

bond.¹⁰ The various Senate Reports as well as the hearings had on the several proposed bills makes it manifest to me that Congress understood the procedure looked to the entry of a decree of condemnation before release of the seized articles.¹¹

"Not only is the legislative history of sec. 304 helpful in determining its meaning, but a mere examination of the statute makes it clear that (1) an article may be proceeded against by libel when it is adulterated or misbranded; (2) once such an article is seized the issue of adulteration or misbranding must be determined by the court; (3) if the article is neither adulterated nor misbranded, it is released to the claimant; but (4) if it is adulterated or misbranded it may be disposed of only as provided by sec. 304 (d).. Destruction or release may only be had after decree.

"I reject the contention of the claimants that the articles may be released prior to judicial determination of whether they were misbranded. Accordingly, the motion of the Government to amend the order of May 21, 1942, is granted. An order may be submitted striking out those portions of the May 21st order which permitted a return of the seized goods."

On June 15, 1942, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled under the supervision of the Food and Drug Administration.

793. Misbranding of Emerson's Dead Shot. U. S. v. 18 Cans of Emerson's Dead Shot. Default decree of condemnation and destruction. (F. D. C. No. 6920. Sample No. 89121-E.)

On February 27, 1942, the United States attorney for the Southern District of New York filed a libel against 18 8-ounce cans of Emerson's Dead Shot at New York, N. Y., alleging that the article had been shipped on or about November 26, 1941, by the Emerson Products Co., Inc., from Newark, N. J.; and charging that it was misbranded.

Analysis of a sample of the article showed that it consisted essentially of calcium carbonate and fenugreek, with a small amount of a potassium compound, and not more than a trace of iron.

The article was alleged to be misbranded: (1) In that statements in the labeling which represented that it would be of value in the control, prevention, and removal of all species of worms infesting animals; in the control, prevention, and treatment of disease conditions of animals; and as a tonic and conditioner, were false and misleading since it would not be of value for such purposes. (2) In that it was a drug fabricated from two or more ingredients and the label failed to bear the common or usual name of each active ingredient.

On April 10, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

794. Misbranding of ADM Wheat Germ Oil. U. S. v. 141, 32, 21, and 17 Cans of Wheat Germ Oil With Accompanying Labeling. Consent decree of condemnation and destruction. (F. D. C. No. 5228. Sample Nos. 57684-E to 57687-E. incl.)

On July 28, 1941, the United States attorney for the Southern District of Iowa filed a libel against 141 quart cans, 32 4-ounce cans, and 38 pint cans of ADM Wheat Germ Oil with accompanying labeling at Des Moines, Iowa, alleging that the wheat germ oil had been shipped in interstate commerce within the period from on or about April 21 to on or about June 5, 1941, by Archer-Daniels-Midland Co. from Minneapolis, Minn.; and charging that it was misbranded.

Examination of samples of the article showed that it consisted of a bland oil possessing chemical and physical constants corresponding to those of wheat germ oil.

The article was alleged to be misbranded in that statements in the labeling which represented that it would be efficacious in the treatment and prevention of the various causes of breeding difficulties in cattle and other livestock, poultry, dogs, and foxes; that it would be efficacious in the treatment and prevention of sterility, impotency, failure to come on heat, missed breedings, false pregnancy, fetus resorption, abortion, premature birth, stillbirth, weak, puny

¹⁰ S. 1944, 73d Cong., 1st and 2d Sess.; S. 2800, 73d Cong., 2d Sess.; S. 5, 74th Cong., 1st and 2d Sess.; S. 5, 75th Cong., 1st and 3d Sess.

¹¹ For the various Senate Reports and the hearings on the proposed bills, see Dunn, *Federal Food, Drug, and Cosmetic Act (1938)*, pp. 46, 61, 102, 206, 642, and 1,263 *et seq.*

calf, poor lactation, and diseases of the reproductive organs in cattle; and that it would be efficacious in the treatment and prevention of nonfertility, 4th day embryonic death, leukemia, poorly developed pullets, poor reproductive development, slow maturity, weak chicks, poor egg yield, poor hatchability, and various diseases in poultry; and that it would be efficacious in the treatment and prevention of sterility, impotency, partial fertilization, fetus resorption, abortion, stillbirth, weak, puny runts, poor lactation, mortality during nursing, diseases of reproductive organs, and small unprofitable litters in hogs, were false and misleading since it would be of no value for such purposes.

On June 16, 1942, the shipper and consignee, claimants, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

NONSTERILE SURGICAL DRESSINGS

795. Adulteration and misbranding of adhesive strips and first aid kits. U. S. v. 286 $\frac{3}{4}$ Gross Packages of Sani+Cross Adhesive Strips and 4 $\frac{1}{2}$ Gross Top Emergency First Aid Kits. Default decrees of condemnation and destruction. (F. D. C. Nos. 7364, 7617. Sample Nos. 83892-E, 89872-E.)

The Sani+Cross Adhesive Strips and the absorbent cotton, gauze, and compress in the first aid kits were contaminated with living micro-organisms. The first aid kits were misbranded since the boxes containing the absorbent cotton, adhesive tape, and compress were much larger than necessary; and no statement of the quantity of contents appeared on any of the labels.

On April 23 and June 9, 1942, the United States attorneys for the Southern District of New York and the Eastern District of Louisiana filed libels against 286 $\frac{3}{4}$ gross packages of adhesive strips at New York, N. Y., and 4 $\frac{1}{2}$ gross first aid kits at New Orleans, La., alleging that the articles had been shipped in interstate commerce on or about January 27 and April 28, 1942, by Gero Products, Inc., from South Boston, Mass.; and charging that they were adulterated and misbranded.

The Sani+Cross Adhesive Strips were alleged to be adulterated in that their purity and quality fell below that which they purported and were represented to possess, i. e., they purported to be and were represented as being of such purity and quality that they were suitable for use on cuts and other wounds; whereas they were not suitable for such use since they were contaminated with living bacteria. They were alleged to be misbranded in that the following statements on the label, "Sani+Cross Adhesive Strips for Home, Factory, and Sport Use. Directions Wash wound with an antiseptic. Remove crinoline and apply gauze pad to the wound," were false and misleading since they represented and suggested that the article was a safe and appropriate bandage for first aid use on broken skin; whereas it was not safe and appropriate for such purposes.

The first aid kits were alleged to be adulterated in that they contained a package of an article which purported to be a drug recognized in the United States Pharmacopoeia, namely, absorbent cotton, but its quality or purity fell below the standard set forth in the pharmacopoeia since it was not sterile.

They were alleged to be misbranded (1) in that the statements, "First Aid Kit * * * For small cuts use 'Handi-Aid' or Adhesive Bandage * * * Be Prepared for Emergencies," were false and misleading when applied to kits containing items which were not sterile; (2) in that the labels failed to bear an accurate statement of the quantity of the contents; and (3) in that the containers were so made and filled as to be misleading.

On June 26 and July 3, 1942, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

796. Adulteration and misbranding of Blue Cross First Aid Kits. U. S. v. 83 $\frac{3}{4}$ Dozen Blue Cross First Aid Kits. Consent decree of condemnation. Product ordered released under bond for reconditioning and relabeling. (F. D. C. No. 7067. Sample No. 59769-E.)

The absorbent cotton in these first aid kits was contaminated with viable micro-organisms; and the outside container of the kits failed to bear statements of the quantity of the contents and of the quantity or proportion of the mercury derivative (mercurochrome) contained in one of the items, i. e., the bottle of mercurochrome solution.

On March 19, 1942, the United States attorney for the District of Maryland filed a libel against the above-named product at Baltimore, Md., alleging that