"In Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714, 13 L.R.A. (N.S.) 932, 14 Ann. Cas. 764, it was held that, while there is no rule permitting a person to disobey a statute with impunity at least once for the purpose of testing its validity, when such validity can only be determined by judicial determination and construction, a provision in the statute which imposes such severe penalties for disobedience of its provisions as to intimidate the parties affected thereby from resorting to the courts to test its validity practically prohibits those parties from seeking such judicial construction and denies them the equal protection of the law. In the present case, the action and proposed action of the Department would, under the averments of the bill, in effect deprive appellant of its property through the destruction of its business before the issues involved could be determined by the court. The result, therefore, would be little different than as though no provision had been made for judicial review. Such a course of conduct on the part of the Department amounts to arbitrary exercise of power, and is a deprivation of due process of law. It is not, therefore, a suit against the United States. *Philadelphia Co.* v. *Stimson*, 223 U.S. 605, 620, 32 S.Ct. 340, 56 L.Ed. 570; *Heath & Milligan Co.* v. *Worst*, 207 U.S. 338, 28 S.Ct. 114, 52 L.Ed. 236.

"A court of equity has jurisdiction to restrain by injunction the institution of a multiplicity of suits under such circumstances as are here present. In *Third Ave. R.R. Co.* v. *Mayor, etc., of N.Y.*, 54 N.Y. 159 (cited with approval in *Cave* v. *Rudolph*, 53 App.D.C. 12, 15, 287 F. 989), the municipal authorities had commenced 27 actions against the railroad company to recover penalties prescribed and imposed by city ordinances for running cars without a license. The railroad company brought an action to restrain the prosecution of more than one until that one could be finally heard and determined. The Court of Appeals ruled that, as the prosecution of all the suits would be unnecessarily oppressive, the interference of a court of equity was properly invoked and exercised. But it is contended that, 'If appellees should be enjoined in this case no practical relief would be afforded appellant, since under section 5 of the act the United States Attorney could proceed against various shipments of the product throughout the country when any health, food, or drug officer or agent of any State, Territory, or the District of Columbia should present satisfactory evidence of such violations.' This contention is without merit. The relief prayed for is against appellees to prevent them from causing seizures of practically all of appellant's product, and to this relief, under the admitted facts, appellant is entitled.

"The decree will be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

"Reversed and remanded."

No further action was taken in the case, all seizure proceedings in litigation at the time of the institution of the injunction suit having been terminated prior to the said decision of June 1, 1931, by the entry of judgments ordering destruction of the product, as reported in notice of judgment No. 18176.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20164. Misbranding of Sinapole ointment. U.S. v. 25 Large Jars, et al., of Sinapole Ointment. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 28650. Sample No. 2395-A.)

Examination of the drug product involved in this case disclosed that the article contained no ingredient or combination of ingredients capable of producing certain curative or therapeutic effects claimed in the labeling.

On August 15, 1932, the United States attorney for the District of New Mexico, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 25 large jars and 25 small jars of Sinapole ointment, remaining in the original packages at Santa Fe., N.Mex., alleging that the article had been shipped in interstate commerce on or about September 15, 1925, by the Sinapole Co., from Los Angeles, Calif., to Santa Fe, New Mex., and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis of a sample of the article by this Department showed that it consisted of an ointment with a petrolatum base containing volatile oils including mustard oil, 12.5 milliliters per 100 grams.

It was alleged in the libel that the article was misbranded in that the following statements appearing in the labeling, regarding its curative or therapeutic effects, were false and fraudulent: (Jar label) "Uses Pleurisy * * * Rheumatism, * * * Lumbago, Croup, * * * Sore Throat, Neuritis,

Pneumonia, Toothache"; (carton) "For Coughs * * * Congestion of Lungs, Pneumonia, Lumbago, Bronchitis, Croup, Sore Throat, Pleurisy, Rheumatism * * * Neuritis, Toothache, Sore Joints"; (circular) "Sinapole * * * quick relief to the most deepseated nerve pain. * * * Sinapole is used in the following ailments: Coughs and colds of the throat, chest and lungs, pneumonia, bronchitis, pleurisy, lumbago, rheumatism, neuritis, * * * toothaches, * * * and sore joints * * * In severe cases of neuritis, lumbago, rheumatism, * * * we recommend that you bathe the parts affected with hot water to open the pores of the skin, dry thoroughly and then rub Sinapole in well and you will find that you will get quick results."

On October 5, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20165. Misbranding of Scarlet Red salve. U.S. v. 23 Jars of Scarlet Red Salve. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 26130. I.S. No. 16050. S. No. 4435.)

Examination of the drug preparation involved in this case disclosed that the article contained no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed on the carton label and in an accompanying circular.

On March 30, 1931, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 23 jars of Scarlet Red salve, remaining in the original unbroken packages at Baltimore, Md., alleging that the article had been shipped in interstate commerce on or about December 29, 1930, by the Heilkraft Medical Co., from Boston, Mass., to Baltimore, Md., and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis of a sample of the article by this Department showed that it consisted essentially of petrolatum, containing boric acid, a zinc compound, eucalyptus oil, and a red dye (Scarlet R).

It was alleged in the libel that the article was misbranded in that the following statements appearing in the labeling, regarding the curative or therapeutic effects of the article, were false and fraudulent: (Carton) "Causes an active proliferation of the epithelium, and in such chronic conditions as partial skin grafts, ulcers following operation for infection, ulcers following burns, traumatic ulcers, specific ulcers, varicose ulcers, bed sores, and the like, the results have been in many instances nothing short of remarkable. All who have used the agent are enthusiastic in their praise of it"; (circular) "In the treatment of Indolent Varicose Ulcers, Sluggish or Non-granulating Wounds, Sores resulting from various Blood Diseases, Eczema, * * * etc."

On October 19, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20166. Adulteration and misbranding of Armstrong's granular effervescent lithia compound. U.S. v. Armstrong Chemical Co. Plea of nolo contendere. Fine, $25. (F. & D. No. 28050. I.S. No. 30584.)

This action was based on the interstate shipment of a drug preparation which was represented to contain caffeine citrated, and which, upon analysis, was found to contain no caffeine citrated.

On May 4, 1932, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Armstrong Chemical Co., a corporation, Boston, Mass., alleging shipment by said company, in violation of the Food and Drugs Act, on or about December 15, 1930, from the State of Massachusetts into the State of New Hampshire, of a quantity of Armstrong's granular effervescent lithia compound that was adulterated and misbranded. The article was labeled in part: "Armstrong's granular Effervescent Lithia Compound. Each heaping teaspoonful one drachm contains * * * one grain of Caffeine Citrated * * * Armstrong Chemical Company * * * Boston, Mass."

It was alleged in the information that the article was adulterated in that its strength and purity fell below the professed standard and quality under