

*Failure to Label Poison—Contributory Negligence of Patron.*—Plaintiff, a farmer, who at times practised veterinary surgery, went to defendant's drug store and purchased a bottle of castor oil and some Rochelle salts, which he himself desired to take, and some sulphate of zinc to make a wash to be applied to a colt's foot. The salts and sulphate of zinc were wrapped in separate packages, and the latter was then attached to a bottle containing the oil by a rubber band. When plaintiff reached home, he placed the bottle and the package of sulphate of zinc, the two being still attached, on a shelf in his room, and the other package, containing the Rochelle salts, he placed on a shelf in a cupboard with medicine used by him in his veterinary work. A few days later, plaintiff desired to take a dose of the salts and his wife undertook to prepare the same for him. She used the sulphate of zinc, which was still attached to the bottle of castor oil, and plaintiff was made ill from taking the same. A statute required the druggist to label poisons, and there was evidence that there was no label on the sulphate of zinc, although there was positive evidence that there was. There was a verdict in favour of the plaintiff, which was upheld on appeal. The court sustained an instruction which told the jury that even if they found that defendant had failed to label the drugs, as required by law, yet that fact would not relieve plaintiff from the exercise of reasonable care and caution in using the same to prevent injury to himself, and if they further believed that plaintiff knew he had purchased sulphate of zinc with the Rochelle salts, and through his own negligence and want of reasonable care and caution, took the sulphate of zinc instead of the salts, and was thereby made sick and injured, he could not recover for such injury. The court also declared that a violation of the statute requiring labels to be placed on drugs sold would constitute negligence *per se*.

*Improperly labeling poison.*—In the leading case of *Thomas v. Winchester* (6 N.Y. 397), the agent of defendant, who manufactured vegetable extracts for medicinal purposes, put up belladonna, a deadly poison, in a jar and labeled it dandelion, and sold it to a druggist in New York, who in turn sold it to another druggist who put it up for the plaintiff in pursuance of a physician's pre-