

It was alleged in the libel that the article was misbranded in that the following statements appearing on the labels, regarding the curative and therapeutic effects of the said article, were false and fraudulent: "Health * * * The Unfailing Remedy for Laziness and a Drowsy, Tired, Sleepy Feeling. Relieves Indigestion * * * Biliousness * * * Dizziness, Sick Headache, Numbness or Chills, Kidney or Bladder Troubles, * * * Piles, Jaundice, Dropsy, Loss of Appetite, Weakness, Tired Feeling, Stimulates and Purifies the Blood."

On October 14, 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.*

20369. Adulteration of ether. U.S. v. 400 Cans of Ether. Default decree of condemnation and forfeiture. Product delivered to Government agency for laboratory use. (F. & D. no. 28889. Sample no. 1198-A.)

This case involved a quantity of ether, samples of which were found to contain peroxide, a decomposition product.

On September 12, 1932, the United States attorney for the Southern District of California, 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 400 cans of ether, remaining in the original unbroken packages at Los Angeles, Calif., alleging that the article had been shipped in interstate commerce on or about August 24, 1932, by the Mallinckrodt Chemical Works, from St. Louis, Mo., to Los Angeles, Calif., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Ether for Anesthesia."

It was alleged in the libel that the article was adulterated in that it was sold under a name recognized in the United States Pharmacopoeia, and differed from the standard of strength as determined by tests laid down in the said pharmacopoeia official at the time of the investigation, and its own standard was not stated on the label.

On November 4, 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 delivered to the chemical laboratory of the Bureau of Industrial Alcohol, at Los Angeles, Calif., to be used for purposes other than for anaesthesia.

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

20370. Misbranding of Numoss. U.S. v. Tina Rubano and Charles Rubano (C. R. Products Co.). Pleas of guilty. Fines, \$50. (F. & D. no. 28146. I.S. no. 48756.)

Examination of the drug product Numoss, on which this action was based, disclosed that the article contained no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects, claimed on the bottle and carton labels and on a display card and circular shipped with the article.

On September 15, 1932, the United States attorney for the Southern District of New York, 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 Tina Rubano and Charles Rubano, trading as the C. R. Products Co., New York, N.Y., alleging shipment by the said defendants in violation of the Food and Drugs Act, as amended, on or about January 9, 1932, from the State of New York into the State of New Jersey, of a quantity of Numoss which was misbranded.

Analysis of a sample of the article by this Department showed that it consisted essentially of ammonium chloride, a small proportion of creosote, Irish moss, sugar, and water.

It was alleged in the information that the article was misbranded in that certain statements, designs, and devices regarding its therapeutic and curative effects, appearing on the bottle and carton labels and the display card and in an accompanying circular, falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for coughs, bronchial coughs, all conditions of cough, acute and chronic bronchitis, bronchial asthma, spasmodic coughs, whooping cough and similar diseases of the respiratory organs, and

tubercular and influenza conditions; effective as a preventative for influenza and pneumonia; effective to stop coughs and as a treatment for coughs; effective as a distinct germicidal possessing antiseptic and prophylactic properties when used as directed; effective as a treatment in dry and persistent cough and to clear up cupitious or moist cough; effective as a treatment, remedy, and cure for hard, dry bronchial coughs, cupitious or moist coughs, hay fever, whooping cough, bronchial asthma, bronchitis, pneumonia, and influenza; effective as a relief for tubercular coughs and as a remedy to give instant relief and destroy the cause of bronchial coughs; and effective as a germ killer, when used as directed.

On September 21, 1932, the defendants each entered a plea of guilty to the information, and the court imposed fines totaling \$50.

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

20371. Misbranding of Vapex. U.S. v. 11 Dozen Cartons of Vapex. Hearing on demurrer to claimant's amended special plea. Demurrer sustained. Decree of condemnation and destruction, with forfeiture provision for release under bond for relabeling. (F. & D no. 24768. I.S. no. 017180. S. no. 3120.)

This action involved the interstate shipment of a drug preparation, known as Vapex, which failed to bear on the package or label a statement of the quantity or proportion of alcohol contained in the article.

On May 15, 1930, 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 11 dozen cartons of Vapex, remaining in the original unbroken packages at Baltimore, Md., alleging that the article had been shipped in interstate commerce, on or about April 28, 1930, by E. Fougere & Co., Inc., from New York, N.Y., to Baltimore, Md., and charging misbranding in violation of the Food and Drugs Act.

Analysis of a sample of the article by this Department showed that it consisted essentially of volatile oils, including lavender oil and menthol, and alcohol (67 percent by volume).

It was alleged in the libel that the article was misbranded in that the packages containing the article failed to bear a statement on the label of the quantity or proportion of alcohol contained therein.

On June 14, 1930, E. Fougere & Co. Inc., New York, N.Y., interposed a claim for the property and filed its answer praying dismissal of the libel. Subsequently claimant's answer was withdrawn and a special plea was entered. On December 22, 1931, the special plea having been withdrawn, claimant filed an amended special plea, to which the Government demurred.

The case was set for hearing on May 17, 1932, on briefs submitted by the Government and the claimant, no oral argument being made. On June 7, 1932, the court handed down the following opinion sustaining the Government's demurrer: (Chesnut, *D.J.*):

"In this proceeding at law (by the applicable statute called a libel) the Government seeks to condemn a quantity of 'Vapex', shipped in interstate commerce, on the ground that it is misbranded under section 8, paragraph 2, of the Food and Drugs Act of Congress (U.S.C., title 21, sec. 10).

"The misbranding is alleged to result from the failure of the package 'to bear a statement on the label of the quantity or proportion of any alcohol * * *, or any derivative or preparation of any such substances contained therein.'

"By its second amended plea filed February 12, 1932, the claimant, E. Fougere & Co., Inc., admits all the allegations of fact contained in the libel but, in opposition to the claimed condemnation, sets up the following contentions, in substance: (1) that the 'Vapex' as shown by the labels on the packages is 'a pure inhalant generally indicated in the treatment of head colds'; (2) that the directions for using it are to place a drop or two in the center of a folded handkerchief and inhale the vapor therefrom; (3) that the alcohol contained in the article 'has no office or property therein other than as a diluent or solvent of the essential oils contained therein.' From these facts in the plea the legal conclusions are drawn that (a) Vapex is not a drug within the meaning of the act; (b) the act properly construed does not apply to Vapex; (c) that if construed to apply to Vapex the act is unconstitutional in the absence 'of a showing that the alcoholic content of said article renders the same noxious or harmful to the public health.'