

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.