

in livestock and found as a matter of law that the article was misbranded. The Court entered a decree of condemnation and ordered that the seized article be destroyed. This action was No. 2960 Civil, decided March 11, 1946.

"10. The claimant in this proceeding, J. P. Rosenbaum, the owner of the Hy-Life Mineral Company, appeared as claimant and contested the previous action decided in the United States District Court for the District of Wyoming.

"11. Subsequent actions were filed against other shipments of the article involved in this action in 1945 in the United States District Court for the District of Kansas, First Division, Civil Action No. 5366; in 1945 in the United States District Court for the District of Montana, Butte Division; and three other seizure actions in the District of New Mexico in May of 1952, Nos. 2048, 2049, and 2050. All of these actions resulted in default decrees of condemnation.

CONCLUSIONS OF LAW

"On the basis of the foregoing findings of fact, I hereby conclude as a matter of law:

"1. The seized article is a drug within the meaning of 21 U. S. C. 321 (g) (2).

"2. The article of drug was shipped in interstate commerce.

"3. The drug when introduced into and while in interstate commerce was misbranded within the meaning of 21 U. S. C. 352 [502] (f) (1), in that its labeling failed to bear adequate directions for use, since the labeling did not mention the disease condition for which the drug was intended, namely, bloat in sheep and cattle, nor did it bear any directions for use for that disease.

"4. The claimant, the Globe Seed & Feed Company, Inc., is in privity with the claimant, Hy-Life Mineral Company and J. P. Rosenbaum, its owner, having obtained its title to the seized article from the Hy-Life Mineral Company and J. P. Rosenbaum.

"5. The claimants are estopped by the principle of *res judicata* from contesting the issue as to whether the drug is effective in treating or preventing bloat in livestock, this issue having been decided adversely to them in prior litigation.

"6. The drug was misbranded while held for sale after shipment in interstate commerce within the meaning of 21 U. S. C. 352 [502] (a), in that the statements in its labeling which recommended it for the prevention, treatment or cure of bloat in sheep and cattle are false and misleading.

"7. The United States of America, libelant, is entitled to summary judgment as a matter of law since there exists no genuine issue as to any material fact."

In accordance with the above findings of fact and conclusions of law, the court, on April 7, 1953, entered a decree of condemnation and ordered that the product be destroyed.

4240. Misbranding of Dr. David Roberts veterinary drugs. U. S. v. 8 Cartons, etc. (F. D. C. No. 35304. Sample Nos. 20645-L to 20650-L, incl.)

LIBEL FILED: June 16, 1953, District of Minnesota.

ALLEGED SHIPMENT: Between the approximate dates of August 8, 1951, and March 23, 1953, by Dr. David Roberts Veterinary Co., from Waukesha, Wis.

PRODUCT: 8 8-ounce cartons of *Dr. David Roberts Diuretic*, 24 1-pound, 12-ounce cartons of *Dr. David Roberts Special Rx No. 63*, 2 14-pound cartons and 4 cases, each case containing 12 3-pound cartons, of *Dr. David Roberts Herd Iron Tonik for Cows*, 8 3-pound cartons of *Dr. David Roberts Herd Iron Tonik for Sheep*, 2 3-pound cartons and 24 15-ounce cartons of *Dr. David Roberts Worm Seed Rx No. 89*, and 1 12-pound carton of *Dr. David Roberts Poultry Rx No. 62* at Duluth, Minn., together with a number of booklets entitled "The Practical Home Veterinarian," a leaflet entitled "Take Good Care of Your Livestock and Your Livestock Will Take Care of You," and a price list entitled "Full Line of Veterinary Medicines prepared by Dr. David Roberts Veterinary Co.," which accompanied the products.

LABEL, IN PART: (Carton) "Dr. David Roberts Diuretic Active Ingredients: Juniper Berries Anise Licorice Salt Petre Sulphur Inert Ingredients: Rosin Sugar Bicarbonate of Soda Corn Starch 15%," "Dr. David Roberts Special RX No. 63 For Livestock At Breeding Time Ingredients: Nux Vomica (Strychnine $\frac{1}{12}$ grs. in each ounce) Carbolic Acid 1.6% Capsicum Demiana Wild Mustard Seed Cantharides Burdock Anise Black Haw Sulphur Corn Starch 24% Locust Beans 32% Feeding Lime," "Dr. David Roberts Herd Iron Tonik For Cows Ingredients: Nux Vomica (strychnine .25 grains in each ounce), Carbolic Acid 1%, Salol, Potassium Iodide, Iron and Copper Sulphate, Colombo Root, Anise, Black Haw, Poke Root, Sulphur, Epsom Salts, Sodium Bicarbonate, Manganese and Cobalt Sulphate. Ingredients: Starch, Phosphorus p. r. Cocoa Shells, Calcium, sugar carbohydrates, Malt products and Yeast vitamins B-G, Vitamin 'D' 2500 U. S. P. Units per ounce," "Dr. David Roberts Herd Iron Tonik For Sheep Active Ingredients: Nux Vomica (strychnine .25 grains in each ounce), Carbolic Acid 1%, Potassium Iodide $\frac{1}{5}$ %, Iron Sulphate, Copper Sulphate $\frac{8}{10}$ %, Gentian, Anise, Sulphur, Black Haw, Poke Root, Epsom Salts, Sodium Carbonate, Manganese, Cobalt. Inert Ingredients: Corn Starch, Bone Meal, Salt, Cocoa Shells, Locust Beans, Feeding Lime and Dehydrated Grains, Vitamin 'D' 2500 U. S. P. Units Per Oz.," "Dr. David Roberts Worm Seed Rx No. 89 For Common Worms in Livestock and Poultry Ingredients: Worm Seed (chenopodium) 7%, Quassia, Copper Sulphate 17%, Tobacco Dust (nicotine), Sulphate of Iron, * * * Rosin (comp.), Sulphur, Charcoal, Calcium Carb., Yeast Meal," and "Dr. David Roberts Poultry Rx No. 62 Active Ingredients: Dry Brewers Yeast Carbonate of Iron Capsicum Quassia Copperas Tobacco Mineral Oil Powdered Borax Toasted Bread (ground) Inert Ingredients: Salt Epsom Salts Ground Alfalfa Feeding Lime."

NATURE OF CHARGE: *Dr. David Roberts Diuretic.* Misbranding, Section 502 (a), certain statements in the above-mentioned price list and booklets were false and misleading. The statements represented and suggested that the article was an adequate and effective treatment for faulty kidney action in all animals, red water in cattle, azoturia or paralysis of the hind parts, and kidney disease in horses. The article was not an adequate and effective treatment for such conditions.

Dr. David Roberts Special Rx No. 63. Misbranding, Section 502 (a), the statements on the carton label and in the above-mentioned price list and booklets were false and misleading. The statements represented and suggested that the article was an adequate and effective treatment for breeding troubles of cows, mares, and sows, slow breeders or failure to conceive in cows, slow breeding or failure to conceive in mares, and abortion ("Sows Losing Pigs") in sows; that it would stimulate breeding in cows, mares, and sows, and would act as a tonic and a regulator for the genital organs of livestock. The article was not an adequate and effective treatment for such conditions, and it would not fulfill the promises of benefit stated and implied.

Dr. David Roberts Herd Iron Tonik for Cows. Misbranding, Section 502 (a), certain statements on the label of the article and in the above-mentioned price list, leaflet, and booklets were false and misleading. The statements represented and suggested that the article was an adequate and effective treatment for cows that were not doing well, overworked cows, eye diseases, fistula, genital organ disorders, superficial itch and skin diseases, such as eczema, and mange, lump jaw or actinomycosis, and warts of cattle, calf scours in-

nursing calves when administered to the cows, inflammation of the testicles of bulls, and sleeping sickness in horses; that it was an adequate and effective preventive against bloat and ketosis (acetonemia) in cattle; that it would restore cattle to a normal, healthy condition regardless of the condition before using, and keep herds of cattle profitable, healthy, and producing at top quality; and that it would aid digestion, tone up the system, promote vigor, build up the quality of the blood, and restore a normal flow of milk in cows. The article was not an adequate and effective treatment or preventive for such conditions, and it would not fulfill the promises of benefit stated and implied.

Dr. David Roberts Herd Iron Tonik for Sheep. Misbranding, Section 502 (a), certain statements on the label of the article and in the above-mentioned price list and booklets were false and misleading. The statements represented and suggested that the article was an adequate and effective treatment for catarrhal fever and colds, indigestion, pregnancy and lambing disease, foot rot, and lung worms in sheep; and that it would restore nervous, rundown, or unthrifty sheep to a normal, healthy condition, and would keep flocks of sheep profitable. The article was not an adequate and effective treatment for such conditions, and it would not fulfill the promises of benefit stated and implied.

Dr. David Roberts Worm Seed Rx No. 89. Misbranding, Section 502 (a), certain statements on the label of the article and in the above-mentioned price list and booklets which represented and suggested that the article was an adequate and effective treatment for removing bots from horses and all species of worms from livestock and poultry were false and misleading since the article was not an adequate and effective treatment for such purposes; the reference on the label to American worm seed (*Chenopodium*) and tobacco dust (nicotine) was misleading since it represented and suggested that such substances were present in such proportions in the article as to be of therapeutic significance when the article was administered as directed, whereas such was not the case; and the labeling of the article was misleading since it was designated on the label by a name which included the name of one of the ingredients in the article but not all such ingredients even though the names of all such ingredients were stated elsewhere on the label.

Dr. David Roberts Poultry Rx No. 62. Misbranding, Section 502 (a), certain statements in the above-mentioned price list and booklets were false and misleading. The statements represented and suggested that the article was an adequate and effective treatment for blackhead in turkeys, bowel trouble (coccidiosis), crop bound, diarrhea, gapes, leg weakness, and roup in poultry, and that it would restore poultry to a normal, healthy condition regardless of the condition before using. The article was not an adequate and effective treatment for such conditions, and it would not fulfill the promises of benefit stated and implied.

DISPOSITION: August 26, 1953. Default decree of destruction.

U. S. Department of Health, Education, and Welfare

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

4241-4260

DRUGS AND DEVICES

The cases reported herewith were instituted in the United States district courts by the United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare, and include, where indicated, the results of investigations by the Department, prior to the institution of the proceedings. Published by direction of the Secretary of Health, Education, and Welfare.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

WASHINGTON, D. C., *December 9, 1954.*

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* For presence of a habit-forming narcotic without warning statement, see Nos. 4248, 4249; omission of, or unsatisfactory, ingredients statements, Nos. 4247-4249, 4252; failure to bear a label containing an accurate statement of the quantity of the contents, Nos. 4247-4249, 4252; failure to bear a label containing the name and place of business of the manufacturer, packer, or distributor, Nos. 4247, 4248, 4252.