

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 1, 1945, TO JUNE 30, 1945

IN THE MATTER OF

G. C. COUNCIL TRADING AS DANVILLE ENGRAVING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5045. Complaint, Sept. 10, 1943—Decision, Jan. 16, 1945

Where an individual engaged in the manufacture and in the competitive interstate sale and distribution under the trade name "Decotones" of photoengraving plates, made on the standard halftone screen, and properly described as halftones; through statements in circulars distributed among prospective purchasers located throughout the United States, directly or by implication—

- (a) Represented that his photoengraving plates were etched to double the depth of standard plates, or twice as deep as those sold by his competitors, and for that reason produced a sharper, clearer, and more distinct impression than did his competitors';

The facts being that his plates were not, as thus represented, etched to double the respective depths prescribed by the "scale of standard depths for halftone plates," which was in general use in the photoengraving industry and represented the etching depth which it was desirable to obtain, but—aside from serious doubt as to whether it is possible to etch to double depth without doing harm to the plate—fell far short of being etched to such depth; further etching, after sufficient depth has been obtained, serves no purpose and is likely to injure rather than improve the plate; and etching of a plate to double depth, therefore, will not result in a sharper, clearer, or more distinct impression;

- (b) Represented that the wet plate process employed by him in making halftones required more skill, patience, and experience, and produced better negatives than the film or dry plate process used by his competitors;

The facts being that the film process was the more modern and was apparently supplanting the other, which, however, was still in use to some extent in the industry, some concerns using both processes; and the wet plate process does not require more skill, patience or experience than the other, or produce better negatives;

- (c) Represented that the cost of the plates produced by his competitors was higher than the cost of his plates because of the tax imposed on film, and that such increased cost is passed on to the consumer through higher prices, through such statements in said circular as "The new tax law now adds a TEN PER CENT TAX to the cost of DRY PLATES because such plates are prepared from the commercial film. Naturally, the engraver is NOT going to absorb this tax—You can judge for yourself who is going to pay for this extra cost—But if you order DECOTONES (Pro-

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cessed the WET PLATE way) you'll not only get a BETTER job—but will find that our prices have NOT advanced because this type of process is NOT taxed"; The facts being that the principal item of cost in the making of photoengraving plates is labor; and the tax on the film used in the film process has not appreciably affected the cost of plates to engravers, who have absorbed the small additional cost and have not passed it on to the consumer through higher prices; and

- (d) Represented that halftones produced by his competitors were composed of square dots, whereas the wet plate process employed by him produced round or "island" dots on the halftone screen, resulting in a sharper, clearer, and more satisfactory finished plate;

The facts being the shape of the dots in a halftone depends upon the manipulation of the camera and the etching operation, and these are the same, irrespective of the process used; halftones frequently contain both square and round dots, and there is no advantage in one over the other, and the differences between the two photographs in his advertising circular were due not to any difference in the shape of the dots composing the photographs, but solely to the fact that the better photograph was made from a good negative, while the poorer photograph was made from an inferior negative;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his products and to disparage the products of his competitors, and to induce such public to purchase substantial quantities of his products as a result, whereby substantial trade was diverted unfairly to him from his competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and his competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. J. Earl Cox*, trial examiner.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.
Allen, Dalbey & Foreman, of Danville, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that G. C. Council, an individual, trading as Danville Engraving Company, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, G. C. Council, is an individual, trading under the name and style of Danville Engraving Company, with his principal office and place of business located at 220 North Logan Avenue, Danville, Ill.

Respondent is now, and for several years last past has been, engaged in the making of photo-engraving plates and in the sale and distribution thereof by mail direct to the purchasers thereof located in various States of the United States. Respondent causes said photo-engraving plates, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said plates in com-

merce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, during the times mentioned herein, has been and is now in substantial competition with other individuals and with firms, partnerships and corporations engaged in the manufacture and sale of photo-engraving plates in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's photo-engravings are made on zinc, alloy or copper plates on the standard half-tone screen and are properly described as half-tones, although they are sold under the trade name "Decotones." Solicitation for the sale thereof has been principally by means of advertisements in trade journals and magazines and by means of circulars disseminated to prospective customers through the United States mails.

Among the representations made by respondent in said advertisements and circulars are the following:

DECOTONES produce a sharper, a clearer and more distinct impression because they are etched to double depth and are produced from the old tried and true WET PLATE process.

Now, there's a big difference between the WET PLATE process and the DRY PLATE (prepared from commercial film).

You see, some photo engravers prefer to use the prepared film process because it is easier, even though it is also more expensive and does NOT produce the BEST negative.

The WET PLATE process requires more skill; patience; and years of experience—

But this extra effort is truly worthwhile for YOU, the customer, as it gives you a printing plate that will produce a true, clear impression.

The new tax law now adds a TEN PERCENT TAX to the cost of DRY PLATE because such plates are prepared from the commercial film.

Naturally, the engraver is NOT going to absorb this tax—

You can judge for yourself who is going to pay for the extra cost—

But if you order DECOTONES (processed the WET PLATE way) you'll not only get a BETTER job—but will find that our prices have NOT advanced because this type of process is NOT taxed.

On an inside page of one of respondent's advertising circulars appears a girl's photograph with the following words beneath it:

A REGULAR HALFTONE

First, notice this regular halftone proof.

A 60 line screen is used, which is first composed of square dots. And while its physical make-up consists of shadow dots, middle tone and highlight dots, all remain more or less a SQUARE dot with the lines or sides of the dots running at a 45 degree angle

See for yourself with your own eyes what can be expected from an ordinary half-tone,

On the opposite page appears a girl's photograph, apparently identical with the following words beneath it,

DECOTONES

Now, study this picture.

Compare it with the one on the opposite page.

This is an actual sample of our high quality DECOTONE process which is etched deeper (double depth); dots are of a round formation (THE ISLAND DOT).

See this contrast—darker portions are darker; light portions are lighter; details are sharper and more distinct—

Surely, you can see the difference in the two illustrations—

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And if you will compare the pictures thoroughly, we're confident this comparison will prove to you more than mere words or claims, the difference—and show you exactly why YOU, too will always want to use our high quality Decotones.

PAR. 4. By means of the foregoing representations and others of similar import and effect, respondent has represented, directly and by implication and inference, that his photo-engraving plates are etched to double the depth of standard plates or twice as deep as those produced by his competitors, and for that reason produce a sharper, clearer and more distinct impression and are superior to plates produced by his competitors or by other processes; that the wet plate process of making halftones employed by respondent is a less expensive method and produces better negatives than the dry plate or film method employed by his competitors and the photo-engraving trade generally; that respondent's Wet Plate process requires more skill, patience and experience than the processes used by his competitors; that the costs of the plates produced by respondent's competitors are higher than his costs because of the ten percent tax on the cost of the dry plates or film used by his competitors and that this tax results in higher prices to the ultimate consumer for plates produced by his competitors compared to plates produced by respondent; and that half-tones produced by his competitors are composed of square dots whereas the Decotone process employed by respondent produces round or "island" dots on the half-tone screen, resulting in a sharper, clearer and more satisfactory finished plate.

PAR. 5. In truth and in fact, respondent's "Decotone" plates are not etched to twice the standard depths of plates produced by respondent's competitors, and in fact it is impossible to etch a photo-engraving to double the standard scale depth, because in so doing the dots in the half-tone screen would be so worn and broken down that they would not make satisfactory impressions. "Decotones" do not produce a sharper, clearer or more distinct impression and are not superior to plates produced by respondent's competitors or by other processes. There is no difference between the results obtained by the wet plate process and those obtained by the film or dry plate process, and the film or dry plate process is neither easier, more expensive or productive of less satisfactory negatives than the wet plate process employed by respondent, and does not require less skill, patience and experience than the wet plate process. The film or dry plate method of producing half-tones has been widely adopted in the photo-engraving industry because of the greater speed and volume of output obtainable by its use, and resultant decrease in labor costs per unit of output. In the photo-engraving industry labor costs amount to about 95 percent of the total cost of the finished product, and the greater speed of the film process makes that method of producing half-tones cheaper than the wet plate process employed by respondent. The ten percent tax on the materials used in the film process adds very little, if any, to the cost of the finished plates produced by respondent's competitors, and the prices charged to the ultimate consumer by respondent's competitors are not necessarily increased because of said tax.

All half-tone screens are composed of square dots regardless of what photographic materials or processes may be applied, and respondent's representation that the use of wet plate photography converts these square dots in the half-tone screen to round dots in the finished plate is unfounded in fact. The shape of the dots depends largely upon manipulation of the

camera, and round dots would be no more readily produced by the wet plate method than by the film method. Also, dots originally square may take on a rounded appearance due to the fact that the chemical solution used in a second or additional etching, often made to improve the tone values, tends to round off the corners to some extent. Round dots are not in any way peculiar to the plates produced by respondent, and ordinarily make no better reproductions than do square dots. The differences between the two photographs in respondent's advertising circular are due, not to different materials or methods of photography, but to deliberate manipulations by the respondent to indicate a superiority in plates produced by him as compared to those made by other processes. The defects apparent in the so-called "regular half-tone" result from an under-exposed and over-etched plate, and are not due to the employment of methods or materials commonly used by respondent's competitors.

The aforesaid statements contained in respondent's advertisements are not only false, misleading and deceptive to the purchasing public, but unfairly defame and disparage the products of respondent's competitors in that it is represented that respondent's products are superior to those of respondent's competitors, and require more skill, patience and experience to produce, and are less expensive, sharper, clearer and more satisfactory than the products of respondent's competitors, when such is not the fact.

PAR. 6. The use by respondent of the false, misleading and disparaging statements, representations and advertisements as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, misleading and disparaging statements, representations and advertisements are true, and induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondent's photo-engraving products. As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 10, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, G. C. Council, individually, and trading as Danville Engraving Company, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the

trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, G. C. Council, is an individual, trading under the name Danville Engraving Company, with his principal office and place of business located at 220 North Logan Avenue, Danville, Ill. Respondent is now and for a number of years last past has been engaged in the manufacture and sale of photoengraving plates. The plates are used by the printing trade in the reproduction of photographs, drawings and other copy.

PAR. 2. In the course and conduct of his business respondent causes his photoengraving plates, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his plates in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and has been in substantial competition with other individuals and with firms and corporations engaged in the manufacture of photoengraving plates and in the sale and distribution of such plates in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent's photoengravings are made on the standard half-tone screen, and are properly described as halftones. In addition to such general designation, however, respondent uses the trade name "Decotones" to describe his products, this name being a coined word made up as follows: "D" for Danville, the city in which respondent is located, "e" from the word engraving, "co" from company, and "tone" for what respondent considers the tonal value of pictures made from his plates.

Respondent advertises his products by means of advertisements inserted in trade journals, and also by means of circulars distributed among prospective purchasers through the United States mail. One of these circulars, of which some ten thousand copies were distributed among prospective purchasers located throughout the United States, contained the following representations:

DECOTONES produce a sharper, a clearer and more distinct impression because they are etched to *double* depth and are produced from the old tried and true WET PLATE process.

Now, there's a big difference between the WET PLATE process and the DRY PLATE (prepared from commercial film).

You see, some photo engravers prefer to use the prepared film process because it is easier, even though it is also more expensive and does NOT produce the BEST negative.

The WET PLATE process requires more skill; patience; and years of experience—

But this extra effort is truly worthwhile for YOU, the customer, as it gives you a printing plate that will produce a true, clear impression.

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Findings

The new tax law now adds a TEN PERCENT TAX to the cost of DRY PLATES because such plates are prepared from the commercial film.

Naturally, the engraver is NOT going to absorb this tax—

You can judge for yourself who is going to pay for this extra cost—

But if you order DECOTONES (processed the WET PLATE way) you'll not only get a BETTER job—but will find that our prices have NOT advanced because this type of process is NOT taxed—

(Commission's Exhibit No. 4)

On one of the inside pages of the circular there appeared the photograph of a young woman, and under the photograph the following:

A REGULAR HALFTONE

First, notice this regular halftone proof.

A 60 line screen is used, which is first composed of square dots.

And while its physical make-up consists of shadow dots, middle tone and high-light dots, all remain more or less a SQUARE dot with the lines or sides of the dots running at a 45 degree angle

* * *

See for yourself with your own eyes what can be expected from an *ordinary half-tone*.

On the opposite page there appeared another photograph of the same young woman, and beneath this photograph the following:

DECOTONES

Now, study this picture.

Compare it with the one on the opposite page.

This is an actual sample of our high quality DECOTONE process which is etched *deeper* (double depth); dots are of a round formation (THE ISLAND DOT).

See this contrast—darker portions are darker; light portions are lighter; details are sharper and more distinct—

Surely, you can see the difference in the two illustrations—

And if you will compare both pictures thoroughly, we're confident this comparison will prove to you more than mere words or claims, the difference—and show you exactly why YOU, too will always want to use our high quality DECOTONES—

PAR. 5. Through the use of these representations and others of similar import, respondent has represented, directly or by implication, that his photoengraving plates are etched to double the depth of standard plates, or twice as deep as those sold by his competitors, and that for that reason respondent's plates produce a sharper, clearer, and more distinct impression than do plates sold by his competitors; that the wet plate process employed by respondent in making halftones requires more skill, patience, and experience than the film or dry plate process used by his competitors, and that the wet plate process produces better negatives than the film process; that the cost of plates produced by respondent's competitors is higher than the cost of respondent's plates because of the tax imposed on film, and that such increased cost is passed on to the consumer through higher prices; and that halftones produced by respondent's competitors are composed of square dots, whereas the wet plate process employed by respondent produces round or "island" dots on the halftone screen, resulting in a sharper, clearer and more satisfactory finished plate.

PAR. 6. Photoengraving plates are made from zinc, copper, or an alloy metal. They may be made by either of two processes, the "wet plate" process or the film (dry plate) process. The essential difference between the two processes is that in the wet plate process the engraver begins with a piece of clear glass and applies to the glass the necessary sensitizing elements, thus actually making the plate-negative upon which the picture or other material is photographed. In the film process, commercial film is used. The film is ready for use when received by the engraver, that is, it does not have to be sensitized. In either case the image produced on the negative (wet plate, if the wet plate process is employed, or film, if the film process is used) is transferred to the metal plate, after which the engraver, by the skillful application of certain acids, etches the plate until sufficient depth has been obtained to bring out the various tones and details of the original photograph or other copy.

Of the two processes, the film process is the more modern and appears to be supplanting the wet plate process, although the latter is still being used to some extent in the industry. Some photoengraving concerns use both processes.

PAR. 7. There is in general use in the photoengraving industry a "Scale of Standard Depths for Halftone Plates." This scale represents the etching depths which it is desirable to obtain. Respondent's state ment that his plates are etched to "double depth" constitutes a representation that the plates are etched to double the respective depths prescribed by this scale. The evidence discloses that the plates fall far short of being etched to this depth. There is, in fact, serious doubt as to whether it is possible to etch to double depth without doing harm to the plate. After sufficient depth has been obtained, further etching serves no purpose and is likely to injure rather than improve the plate. The etching of a plate to double depth therefore will not result in a sharper, clearer, or more distinct impression.

The wet plate process does not require more skill, patience, or experience than the film process, nor will the wet plate process produce better negatives than the film process. The principal item of cost in the making of photoengraving plates is labor, and the tax on the film used in the film process has not appreciably affected the cost of plates to engravers using that process. Such small additional cost as the tax has occasioned has been absorbed by the engravers and has not been passed on to the consumer through higher prices.

The shape of the dots in a halftone depends upon the manipulation of the camera and the etching operation, and these are the same, regardless of whether the wet plate or the film process is employed in making the negative. The kind of process used does not affect the shape of the dots. Halftones frequently contain both square dots and round dots, and there is no advantage in one over the other. Round dots do not produce a sharper, clearer, or more satisfactory plate. The differences between the two photographs in respondent's advertising circular are due not to any difference in the shape of the dots composing the photographs, but are due solely to the fact that the better photograph was made from a good negative while the poorer photograph was made from an inferior negative.

PAR. 8. The Commission therefore finds that the representations made by respondent with respect to his products, as set forth in paragraphs 4 and 5 thereof, are erroneous and misleading.

PAR. 9. The use by respondent of these erroneous and misleading

representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products and to disparage the products of respondent's competitors, and the tendency and capacity to induce such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to respondent from his competitors.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, G. C. Council, individually, and trading as Danville Engraving Company, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's photoengraving plates in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's photoengraving plates are etched to "double depth," or to any depth in excess of that to which said plates are in fact etched.

2. That the etching of a photoengraving plate to double depth results in a sharper, clearer, or more distinct impression.

3. That the wet plate process of making photoengraving plates requires more skill, patience, or experience than the film or dry plate process, or that the wet plate process produces better negatives than the film process.

4. That the imposition of the tax on film used in the film process of making photoengraving plates has resulted in higher prices to consumers of such plates.

5. That the use of the wet plate process in making photoengraving plates affects the shape of the dots in such plates, or that round dots produce a sharper, clearer, or more satisfactory plate than square dots.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

HEALTHAIDS, INC., THE JOURNAL OF LIVING
PUBLISHING CORPORATION, AND VICTOR H. LINDLAHR

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4332. Complaint, Oct. 4, 1940—Decision, Jan. 18, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of its medicinal preparation "Serutan"; a second corporation engaged in the publication, sale and distribution of a monthly magazine and of various booklets, pamphlets, circulars and other written material directed to promoting the sale of Serutan; and an individual who (1) was editor of said "Journal of Living" monthly magazine, as well as of various books, pamphlets, circulars and other written material distributed by said corporations, and was employed by said manufacturing corporation to deliver radio talks constituting the principal feature of a program devoted to promoting sale of "Serutan," broadcast by numerous stations in various parts of the United States; (2) was licensed to practice as an osteopath upon the completion of a course at a college of osteopathy, attended by him after securing the equivalent of a high school education, and had secured a degree as doctor of medicine from an admitted diploma mill;

Acting in concert in advertising and promoting the sale of said "Serutan" to members of the public, under a general plan in accordance with which (a) said manufacturing corporation directly advertised said product and promoted said individual as "an eminent diet authority," "famous editor of the Journal of Living," "the eminent nutritionist," and by other designations, and promoted the "Journal of Living" and various books and pamphlets of said individual; said individual in his radio talks, books, pamphlets, and circulars promoted "Serutan" and the "Journal of Living," and the "Journal of Living" directly advertised "Serutan" and promoted said individual and his writings, which in turn promoted "Serutan," and essence of which plan (b) was to promote the sale and distribution of said product, and to do so in as indirect and apparently disinterested a guise as possible; whereby they were able to sell to the public publications which were actually advertisements of "Serutan" disguised with titles such as "Eat Your Way to Beauty—The Famous Lindlahr Beauty Diet," "Eat Stay Young—The Fountain of Youth," "How to Gain Weight—The Famous Lindlahr 7-Day Weight Gaining Diet," "The Famous Lindlahr 7-Day Reducing Diet," and which pointed out how essential "Serutan" was to whatever the purpose of the booklet might be—beauty, health, longevity, weight reduction, weight gain, or other objective—

Represented directly or by implication, through statements in advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets and other advertising literature that "Serutan" was of substantial therapeutic value in restoring and maintaining natural elimination, that it stimulated and strengthened the digestive and eliminative organs and muscles and promoted normal and regular action on their part, constituted a cure or remedy for constipation, and possessed substantial therapeutic value in the treatment thereof;

The facts being that it did not constitute a cure or remedy for constipation, symptom usually of some other trouble for which the proper treatment is the ascertainment and correction of its cause; therapeutic value thereof being limited to the temporary relief afforded by its laxative action as a result of its bulk and irritant proper-