

NATURE OF CHARGE: Misbranding, Section 403 (a), the labeling was misleading in that it failed to reveal the fact that the article contained about 11 grams per 100 cc. of monochloroacetic acid, a poisonous and deleterious substance, which caused the article to be a poisonous and deleterious substance and which rendered it unwholesome and unsuitable for use as a component of food used by man.

DISPOSITION: On November 28, 1944, the C. O. and W. D. Sethness Co., claimant, having filed a petition for the removal of the case for trial to another jurisdiction, an order was entered directing the transfer of the case to the Eastern District of Wisconsin. Thereafter, the claimant filed an answer denying the misbranding of the product, and on July 2, 1945, the case came on for trial before the court. After consideration of the testimony of the parties and the arguments of counsel, the court, on September 4, 1945, handed down the following findings of fact and conclusions of law:

F. RYAN DUFFY, *District Judge*;

FINDINGS OF FACT

"1. On or about the 28th day of June, 1944 said C. O. & W. D. Sethness Company did ship and consign from Chicago, Illinois to Portland, Oregon said article so seized.

"2. That said article consists of a solution of monochloroacetic acid in water in the proportions of eleven grams of monochloroacetic acid to one hundred cubic centimeters of the article. Monochloroacetic acid is a poisonous and deleterious substance, and the article is a poisonous and deleterious substance.

"3. Said article was sold and shipped by claimant to be used as a component of food.

"4. When introduced into interstate commerce as aforesaid, the labeling of said article represented that it was a non-poisonous and harmless substance and failed to reveal the fact material in the light of such representation that said article is a poisonous and deleterious substance, and that by reason of said omission I find that said labeling was misleading within the meaning of Sec. 343 (a), Title 21, United States Code.

"5. That Esterex, when used in proportions not to exceed 500 parts per million of monochloroacetic acid, does not render foods or beverages injurious, deleterious or unsafe for human consumption.

CONCLUSIONS OF LAW

"1. That the said article under seizure is misbranded in violation of Sec. 343 (a), Title 21, United States Code, because its labeling is misleading within the meaning of Sec. 343 (a), and was introduced into interstate commerce in violation of Sec. 331 (a), Title 21, United States Code, and is subject to condemnation, pursuant to Sec. 334 (a), Title 21, United States Code. Let a decree of condemnation be entered accordingly, with costs against the claimant."

On September 4, 1945, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Federal Security Agency.

10002. Misbranding of Esterex. U. S. v. 15 Bottles of Esterex (and 8 other seizure actions against Esterex). Default decrees of condemnation and destruction. (F. D. C. Nos. 15339, 16130, 16158, 16159, 17262, 18014, 18016, 18825, 18953, 19137. Sample Nos. 13462-H, 20134-H, 20198-H, 20199-H, 21957-H, 23833-H, 23877-H, 23887-H, 25090-H, 33161-H.)

LIBELS FILED: Between March 5, 1945, and February 21, 1946, Western District of Oklahoma, Eastern, Western, and Northern Districts of Texas, Western District of Tennessee, Northern District of Ohio, and District of Kansas. An amended libel was filed in the Western District of Tennessee on January 28, 1946, to charge the product to be a food instead of a drug as originally charged.

ALLEGED SHIPMENT: Between the approximate dates of August 5, 1944, and November 26, 1945, by C. O. and W. D. Sethness Co., from Chicago, Ill.

PRODUCT: 108 1-gallon bottles of Esterex at Oklahoma City and Stillwater, Okla.; Temple, Corsicana, and Sherman, Texas; Toledo, Ohio; Memphis, Tenn.; and Winfield, Kans. Analysis disclosed that the product was an aqueous solution containing between 15 grams and 23 grams of monochloroacetic acid per 100 cc.

LABEL, IN PART: "Cosco Esterex * * * Contains Water and (Salts and Esters of Monochloracetic Acid)," "Cosco Esterex * * * a buffered aqueous solution of monochloracetic acid and its selected esters, salt, and glycerine. Directions for stabilizing purposes use ½ ounce to each gallon of bottling syrup, or to 6 gallons of finished drink," or "Cosco Esterex * * * an aqueous solution of monochloracetic acid and its salts and esters, glycerine, salt and certified food color. Caution: Esterex in its present concentrated form is caustic, is not a finished food and should be used with care * * * Directions when use of a stabilizer is indicated by good manufacturing procedure, add ½ ounce of Esterex to each gallon of bottling syrup, or to 6 gallons of finished drink."

NATURE OF CHARGE: Misbranding, Section 403 (a), the labeling of the article was misleading in that it represented to purchasers that the article was wholesome and suitable for use as a component of beverages used by man, whereas the article contained monochloracetic acid, a poisonous and deleterious substance; and the labeling failed to reveal the material fact in the light of the representations made, that the article contained a poisonous and deleterious substance.

DISPOSITION: Between April 17, 1945, and March 22, 1946. No claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

10003. Adulteration of grape juice. U. S. v. 1,086 Cans of Grape Juice. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 17187. Sample No. 31573-H.)

LIBEL FILED: August 24, 1945, Southern District of California.

ALLEGED SHIPMENT: On or about May 29, 1945, by the Monmouth Products Co., from Asbury Park, N. J.

PRODUCT: 1,086 5-gallon cans of grape juice at Los Angeles, Calif. This product was undergoing active fermentation.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: October 8, 1945. The Monmouth Products Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond for conversion into alcohol or brandy of any portion fit for such purposes, under the supervision of the Food and Drug Administration.

10004. Adulteration of grapefruit juice. U. S. v. 1,798 Cases of Grapefruit Juice (and 1 other seizure action against grapefruit juice). Consent decrees of condemnation and destruction. (F. D. C. Nos. 15892, 17196. Sample Nos. 20091-H, 22921-H.)

LIBELS FILED: April 9 and August 24, 1945, Eastern District of Missouri and District of Nebraska.

ALLEGED SHIPMENT: On or about March 5 and May 17, 1945, by the Christensen Products Co., from Weslaco, Tex.

PRODUCT: 1,798 cases, each containing 24 1-pint, 2-ounce cans, of grapefruit juice at St. Louis, Mo., and 555 cases, each containing 12 1-quart, 14-ounce cans, of the same product at Omaha, Nebr.

LABEL, IN PART: "Tom Boy 'flavor plus' [or "Fancy Red and White Brand"] Unsweetened Grapefruit Juice."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of maggots, insect eggs, fly eggs, and fly fragments; and, Section 402 (a) (4), the article had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: September 10 and November 5, 1945. The shipper and the consignee of the Omaha lot having consented to the entry of a decree, and the claimant of the St. Louis lot having admitted the allegations of the libel, judgments of condemnation were entered and the product was ordered destroyed.