manufacturer of the effect of violations of the Act that result from the processing of his products by others for whom the manufacturer should not be liable.

"Neither the reported cases, nor the Committees' report deals with the question of the defense available to the shipper who holds a guaranty from the manufacturer.

"It is fundamental that the purpose of the Act is to protect the consumer. Public policy casts upon those who introduce foods, drugs and cosmetics into interstate commerce the duty of rigid inspection. They are charged with absolute responsibility for proper branding of their products. Public safety demands of them not only extreme care, but definite assurance of the quality of their products.

"It is the judgment of this court that no person may rely upon any guaranty unless, in introducing the product into interstate commerce, he has acted merely as a conduit through which the merchandise reaches the consumer.

"The protection of the exemption clause of the statute does not include within its ambit those who, in any way handle or process the product to which the guaranty attaches, if one has been given.

"The guaranty can be received in good faith, within the meaning of the statute, only if the shipper passes the product on in the same form as he receives it, without repacking it or subjecting it to any new hazards of adulteration or failure which were not present when the original guaranty upon which he relies was given.

"The facts in this case show the prophylactics were purchased by the defendants in bulk and that they repackaged and relabeled them. They shipped them in cartons bearing their own trade name.

"When this state of facts appears, in the judgment of the court, as a matter of law, the defense of the guaranty no longer is available to the defendants.

"Such an interpretation, the court believes, would be in accord with the intent of Congress, as reflected both by the general purpose of the Act and the language of the Committees in treating the extent of the defense available to the manufacturer.

"Since the defense of the guaranty is not available to the defendants, and since the evidence establishes every other element of the offenses charged, it is the judgment of the court that they must be found guilty of the violations charged in the information."

On February 11, 1947, the defendants having petitioned for a mitigation of the sentence, the court reduced the fine from $2,400 to $800.

2321. Adulteration and misbranding of prophylactics. U. S. v. Allied Latex Corporation. Plea of guilty. Fine, $5,400. (F. D. C. No. 5579. Sample Nos. 5557-E, 5558-E, 19662-E, 27493-E, 27494-E, 36368-E, 39501-E, 39985-E, 42958-E, 48610-E, 48611-E, 48613-E, 48615-E, 48616-E, 48618-E to 48621-E, incl., 50139-E, 51583-E, 51587-E, 51993-E, 51994-E, 54206-E, 54207-E, 62569-E, 74123-E, 74781-E.)

INFORMATION FILED: February 26, 1942, District of New Jersey, against the Allied Latex Corporation, East Newark, N. J.

ALLEGED SHIPMENT: Between the approximate dates of October 12, 1940, and September 23, 1941, from the State of New Jersey into the States of Georgia, Maryland, Massachusetts, Missouri, New York, Ohio, Pennsylvania, and Rhode Island.

LABEL, IN PART: "Smithies [or "Gems," "Thin-Tex," or "Seal-Test"] Prophylactics," "Liquid Latex," or "Dr. Robinson #333 Disease Preventative * * * Wilson-Robinson Co. Incorporated Boston, Mass."

NATURE OF CHARGE: Adulteration, Section 501 (c), the strength of the article differed from, and its quality fell below, that which it purported and was represented to possess. (Samples of the article were found to be defective because of the presence of perforations or holes.)

Misbranding, Section 502 (a), certain statements on the labels and on the article, which represented and suggested that the article was a prophylactic for protection against disease in man and would be efficacious in the prevention of disease in man, were false and misleading.

DISPOSITION: May 14, 1943, a plea of guilty having been entered, the defendant was fined $5,400.