On July 14, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a charitable institution after its labeling had been destroyed.

913. Misbranding of Ocean-Lax. U. S. v. 29 Bottles of Ocean-Lax. Decree of condemnation and destruction. (F. D. C. No. 6368. Sample Nos. 40885–E, 40886–E.)

On December 6, 1941, the United States attorney for the Eastern District of Pennsylvania filed a libel against 29 bottles of Ocean-Lax at Philadelphia, Pa., alleging that the article had been shipped in interstate commerce within the period from on or about July 3 to August 11, 1941, by the Mineralized Foods, Inc., from Baltimore, Md.; and charging that it was misbranded.

Analysis of the article showed that it consisted essentially of senna pods, purging cassia, rhubarb root, sea weed, and mint leaves. It contained a total mineral matter of 0.18 grain per tablet and total iodine of 0.4 milligram per tablet.

The article was alleged to be misbranded (1) in that its labeling failed to bear adequate directions for use since the directions on the label, "If necessary 1 to 2 Ocean-Lax Tablets before or after each meal and before retiring, with water or fruit juice, preferably unsweetened grapefruit juice, at least ½ glassful. Increase or decrease intake to meet individual requirements. For children over 4 years reduce intake to ½ or less," did not constitute appropriate directions for use of this laxative drug, since they provided for frequent and continued use which might result in injury to the consumer by establishing dependence upon laxatives to move the bowels; (2) in that the statement "Each Ocean-Lax Tablet averages approximately 1½ milligrams of natural organic food iodine," borne on the label, was false and misleading since each tablet contained only 0.4 milligram of iodine; (3) in that the designation "Ocean Lax," borne on the label, was false and misleading since the laxative ingredients in the article, senna pods, purging cassia, and rhubarb root, are not obtained from the ocean; (4) in that the statements on the label, "More Than A Laxative. Mineralized With Imported Sea Plants. Consists of an imported rare variety of Sea Vegetables, high in alkalinity and food minerals carefully blended with Senna Fruit, Peppermint Leaves, ripe fruits of Cassia Fistula and Chinese Rhubarb, U. S. P.," were false and misleading because the alkalinity of the article and the amount of minerals supplied by it were inconsequential, and because the label failed to reveal the material fact that sea plants and peppermint leaves do not contribute in a material respect to the effects of the article; and (5) in that the common or usual name of each active ingredient, required by law to appear upon the label, did not appear prominently placed thereon and in such terms as to render it likely to be understood by the ordinary individual under customary conditions of purchase and use, since the label did not show that the only active ingredients in the preparation were senna pods, purging cassia, and rhubarb root.

The libel alleged that the article was also adulterated and misbranded under the provisions of the law applicable to foods, reported in food notices of judgment.

On March 4, 1942, the Mineralized Foods, Inc., claimant, having filed an answer denying the adulteration and misbranding charges in the libel, and having filed a motion for removal of the proceedings to the District of Maryland in which District the claimant had its principal place of business, the court denied such motion, handing down the following opinion:

MOORE, *District Judge:* "This is a suit by the United States of America under the Federal Food, Drug & Cosmetic Act of June 25th, 1938, to condemn twenty-nine bottles more or less of a product called "Ocean-Lax." The libel charges adulteration and misbranding. The articles were seized in the city of Philadelphia, in the Eastern District of Pennsylvania, in the hands of Thomas Martindale and Company, and are still in this District.

"Motion has been filed by Mineralized Foods, Inc., claimant of the products seized, for an order to remove the case for trial to the District Court of the United States for the District of Maryland. The ground for the motion is that the claimant, Mineralized Foods, Inc., is a corporation having its principal place of business in the city of Baltimore, Maryland. The claimant relies upon the provisions of the act set out in Section 394 (a) (21 U. S. C. A. sec. 334) of which the pertinent portion is as follows: 'In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in

case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States Attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.'

"It is contended by the claimant that because its place of business is located in the District of Maryland and because the act provides that unless good cause to the contrary is shown by the Government it is entitled to have the Court specify a Court of 'reasonable proximity' to its principal place of business as the place of trial, it therefore necessarily follows that a removal order should be entered, and that the District Court for the District of Maryland is the proper place to which the case should be removed. The Government contends on the other hand that a proper interpretation of the Act, particularly in view of its legislative history, does not permit the Court to remove the case to the district of claimant's residence; in other words that the term 'reasonable proximity' must be held to exclude the claimant's own district.

"I do not find it necessary to decide this point in passing upon the motion. The parties having failed to stipulate with reference to any district to which the case should be removed, the Court's duty is to specify a district of 'reasonable proximity' *unless good cause to the contrary is shown.* I am of the opinion that whenever it appears that the seizure has been made and the libel filed in a district which is itself of 'reasonable proximity' to the claimant's principal place of business, that fact alone constitutes good cause against removal. The Eastern District of Pennsylvania is a district of 'reasonable proximity' to the claimant's principal place of business. The District Court for that district sits in the city of Philadelphia which is approximately one hundred miles distant from claimant's principal place of business. It is imposing no hardship upon the claimant in this instance to require the case to be tried in the district where the libel is filed. It appears that the seized products are situated in this district and were in the hands of a person other than the claimant when seized; and it is further stated by the Government that many of the witnesses are in this district.

"Claimant's motion will be denied. An order may be prepared and entered in accordance with this opinion."

On January 7, 1943, the claimant having withdrawn its claim and answer, judgment of condemnation was entered and the product was ordered destroyed.

DRUGS ACTIONABLE BECAUSE OF CONTAMINATION WITH FILTH

914. Adulteration and misbranding of milk of magnesia, chloroform liniment, ammonia water, and saturated solution of boric acid. U. S. v. Frank C. Garlett (Lee Drug Sales Co.). Plea of nolo contendere. Fine, $250. (F. D. C. No. 6458. Sample Nos. 65058–E, 65126–E, 65127–E, 65129–E, 65170–E.)

These products were sold under names recognized in the United States Pharmacopoeia or National Formulary, official compendiums, and differed in strength and quality from the standard prescribed therein. The boric acid was also contaminated, one lot with an oily substance and the other lot with mold.

On August 4, 1942, the United States attorney for the District of Colorado filed an information against Frank C. Garlett, trading as the Lee Drug Sales Co., Denver, Colo., alleging shipments on or about March 28, April 28, and June 3, 1941, from the State of Colorado into the States of New Mexico and Wyoming of quantities of the above-named drugs which were adulterated and misbranded. The drugs were labeled in part: (Bottles) "Garlett's Milk of Magnesia * * * Distributed by D. W. Garlett Drug Stores Cheyenne, Wyoming," "Lee's Saturated Solution of Boric Acid," "Hytest * * * Chloroform Liniment," or "Hytest * * * Ammonia Water"; (tags attached to bottles of liniment and ammonia) "Distributed By Hytest Drug Co. Denver, Colo."

The milk of magnesia was alleged to be adulterated in that it purported to be and was represented as a drug, the name of which is recognized in the United States Pharmacopoeia, but its strength differed from and its quality fell below the standard set forth therein since it contained not more than 6.11 percent of magnesium hydroxide, whereas the Pharmacopoeia provides that milk of