it eliminate all the effete matter from the circulation?

A. Well, in the first place it dilutes it.

Q. Would not good clean clear water do the same thing—would not it act as a diluent?

A. I don't know of any that will do it as quickly or as soon as Bear Lithia Water, or as thoroughly.

Q. Have you ever tried it?

A. Yes; in my practice I give them the Bear Lithia Water; boiled Bear Lithia Water.

Q. You don't say and you don't consider that it has any medicinal qualities, do you?

A. No, sir; I do not.

Q. Simply that it is a good clear water?

A. Yes, sir.

Q. Do you know of any other diseases, any of those we have spoken of to-day, for which you would call this water a specific?

A. That is all the diseases that I have to contend with.

Q. Just that one—the bladder troubles?

A. Yes, sir.

Q. Now, in the treatment of fever, in cases of typhoid, malarial and others, you say that you as a physician would prescribe a good clean water, wouldn't you?

A. Well, I use the Bear LithiaWater.

Q. You don't use the Bear Lithia Water because it has some peculiar medicinal value, do you?

A. No—well, yes—yes; I use the purest water that I can get, and if I cannot get pure water, I generally boil the water.

Q. And you think Bear Lithia Water is a pure water?

A. Yes, sir.

Q. And that is the reason you prescribe it in these cases?

A. Yes, sir; and for the reason that it is a very light water; that it does not distress the stomach at all.

Q. Why do you say "it is a very light water?"

A. Because you can drink as much as you please, and it does not distress you.

Q. Is that because of the slight quantity of medicinal properties or mineral properties in it?

A. That I don't know, sir?

Q. Haven't you looked at the analysis?

A. I know what the analysis is.

Q. Why do you say that it is a light water?

A. Well, because in typhoid fever and in dyspepsia cases—now, if you treat fever cases and it causes a distress to the stomach, the patient is restless; now, I give them this water in mild doses at first, and then afterwards when I think they can stand it, I give them all that they want to drink of it.

Q. You tell your patients how much water to use, don't you?

A. Yes, sir.

Q. Would you tell your patient to go on and drink all he could?

A. Not at first; no, sir.

Q. Then each distinctive disease, you would first

diagnose it, and then you would tell your patient how much of that water to use?

A. Yes, sir.

By the Court.

Q. Doctor, do you understand at all about the minerals that make up this water?

A. I have seen it advertised, your Honor; I do not know the constituent quantities of it.

Q. Have you seen the analysis as it has been advertised?

A. Yes, sir.

Q. And you know the natural effects of those minerals in that combination when administered, do you?

A. Yes, sir.

Q. What is there in that combination that will cure incipient Bright's disease?

A. I suppose that is the magnesia and the lithia in it.

Q. Now, you must take the analysis, as they furnish it to you; I understand you have not analyzed it yourself?

A. No, sir.

Q. Now, taking this analysis, what is there in that water that will cure incipient Bright's disease, for instance?

A. Well, there is the combination—let me have the analysis please?

Q. (Analysis handed to witness)—what is there there in that analysis, that you would say would cure incipient Bright's disease?

A. There is potassium and there is sodium.

Q. Is there enough there to help in the cure of incipient Bright's disease?

A. Oh, yes, sir; in the combination.

Q. What combination are you speaking of?

A. It is in the combination of the gallon.

Q. Now, you know how much that is; I don't; now, what is the proportion there of that mineral in that water?

A. One one hundred and twenty thousandth of a grain.

Q. You say there is one one hundred and twenty thousandth of a grain in a gallon of water?

A. Yes, sir; of lithium.

Q. And you think that is a specific for Bright's disease, do you?

A. Oh, no, sir; I said in the combination.

Q. What else is there in the combination which you think is specific for Bright's disease?

A. There is the sodium in combination, and the lithium, and the carbonates, the magnesia, and the iron and the manganese, and the calcium and the strontium sulphate, and the aluminum; that is a combination which would be very beneficial in the diseases that have been mentioned.

Re-direct by Mr. Collins.

Q. You have said that you would not undertake to say that it will cure these various diseases, but that it benefits them; now, have you known of cases where it has cured?

A. I have had in my neighborhood some cases that got perfectly well.

Q. By the use of anything other than by the use of this water?

A. By the use of nothing but this water.

Q. Now, you say you have the Elk Lithia Water at your home.

A. Yes, sir.

Q. And you said that you were suffering and that you didn't get better, and so you sent and got the Bear Lithia Water, and you were cured immediately?

A. Yes, sir; I had quite some trouble myself with

the phosphatic deposit, at least so I assumed it was, and I didn't get any better by the use of medicines or this Elk Lithia Water, and so I sent over and got a five-gallon jug of Bear Lithia Water, and I got well right off, and I have used it and have it there now.

Q. And you find, then, that the Bear Lithia Water has qualities that the Elk Lithia Water does not have?

A. Yes, sir.

Q. And you prescribe that water when you prescribe any water that the Elk Lithia Water would not cure?

A. Yes, sir.

Further cross-examination by Mr. Lichtenstein.

Q. Would you not adopt lime in the treatment of all the kidney diseases that you have mentioned?

A. We use lime, but not in all cases.

Q. Well, would you use lime at all in the treatment of the kidney diseases that have been mentioned?

A. I would not use it; no, sir; I would not prescribe it.

Q. Why did you pick out the lime ingredients of this water in speaking of the chemical substances useful in the treatment of incipient Bright's disease?

A. How? Well, I got the lime out of the Bear Lithia Water.

Q. Why did you pick out the lime ingredients when speaking of the chemical substances useful in the treatment of that disease?

A. Why did I do it? Because it is delaterious to the organism.

Q. Would you not try to avoid the use of lime substances in the treatment of incipient Bright's disease?

A. If I could, I would.

Q. Then why would you prescribe Bear Lithia Water in the treatment of that disease?

A. Because the water is very light; it is very pleasant to the stomach, and I prescribe it in preference to the other water.

Q. Don't you know that nine-tenths of the substances mentioned here in this analysis, according to their own analysis, are lime substances? For instance, calcium carbonate, 3.737 grains; magnesium carbonate, 2.940 grains; now, those are the only two minerals in the water in quantities of more than a grain to the gallon?

By Mr. Collins.

Q. They are not lime?

THE COURT—The witness said that lime is injurious in a case of Bright's disease, and when I asked him what lime there was in that analysis, he picked out those two elements.

By Mr. Lichtenstein.

Q. Why did you select them?

A. Well, it is a gaseous eliminator; at least it keeps down the flatulence and fructuation in the stomach by the using of this water.

Q. It would be injurious to prescribe those things for Bright's disease, would it not?

A. In my medicinal remedies I would not prescribe lime; no, sir.

By the Court.

Q. Is lime a thing that you would prescribe as a cure for incipient Bright's disease?

MR. COLLINS—Abstractly or medicinally?

THE COURT—I will say lime water then?

A. No, sir; I would not give lime water at all.

By Mr. Lichtenstein.

Q. Would you not prescribe lime water?

A. No, sir.

By the Court.

Q. When I asked you what there was in this water, from the analysis of the water that would cure Bright's disease, you picked out the two elements containing lime; now, counsel wants to know why you did that?

A. It makes the water soft, and I don't know that it makes the water any more delaterious—

Q. Does it not have the opposite effect, and make it hard?

A. No, sir; it makes it soft.

Q. You spoke of prescribing these things, because of their gaseous qualities; now, does it not make them into solids?

A. In my practice, in my experience, I say I use this water; now, whether it is wrong or not, I don't know; I use it, and have had good success from it.

Q. You mean that in the composition you find it in, that is, according to this analysis, the lime contained in this water; it is not a solid?

A. I don't know whether it is or not.

Q. It is a gas, is it not?

A. It is a light water, and I cannot tell you; I am not a chemist, and I cannot understand it to that extent, so as to be able to explain it.

By Mr. Lichtenstein.

Q. What is it that makes all the other waters around your neighborhood heavy?

Q. The excess of lime; the excessive quantity of lime in it.

Q. Do you know how much lime there is in the other waters?

A. No, sir; I will illustrate to you. In using the boiled water in our tea-kettles, it will close up the spouts of the tea-kettle, by the excessive quantity of lime in it, in a great many places around our country.

Q. Is that called Lithia Water?

A. No, sir; it is not.

Q. You have noticed that the total amount of solids in this water is nine and a half grains to the gallon, haven't you?

A. Yes, sir; I have.

Q. And you also notice that the calcium carbonate is very nearly four grains, and the magnesium carbonate is very nearly three grains?

A. Yes, sir.

Q. Now, knowing such to be a fact, would you say that you would prescribe such a water as that in the treatment of incipient Bright's disease?

A. I have, sir; and with very good success; now, that is my experience, but whether I am right or not, I don't know.

Q. The result of the treatment of the disease might have been to other causes entirely, might it not?

A. It might have been.

Q. Have you ever used lithium in the treatment of any disease?

A. Yes, sir.

Q. Have you ever used lithium in the treatment of albuminuria?

A. Yes, sir.

Q. How many grains of lithium do you use in that treatment?

A. About five grains.

Q. And how many times a day?

A. Three times a day; immediately after meals.

Q. Would you prescribe fifteen grains a day?

A. Yes, sir.

Q. Have you looked to see how much lithium is contained in the water in question?

A. No, sir.

Q. Have you not seen the amount as shown in the analysis?

A. Oh, I have seen that; but I am not chemist enough to know how much it is.

Q. I will read it out to you "Lithium carbonate .012 grains"—that is, twelve one-thousandths of a grain per Imperial gallon—now, that is a very small quantity, is it not?

A. Yes, sir; it is.

Q. Now, that would take one hundred and eleven gallons of this water to furnish one grain of lithium —now, would you, in view of this analysis, and the small quantity of lithium therein exhibited, say that this water would be useful in the treatment of any disease—that is, any disease where you would use lithium as a medicine?

MR. COLLINS—I object to the question on the ground that it does not follow that the water may not be useful for other reasons, and I do not think it is a fair question to ask the witness.

THE COURT—I think it is perfectly fair. This physician comes here to testify as to the curative properties of the water. He says that the ordinary dose of lithium that he would give for these troubles would be fifteen grains a day. Now, the analysis here shows that he would have to drink 1,500 gallons a day to get that amount of lithium. The question

is whether he would prescribe that water for that particular thing.

MR. COLLINS—Your Honor, I think, does not get my point. I say it does not follow that he may not get excellent results from this water, for other reasons.

MR. LICHTENSTEIN—To get lithium effects?

MR. COLLINS—That is not the question here.

MR. LICHTENSTEIN—I will reframe the question, then.

Q. Doctor, knowing now that Bear Lithia Water contains twelve one thousandths of a grain of lithium per Imperial gallon of water, which is a larger gallon than the United States gallon; it would require the patient to drink one hundred and eleven gallons of this water to furnish one grain of lithium; would you, knowing this fact, prescribe this water in the treatment of any disease, for the purpose of getting its lithium effects?

A. I would prescribe it, yes; I would prescribe it. Why, I use the water, and what I use the water for is—in its combination with the whole thing—

Q. The question is, would you prescribe it for its lithium effects?

A. In a measure I would.

Q. You say the usual dosage is five grains of lithium three times a day?

A. I generally prescribe five grains to grown people and less to children, of course.

Q. What is the minnimum amount you prescribe for children?

A. Half a grain to a grain.

Q. Three times a day?

A. Yes, sir.

Q. Knowing that it would take one hundred and eleven gallons of this Bear Lithia Water to get the

effects of one grain of lithium, I want to ask you again, would you use this water for its lithium effects in the treatment of any disease?

A. I would; as I have already told you, I use it for its constitutional effects.

Q. I understood you to say that you prescribed that water because you thought that the patient should use lithium?

A. Yes, sir.

Q. And yet in ordinary cases, you consider it absolutely necessary to prescribe five grains three times a day in order to get any beneficial effects out of lithium?

A. Yes, sir.

Q. Why do you say you would use this water to effect any cure, where lithium is required in the treatment of a patient, where it only contains twelve one thousandths of a grain of lithium to the gallon of water?

A. Well, as I have told you several times already, I use the water as a dilutent for the kidneys.

By the Court.

Q. Do you use it to get the lithium effect or not?

A. In a measure, I do.

By Mr. Lichtenstein.

Q. In what cases did you ever use the water to get the lithium effect?

A. In kidney or bladder trouble.

Q. Now, if a person came to you suffering from incipient Bright's disease, and you didn't have this water handy, how many grains of lithium would you prescribe, under such circumstances as that?

A. Anyway from two, three, four or five grains, three times a day, just as the case might be.

Q. Would you go up as high as ten grains three times a day?

A. I might in extreme cases.

Q. But not less than two or three?

A. No, sir; not less than two or three.

Q. Well, will you tell me how can this water have any beneficial effect in incipient Bright's disease, if it only contains twelve one thousandths of a grain to the gallon?

A. Well, you see, I argue from the analogy, that the combination of the different ingredients has a beneficial effect—the combination.

Q. Not because of the lithia in it then?

A. Of course not.

Q. You have published a testimonial for this company, have you not?

A. Some years ago.

Q. Lots of them, haven't you?

A. No, sir; only one.

Q. I show you Exhibit C 40, in which is published as follows:—Dr. J. H. Wolfe, of Elkton, Va., writes: "I have known the Bear Lithia Springs all my life, and always observed that it possessed decided diuretic and slightly aperient properties. I used the water in my practice in kidney and liver complications, and bear testimony to its efficacy in cases of nervous dyspepsia and insomnia; the water is peculiarly effective. Its alkaline properties correct billiary acidities, and its soperific qualities are marked." You do not speak of all those other numerous diseases that you consider it is a cure for, do you?

A. My testimonial—that is my testimonial, and I don't go back on that; I used it in my practice, as I stated in my testimonial for the diseases I mentioned there—that is my testimonial and I stand by it.

Q. Why did you not furnish testimonials as to

the wonderful curative powers of this water, as to all these other diseases?

MR. COLLINS—I object to the question, he has not testified to that at all.

Question withdrawn.

Q. Where do you get its soporific qualities that you speak of?

A. It is carmanitive in its operations; it acts very lightly on the stomach, and it is readily absorbed, and it acts as a valuable dilutent to the circulation generally.

Q. Look at this analysis and tell me what there is in that which would have that effect upon a patient by the use of this water?

A. As I told you before, I am not chemist enough to tell you; I only know of its effects, not its chemistry.

Q. How do you know that it has this effect?

A. By my experience of it; I have already told you that I am not a chemist; not chemist enough to explain it.

Q. Well, how many cases have you had, that came under your notice, where that effect was observed?

A. I cannot tell you how many, a great many though.

Q. It might have been the result of numerous causes other than the one you attribute it to?

A. Well, I attributed it to the water; they didn't sleep any before they used it, and they did afterwards.

Q. A chemist does not prescribe?

A. No, sir.

Q. A physician does?

A. Yes, sir.

Q. Then why did you prescribe this water for its various qualities?

A. Because I have used it since 1879, and I know what it will do.

Q. You don't consider it a lithia water, do you?

A. That is what I call it.

Q. Knowing that it contains a twelve thousandths of a grain of lithium to the gallon, yet you consider it a lithium water?

A. That is what I call it.

Q. You call it a lithia water?

MR. COLLINS—I object to the question; he has already answered it.

COURT—I will take it.

A. Well, as far as the lithia goes, there may not be very much in it, but yet I consider it a lithia water.

Q. Why do you consider it a lithia water if it only contains that minute quantity of lithia in it?

COURT—I don't think it is necessary to go into that any further.

Re-direct by Mr. Collins.

Q. You say that if you gave lithium at all, you would give it in those quantities you have mentioned?

A. If I did prescribe it at all, I would give it in quantities I have mentioned, but I do not prescribe it very often, in fact, I don't think I have prescribed it a dozen times in my life.

Q. You do not undertake to say whether, even if in case you were going to give lithium to a patient, you would give this large quantity, but notwithstanding the fact that there is this small quantity.

of lithium in this water, you have found beneficial effects from the use of this water?

A. Yes, sir.

Q. And you don't undertake to say why?

A. That is it, that is right, yes, sir.

WILLIAM J. RUNKLE, recalled in behalf of the complainant, in rebuttal, saith:

Examined by Mr. Collins.

Q. I want to ask you as to your knowledge, from any practical experience of your own, or from your observation of other people, who have come there to take this water, with regard to its curative properties?

MR. LICHTENSTEIN—I object to the question on the ground that this witness would not be qualified to testify as to anything in regard to its curative properties.

WITNESS—Well, I ran a hotel there for fifteen years and lived there—

COURT—I think that covers it; I will take the evidence.

By Mr. Collins.

Q. Proceed, and tell us what you know about it—that is, in regard to the curative properties of this water, from your own practical experience, or from your observation of other people who have come there to take this water—you ran a hotel for fourteen or fifteen years there?

A. Yes, sir.

Q. How many could you accommodate in the hotel?

A. I only had a small hotel in a small town; I I had fourteen or fifteen people there at a time, about.

Q. What fourteen years did you run the hotel?

A. I went there in 1886; the 20th of May, 1886.

Q. And during that time did or did not people come there to drink the water?

A. Yes.

Q. From the Bear Lithia Spring?

A. Yes, sir.

Q. In what condition did they come?

MR. LICHTENSTEIN—I object to that as immaterial and incompetent.

Objection sustained.

By Mr. Collins.

Q. State cases that you have known of people coming there to drink the water for sickness; state their names, what condition they were in when they came there, so far as a layman could observe it?

A. Well, I met a gentleman that stopped over with me on one occasion—

Q. What is the name?

A. John L. Howard; he was from Florida somewhere, and he went to the Bear; I drove him to the Bear Lithia Spring myself; I took him in my surrey, and Mrs. Bear, when we got there, could not furnish a room for him on that occasion, but she said there might be one empty in a week or a few days, and he came back to my place. Now, there is another spring just a little way from us, a mineral spring called by some Chalibiate Waters, they are over there in the country close by us, about six miles I should say from us, and I used to take him over there in the afternoons. You will understand now, that I had already taken him over to the Bear; I took him over there in the first place in the morn-

ing, and he drank a good deal of the water while he was at the spring, and I stayed around there a couple of hours with him, and then when Mrs. Bear couldn't take him in, we came back again to the house to get dinner, and he finally says—

MR. LICHTENSTEIN—I object to what the gentleman said.

THE COURT—You cannot tell what was said by him to you.

A. Well, he used to go to the spring, that is, to the Chalibiate Spring; I didn't take him over myself, and finally he concluded that he would stay at my place—

Q. What was the matter with him?

By the Court.

Q. Could you tell what was the matter with him by looking at him?

A. No, sir; I could not.

By Mr. Collins.

Q. Did he look sick?

A. Yes, sir; he did look sick; he looked very sick, and he stopped off for that purpose; that is, the drinking of the water.

Q. How long did he stay?

A. About a month.

Q. Did he take the water?

A. Yes, sir.

Q. Well, how did he get?

A. He got well.

MR. LICHTENSTEIN—I object to this, and ask that it be stricken out—this witness is not qualified to testify as to this.

THE COURT—Yes; that should come out.

By Mr. Collins.

Q. Well, what was his appearance?

A. Well, he was quite different; different man altogether in looks, and also in his weight.

Q. What other case can you remember?

A. I cannot just remember; you know I have had persons who have stopped over for a night.

Q. Can you give their names?

A. I cannot give the names. For instance, I had a lady who was there, and she stopped there for two weeks, but I cannot remember her name. And then there was Mr. R. Cottonball, a gentleman from Massachusetts; he came to take the water.

Q. Where did he live?

A. He lives in Washington now; he came to my place to take the water.

Q. What was his condition?

A. Well, he claimed to be—

MR. LICHTENSTEIN—I object to that—he cannot say what the gentleman told him.

Question excluded.

By Mr. Collins.

Q. Well, how did he look?

A. He was looking very well.

Q. He was looking very well when he came?

A. Yes, sir; and he went away looking very much better, though; he gained a good deal in weight, I want to say.

Q. Did he come there as a sick man?

A. Yes, sir.

Q. What other case can you remember?

A. There was Capt. Haynes.

Q. In his case, what was the difficulty—you need not state what they said, but what was the difficulty they were laboring under?

By the Court.

Q. You don't know that except as you were told it, do you?

A. No, sir; I cannot tell only what they told me.

By Mr. Collins.

Q. Cannot you tell me what they did, what their conduct was like; you know that if a man comes to your hotel you could usually tell what his trouble is, whether he is suffering from gout, or rheumatism, or urinary trouble?

A. He claimed—

MR. LICHTENSTEIN—I object to that—what the man said.

THE COURT—That must be overruled.

By Mr. Collins.

Q. Do you know, from observation, whether he had any trouble with his urinary organs, whether he went often to the urinal, or whether he had trouble in passing his urine or not, don't you?

A. Well, they all passed a good deal of urine afterwards—

Q. Afterwards; but at the time they came there?

A. I cannot tell you about that; before they came there I didn't know anything about them.

Q. Can you give any other cases?

A. Another gentleman staid with me for about six months.

Q. How was he when he came?

A. He was very much debilitated—

Q. Cannot you give his name?

A. No, sir; I forgot the name; he was there in 1889.

Q. Well, where was he from?

A. From Washington.

Q. You cannot remember his name, except that he was from Washington; that is all you remember?

A. That is all.

Q. What was his condition?

MR. LICHTENSTEIN—Same objection.

Objection sustained.

By Mr. Collins.

Q. He came there to drink the water?

A. Yes, sir.

Q. How many came there for that purpose altogether.

A. Well, a great many of them; I keep it in my house all the time; I ran a livery and I keep the water on the table, and the train stops there; I have trains stop there at noon, and the water was always kept there on the table for the passengers.

Q. How long have you lived in the neighborhood.

A. All my life.

RECESS.

By Mr. Collins.

Q. Have you recalled the name of the man whose name you could not remember?

A. Yes, sir; Mr. Campbell.

Q. Where was he from?

A. Nelson County, Virginia.

Q. Who attended him?

A. Dr. Wolf.

Q. What was his condition, or was he out of condition when he came there?

A. I had to take him from the station to the hotel; the Bear Hotel was open at the time, and I hauled him about two miles, and he was in a very very bad condition.

Q. Had he to be carried to the spring?

A. I drove him to the spring in a carriage.

Q. Was he able to go about himself?

A. Oh, no, sir; not at first.

Q. How long was he with you?

A. He was with us—now, understand me, he was not at my place; he was at the Bear Lithia Hotel, but I hauled him from the station there.

Q. He was up at the spring?

A. Yes, sir; he went to the spring.

Q. Do you know how long he staid there?

A. He staid there about a month.

Q. And how was he when he went away?

A. He was in a very good condition; he walked from the Bear Lithia Hotel to the station which is near two miles to my place.

Cross-examination by Mr. Lichtenstein.

Q. You speak of all these places as Bear Lithia; this place is known as Bear Lithia geographically where this spring is, is it?

A. Well, I suppose it is.

Q. This man Howard that came from Florida suffering from malaria, didn't he?

A. Yes, sir; I think so.

Q. The water down there didn't agree with him in Florida?

A. No, sir.

Q. And he came up to your healthful country to get rid of the malaria?

A. Yes.

Q. There is no malaria in your part of the country?

A. Well, now, I am no physician, and I cannot tell you about that.

Q. Now, the hotel that you ran, it is not used by anybody now as a hotel, is it?

A. Yes, sir; it is the one that Mr. Edwards stop-

ped at while he was down there.

Q. Mr. Estes, you mean?

A. Yes, sir.

Q. There is a hotel, a large hotel that accommodates summer boarders?

A. Yes, that is at Elkton, also.

Q. And they use the Elk Lithia Water exclusively at that hotel, do they not?

A. Yes, sir.

Q. And people come down there to be treated during the summer time?

A. Well, they have a good time usually.

Q. And they use the Elk Lithia Water exclusively there?

A. Yes, sir.

Re-direct by Mr. Collins.

Q. There was a post-office for the hotel; before the hotel was burned; a post-office called "Bear Lithia?"

A. Yes, sir.

Q. And then the hotel was burned, and they discontinued it?

A. Yes, sir.

JOSEPH H. WOLFE, further recalled in behalf of the complainant, in rebuttal, saith:

Examined by Mr. Collins.

Q. Did you attend this man Campbell, when he was at the springs?

A. Yes, sir.

Q. What was his trouble?

A. He had acute cystitis.

Q. Was it acute cystitis or inflammation of the bladder?

A. Yes, sir; acute cystitis.

Q. Was it a bad case?

A. Yes, sir.

Q. How bad?

A. He could scarcely get about at all.

Q. What did you give him?

A. I told him to drink the Bear Lithia Water; I didn't give him a bit of medicine at all.

Q. Did he get well?

A. Apparently, yes.

Q. How long did it take?

A. He was relieved I guess in eight or ten days.

Q. Do you remember Mr. Turner the lawyer that testified here the other day?

A. He staid at my house.

Q. He came down to the springs on more than one occasion suffering with an attack of—what was it he suffered from?

A. Gall stone or bladder stone, or something of that kind.

Q. Do you know whether he took the water?

A. He didn't take anything but the water.

Q. And he got well, cured?

A. Yes, sir.

Cross-examination by Mr. Lichtenstein.

Q. Mr. Turner staid down at the Elk Lithia Spring for a long time, didn't he?

A. He staid at my house.

Q. He staid there for a number of years, didn't he?

A. Off and on, yes, sir.

Q. And every time he went away from that locality and went into a limestone locality he commenced to suffer again from his old complaint, and had to come back to you?

A. Well, I don't know about that.

Q. You know that he came back, don't you?

A. He lived around among his friends and relations.

Q. Do you know where he lives now?

A. No, sir.

Q. You say this man Campbell was suffering from acute cystitis?

A. Yes, sir.

Q. And inflammation of the lining of the bladder?

A. Yes, sir.

Q. What were his symptons?

A. He wished to urinate all the time and had a great deal of pain.

Q. Was that all?

A. Yes, sir; that was enough.

Q. Did that indicate to you that he was suffering from acute cystitis?

A. Yes, sir.

Q. Was there any blood in his urine?

A. No, sir.

Q. Any pus in his urine?

Q. I didn't examine his urine at all.

Q. How did you know that he had cystitis, then?

A. Because he suffered a great deal of pain?

Q. Would not that be indicative of a great many and various other diseases?

A. I don't know as it would.

DAVID SHERMAN, a witness produced in behalf of the complainant, in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You practice as a physician and surgeon in the Borough of Brooklyn, do you not?

A. Yes, sir.

Q. How long have you thus practiced?

A. Eleven years.

Q. You are a general practitioner?

A. Yes, sir.

Q. Was your attention called to Bear Lithia Water for use in your practice at all?

A. Yes, sir.

Q. About when, first?

A. In 1902.

Q. Have you prescribed it?

A. Yes, sir.

Q. How extensively?

A. Well, very extensively; as extensively as such a water could be used.

Q. Do you continue to do so?

A. Yes, sir.

Q. Down to the present time?

A. Yes, sir.

Q. Do you regard it a medicinal water?

A. Yes, sir.

Q. Will you kindly state in what diseases you have found it beneficial in your practice, what class of diseases?

A. Albuminuria, chronic Bright's disease, cystitis, uric acid, diathesis, a rheumatic condition, and gouty condition, which come under the uric acid diathesis, and it has a mild action on the bowels, as far as I have been able to find out, and also a certain tendency to overcome flesh.

Q. Corpulency?

A. Yes, str.

Q. Have you had occasion to observe it in your own immediate family?

A. Yes, sir.

Q. In what member of your family?

A. My wife; she is quite stout, and she was going to Dr. Shepherd's Turkish baths for the purpose of reducing her weight, and she had also been using or trying a number of German mineral waters, Kissengen and Lithia and others, and we thought of the Bear Lithia Water, and she tried it,

and with very considerable success, and she has been taking it ever since 1902.

Q. State what effect it had upon her?

A. She was troubled with frequent urination, and as I say, she is quite stout, although now she is considerably leaner than she was; it has seemed at all times since she commenced the use of the water to keep her flesh down, and it has also a mild action on her bowels, which she likes, and she has taken it right along since 1902.

Q. Well, how about this frequent urination?

A. That has stopped.

Q. Has she taken anything for it since she began the use of Bear Lithia Water for that purpose?

A. No, sir; she has taken no medicine since, of any account.

Q. Now, give us some illustrations of your use of the water in your practice?

A. One lady on Prospect avenue, Brooklyn—

Q. What is her name?

A. I cannot recollect her name, but she lives at 396 Prospect avenue, near Seventh avenue.

Q. What was her trouble?

A. She was troubled with a rheumatic condition, a uric acid diathesis, and at frequent intervals her ankles became very much swolen and very painful, and she was suffering from a gouty condition, and she tried the effect of drugs at different times, and they would alleviate the gouty condition, but nothing would seem to get at the trouble chronically. I then tried the Bear Lithia Water on her for about a year, going entirely without the use of drugs, and she improved very considerably, and for eight or ten months now she has not had an attack of her old rheumatic condition and her limbs have not been swollen any; she is better now than she has been for years; her general health has been somewhat better for the

last eight months or so, and she has gone entirely without any drugs, and I attribute it to the use of this Bear Lithia Water.

Q. Can you give any other case?

A. There is another family in Borough Park, Fiftieth street, near Fourteenth avenue, Shuttleworth is the name. He is in business on Washington street, New York, in the paper and twine business. His sister was troubled very much with rheumatism for about a year, and her condition was very much relieved of its acuteness by the use of medicines. But there was a stiffness still continued which she could not seem to get rid of until she began the use of the water. She took the Bear Lithia Water for a period, and she seemed to get along very well, and she now continues to get along very nicely without any stiffness in her limbs, she uses the water continuously—

Q. Under your prescription?

A. Yes, sir; she uses the water under my prescription; she gets along very nicely now; the stiffness seems to have been entirely removed.

Q. And without the use of drugs?

A. Yes. sir; without the use of drugs. As I informed you, when her condition was in its acute shape, I prescribed drugs for her then, and after that condition was relieved, it left this stiffness in her limbs, which she apparently could not get rid of until she began the use of the Bear Lithia Water.

Q. Proceed?

A. Another lady at 354 Tenth street, Brooklyn, she was quite frequently troubled with frequent urination, and also troubled with swelling of the ankles, arising from a gouty condition, and with a soreness of her feet, and she would get occasional rheumatic attacks, which she would have every once in a while. The acute attacks would be overcome by the use of drugs, but the drugs did

not seem to take or relieve the chronic condition. As I say, the acute rheumatic condition was relieved, but there was no relief from the chronic, and I told her of the experience I had had with the use of Bear Lithia Water and advised her to get it, and she tried it, and she has had good results from it ever since she has taken it.

I have had a great many more cases; I should say ten or fifteen cases of this sort of kidney trouble and uric acid diathesis conditions, and frequent urination, complicated with constipation. I have had quite a number of patients suffering with constipation who have come to my office; I never went to their houses, and I have prescribed Bear Lithia Water, and they have come back after a while and told me that they were getting along very nicely. I tried in cases of this kind to cure them with drugs, but they didn't seem to touch it at all. I remember one man in particular, his name was O'Donnell, I cannot think of his address just now; he came to me suffering from frequent urination and constipation. In the treatment of this man my desire was to get something that would affect both conditions. I tried drugs, and it didn't seem to have any effect on the bladder at all, and I told him to try the Bear Lithia Water, and he tried it, and has used it, and he has been getting along very nicely ever since, and he takes it right along now.

Q. Without the use of drugs?

A. Yes, sir; without the use of drugs entirely.

Q. And that continues right up to the present time.

A. Yes, sir; his condition continues to be satisfactory right up to the present time.

Cross-examination by Mr. Lichtenstein.

Q. This Bear Lithia Water Company, they give you water at reduced prices, do they not?

A. Not as I know of.

Q. What do you pay for your water?

A. I don't know what it is I pay for it; when it comes to the house the girl pays for it, and I really don't know what it is.

Q. Do you get it regularly at the house?

A. Yes, sir; we get it regularly at the house.

Q. And you first started to use it in 1902?

A. Yes, sir; in 1902.

Q. What was it first called your attention particularly to the medicinal qualities of this water?

A. Well, I was looking around to find a lithia water that would work all right and one which was somewhat reasonable in price, and in that way I tried the Bear Lithia Water, and having taken it at our own house, and having experienced good results from it, that is how I fell in with it.

Q. You were looking for a lithia water?

A. I was looking for some water that would overcome this gouty and rheumatic condition; I was not at all particular whether it was lithia water or not; I tried other waters.

Q. Why did you say, then, that you were looking for a lithia water?

A. Well, I was looking for a water that was called a so-called lithia water.

Q. You would call this water, then, a so-called lithia water, would you?

A. Yes, sir.

Q. Why not call it a lithia water?

A. Well, there are lithia waters with other elements in them too, but lithia is one of the things that does good in such conditions as I had to deal with.

Q. Have you examined the analysis of this water?

A. No, sir.

Q. You don't know what minerals are contained in it?

A. No, sir.

Q. Or the quantity of lithia contained in it?

A. No, sir.

Q. You never paid any attention to that?

A. No, sir.

Q. When it was first called to your attention and, as you say, you were looking for a mineral water, would not the first thing that you would do be to look at the analysis of the water, as a physician?

A. Well, I can tell you this, that the waters do not affect any one in regard to the analysis of them particularly; it is the combination of the elements which would be of advantage; that would result in the good; it is not any one particular thing in the water; it is the combination of all these lithia waters that does the good.

Q. Why did you not look tor the analysis before you started the use of this water?

A. It did not come to me in that way; it did not occur to me that it was of any importance to me; I tried the water and then I had the evidence that it did good, and I used it.

Q. When you were first looking, as you say, to find a lithia water, did you not look at the published literature of the company?

A. No, sir; I never saw any.

Q. How did you first see it? How did you come to try it at first?

A. It was advertised as a lithia water, and just the same as the Buffalo Lithia Water, but it was very much more reasonable in price.

Q. Have you ever used any other lithia water?

A. Oh, yes, sir.

Q. Did you ever make an analysis to see the quantity of lithia in the other waters you used?

A. No, sir.

Q. You believe in the use of lithium in the treatment of various diseases, do you?

A. Yes, sir.

Q. And are you in the habit of prescribing lithium in its natural form?

A. Yes, sir.

Q. I mean in the commercial form?

A. Yes, sir.

Q. What quantities do you prescribe of lithium? What is the minimum dose?

A. I generally prescribe three to five grains at a dose three times a day.

Q. Do you know the quantity of lithium contained in this water?

A. It is a small quantity, I know.

Q. How much do you think it is?

A. I don't know, sir.

Q. Well, according to the published analysis of this water it is twelve thousandths of a grain to the imperial gallon?

A. Yes sir.

Q. Now, if you were to use that amount of lithium in water, do you think you would have any therapeutic effect from it?

A. It seems to have; that is, the combination of lithium with the other elements in the water would seem to have the desired effect; we give more lithium, larger doses of lithium, in acute cases; but in chronic cases we give them lithium water, because it contains smaller quantities, and a person can drink larger quantities of the water with it.

Q. In the treatment of these various diseases by this water, you do not mean to attribute the beneficial results solely to the use of this water, do you?

A. From my experience, I should have to state the cases that I have mentioned; its use resulted in considerable benefit.

Q. Do you use anything else in the treatment of any of these diseases but lithia water?

A. I have not. In the cases that I have mentioned, as I said before, I tried drugs, but they were not of any use, except so far as the acute condition was concerned—as to the chronic condition, I tried the water and found good results from it.

Q. In any recent case that you have had, have you not used drugs in persons affected with urinary trouble?

A. Yes, for acute cases just as I have stated.

Q. For acute attacks?

A. Yes, sir.

Q. You do not consider, then, that Bear Lithia Water would have any effect upon acute attacks?

A. It has a very good effect, but not sufficient to overcome the immediate violent pains. But there is a very large field in chronic conditions that we are not able to benefit very much by the use of medicines.

Q. Well, in the treatment of albuminuria, do you prescribe any particular quantity of water there for your patients to drink?

A. I tell my patient to use the Bear Lithia Water just as freely as they can.

Q. Take people suffering with chronic Bright's disease, you allow them to use the same quantity of water as others suffering from other diseases?

A. Yes, sir; I would have them drink it freely.

Q. Freely?

A. Yes, sir.

Q. Just as much as they please?

A. Yes, sir.

Q. Would not that have the effect to overwork the kidneys?

A. No, sir; I don't think so.

Q. Would you allow a person to drink as much water as they wanted in quantity, if they were suffering from Bright's disease?

A. Yes, sir.

Q. In the treatment of these diseases, would you allow them to drink as much as they wanted to?

A. Yes.

Q. And you think that would not overwork the kidneys at all?

A. No.

Q. Have you used anything else but Bear Lithia Water in the treatment of albuminuria cases?

A. No, sir.

Q. Well, what would you use outside of Bear Lithia Water?

A. There is a great many things that we could use in cases of albuminuria; but in speaking of Bear Lithia Water, I would use that. I have found by its use that it would cut down the quantity of albuminuria in the urine and generally overcome the dropsical condition of the patient.

Q. You speak of generally overcoming the dropsical condition; does the drinking of large quantities of Bear Lithia Water overcome the dropsical condition?

A. It always has good effects.

Q. You would not say that it has absolutely good effect, do you, in cases of Bright's disease?

A. Well, no, sir; you know there is no cure for Bright's disease.

Q. And it would not be an absolute cure in any disease, would it?

A. It would so act as to more or less overcome the uric acid condition.

Q. My question is, would it be a cure in any form of Bright's disease?

A. No, sir.

Q. You do not consider it an absolute cure in uric acid troubles, do you?

A. Well, my experience has not been sufficient to tell that exactly; I know from my experience that it overcomes the uric acid condition as long as they take it; I have had some patients that have stopped taking the water after they had apparently been cured, and they would stop taking the water for two or three months, and then their condition has not returned, so I say that they were apparently cured.

Q. What action has this water on the bowels?

A. A slightly laxative action.

Q. Have you examined so as to say that it has?

A. No, sir; not positively.

Q. What is the effect of lime salts upon the bowels?

Q. I have not considered that at any time.

Q. Is it not constipating?

A. I don't know, sir; I have not considered it.

Q. From your general knowledge of medicine, you can answer that question?

A. Well, I could not answer that.

By the Court.

Q. Do you mean to say you don't know?

A. No, sir; I have not considered it.

By Mr. Lichtenstein.

Q. This water contains very nearly four grains of calcium bicarbonate, out of a total of not more than ten grains of solid matter; would not you consider that that would act as a constipator?

A. I don't know, sir; I have not—

By the Court.

Q. What do you mean, sir—do you mean to say

that you do not know the effect of such salts upon the human system?

A. I don't know whether that would constipate or not; I don't know what would be sufficient quantity of lime to constipate a person; I don't know whether that amount or portion that you speak of would constipate or not.

By Mr. Lichtenstein.

Q. You don't know whether that particular ingredient would constipate or not?

A. I don't know, sir.

By the Court.

Q. Well, take it in any shape?

A. Large quantities of lime is constipating, I should think.

By Mr. Lichtenstein.

Q. Would you not consider four grains a large quantity of lime in a gallon of water?

A. Oh, I don't know.

Q. You do not consider this water a cure for all rheumatic condition, do you?

A. No, sir.

Q. You would not consider or say that it was, would you?

A. No, sir; I don't think so

Q. Will you look at the analysis of this water as published by the Bear Lithia Co.?

A. I have one here.

Q. And tell me what there is in that water which would relieve constipation?

A. I could not tell you that.

Q. You are familiar with the effects of these various minerals upon the human body, are you not?

A. Not particularly so; no, sir.

COURT—What medical college did you graduate from?

A. Long Island Medical College.

Q. And you don't know the effect of these various minerals upon the human system?

A. Yes.

Q. Oh, you do know the effect?

A. Why, yes, sir.

Q. I thought in answering counsel's question that you said you did not?

A. That is quite a particular assertion, I don't know how to answer the question.

MR. LICHTENSTEIN—What school of medicine are you a graduate of?

A. Long Island Medical College, of Brooklyn.

Q. Potassium carbonate is a well recognized mineral salt, is it not?

A. Yes, sir.

Q. And sodium carbonate also, is it not?

A. Yes, sir.

Q. And lithium carbonate?

A. Yes, sir.

Q. And calcium carbonate?

A. Yes, sir.

Q. And magnesium carbonate?

A. Yes, sir.

Q. And all the rest of the carbonates and the sulphates?

A. Yes, sir.

Q. Then do you mean to say that you don't know the effect of these various mineral salts?

A. Oh, yes, I do.

Q. Then tell us what mineral substance is there

there in that analysis, which would relieve, or tend to relieve constipation?

A. I could not tell you.

Q. Or be beneficial in that kind of case?

A. I could not tell you.

Q. Still you say it does relieve that condition?

A. It does relieve it; my experience indicates to me that it does relieve that condition.

Q. Why is it; how does it relieve that condition?

A. I don't know, but I suppose it is the combination of the elements taken all together.

Q. Would not any pure water do the same thing that you claim has been done to your patients by this Bear Lithia Water?

A. No, sir; I don't think so.

Q. Why does this particular water do it?

A. It seems to me, that it must be because of the combination of the elements contained in the water, that does it.

Q. What element is it that you would say will do it?

A. I could not tell you—all I know is from my experience; the water moves the bowels; that is all I know, or care to know.

Q. Is not the total amount of mineral salts contained in this water less than the amount of the usual dosage of any of the drugs you gave any patient of yours in an attempt to cure any of these conditions?

A. Yes, sir; but as I said before, it is the combination of these mineral salts that seems to work the effect—I cannot tell you how it does it, but it does do it—

Q. All minerals have a recognized therapeutic value in the treatment of diseases, do they not?

A. To a certain extent.

Q. Now, being familiar with all these mineral salts and their medicinal value, can you explain

why it is that this water should have any beneficial effect in the treatment of these various diseases that you have mentioned?

A. No, sir, I cannot; and there are lots of things in medicine that work in that same way, that is, there are lots of things that have certain effects, and yet you cannot tell how it is that the medicine does have that effect; we gain results by the use of various medicines, and we know the effect that they will have upon the system, yet neither I nor anyone else can explain to you how that result is attained.

Q. Then I am to understand you to say that any pure water other than this Bear Lithia Water might have the same effect?

A. No, sir; I say that according to my experience other pure waters does not work like that water.

Q. Then you have tried it, have?

A. Oh, yes, sir; I have tried it, and I have found that the Bear Lithia Water is far superior to any other water that I have tried; I have tried lots of mineral waters, so called; I have tried all kinds of waters to fit varying conditions, and I have never had the success by the use of any other water that I have had by the use of Bear Lithia Water in the conditions or cases such as I have described.

Q. Now, doctor, is it a fact that a mineral water has a greater potency in the cure of disease or the amelioration of the troubles you have described than the minerals would have if taken by themselves in their commercial shape?

A. It is a fact, but why, we cannot tell you; we cannot tell you how it does it.

Q. Well, how do you know that it is a fact?

A. By the experience I have had.

Q. Did you ever conduct a clinic?

A. Yes, sir; I have.

Q. Where?

A. At the Long Island Medical College.

Q. In the trying of different drugs?

A. No, sir.

Q. In the use of mineral waters?

A. No, sir.

Q. Well, Doctor, I want you to tell me how it is that you know that mineral waters will produce certain effects that the drugs themselves will not produce?

A. Well, name the drug.

Q. Well, what mineral waters have you used?

A. This one in particular—

Q. And what others?

A. I have used the Rubinat Water, but not for these purposes?

Q. Have you used any mineral waters at all parallel to this water in the treatment of disease?

A. No, sir; I have not.

Q. How can you say that this water has peculiar medicinal values, then?

A. Because it works on my patients so as to suit me.

Q. How do you know that it works in any other way different to any other mineral water, if you have not used them?

A. I am not comparing them with any other mineral; I haven't said anything about other mineral water not having the same effect; all I have said is, that I have used this water, and that the use of this water has been satisfactory to me in my practice.

Q. You have used it in connection with other mineral waters, have you not?

A. Why, no, sir, I have not; not in comparison with this water, or in conjunction with this water; but what I do say is that we know that common water alone will not overcome a rheumatic con-

dition; that under those circumstances we would have to use medicinal remedies, and I say that I have used this water for chronic conditions and without other medicines, but I have not used this water, and any other water in comparison or in conjunction, that is, I have not used the two together.

Q. You have not used it, you say?

A. Yes, sir; I have used common water in years gone by, but in conjunction with medicine.

Q. Then how do you get your comparisons?

A. I have used it; but I have never used the two together.

JOHN P. N. H. THELBERG, a witness produced in behalf of the complainant in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are a native of Sweden, are you?

A. Yes, sir.

Q. And a physician and surgeon by profession?

A. Yes, sir.

Q. And what is your age?

A. A little over fifty.

Q. Where were you educated?

A. In Sweden and in this country; in Germany, in Austria and in France.

Q. You have taken many post graduate courses, I should judge?

A. Yes, sir.

Q. What was your original graduation?

A. As a chemist.

Q. And your original graduation as a physician was where?

A. Here; in New York.

Q. At what college?

A. The New York University—Medical Department.

Q. Are you in general practice?

A. Yes; sir.

Q. Extensive practice?

A. Well, I should judge so; as much as I can do.

Q. What are your social connections?

A. I am connected with different medical societies, for instance, the Academy of Medicine of New York County, Medical Society, pathological societies and allied societies, and the Electro-Chemical Society.

Q. You have been, in your lifetime, a practical chemist, have you?

A. Yes, sir.

Q. But you do not follow that profession now?

A. No, sir; I practice medicine alone.

Q. That is, you practice medicine altogether?

A. Yes, sir.

Q. I appreciate your modesty, but is not your practice a very extensive one?

A. Well, I do as much as I can do; I left a few patients to come here.

Q. Do you use natural mineral waters in your practice?

A. Yes, sir; I do.

Q. Is the medicinal value of a natural mineral water the same as the corresponding drug value of the mineral constituents in solution?

A. No, sir; it is not.

Q. What is the difference? I do not mean by comparison; but why is it different?

A. Well, we find that the potency is so much higher in the natural mixtures of salts in mineral waters than in the chemicals where they are singly or separately or prescribed in combination, as dispensed by a druggist or a chemist.

Q. Have you an acquaintance with Bear Lithia Water?

A. Yes, sir.

Q. For how long a time?

A. Oh, a few years; a couple of years, certainly.

Q. Have you used it it your practice?

A. Yes, sir; I preseribe it quite often.

Q. You prescribe the use of Bear Lithia Water in your profession, or in your practice, quite often?

A. Yes, sir.

Q. In what class of cases or diseases is it of special medicinal value, if any?

A. In the uric acid diathesis; in gout and rheumatism.

Q. Does it possess medicinal value, in your opinion?

A. Yes, sir; it does.

Cross-examination by Mr. Lichtenstein.

Q. Every pure water is of medicinal value, is it not?

A. No, sir.

Q. No?

A. No, sir; it is not.

Q. Why not, Doctor?

A. There can be pure water that is irritating to the system; you take distilled water, for instance, and it is decidedly irritating to the tissues and to the system generally.

Q. I am speaking of pure natural water, not distilled water?

A. Well, there exists very pure water, natural water, that is decidedly irritating to the system.

Q. But every one of them have some beneficial effect in the treatment of several diseases, haven't they?

A. Well, where it happens that you need a diluent for the secretions of the body, water is the nat-

ural diluent, water is the only diluent; some waters are more effective than others, and pure water is very useful in such conditions.

Q. Is it not a fact, Doctor, that you have used this Bear Lithia Water as a diluent or dilutent in the treatment of these various diseases?

A. Yes, sir; that is true; I have used this Bear Lithia Water as a diluent, but I also have used it on account of its materially alkaline nature; I call it an alkaline carbonate water.

Q. You consider this water useful because of its alkaline nature?

A. Yes; I call it, as I said before, an alkaline water.

Q. You would not consider this a lithia water, would you?

A. Certainly.

Q. Why?

A. As long as it contains an analysis of lithia, I consider it a lithia water.

Q. It does not make any difference whether it merely contains a trace only of lithium, you consider that under those circumstances it is a lithia water?

A. It is a lithia water in the sense that it contains lithia.

Q. Do you know how waters are classified?

A. Yes.

Q. They are classified according to their principal constituents, are they not?

A. Yes, sir; but I called this water in my answer to your question before an alkaline carbonate water; I might add, with lithia.

Q. And so alkaline carbonate water is not a lithia water, is it?

A. No, sir; but when it contains lithium it is a lithia water to that extent at least.

Q. Well, then, why not call this a lime water?

A. I think, as I said before, it was an alkaline carbonate water, and yet lime is an alkaline.

Q. Why not call it a carbonate as well as a lithia water?

A. Because it is an alkaline water.

Q. Is there any other answer to that question?

A. No, sir; I would not call it a lime water.

Q. Do you know the quantity of lithium that is claimed to be in this water?

A. I think I do.

Q. It is twelve one thousandths of a grain to a gallon, an imperial gallon of the water?

A. Yes, I think that is all. I understand there are about nine and a half grains of solids to the gallon.

Q. Would you say that this water has any effect medicinally because of the lithium contained in it?

A. I would not say so alone, because of the lithium contained in it; we do not know that it is a fact—you will find that the combination of the water as it is is effective in certain directions; we find that it is effective and that it has a decidedly diuretic effect—

Q. Are you familiar with the various mineral waters of this country?

A. I don't know that I am familiar with all of them, but I know the scientific classification of them.

Q. The quantity of lithium that is contained in this water is so small, is it not, that it would not have any beneficial effect whatever in the treatment of any disease, would it?

A. It would not have if you dispensed it from the drugs; but in a mineral water, with the other ingredients of the water, and with the variety of properties of the water, as we might say, taking all the other properties of the mineral water into consideration, then I would say that it undoubtedly

has beneficial effects in the treatment of diseases.

Q. What other substance is there in this combination or composition of this water, which, taking for instance the lithium or the iron or the calcium, or any other of these constituents contained in this water, would be beneficial in the treatment of rheumatism or gout?

A. Well, I have to answer that question in a roundabout way. In the organism we have various diseases, but we do not have the uric acid troubles by the pounds or the ounces, but in the whole system there might be a few grains only, and of course we do not expect to relieve the system of that quantity of irritating substance in one dose of anything; we expect that by continued doses, that finally we may get the irritating substance out of the system, and therefore we continue the doses continuously, getting the blood gradually into a proper condition so as to favor the elimination of the uric acid. Now, it cannot be done by one dose, it is not to be expected that it can be done, and then the lithium contained there in this water in combination with these other minerals, or salts, in this mineral water, I say they are, it seems to me, other and important factors, the action of which we do not altogether know; there may be a retroactive effect, we cannot test for it, we cannot know about it, but the retroactive effect may be there, the effect that we have we only find it by its effects, we find it of late to exist in these waters, and I say, that in that view, they have quite a great therapeutic potency; and taking this into consideration, and with this explanation, I may answer your question by saying that the lithium contained in this water might have, and in fact may have, a therapeutical effect, and I think it has.

Q. But why this water, containing as it does

these various mineral salts, has this therapeutic effect, you cannot give us any answer for it?

A. No, sir, no; we find it by experience; we cannot give you any absolute reason for it.

Q. Why is it that you physicians use such large quantities of lithium in the treatment of uric acid troubles—

A. I don't think it is done; I don't think that the modern physicians do it.

Q Don't you know that they use as high as five grains of lithium to a dose, and give a patient three doses in a day.

A. Oh, they use ten grains to a dose, some of them, but we of the more modern school of practitioners do not do that; we find that lithium acts very nicely in troubles of the urates and the uric acid diathesis, but when you put in ten, fifteen or fifty grains of lithium to-day, you find that you do not get any elimination in the urine—

Q. You find that lithium taken internally that it has no effect whatever?

A. In what form?

Q. Taking it in its commercial form?

A. No, sir; that is my opinion.

Q. Is not that the opinion or consensus of opinion in your profession at the present time, and has it not been so for a number of years past, that lithium taken in its commercial form is of no beneficial effect in the treatment of these various diseases that have been mentioned?

A. No, sir; I beg your pardon; lithium in mineral waters is beneficial; much more so than it is in its commercial form.

Q. In what form does lithia exist in that water in question?

A. It exists as lithia—lithium carbonate; well, we do not know—no chemist on earth can tell you just in what form the lithium does exist in this

water; no chemist can estimate it; they only guess at it.

Q. What form is lithium as sold in the drug stores?

A. Carbonate and citrate.

Q. The form is the same, is it not?

A. No; by no means; there might be a very great difference.

Q. Don't you obtain lithium sulphate in a commercial form also?

A. Yes, sir; you have the sulphur; now, you see we have an allothropic system and we have various results obtainable from very different crystals by different methods; one is produced, for example, by melting sulphur—

Q. What has that got to do with lithium?

A. I am only giving you an instance or illustration to show you that lithium can be under different allothropic modifications, and that it can have different properties obtainable by different methods—

Q. How do you prove it?

A. By the effect of the water; by the effect of the lithium as contained in the mineral water; but you cannot produce it without you take lithium salts and dissolve those lithium salts in water yourself; that is, you would have to take the lithia and the other salts contained in the water in question and dissolve it in water that must be absolutely pure, but the water itself might be exposed to very different conditions; it may have been exposed to a very high thermic and magnetic or other force, and you might produce a very different condition of atoms in the mineral—

Q. If, for instance, a mineral water was evaporated to dryness and the residue dissolved in water, would it have the same value?

A. No, sir.

Q. Why not?

A. Well, you must take the experiment with other things; they are altogether different; I might give you another illustration; take, for instance, phosphoric acid—

Q. Just give an answer to my question, please?

A. No, sir; it is not; it might not have—

Q. It might not have what?

A. No, sir; it is not; undoubtedly it is not.

Q. Have you ever made any tests to find out just that thing? Have you ever put that to use with a view to finding out whether there is any change in value or not?

A. In this water?

Q. In evaporating any mineral water and taking the residue, adding water to it with a view of then ascertaining whether it then had the same medicinal value?

A. No, sir; I have not.

Q. How do you know then that it has not the same value after it is redissolved in water that it had before?

A. Well, yes, sir; we might say in regard to the sprudel salts, that is, a salt which is at present in the market and which is the residuum of the German mineral water; now, in the case of the sprudel salts we do not find the same effect from the use of them as when you go and drink the natural Carlsbad water, and there are other instauces to the same effect.

Q. But that has an entirely different effect to the lithium water, has it not?

A. Oh, yes, sir; but you were asking about the mineral waters—

Q. So, then, Doctor, you don't know what there is in this water which has this peculiar value that you speak of.

A. That is the combination; no, sir; I tell you that the water has a greater value—

Q. Still, every one of the minerals which are contained in this analysis have a recognized value in your profession, have they not?

A. Oh, yes, sir; they have; some of them are of some value, I think, and some of them are of no value perhaps, but in the combination, in the shape of this water I think they are valuable.

JOHN D. MCGILL, a witness produced in behalf of the complainant in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. You are a practicing physician and surgeon?

A. Yes, sir.

Q. Of how many years practice?

A. For thirty-six years; or thirty-five years in Jersey City.

Q. And are a graduate of what institution?

A. A medical institution; a medical department of the University of Pennsylvania.

Q. And are you connected with any institutions here?

A. I am connected as visiting surgeon and medical director of St. Francis Hospital, in this city; I am connected or was connected with the City Hospital for over twenty years, but I resigned.

Q. And you also have been Surgeon-General of the State?

A. I am at present Surgeon-General of the State.

Q. And have been for how many years?

A. Twenty years.

Q. Are you familiar with the analysis of various mineral waters?

A. I am somewhat, as far as I use them in my practice, with their general therapeutic value.

Q. And you are familiar with Prof. Mallet's published analysis of the Bear Lithia Water, are you?

A. I have that here before me.

Q. In your opinion does that analysis show a medicinal water?

A. Yes, sir; it does.

Q. State how?

A. It is a pure water combined with medicinal substances; such substances as are efficient in the cure and alleviation of disease.

Q. Describe how—describe the processes of the body and what is essential to health?

A. The great essential to health is what is called a normal metabolism; a metabolism may be either constructive or destructive; a constructive metabolism is the repair and the nourishment of the tissues; a destructive metabolism is the breaking down and removal of effete and used up organic materials; one is called anabolism, and the other is called catabolism; the blood carries the protoplasm to the tissues, that is the physical basis of life; the tissues take such portion of the plasma as they need, and then the blood carries away all the effete matters and they are eliminated by the so-called eliminaries of the body, the emunctories, the kidneys, the skin, etc., and the lungs through respiration, to a certain degree; this interchange is absolutely necessary to health, to keep the body in a natural condition, a condition of well preserved health; if you allow metabolism to become defective the physical functions will be performed with difficulty; then you will have disease and poor health; of course, a complete cessation of metabolism would mean death; it is impossible for life to exist without metabolism.

Now, we know that the body is composed of

two-thirds of pure water; that the blood contains seventy-eight of one hundred composing parts of water; all repairing elements, to rebuild the tissues of the body, must be carried in the blood; they are carried in a state of solution in the water contained in the blood.

Now, if there should take place a deficiency, from diseased action, or a lack of proper supply exist, of some of the proximate principles to tissue composition, if the water that is ingested contains material that is necessary to supply this deficiency, it is carried to the tissues and used to repair the deficiency by the use of a mineral water of proper composition, such deficiency may be remedied.

Q. Where is it carried?

A. It is carried in the blood.

Q. So, in your opinion, are impregnated waters useful or valuable?

A. Natural waters impregnated by nature with various salts are the most efficient kinds of water to use in the treatment of disease; nature will produce a better solution and a better combination than all the artificially made waters, or rather, nature will produce a better prescription than all the doctors can give.

Q. And they are useful to remedy defective metabolisms?

A. Very much so, for the reason that we get in the natural mineral waters, waters made up and prepared by nature, just the proper proportion and description of ingredients needed for the reparation of deficient metabolisms, which means disease.

Q. It helps both constructive and destructive metabolisms?

A. Yes, sir; it helps the constructive and the destructive metabolism.

Q. Are some mineral salts essential to the health of the body?

A. Oh, yes, sir; there are certain mineral salts that you can call really proximate principles; that is, they appear in the tissues just in the form that you have them outside; take for instance the phosphate of lime, one salt in particular; the carbonate of lime, another salt,—

Q. Wherein would you think this analysis of Bear Lithia Water would be indicated as helpful?

A. Well, in a great many diseases. In the first place, it is a pure water; it is a soft water. We call it that because it is slightly alkaline, and it is of a certain specific gravity, and then it contains many valuable salts, valuable for the alleviation and cure of disease, certain diseases at all events, and the list is very extensive; in fact, it is so extensive, that it can only be determined by the experience of the practitioner; it is valuable as a pure water alone, as well as for the medicinal and metallic salts which it contains.

Q. What is the remedy so-called "diuretic" by the other witnesses who have been sworn?

A. A remedy that acts on the kidneys, by stimulating them to increased action and which produces a greater flow of urine.

Cross-examination by Mr. Lichtenstein.

Q. In pure water—any pure water would be used by physicians generally for the cure and alleviation of disease, would it not, Doctor?

A. Well, a pure water properly impregnated with the medicines that are needed—the pure water in itself would be no more than a species of food for the body, for the blood and for the tissues, because the body contains such a great amount of water. But if you want to treat disease with water outside of its mere mechanical effect, the washing out of the system, as it were, through the sewers of the body, it has not any other medicinal value—

its medicinal value would depend upon what the pure water was impregnated with.

Q. All mineral waters are impregnated with these various salts, are they not?

A. Yes, sir; in different quantities, in different proportions, some containing one kind of salt, and some another.

Q. Now, Doctor, nine grains of solid matter to the Imperial gallon is a very slight quantity of mineral material to be contained in a mineral water, is it not?

A. It is, yes, sir; it is a small quantity.

Q. A very small quantity, is it not?

A. Relatively so; yes, sir.

Q. A water containing a little over nine grains of solid matter to the Imperial gallon, contains no more mineral matters than is contained in almost any ordinary spring water?

A. Well, it depends on what that spring water is; there are so many varieties of spring water.

Q. Do you know the amount of solid matter in any particular spring water outside of this Bear Lithia Water in question?

A. I don't know exactly the amount in this water; I cannot carry it in my mind; I have looked over a great many analyses of different springs of various spring waters, but I cannot carry them all in my head.

Q. Now, take any one of the salts contained in this water, is there any one salt, taking it alone, in sufficient quantities to be of any medicinal value?

A. There might be. Our ideas of doses have very much changed of late years. Of course, you know that the homeopathic school of medicine believe that a very small amount, perhaps as small as the billionth of a grain, would be competent to work a cure—now, I don't belong to that school,

but still I do believe that small doses systematically and frequently repeated, especially when prepared by nature, are vastly more efficient in the curing and amelioration of certain conditions than big doses of the same medicine prepared outside; that is, as we prepare our medicines, by having a prescription filled at a druggists. Now, a medicine cannot be judged by its amount at all. You take, for instance, the therapeutic value of arsenic. We use it only in doses of from one-fiftieth to one one-hundredths of a grain. The physiological dose of arsenic, that is, enough to show its physiological effects, might kill the body, whilst a very small dose of the same medicine would have the therapeutic effect in restoring a patient to health.

Q. That of course would not apply to lithia, would it?

A. Yes, it would; the same principle is involved.

Q. What is the usual dose of lithium?

A. Whatever a person's experience may have shown them that it would be proper under the circumstances to give. Maybe a fraction of a grain in some instances would be sufficient; in other instances, you would prescribe from two, three, four or even more grains per dose.

Q. Is it not in your experience, Doctor, a fact that it is not of any effect unless given in large quantities?

A. No, sir; I cannot say that; I have had my experience with these mineral waters, and my experience in that regard is, that they do better than when we give it in large does, because in large doses it is apt sometimes to disagree with the stomach.

Q. In what doses of lithium have you been in the habit of administering that drug?

A. I have given it alone in the regular doses of perhaps from one, two, three, or more grains; I have

perhaps given it with other substances, in the form of an effervescent tablet; I have given it in very frequent doses, in mineral water.

Q. That is, the lithium added to this mineral water?

A. No, sir; it was already in the mineral water itself.

Q. What water did you ever prescribe that contained lithia, that is, natural water?

A. I have used the Londonderry Lithia Water; and I have used aperient waters, which have perhaps some lithia in them.

Q. Do you know what quantity of lithia there is in the Londonderry Lithia Water?

A. Very small, I understand.

Q. Have you prescribed that Londonderry Lithia Water because of the effect produced by the lithium in it?

A. Yes, sir.

Q. For use in what form of disease have you prescribed it?

A. In various forms of disease.

Q. Again, I will ask you, Doctor, if you have prescribed the lithia water, with the object of getting its lithia effects in these various forms of disease?

A. I have prescribed the use of this Londonderry Lithia Water, with the object and purpose of getting its general effects on some disease, for which it was known to be efficient.

Q. Then do I understand you to say that you did not prescribe it to get its lithium effects?

A. I did prescribe it to get its lithium effects, because it has a lithium salt in combination with other salts, just as nature has prescribed it—nature has taken a very small quantity of lithium and placed it in combination with other salts. Why? Because that is nature's formula; nature has placed

it in combination and backed it up with other salts, so as to make it efficient in the cure and amelioration of various diseases.

Q. Don't you know, Doctor, that there are lithia waters that contain as high as two, three, four, and up as high as seven grains per gallon?

A. Yes, possibly there are; and I may say perhaps that they have not been found when tested, by actual use, as efficient as this small quantity in the combination in which it is found.

Q. Nature combines this?

A. Yes; but you don't have to take other waters because nature prescribes a large dose of it.

By the Court.

Q. What do you mean by the term "nature prescribes?"

A. Well, we try to copy nature as far as we can in the treatment of disease.

Q. You don't mean to give me the impression, do you, that nature has written a particular prescription for that water?

A. I think nature has so arranged it, that that water has been produced. How else can we explain it? It is found to be impregnated with a certain quantity of these valuable medicinal salts; it comes up out of the bowels of the earth, just as it is impregnated with these valuable medicinal materials, just as I say, as nature has evidently prescribed it should.

Q. Is it produced for a particular purpose, do you suppose?

A. That is dependent on how much you believe in Providence; that is a matter you will have to find out by experience. Nature has prepared all these mineral waters, and it must have been for some object, just the same as nature makes some substances white, and other substances black or

gray; for instance, the cereals grown in our fields, some are white; and others gray; now, that is all done for some purpose, with some object, and therefore it must have been, I reason, the same with regard to the production by nature of these mineral waters; that they have been produced for some purpose; that they have some object to serve.

By Mr. Lichtenstein.

Q. You have known of spring waters that come from the earth at a distance of five or ten yards from each other, which contain the same ingredients, that is, they contain the same salts, but one will be in a very minute quantity, and the other would be very highly charged, have you not?

A. I don't know anything of any five or ten yards distance between springs; but I do know of mineral springs that have been situated quite closely together, and that they did have the same ingredients, but in different proportions.

Q. These waters, that is, the mineral waters, obtain their constituent parts by reason of the water flowing through the earth?

A. Yes, sir; that is so.

Q. And coming in contact with various mineral matters?

A. Yes, sir.

Q. And where the stream of water has flowed through a certain mineral body for a longer distance it would than be charged with more or a greater amount of these particular mineral matters than others?

A. It depends on the composition of the soil through which the water flows

Q. Are you familiar with the blue-lick waters?

A. I cannot say I am particularly.

Q. Are you familiar with the classification of waters by the United States Government officials?

A. I have examined that classification, but I cannot say that I am familiar with them.

Q. What would you call this water?

A. I would call this water a soft carbonated alkaline water.

Q. And why do you call it a soft carbonated alkaline water?

A. I call it so from its composition; from the presence of the carbonates in it.

Q. And you take that name for it because of the substances which it contains, in the largest proportions, do you not?

A. From the quantity of carbonate it contains.

Q. And is not that the usual method of prescribing various waters?

A. It is, I think; it enters into the nomenclature of waters, to a certain extent.

Q. Now, this very instructive lecture that you have given us of the construction of the tissues &c., had mainly to do with the manner in which effete matter should be discharged from the system, hadn't it?

A. No, sir; it had just as much to do with the construction, as it had to do with the destructive elements.

Q. Now, Doctor, you would use any pure water would you not, to have that effect upon the system—that is, would not any pure water have that effect upon the system, to take off or carry off the effete matter?

A. A pure water would not act as efficiently as a medicinal water.

Q. A pure natural water, I mean?

A. A pure natural water would not act as efficiently as a medicinal water, because a pure and natural water must be as near as possible two parts of hydrogen to one part of oxygen—

Q. And you think it would not be as effective to carry off the effete matter of the system?

A. No, it would not, it lacks its diuretic effects, its antacid effects, and its laxative effects.

Q. What is there in the water that would indicate to you that it has any laxative effect?

A. The carbonate magnesium, the chloride sodium, carbonate of potassium—

Q. How can you tell it would have that effect in combination with other minerals?

A. Because I have used them; I have used this mineral water in the combination.

Q. In the same combination that this water appears to have?

A. I have not used this water, but I have used other waters of similar combination.

Q. You don't know what effect this water would have upon the system, do you?

A. I do.

Q. Oh, I thought you said it was because of the peculiar manner in which nature combines the mineral waters, that it has peculiar medicinal value, and not because of the particular ingredients—how can you then say that this water will have the effects you state?

MR. COLLINS—I object to the question; the Doctor did not say that he limits it to the combination; the Doctor said that it was due to the combination.

COURT—What I understood the Doctor to say was this. That while these different salts if taken out and separated one by one, might not indicate that they would do all that is claimed for them, yet in combination they would produce a certain effect.

MR. COLLINS—That would not ignore the ingredients.

By the Court.

Q. Did I understand you correctly, Doctor?

A. You did; that is the idea I wished to convey.

By Mr. Lichtenstein.

Q. Now, will you answer the question Doctor (question read as follows)—I thought you said it was because of the peculiar manner in which nature combines the mineral waters; that it has peculiar medicinal value, and not because of the particular ingredients—how can you then say that this water will have the effects you state?

A. Nature makes the combination, but the ingredients are the basis of the whole prescription. Nature could not do anything without the ingredients— the ingredients must be at the bottom of the combination, and in a prescription it depends in just how much you get into the combination—

Q. Then as I understand it, the basis is the ingredients?

A. The basis, the curative property, rests with the ingredients, as well as the amount that nature has taken to make the combination, the whole thing together.

Q. Each one of the ingredients, which are contained in this analyses has certain recognized value, has it not in your profession?

A. As far as I look over these ingredients they appear to all have a certain medicinal value.

Q. And it is because of your knowledge of the value of these individual ingredients that you say it will have a certain effect in the treatment of disease, is it not?

A. And my knowledge of the combination.

Q. You have no knowledge of the combination of this particular water, have you?

A. I have a knowledge of like combinations in other waters.

Q. Such as what water?

A. The general characteristics of the Londonderry Lithia Water; to a certain extent.

Q. Do you know what is the composition of Londonderry Lithia Water?

A. No, sir; I cannot tell you now, and I might say, that I cannot tell the exact composition of aperient waters generally; I have used a great deal of aperient water without exact knowledge of composition.

Q. I show you an analysis of aperient water and I ask you whether that is the analysis that you examined in using that water?

A. I could not tell you that; no, sir; it is not; for this, you observe, this being the chemical symbols along here; well, it is to a certain extent the same—

THE WITNESS—Undoubtedly; I have looked at the analysis of the aperient water; now, you have the sulphate of soda, the bicarbonate of soda, the nitrate of soda, the phosphate of lime here, and over there you haven't the same combination; in this analysis you find all the different salts, the iron and the calcium—

Q. Is that correct?

A. So far as I know, it is the true analysis; I think it is.

Q. There is no iron in combination in the Bear Lithia Water, is there?

A. Yes, sir; there is the carbonate of iron.

Q. There is no lithium in Londonderry Lithia Water, is there?

A. I think there is a trace of lithium in Londonderry Lithia Water; that is my impression now.

Q. Not even a trace, is there (handing analysis to witness)?

A. There it is (indicating): "Lithium, a minute trace."

Q. Now, would you say, Doctor, that the composition of this water that you have examined the analysis of is similar to this Bear Lithia Water?

A. Yes, sir; in its general characteristics.

Q. I thought you said that it was the peculiar manner in which nature combines mineral waters that it has peculiar medicinal value, or that gave it medicinal value.

A. I say that yet.

Q. Would you say, then, that aperient water has the same effect as Bear Lithia Water?

A. To a degree.

Q. Would you say that this Bear Lithia Water has the same medicinal effect that the Londenderry Lithia Water has?

A. To a degree; it is a solvent of uric acid calculi, and it has the antacid property which is beneficial for the stomach, and so forth.

Q. Is it not a fact that the calcium in both of these waters, the Bear Lithia Water and the aperient water, will counteract the laxative effect of the laxative ingredients?

A. Not at all; it will simply act as a corrector in preventing too great an effect.

Q. But the calcium is by far the predominating salt, is it not?

A. Not when you take all the other salts together, you have got here the carbonate of magnesium, the carbonate of potassium, the sodium carbonate, the potassium carbonate, the carbonate of iron, the chloride of magnesium, etc.

Q. These ingredients you now speak of do not

exist in the water as carbonates at all, do they?

A. As carbonates in the water?

Q. Yes?

A. They undoubtedly exist according to the analysis.

Q. Do they not exist as bicarbonates?

A. Possibly they do exist as bicarbonates, and very frequently they do when there is an excess of carbonic acid gas in the water.

Q. Do you practice now, at all, Doctor?

A. I do; yes, sir; every day.

Q. You treat a great number of people suffering from kidney disease, do you not?

A. Yes, sir; off and on a great number.

Q. Have you ever heard of Bear Lithia Water before you came into this case?

A. I have heard of Bear Lithia Water before I came into this case; yes, sir.

Q. You treat kidney diseases, or persons suffering from kidney disease, do you?

A. Yes, sir.

Q. Did you ever use this Bear Lithia Water.

A. I never have; no, sir.

Q. Well, how do you treat these patients suffering from kidney disease?

A. Well, it depends on what is the matter with them; what is the variety of the disease itself.

Q. Could a person suffering with kidney disease, incipient Bright's disease,. be cured by the use of water?

A. That would be a question to be determined by the use of the water, and from the composition of the water; it might be possible.

By the Court.

Q. What is your opinion, taking that analysis, would you feel that it would cure incipient Bright's disease?

A. There is a possibility that it would assist it, and as far as any remedial measure would go, for the cure of incipient Bright's disease, it would go, it is possible, I say, it would assist it, so that it would disappear, in its incipient stage; of course, it would not cure it when the disease was further established.

Q. Would not any pure water have the very same effect as this water?

A. Not in my opinion, because it is not alkaline; it is neutral.

Q. Well, any alkaline water?

A. Possibly another alkaline water might act as well.

Q. And not a water which has lithium in it, a lithia water at all.

A. Well, that would be a question I would not like to say yes or no to.

Re-direct by Mr. Collins.

Q. You say that springs not far apart may have the same constituents in different proportions. Now, is it not also a fact that the same spring may have a less proportion of the ingredients at one time than another?

A. Very true.

Q. According to the great or less quantity of water that has to be discharged through it?

A. Well, one month it may contain one proportion and the next month it may contain another proportion of the same ingredients.

Q. You say that some so-called lithia waters have a large proportion of lithium in them, is it or is it not your belief as a physician that lithia is put into some of the waters?

A. Undoubtedly so.

MR. COLLINS—I now offer in evidence an affidavit filed in this cause on the part of the defendant. I will read the affidavit of Joseph A. Deghuee—it is an affidavit filed by the defendant in this cause in opposition to the motion for an injunction.

MR. LICHTENSTEIN—I object to the offer of any affidavit which was used on the preliminary application.

THE COURT—It is part of the record, is it not?

MR. LICHTENSTEIN—Yes, I suppose so.

MR. COLLINS—I will read from the beginning of the affidavit down to the last paragraph, which last paragraph I need not put in.

"Joseph A. Deghuee, of full age, being duly sworn, deposes and says, that he is by profession an analytical chemist and expert in the analysis of water; that he is a graduate in the course of chemistry, Columbia University, holds the degrees of Master of Arts and Doctor of Philosophy from same University, that on the 23d day of February, 1906, he ordered a case containing eight one-half gallon bottles of water from the Bear Lithia Springs Company, at their office, No. 62 New Street, New York City; that he also ordered two cases on the 26th day of February from the warehouse of said company on Eleventh avenue, New York City, and that he personally received said three cases of water at his office in the city of New York, at No. 518 Eighth avenue; that said cases are made of wood, divided into eight compartments, and have stenciled on their sides the words 'Bear Lithia Water,' under

which also appears the words 'Bear Lithia Water' and the words 'Virginia, U. S. A.' That each bottle was stoppered with a porcelain and rubber stopper fastened securely in place by means of a wire lever, which lever was sealed with a seal so placed that to open the bottle by means of moving the lever the seal had to be broken; the seals are of yellow paper, bearing a picture of a black bear, and the words ' Bear Lithia Water,' above which is printed 'Registered Trade Mark,' and below '58 to 62 New Street.'

"That he personally broke the seals and removed the stoppers to obtain the contents of said bottles, and that for the purpose of making the test hereinafter mentioned he used the water from the bottles contained in each of said cases.

"That he personally performed all of the analyses and tests on the samples of water so obtained, and that the sample of Bear Lithia Water above described were at all times under his personal control and care; that he analyzed said water particularly according to instructions, for the purpose of determining the amount of lithium contained in said water, and that the result of his analysis is that said Bear Lithia Water contains 0.034 parts lithium per million, or 0.002 grains per gallon (United States gallon)."

MR. COLLINS—I want to read in evidence one paragraph of a stipulation signed by the defendant's solicitors, at our request, in this cause.

"It is hereby admitted by the solicitors for the defendant, for use at the final hearing herein:

1. That the analysis of the Bear Lithia Water, as published by the Bear Lithia Springs Company,

and its predecessors, on its labels and in its advertisements, is an analysis made of the water of the Bear Lithia Springs, at Elkton, Virginia, by Prof. J. W. Mallet, professor of chemistry, in the University of Virginia, and reported by him on October 27, 1885."

ERNEST ELLSWORTH SMITH, a witness produced in behalf of the complainant, in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. What is your profession?

A. I am a chemist and physician.

Q. You were originally a chemist?

A. I first studied chemistry, and subsequently studied medicine.

Q. When did you graduate as a physician, and where?

A. I graduated as a physician from Bellevue Hospital Medical College.

Q. When?

A. 1898.

Q. Are you a member of any medical and chemical societies?

A. I am.

Q. Name them?

A. I am a Fellow of the New York Academy of Medicine, which I serve as secretary on the section of medicine—a member of the New York County Medical Society, a member of the New York Pathological Society—a member of the Medical Society of Greater New York; an honorary member of the Yonker's Practitioners' Club—I am a member of Medical Associations—

Q. What special line have you of recent years directed your attention to?

A. Well, I have of recent years directed my at-

tention to the subject of medicine and chemistry in relation to one another.

Q. And have you testified as an expert in litigations?

A. I have.

Q. A great many?

A. In a considerable number of cases.

Q. What position do you hold now?

A. I am the Pathologist of Trinity Hospital and St. Bartholomew's Clinic, and the West Side German Dispenary, and the Riverside Hospital of Yonkers, and also Professor of Pathology of New York School of Medicine.

Q. Are you connected with any New Jersey institutions?

A. I am Consulting Pathologist of the Hospital at Somerville.

Q. Have you published or written on the subjects connected with the present case?

A. I have published articles on the subject of uric acid in the nineties, the result of my personal investigation; my personal scientific investigation; I have also published works on the subject of intestinal indigestion and other digestive disturbances, upon the subject of the urine in those various diseases, and upon the subject of mineral water, and upon the subject of waters, generally.

Q. Are you familiar with mineral waters?

A. I am.

Q. What conditions are necessary to observe for the correct determination of the amount of lithium in natural mineral waters?

A. In the first place, for the determination—a correct determination of the amount of lithium in water, it is necessary to take a sufficient amount of water in order to be able to determine the amount of lithium. The amount of water required is established by the preliminary tests upon the water,

which I can give you, if you desire, in each case. In each individual water we have to test to get some approximate idea of the amount of lithium present. If we evaporate ten litres—interrupted—

Q. That is ten thousand cubic centimetres to a gallon?

A. That is ten thousand cubic centimetres—having removed any saline matter that is in the way by proper means, and found that by that amount of water, we get only a slight indication of the presence of lithium, then we conclude that only a trace of lithium is present. But if we find that there is a decided trace of lithium, then we use an appropriate amount of water for the proper determination.

Q. That is one thing necessary; a condition necessary, that is, to take a sufficient amount of water?

A. Yes, sir.

Q. And the other?

A. Then the precautions that are necessary pertinent to the analysis itself.

Q. We will come to those later—do you think a gallon and a half of water is enough water to make a proper analysis for this Bear Lithia Water?

A. No, sir; it is not.

Q. In the method of determination described in Bulletin 91 of the Bureau of Chemistry, of the U. S. Department of Agriculture, is it an official method?

A. It is not an official method.

Q. Explain about that; what are official and what are not official methods?

A. The work of the Bureau of Chemistry of the U. S. Department of Agriculture, generally, is conducted by scientific men appointed to positions in that department for the doing of work that is done generally throughout the different stations of the department, certain official methods are adopted.

These methods are published in Bulletin No. 46, and do not include any method of estimating lithium as that is not generally undertaken. When any special investigation is undertaken—

COURT—You do not undertake to show that there is more lithium in this water than the analysis which has been produced shows there is?

MR. COLLINS—No, but we will undertake to show that the analysis which our friends say was and is official; I say we will undertake to show that that analysis is not official.

WITNESS—When the investigation is assigned to any of the assistants in the department, he chooses his own methods and conducts his investigation in accordance with his own individual preference as to method.

Q. Is the Bear Lithia Water, as analyzed by Prof. Mallet, a lithium water?

A. Well, that depends on what we mean by lithia water. In the sense that it contains lithia, it is a lithium water. It is a lithia water. The term "lithium water" can be used in other senses; it may be used to indicate a water in which lithia is a predominating chemical ingredient. There are no lithium waters that come under that head.

Likewise it may be used to indicate a water in which lithium is the predominating physiological ingredient, judging the lithium from its ordinary drug potency. In that sense there is likewise no known natural lithium water. The only sense in which there is a lithia water, is the sense that lithium occurs and is present in the water.

By Mr. Collins.

Q. And in that sense then, this is a lithium water?

A. Yes, sir; in that sense, this is a lithium water.

Q. Mention all the qualtities of a natural water to be considered in forming an opinion of its value as a remedial agent?

A. The qualtities of a water that are to be considered are:

First—And this applies to the water at the spring only, what is its "thermal" qualtities.

Second—The second quality that has to be considered is the nature of its gaseous constituents.

Third—The third quality is its mineralization.

Fourth—The fourth quality is its radio activity. And in view of the fact that the latter quality is one that has only recently been discovered, I would add that in order to properly judge of a mineral water, we must also test it in clinical use in order to reach a final judgment, we must test it in clinical use.

Q. You are only limiting to the spring, only the first quality?

A. Yes, the "Thermal."

Q. As to how many of these qualities you have enumerated, do we possess any knowledge, so far as the elements appear in this case—in the case of Bear Lithia Water?

A. In the case of Bear Lithia Water, as I understand, from the evidence in this case, and also from

my knowledge of it, we know something of the gaseous constituents, of the mineralization, but we do not know anything of the radio activity, but we do know and do have some knowledge of its therapeutic use.

Q. In your opinion, is it possible to reach a certain conclusion as to the medicinal value of Bear Lithia Water, without a knowledge of all the component factors that may attribute to its medicinal value?

A. It is not.

Q. In what only way can you test it, in the absence of such?

A. In the absence of a clear scientific knowledge the only test that can be made is the actual use of the water in practice.

Q. In the treatment of diseases?

A. Yes, sir; in the treatment of diseases.

Q. And to be helpful, what must that use be?

A. That use must be extensive and thorough.

Q. Systematic?

A. Systematic.

Q. Will you look at Prof. Mallet's analysis of Bear Lithia Water, which is in evidence in this cause, and tell the Court what medicinal value, if any, is possessed by substances like those found by Prof. Mallet?

MR. LICHTENSTEIN—I object to the question on the ground that the gentleman has already stated that it is necessary to possess a clinical knowledge of the water before he can tell what its therapeutical value is.

COURT—That is, he said you must put it in actual use to find out what it is useful for.

MR. COLLINS—Yes, for the therapeutical use.

MR. LICHTENSTEIN—Yes, and we object to the question.

Question allowed.

A. Without regard to the quantities that are present here in this water, or without any effort to state anything further than just what I do state—

MR. LICHTENSTEIN—We do not deny the therapuetical value of certain ingredients therein contained, but we do state that they must be shown to be in sufficient quantity to have therapeutical value.

COURT—I think you must limit your examination to the effect of the quantities of those various ingredients that are contained in the water.

MR. COLLINS—I want to prove that these are and have medicinal properties, and in what direction.

THE COURT—I will overrule the offer to prove that these ingredients used in large quantities would produce given effects.

MR. COLLINS—Your Honor overrules the question?

THE COURT—Yes.

By Mr. Collins.

Q. What is the opinion of the medical profession as to the relative medicinal values of these substances as drugs, and as they occur in natural mineral waters?

A. The medical profession are divided in their opinion upon that point; some physicians believe

that what we may speak of as mineral water, the potency of its constituents is identical with what we may speak of as drug potency of these same substances outside of the water; another class of physicians, and this includes the physicians who make the use of water in clinical practice, believe that the occurrence of natural ingredients, natural in the water, carries with it a greater potency than the drug potency itself; that is, that the mineral water potency is greater than the drug potency.

Q. Is it a fact that the same spring will have more mineral constituents in it at one time than another, in proportion to the volume of the water?

A. I cannot answer that question from experience, as I have not analyzed one spring at one time and the same spring at another time; because, as I say, I have not analyzed one spring in that way, but I have reason to believe that it would be so, under certain conditions and times.

Q. That would be dependent upon the flow of water at certain seasons; one season there would be a greater flow of water than at another, and it would depend upon that, would it?

A. Yes, sir.

Q. Is it consistent with the mineralization of this Bear Lithia Water, as revealed by Prof. Mallet's analysis, that Bear Lithia Water should possess medicinal value in the following conditions of disease, and explain how it may act, as far as you can?

MR. LICHTENSTEIN—I object to the question on the same grounds heretofore urged, that this gentleman has already stated that in order to have any knowledge of the medicinal effect of this water you must have clinical experience of it.

THE COURT—I will allow that question on this theory: That it must be read in connection with his previous statement.

Q. First—Diseases of the kidneys?

A. In the case of diseases of the kidneys, this water is a diuretic and diluent, and possesses slightly alkaline properties; those are properties that are of therapeutic use and are therapeutically indicated in kidney diseases.

Q. Would it be beneficial in incipient Bright's disease?

A. In some cases of incipient Bright's disease it would be very beneficial.

Q. Why?

A. Incipient Bright's disease is due, in many instances, to the irritating action upon the kidney of a concentrated and poisonous urine; the action of a water like this would be to dilute that urine, and hence render its irritating action very much less; there is also a tendency—

Q. That is your description of the origin of Bright's disease?

A. A considerable number of Bright's diseases, a considerable number—

Q. What do you mean by acute diseases? They are all alike, are they not?

A. No, sir; there are several kinds; "Bright" is the name of a man who described a certain kind of disease of the kidneys, and we have come to know that there are several different kinds of diseases known as Bright's disease.

Q. Go on?

A. In this concentrated urine there is a tendency for gravel and other material to separate and act irritatingly upon the kidney; such separation would be counteracted by the use of a water like this; thus it is perfectly consistent with a water of this

kind that it should act in this way, and I believe that it does.

Q. Second—Disease of the bladder?

MR. LICHTENSTEIN—I make the same objection to this question, as before.

Question allowed.

A. The diseases of the bladder are due to infection of the bladder, or irritation of the bladder; these are two generally common causes, and the action—they are of the same physiological action as required in kidney diseases, and the water is beneficial in bladder diseases.

Q. Third—Diseases of the stomach and intestines?

A. In diseases of the stomach and intestines there are a considerable number of possibilities in a water of this kind.

In the first place, the action of the water itself upon the stomach would be beneficial in a certain class of complaints.

In the second place, it is objectionable to give, in a case where you are administrating large quantities of water, a water that does not possess the proper osmotic pressure, for the reason that that water itself exercises an irritating action. And this water contains ingredients which would give it a proper osmotic pressure.

Q. Fourth—The uric acid diathesis?

A. In order to explain the uric acid diathesis, the advantage of a water of this kind in a uric acid diathesis, I shall have to refer to the possibility of this water being radio active.

I may say that within the last two or three years it has been discovered that this more lightly mineralized water in a considerable number of cases exercises therapeutical action, owing to this quality

of radio activity. As an example, the waters of the Valley of Gestein, in Germany, which have had a reputation for many years as therapeutic waters, and which are very lightly mineralized, many of them even much lighter than this water, it has been discovered that they are particularly potent in regard to their radio activity, and in that way what, up to a few years ago, was not scientifically explained as to their therapeutic action, is now understood to be attributable to this condition of radio activity.

Q. Are there any ingredients in this water, analyzed by Prof. Mallet, that accompany radio activity?

A. Radio activity is more apt to be present in water that contains the rarer elements, of which lithium is an example, and so the presence of lithium in this water would possess a much greater degree of probability that this water is radio active than the analysis would indicate if the lithium were not present.

Q. Any others?

A. Strontium and the manganese, I should judge—

Adjourned to Wednesday, April 25th, 1906, at 9.30 A. M.

ERNEST ELLSWORTH SMITH, recalled in behalf of the complainant in rebuttal, his direct examination resumed:

Examined by Mr. Collins.

Q. Now, Doctor, is it consistent with the mineralization of this water, as revealed by Prof. Mallet's analysis, that Bear Lithia Water should possess medicinal value in diseases of the liver?

MR. LICHTENSTEIN—I make the same objection to this line of examination on the ground that the doctor has already stated that it is necessary to have a clinical knowledge of the water itself in order to be able to testify.

THE COURT—I will allow the objection to go on record as standing against and applying to all this line of examination—I will allow the question.

A. It is.

By Mr. Collins.

Q. In rheumatism and gout?

A. It is.

Q. And urinary calculi and gravel?

A. It is.

Q. In cholera infantum?

A. It is.

Q. In teething diseases of children?

A. Well, you mean in the diseases of teething children?

Q. Yes.

A. Yes, sir; it is perfectly consistent.

Q. In consumption?

A. I make the same answer.

Q. In neuralgia?

A. The same answer.

Q. In female complaints?

A. The same answer in a general way; those are not very definite, but the answer applies.

Q. In eczema?

A. The same answer.

Q. In gall stone?

A. The same answer.

Q. In convalescence from typhoid?

A. The same answer.

Q. In ulceration of the stomach?

A. It is consistent that it should be of medicinal value in that condition.

By the Court.

Q. What do you mean by "consistent;" that is a thing I don't quite understand?

A. I mean, your Honor, that a water presenting the mineralization that has been presented by this water, may possess an ordinary action in those diseases, and those diseased conditions, that is, its mineralization does not preclude its being of medicinal value.

By Mr. Collins.

Q. Is it consistent with the mineralization of this water that it should operate as an alterative?

A. It is.

Q. What have you to say as to the indications as a preventive from contamination of fevers?

A. If the water is a pure water, it would act as a preventive in the contamination of fevers, particularly of such fevers as are carried by waters.

Q. You said the last time you were on the stand, something about the necessity of the test of water clinically, in order to determine its medicinal action—what did you mean by that statement?

A. I gave a list of five different qualities to be considered in the water, and I mentioned that as one of the qualities, in order that we might judge completely of its medicinal action—I do not mean to infer that the mineralization itself and the other qualities mentioned, might not be judged of, as far as they show the condition of the water.

Q. Why is a gallon and a half of Bear Lithia Water insufficient to correctly determine the amount of lithia?

A. Well, a gallon and a half of Bear Lithia Water, showing the amount of lithium mentioned in the analysis of Prof. Mallet, would contain less, considerably less lithium than the amount of the correction that is necessary, on account of the inaccuracy of the method, and that correction is subject to slight variation with conditions. It is necessary in order that a correct determination of the amount of lithium be present, to take a sufficient amount of water to contain an amount of lithium that is considerably more than the amount of correction itself.

Q. What is that amount of correction?

A. Mr. Sparks, I think it was, testified that the amount of correction there was one and seven-tenths milligrammes; he did not state it in exactly that form, but that is the amount.

Q. And in your judgment—

A. If, for example, the amount that might be present is only one-tenth of a milligramme, and we apply a correction of one and seven-tenths milligrammes, that correction itself may be in error to the extent of one-tenth of a milligramme and may be even more than that. And therefore the amount of lithium present would be entirely lost sight of, and would not be properly accredited to the water.

Q. In the notes which you furnished me for your examination, I appear to have digressed, and did not return to one subject, to which I will now direct your attention—I will ask you what the conditions were necessary to observe in the correct determination of the amount of lithium in the natural mineral water, and you stated, "First, a sufficient amount of water," and then I went on, and I did not come back to another subject which I find in it here—what is the other condition?

A. The other condition is that the analysis shall be so conducted that the lithium will appear in the

separation in the right place, where it will be recognized. It happens that lithium is particularly apt to go down with other precipitates. Take the first precipitate of the water where the sulphates were precipitated as barium sulphate. The barium sulphate precipitated is apt to throw down with it, any of the alkaline salts, including lithium. This was first called to my attention by investigations that were conducted in Prof. Gooch's laboratory, the author of the Gooch method, the method that was used in this case.

Q. And it is a well known fact now among analytical chemists that we must not only watch a precipitate thoroughly, but that we must test it for lithium, and if we find lithium is present, we must fuse that precipitate with alkalines, redissolve the material that has thus been rendered soluble, and re-precipitate it in a new solution, and continue that operation until such time as the precipitate has been shown to be free from lithium. And that same precaution applies in other parts of the analysis.

Q. Then in your opinion, it is necessary to test the residue?

A. In my opinion it is necessary to test the residue.

THE COURT—Is this examination intended to overthrow the analysis of Prof. Mallet?

MR COLLINS—No.

THE COURT—That you assume to be correct, do you?

MR. COLLINS—Yes; we want to show that the methods of the defendant's analysis have not been correct.

Q. Have you anything further to say in criticism of the methods adopted by Mr. Sparks and Mr. Brooks?

A. That is all.

Q. Have you read the affidavit of Prof. Deghuee that says that he found in Bear Lithia Water as he analyzed it, 0.03 parts of lithium per million, or 0.002 grains per U. S. gallon—now, if you combined that quantity of lithium with the carbonates in this water, to form lithium carbonate, how much lithium carbonate would this affidavit indicate there is in the water?

A. It would indicate almost precisely the amount stated by Prof. Mallet, very slightly more.

Q. Prof. Deghuee's analysis is slightly more?

A. Yes, sir.

Cross-examination by Mr. Lichtenstein.

Q. Doctor, do you consider medicinal guidance necessary in the treatment of disease?

A. I do.

Q. If you had a patient under your care, suffering from a disease, that you considered would be benefited by the use of a mineral water, what would you do to determine upon a fit water to recommend?

A. I would select such a water which I felt would meet those conditions.

Q. And in order to do that would you examine the analyses of the various waters?

A. I would.

Q. And would you consider that you were capable of determining whether a certain water was fit water to use in that disease?

A. From the examination of the analysis?

Q. Yes?

A. No, sir; I would not; not necessarily.

Q. Why would you recommend a water if you

were not capable of determining its beneficial use?

A. Simply because I know of the value of the water from experience, in its use.

Q. Well, have all waters recognized values?

A. That is a very general question—I do not suppose they have; I suppose many waters there may be that we have not yet met with.

Q. You have had no experience with Bear Lithia Water?

A. No.

Q. So that by an examination of the analysis of Bear Lithia Water, you would not consider yourself capable of stating whether it had any medicinal qualities at all?

A. I would not consider myself capable of judging all of its medicinal qualities?

Q. How could you tell from the examination of the analysis of a water what its medicinal value was or was not?

A. You can only tell in part, because the mineralization is only one feature of the quality of the water that has to be considered.

Q. You would first make a very carful examination of your patient, and diagnose the cause of his disease?

A. I would.

Q. And that would be absolutely essential before recommending the use of a mineral water, would it not?

A. Before recommending the use of a mineral water for medicinal purposes, that is the way a physician would proceed.

Q. Why would it be necessary to first diagnose the case and recommend a particular water?

A. That is the proper way in which a physician treats his cases.

Q. It is the only proper way of treating cases, by the use of mineral waters, is it not?

A. For a physician, yes, sir.

Q. For an individual?

A. Well, I don't think I would say for an individual case—well, I will let it stand at that.

Q. You would not consider it proper, would you, doctor, for an individual indiscriminately, to take up a water which was supposed to be, or called a mineral water, and drink it for the purpose of treating himself for various diseases?

A. Well, that rests entirely with the individual, whether they wish to do it or not.

Q. You, as a physician, would not consider it proper, would you?

A. That would depend on the severity of the disease.

Q. The various mineral substances which go to make up the combined parts, or the component parts of a mineral water, have certain definite and well known therapeutic values, have they not?

A. They have certain definite drug values which are recognized.

Q. There is no particular ingredient in this water, doctor, in sufficient quantities, to be considered of drug value, in itself, is there?

A. Do you mean the mineral constituents?

Q. Yes, I mean the mineral constituents?

A. Yes, sir; there are constituents present in sufficient quantities to be of drug value.

Q. Have you ever prescribed for any patient yourself, any one of these minerals, for its drug value, in quantities as small as is contained in this water?

A. No, sir.

Q. Never?

A. Never.

Q. Have you ever heard of any physician prescribing any of these mineral matters for their drug

value, in such minute quantities, as are contained in this water, as shown by this analysis?

A. No, sir.

Q. Of Bear Lithia Water.

A. No, sir.

Q. Should any mineral water ever be used by any one, except upon the advice of a physician?

A. Oh, yes; certainly.

Q. To obtain its drug value?

A. It is entirely proper for them to obtain this drug value.

Q. And for the purpose of treating himself for the disease?

A. For minor ailments.

Q. Why would you not consider it proper for him to use a mineral water to treat himself for greater ailments?

A. Because, as a physician, I do not think that a patient should take that responsibility.

Q. It might be dangerous for a person to do so?

A. It might be in acute conditions and severe conditions.

Q. Why in acute conditions?

A. Well, because acute conditions are subject to more rapid variations.

Q. So that a person might use a mineral water in chronic conditions where he would not or could not use, and should not use it in the treatment of an acute attack?

A. That is a different matter; I said so when you were speaking about the advisability of their using, or the advisability of self-treatment—

Q. Take a person suffering from acute gout, for instance, would it be proper for such a person to indiscriminately use a mineral water without the advice of a physician?

Mr. Collins—I object to the question; we

are speaking of Bear Lithia Water, not other mineral waters.

Question withdrawn.

By Mr. Lichtenstein.

Q. Well, speak of Bear Lithia Water?

A. In that condition I do not think they would do themselves any injury by using Bear Lithia Water.

Q. But I thought you said in acute cases it might do an injury—the use of a mineral water?

A. I said in acute cases it was inadvisable for patients to treat themselves.

Q. By the use of mineral waters?

A. By the use of any form of medicine.

Q. It might turn an acute condition into a chronic condition.

A. Some conditions might be allowed to take a course which a physician would prevent it taking.

Q. Have you ever treated patients of your own, suffering from bladder trouble exclusively, with the use of water?

A. I may state here, and I think it will prevent, or help to prevent further questions that are immaterial, that my position is not that of a therapeutist, in the sense that I give medicine to patients; my work is mostly work in consultatien with other physicians; I talk over cases with physicians and advise them when they ask me in regard to treatment, so that I do not know whether to include my advice to physiciaus, or whether you refer exclusively to individual patients.

Q. Well, both your individual patients and those with which you come into consultation with?

A. There are cases in which we have advised the use of water, and in which that was the only agent that was employed.

Q. And there are othercases in which you have not advised it?

A. Yes.

Q. And would not advise it?

A. I do not recall any case in which I consider it objectionable in the case of bladder conditions.

Q. But there are cases in which you would not rely upon the use of mineral water alone?

A. Oh, yes, sir.

Q. Why?

A. Because I think that those cases would require other treatment.

Q. So that you cannot take all bladder troubles—there are numerous conditions of that trouble—and classify them as a whole, and say that a mineral water will cure all those diseases?

A. You can speak of bladder troubles in a general way, as being aided by a particular treatment.

Q. (Question repeated). So that you cannot take all bladder troubles—there are numerous conditions of that trouble—and classify them as a whole, and say that a mineral water will cure all those diseases?

A. A physician does not predicate that anything will cure anything.

Q. Take cases of gout; you have treated the various forms of gout, have you not?

A. I have advised in the treatment of the various forms of gout.

Q. And various forms of gout that you have treated by the use of drugs, not mineral waters?

A. Yes, sir.

Q. Then why would you use drugs instead of mineral waters?

A. Well, that is difficult to say; the treatment of that condition is largely emperical; it is not rational, and we try one thing and then another, according as the case appears to us.

Q. If mineral water were beneficial in the treatment of cases of gout, of course you would use it, would you not?

A. Not necessarily in every case; no, sir.

Q. If beneficial, why uot?

A. You cannot use every beneficial drug in given cases.

Q. Mineral water is spoken of as beneficial in general use, why would you not use it, then?

A. Perhaps I might.

Q. There are stages or conditions of gout in which you would not use a mineral water?

A. Well, I don't recall any stage of that kind at the present time.

Q. You would not say that a mineral water would be a cure for all cases of gout?

A. A physician does not say that anything will cure anything.

Q. Why not?

A. Because it is contrary to the ethics of the profession to say that we can do any particular thing; our services are employed, and we do the best we can.

Q. Is it because of the mere ethics of the profession that you say things will not cure?

A. Yes, sir.

Q. Is it not because of a well recognized fact that there is no known specific for various diseases?

A. That applies to where there are no known specific for the diseases.

Q. Well, you take cases of gout; no physician can be certain that he could cure a case of gout, can he?

A. Well, now, that requires an explanation of what you mean by curing a disease. If we have a disease that in its progress has produced an injnry, we may not be able to cure that injured condition, but we may stop the progress of the disease, and in

that sense cure the diseases. We may not be able to cure the injury, but we may be able to put an end to the progress of the initial disease, and in that sense, there are now many cases of gout cured.

Q. There are persons suffering from chronic gout; there is no known remedy for it, is there?

A. Chronic gout usually has reference to the injury already produced by the acute gout.

Q. Does not the acute attack continue in the chronic case?

A. It may or it may not.

Q. Is there any known remedy for the eradication of that continued condition?

A. I will say that this condition can be very much ameliorated by treatment.

Q. But not cured?

A. Well, in a considerable number of instances I think they may be cured.

Q. There is no known remedy or cure for rheumatism, is there?

A. Well, we have a specific for some forms of rheumatism.

Q. But not all forms of rheumatism?

A. Well, the word "rheumatism" is used in a very general sense; it applies to a condition where in chronic cases, to certain conditions which we now know is due to a great many different conditions and causes, and we are gradually classifying those causes under different headings, and so in these chronic cases, if we are speaking in a technical way, we use the word "rheumatism," whereas, if we are speaking in a general loose way, we might use the term "rheumatism"—

Q. You have not answered the question, doctor; I asked you this question: "There is no known remedy or cure for rheumatism?" and you answered, "well, we have a specific for some forms of rheu-

matism," and then I asked you, "But not all forms of rheumatism?" will you be kind enough to answer that question?

A. We have no specific that is of advantage in chronic rheumatism, which really is the after effect of acute rheumatism.

A. Well, in the treatment of the after effect of acute rheumatism, does not the acute condition continue?

A. Not necessarily.

Q. But where it does continue, that cannot be remedied—there is nothing known in the profession that will cure that condition?

A. Oh, yes, sir; it can be cured, I think.

Q. You hold, do you, that every form of rheumatism can be cured, then?

A. I use the term "rheumatism" to apply to the gouty infectious disease—rheumatism is a gouty infectious disease, and that is an acute disease, and is curable.

Q. There are numerous and various forms of kidney disease?

A. Yes, sir;

Q. And you would not, for a moment, contend that all the various forms of kidney disease could be cured, or are even curable, would you?

A. No, sir.

Q. Are dropsical affections curable?

A. Yes, sir.

Q. All forms?

A. Well, no; dropsical affections may appear as the last stages in many serious conditions where the patient is dying.

Q. And that condition cannot be cured?

A. No, sir; that condition cannot be cured; the dropsical affection is a symptom, and not a disease.

Q. It is a very broad symptom?

A. Yes, sir; it is.

Q. In the treatment of the various forms of dyspepsia, would you, aside from the use of water, if you thought advisable to recommend the use of water, diet your patient?

A. Yes; if I thought it was advisable to do so, I would diet my patient.

Q. You would consider that absolutely essential, would you not?

A. Yes; I should consider it essential that the patient should eat the right diet, the right food.

Q. And take people who are suffering from gout and rheumatism; the same rule would apply, that you diet them?

A. I would see that they had proper food.

Q. If a person were suffering from kidney troubel brought on by the excessive use of intoxicants, you would advise him that he should desist from the further use of intoxicants?

A. Yes, sir.

Q. You would not consider that you were a faithful physician unless you did so?

A. Well, we found in the last few years that kidney troubles were due less to the use of intoxicants than we had thought they were. Alcohol does not affect the kidneys as much as it is credited with doing, in the lay mind.

Q. Then will you answer my question, please—you would not consider that you were a faithful physician unless you did advise your patient to desist from the further use of intoxicants, if you found that he was suffering from a kidney trouble brought on by the excessive use of intoxicants, would you?

A. No, sir; I would not.

Q. And you would not consider that the use of water would aid your patient, or do your patient any good, if you did not so advise him?

A. Oh, I would think the water would do them

good, even if they were not advised not to discontinue the alcohol.

Q. It would merely act as the diluent for the alcohol, would it not?

A. It would act in that way; I don't say that it would act in that way exclusively, or that that was its exclusive action, but I do say that it would act in that way.

Q. Would you recommend Bear Lithia Water on account of its specific mineral contents, or merely because of its slight mineral contents, such as appear in pure natural water?

A. Well, I give a preference to the Bear Lithia Water over some other natural waters on that ground; that is, on the ground of its specific mineral constituents.

Q. Which specific mineral constituents?

A. Well, I can state the mineral constituents as a whole in this way, that some spring waters are so very pure that they have an irritating action upon the stomach, upon the membranes of the stomach, on account of their extreme purity; they abstract the salts from the cells, and give rise in that way to irritating action. And where mineral is taken continuously, they are apt to cause a catarrhal condition of the stomach, and lightly mineralized waters tend to avoid that condition, and that is so particularly if it is slightly alkaline.

Q. So that the beneficial effect in your opinion, in prescribing Bear Lithia Water would be because of the slight amount of minerals in it?

A. No, sir; my reason, if I were intelligently to use Bear Lithia Water, would be because of my knowledge of its therapeutic value.

Q. But I thought you said that you had no knowledge of its therapeutic value, and could not obtain a knowledge of its therapeutic value unless you had a clinical knowledge of its use?

A. I said that you cannot have all knowledge of its therapeutic value—not all the knowledge of its therapeutic value; you cannot have all knowledge unless you have tried it, in its therapeutic work.

By the Court.

Q. Do you judge of the therapeutic value of this water from its analysis, or from the use of that water?

A. Well, I have not expressed any actual opinion as to the value of this water, that is, as to its composition; I only say that so far as its composition is concerned, it is consistent with its being of value in certain conditions.

By Mr. Lichtenstein.

Q. All mineral waters suffer deterioration in transportation, do they not, because of precipitation?

A. Why, that, I think, is too general a statement to make; I cannot say that it is true—mineral waters are apt to suffer—

Q. Why is it, then, that physicians generally or usually send their patients direct to the springs when they want to get any beneficial results from the use of mineral waters?

A. Because they have found them to act better; they get more beneficial results when they do send their patients to the springs.

By the Court.

A. And they don't know why?

A. Well, they have varying ideas; as to why, that is.

By Mr. Lichtenstein.

Q. You do call this an alkaline water?

A. Prof. Mallet calls it a slightly alkaline water, and I accept his statement.

Q. Should an alkaline water such as Prof. Mallet states this Bear Lithia Water to be, be used in the treatment of gout exclusively?

A. Not where it is a heavily alkaline water, perhaps—well, I would not even say that, on further thought.

Q. Now, you speak of the governmental analysis of various mineral waters and the methods laid down by the government officials, in analyzing mineral waters, and said that there was no official method—you have examined the work put out by Prof. J. K. Hayward, haven't you?

A. I have seen that bulletin; yes, sir.

Q. He is quite an authority on water in this country, is he not?

A. Why yes, sir; he is a competent analysist.

Q. And you know that he has analyzed very nearly all the mineral waters of this country, don't you?

A. He has analyzed some of the mineral waters of this country, I am willing to admit.

Q. Very nearly all, has he not?

A. I don't know that.

Q. Do you know of his analyzing Bear Lithia Water?

MR. COLLINS—I object to the question as not cross-examination.

COURT—I cannot say how that may be. I understood the witness to say that there was no official analysis.

MR. COLLINS—Nothing published by the Government as an official method; that is, as a guide to chemical analysis.

COURT—I will take the evidence.

A. I have seen his published analysis of Bear Lithia Water.

By Mr. Lichtenstein.

Q. And do you agree with him in his method of naming the mineral waters?

MR. COLLINS—I object to that as not cross-examination.

COURT—I will take it.

A. No, sir; I do not.

By Mr. Lichtenstein.

Q. And why not?

A. Because there are points, with which I disagree with him.

Q. You would not call a water by a certain name, which had certain ingredients which were prominent therapeutically, merely because it had those ingredients, would you?

A. That would depend upon the basis of the classification. We classify waters according to different points of view. If I was attempting to classify it according to its medicinal action, why, I would take such substances as I thought were associated with its medicinal action and name the water accordingly.

Q. Would it not be necessary for the ingredients to be prominent, therapeutically, in order to call it by a certain name, or by that name?

A. If I was attempting a therapeutical classification, I should want the ingredients to be prominent that gave it that name.

Q. Then you do not agree with Prof. Hayward in what he says, that it is a misnomer to call Bear Lithia Water, a "lithia" water?

A. I agree with Prof. Hayward, to the extent that, on the basis of chemical classification, which is the classification he adopts, on the basis of that classification, Bear Lithia Water and no other natural water, is a lithia water.

Q. Why do you say Bear Lithia Water and no other lithia water is a lithia water, in that sense, chemically applied?

A. Because there are no natural lithium waters in which the amount of lithium is a predominating chemical constituent.

Q. Would you consider a mineral that contains six and one-tenth grains to a gallon of lithium, that in that water lithium was a prominent factor?

MR. COLLINS—I object to the question as not cross-examination.

Question allowed.

A. I might anticipate, I think, by saying that you are referring to White Rock Water, and that is a water to which the lithium has been added, and it of course is not a natural lithium water.

Q. I am speaking of natural lithium waters; I am not speaking of White Rock at all, I am speaking of the Mount Clements Water—that is a natural lithium water, is it not?

A. Oh, yes, sir; that is entirely correct.

Q. Yes—well, would you consider a mineral water such as the Mount Clements Water, that contains six and one-tenth grains of lithium to the gallon, I say would you consider that was a prominent factor?

A. The amount of lithium—

Q. Will you answer the question, please—would you consider a mineral water such as the Mount Clements Water, that contains six and one-tenth

grains of lithium to the gallon, I say would you consider that was a prominent factor?

A. My answer is no, I do not call that a natural lithium water in a chemical sense.

Q. I asked you whether it was an important ingredient in such a water?

A. From what point of view?

Q. Therapeutically?

A. From the standpoint of the drug potency?

Q. Yes?

A. No, sir; it is not.

Q. Well, from its chemical standpoint?

A. No, sir; it is not.

Q. Why not?

A. Because it consists of only one-third of one per cent. of the solids present in the water.

Q. Then, why do you consider that the Bear Lithia Water has any drug potency?

A. I did not say that it had.

Q. You know that Congress Water contains over two grains to the gallon of lithiun?

A. I have seen that statement, yes, sir.

Q. And that the Carlsbad Water contains over two grains to the gallon of lithium?

A. Yes, sir.

A. And that Cheeve Water contains over one grain to the gallon of lithium?

A. Yes, sir.

Q. And that Magnetic Water contains over one grain to the gallon of lithium?

A. I don't know that.

Q. And that the Kaiser Water of Saratoga contains over one grain of lithium to the gallon?

A. I don't know that; I do know that it contains lithium.

Q. Prof. Hayward classes all of the waters that I have enumerated; as lithia water, does he not?

A. I think he does.

Q. But he does not regard the quantity of lithium in Bear Lithia Water—

COURT—That you have had already two or three times.

Question withdrawn.

By Mr. Lichtenstein.

Q. You have not made a specialty of the analysis of water, have you?

A. Yes, sir; I have specialized in that line.

Q. Do you know Prof. Stillman, of Stevens Institute?

A. Yes, I do.

Q. He has a world-wide reputation in the analysis of water, has he not?

A. Well, he has made extensive analyses.

Q. He is considered the best in this country' is he not?

A. Oh, no, sir.

Q. Do you know the quantity of water that the Chemical Department of Agriculture uses, in making their tests for the various spring waters for lithium?

A. Yes, sir.

Q. What is the amount?

A. As little as a pint.

Q. You said, if I recollect correctly, that the method of analyzing water for lithium as described in Bulletin No. 91, of the United States Government, Department of Agriculture, is not correct; is that so?

A. No, sir; I did not say that.

Q. Did you not say that certain other extra precautions were necessary to be taken, in addition to those laid down by the Department?

A. Yes, sir; it is incomplete.

Q. In what respect is it incomplete?

A. It does not describe the finer points of the analysis; it assumes that the analyist is himself capable of supplying those, I take it, and that is frequently the case in the pescription of chemical methods.

Q. Otherwise it is all complete?

A. Except as to the quantity of water it is using, it is correct.

Q. And a person following the method laid down by Prof. Haward in this bulletin, would arrive at the same results that you have arrived at, would he not?

A. Not necessarily.

Q. Do you think that any lithium is precipitated when barium chloride is added to get rid of the sulphates?

A. Yes, sir.

Q. Do you mean to say that the lithium is precipitated as salts of lithium?

A. It is precipitated as a double barium lithium sulphate.

Q. Is it not a fact that all lithium salts are soluble in water?

A. Not of the double barium lithium sulphates.

Q. Is it not a fact that lithium carbonate, as sold on the market, is soluble in water?

A. Lithium carbonate is so—it is soluble in water as sold on the market.

Q. How do you know that there is a double salt precipitate?

A. That is the explanation that chemists have given of the fact that the lithium is carried down, that is the explanation that has been offered in Prof. Gooch's labratory, where this subject—

Q. You have not made any tests with a view of ascertaining that fact, have you?

A. I have not studied that method myself; it is

a well-known fact, however, that it is not precipitated.

Q. Are not the salts of lithium, sodium and potassium very light in solubility?

A. Yes, sir.

Q. No sodium or potassium is precipitated by barium chloride, is it?

A. Oh, yes, sir; when the barium is precipitated as a sulphate, sodium and potassium is very apt to come down with it in the same form as a double barium salt.

Q. You spoke of the radio-activity of certain mineral waters?

A. I did.

Q. That is purely theoretical, is it not?

A. No, sir; it is a common fact; a well-known fact.

Q. Have you ever made any experiments in that line?

A. Not personally; I can refer you to official bulletins in the Department of Agriculture for it.

Q. Is it not a fact that radio-activity is due to the gases contained in the water, and not to the mineral matter?

A. That may be so or not.

Q. Has not that fact been established that surface waters have a much greater, or as much radio-activity as spring water?

A. No, sir; it has not.

Q. Don't you know that certain waters were investigated by Dr. Boltwood, U. S. Secretary of the Interior, and that this fact was well established?

A. No, sir; I know that there was an investigation made, but I know that Dr. Boltwood did not establish that fact.

Q. How do you determine, in the case of a natural water, if it has any radio-activity or not?

A. I have not determined that thing at all; I say

I have not personally determined it; I say it has been determined so far that the matter has been written upon and reported upon in the various bulletins, which I can refer you to, if necessary, or you should desire it.

Q. Why do you speak of it as a probability that this water may have some radio-active properties?

A. Why do I speak of that?

Q. Yes?

A. Because that is one of the things to be considered in judging of the medicinal value of water.

Q. You are speaking now of Bear Lithia Water?

A. Yes; I am speaking of the Bear Lithia Water, or any other water.

Q. The presence of lithium, is it not a fact, does not indicate at all that the water would contain any radio-active property?

A. It indicates it only to this extent and in this way, that the water contains these properties by passing through the dirt of the earth, or at least it obtains some of its properties in that way; that is the way the strata of the earth contains the raw metals; there you are apt to have associated with it radio-activity, and lithium is a rare metal, and on account of that association it seemed to me more probable that the lithia water would contain and show radio-activity than if it were not a lithium water.

Q. As the radio-activity property is not due to the lituium it is not due to the uranium?

A. It is due to the radio-activity imparted to the water, as I said before, by its passage through the various strata of the earth (interrupted)—

Q. Well, it is not due to uranium?

A. It is a disputed fact whether it is due to uranium or whether it is due to lithium associated with the other metals with which it came in contact on its passage through these various stratas—

Q. Well, is lithium due to uranium, thereamium or irridium?

A. That is a point we cannot ever know, because uranium is present in such very very minute quantities in mineral water, that until the present we have not provided a method whereby we had been able to examine for uranium, we would have to have a very much improved method for the examination for uranium, which might be present in very much less quantities than lithium and the other things we have spoken of as being contained only to the extent of a trace, and it might carry with it a greater amount of radio-activity going to this point, that although we might have an exceedingly minute quantity, yet we might have a very good effect from it.

Re-direct by Mr. Collins.

Q. Mount Clements water is a purgative water, is it not?

A. I do not recall, just now, what the action of Mount Clement water is.

Q. I hand you a pamphlet?

A. Oh, yes, sir; Mount Clement Water belongs to the class of waters, and many of those that have been mentioned as containing lithium belong to the class of waters that contain enormous quantities of other salts, so that the presence of lithium there, although in much larger quantities than in this Bear Lithia Water, they would not be able to take any amount of lithium because of the other qualities of the water.

Q. The so-called lithium waters in commercial use, all of them, contain small proportions of lithium, except White Rock, which you say is lithiated?

A. Yes, sir.

Q. I would like to ask you a few things about

Prof. Hayward; what he says about Bear Lithia Water is this, "The same may be said of this water, as was said in the paragraph preceding, in regard to the Augusta White Lithium Water?"

A. Yes, sir.

Q. And as what he says, "While there is some little variation between the advertised and the Bureau of Chemistry, it is no more than would be expected from two samples taken at different times, however; it is a misnomer to call such a water as this a lithia water,—that is what he says on that subject, is it not?

A. That is what he says on that subject, I believe.

Q. Now, we find what he is speaking about as to misnomer of lithia water here, don't we—where he says the same of Londonderry "lithia water," it is a misnomer in he name of Londonderry Lithia Water?

A. Yes, sir.

Q. And you find what he is talking about here; where he comes to speak of the Otterburn Lithia Water, the composition of this water, as determined by the Bureau of Chemistry, does not differ materially from the advertised analysis, however it is a misnomer to call it a lithia water, as it would take approximately one thousand litres to give a full medicinal doses of lithium?

A. Yes, sir.

Q. So that he is attempting to give a name by reference to the medicinal properties of the water?

A. Yes, sir.

Q. When you said a little while ago that you had not given or would not give, I forget which expression you used, as minute doses in the drug form as the minerals in this water, you meant as drugs, did you not?

A. As drugs; yes, sir.

Q. Not speaking about the administration of natural water?

A. No, sir; I was speaking with reference to the administration of these constituents as drugs.

Q. Prof. Hayward says it is a misnomer to call Buffalo Lithia Water a lithia water, too, does he not?

A. Yes, sir; he does.

Further cross-examination by Mr. Lichtenstein.

Q. Prof. Hayward speaks of lithia waters as medicinal waters, does he not?

A. Well, just what do you mean?

Q. Is not his classification of these waters, which contain lithia, and in his speaking of them as misnomers, is he not speaking of them as medicinal waters?

A. The man who made the classification is not qualified, I think—his work has been in the United States Geological Survey, and he knows nothing about medicine, or anything else pertaining to the use of mineral waters medicinally. His work has to do with the geological side of the subject. His classification is the Peale & Peale classification, but he is working, as I said before, in the geological survey. Now, Prof. Hayward has adopted his classification practically; but I think he agrees in my statement, that no waters are to be classified as lithia waters, chemically, but he does speak of them as lithia when they contain a certain amount of lithia.

By Mr. Collins.

Q. Prof. Hayward is a chemist, not a physician?

A. Yes; Prof. Hayward is a chemist, and not a physician in any sense.

By Mr. Lichtenstein.

Q. How did you determine that the amount of

lithium found to be contained in Bear Lithia Water, according to Prof. Deghuees' analysis, compare with the analysis of Prof. Mallet?

A. I did it in a number of ways; you will find it all worked out in Bulletin No. 91, under the head of Bear Lithia Water.

Q. How did you do it?

A. I multiplied the amount of lithium by five and seven-tenths, to convert it into lithium carbonate; that is, the relation to the weight of lithium, and the weight of lithium carbonate.

Q. Did Prof. Deghuees give it as a chloride, and not as a carbonate?

A. No, sir; he gives it as a lithium uncombined.

Q. You don't know in what form he found it?

A. He says lithium.

Q. He does not say whether lithium chloride or carbonate?

A. He reports it in the form of lithium.

By Mr. Collins.

Q. Prof. Mallet is a very distinguished chemist, is he not?

A. Oh, yes, sir; he is a very distinguished chemist.

CHARDES E. ARNAUD, a witness produced in behalf of the complainant, in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Collins.

Q. Were you, on the ninth of January, 1903, in the employ of the Bear Lithia Springs Co.?

A. I was.

Q. You are not now?

A. No, sir.

Q. Did your company, the Bear Lithia Springs

Company, supply the Orpheum Theatre, in Brooklyn?

A. Yes.

Q. Did you send a letter, of which this is a copy, made by you at the time, and if so, how was it addressed?

A. I sent this letter from my house, 574 Fifty-seventh street, Brooklyn, to the Bear Lithia Water Company, Liberty street, Broklyn.

Q. The Great Bear Spring Company had an office on Liberty street, had they not?

A. Yes, sir.

Q. And your company had none?

A. No, sir.

MR. COLLINS—I offer that letter in evidence. It is already marked C 75, for identification.

The letter reads as follows:

"574 Fifty-seventh Street,
Brooklyn, N. Y.,
Jan. 15, 03.

Bear Lithia Water Company,
Dear Sirs:

Having sampled your water at the Orpheum theatre last night, I would like to have you leave me a 5 gal. demijohn at my house, on the second floor of the above address, and oblige,

Yours truly,
C. E. ARNAUD."

Marked Exhibit C 74.

Q. Did you receive this reply thereto (handing witness paper).

A. Yes, sir; January 16th, 1903.

Q. In this envelope?

A. Yes, sir.

MR. COLLINS—This letter has already been marked C 76, for identification. I will now offer it in evidence. It reads as follows:

"Great Bear Spring Co.,

Brooklyn, N. Y.,
Jan. 16th, 1903.

Mr. C. E. Arnaud,

574 57th Street, Brooklyn, N. Y.

Dear Sir:

We are in receipt of your order of the 15th inst., and will say that our wagon will not be in your vicinity until the last Tuesday of this month, but if you desire a case in the meantime, we will send it by express c. o. d. 50c. and the expressage will be 25c.

Kindly advise us at your earliest convenience and oblige

Yours truly,
GREAT BEAR SPRING CO.
J. M. L."

Marked Exhibit C 76.

Q. You did order it?

A. I must have ordered it; I don't recall the order particularly, but it must have been ordered.

Q. You got that receipt (handing witness paper)?

A. Yes, sir; I got that receipt; it is a receipt that my wife got; it reads as follows: "Recd. Jan. 20/03, fifty cents for 1 case of Great Bear Water."

G. B. S. Co.
Garretson.

MR. COLLINS—I offer that rececept in evidence.

Marked Exhibit C 78.

Cross-examination by Mr. Lichtenstein.

Q. You have not a copy of the envelope in which you sent this letter, have you?

A. A copy of the envelope?

Q. The address?

A. No, sir; I do not have the envelope; I do not know where it is.

Q. Well, how do you remember where you addressed the envelope??

A. Well, I knew the Great Bear Spring Co. and it was there I sent it.

It is admitted on the part of the defendant as to the lawyer, Mr. Aldridge, who bought a case of water, that the defendant asked this gentleman to purchase the case of water from the Bear Lithia Co., and that he obtained this particular water that has been produced in the cause.

PHILIP B. JENNINGS, recalled in behalf of the complainant in rebuttal, saith:

Examined by Mr. Collins.

Q. Had you any knowledge of the sale of the case of water to Mr. Aldridge.

MR. LICHTENSTEIN—I object to the question as immaterial.

MR. COLLINS—I want to show that he did not have any knowledge of it; that is, as to the fact that the label contained on the bottle had the words "Bottled at the Spring;" that he had given orders that those labels should not be used, and this label was used on those bottles, without his knowledge.

THE COURT—He gave the orders that the labels should not be used; that is proved, I think; and you cannot make it any stronger than it now is.

Question withdrawn.

COMPLAINANT RESTS.

CASE CLOSED.

(ARGUMENT).