

digitalis per tablet), and another shipment had a potency of not more than 1.1 grains of digitalis leaves per tablet (equivalent to not more than 11.0 minims (0.7 cc.) of tincture of digitalis per tablet). Misbranding of the Digitos Tablets was alleged in that the aforesaid statements were false and misleading.

The tincture of digitalis was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia, but differed from the standard of strength, quality, and purity as determined by the test laid down therein and its own standard of strength, quality, and purity was not stated on the label. Misbranding was alleged in that the label statement "Tincture Digitalis U. S. P. XI" with respect to both lots, and the further statement "Biologically Standardized" with respect to one lot, were false and misleading when applied to an article that was materially subpotent.

On April 25 and June 2, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30624. Adulteration and misbranding of gauze pads. U. S. v. 60 Packages of Dispensary Gauze Pads. Default decree of condemnation and destruction. (F. & D. No. 45258. Sample No. 47281-D.)

This product was represented to be sterile but was contaminated with viable micro-organisms.

On May 2, 1939, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 60 packages of dispensary gauze pads at Washington, D. C.; alleging that the article was being offered for sale in the District of Columbia, in possession of the Kloman Instrument Co.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the professed standard under which it was sold, i.e., (carton) "Sterilized," since it was not sterile but was contaminated with viable micro-organisms.

Misbranding was alleged in that the statements on the label, "Dispensary Gauze Pads," "Sterilized After Packaging at 250° Fahr.," and "Prepared For The Medical Profession," were false and misleading, since the product was not sterile and was not suitable for dispensary use or for use by the medical profession.

On May 26, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30625. Misbranding of Zilatone. U. S. v. 18 Packages and 48 Packages of Zilatone (and 3 other seizure actions against the same product). Default decrees of condemnation and destruction. (F. & D. Nos. 30484, 30537, 30541, 30548. Sample Nos. 34487-A, 34762-A, 38271-A to 38274-A, inclusive.)

The labeling of this product contained false and fraudulent representations regarding its curative and therapeutic effects.

On May 26 and 29 and June 1, 1933, the United States attorneys for the Eastern and Western Districts of Pennsylvania and the District of Massachusetts, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 66 packages of Zilatone at Pittsburgh, Pa., 334 packages of Zilatone at Philadelphia, Pa., and 249 packages of Zilatone at Boston, Mass.; alleging that the article had been shipped in interstate commerce within the period from April 27 to May 18, 1933, by the Drew Pharmacal Co. from Buffalo, N. Y.; and charging misbranding in violation of the Food and Drugs Act as amended.

Analyses showed that the article consisted of tablets containing phenolphthalein, bile salts, pepsin, pancreatin, and extracts of plant drugs including capsicum, nux vomica, and a laxative drug.

The article was alleged to be misbranded in that certain statements on the box labels and in a circular shipped with it, regarding its curative and therapeutic effects, falsely and fraudulently represented that it was effective to increase digestion, to stimulate the liver, and to produce an increased flow of bile; effective in the treatment of chronic constipation, certain forms of gall-bladder disorders, and as a medical treatment for gallstones; effective in the treatment of auto-intoxication when due to intestinal stasis, of diseases of the biliary system, cholecystitis, and catarrhal conditions of the stomach and duodenum; effective to keep the intestinal tract free from cumulative toxic

matter; effective as a treatment of habitual constipation, intestinal putrefaction, and infections of the gall bladder and bile ducts; and effective to reestablish more nearly normal bowel and liver functioning.

On March 6 and 20 and April 6, 1939, the claims and answers of J. H. Cummings, trading as the Drew Pharmacal Co., having been withdrawn and no other claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30626. Adulteration and alleged misbranding of cold tablets. U. S. v. Strong, Cobb & Co., Inc. Plea of not guilty. Tried to the court. Judgment of guilty on adulteration charge; not guilty on misbranding charge. Fine, \$100. Judgment affirmed on appeal. (F. & D. No. 33759. Sample No. 42736-A.)

This product was represented to contain 1 grain of acetanilid and 0.625 grain of quinine sulfate in each tablet; whereas each tablet contained not more than 0.83 grain of acetanilid and not more than 0.56 grain of quinine sulfate.

On September 22, 1934, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Strong, Cobb & Co., Inc., Cleveland, Ohio, alleging shipment by said defendant in violation of the Food and Drugs Act, on or about January 21, 1933, from the State of Ohio into the State of Oklahoma of a quantity of cold tablets that were adulterated and misbranded.

The article was alleged to be adulterated in that its strength and purity fell below the professed standard and quality under which it was sold, in that each of said tablets was represented to contain 1 grain of acetanilid and 0.625 grain of quinine sulfate; whereas each tablet contained less than 1 grain, i.e., not more than 0.83 grain, of acetanilid, and less than 0.625 grain, i.e., not more than 0.56 grain, of quinine sulfate.

Misbranding was alleged in that the article contained acetanilid and its label failed to bear a statement of the quantity or proportion of acetanilid contained therein.

On February 1, 1935, the defendant, by its attorney, filed a demurrer and motion to quash, both of which were overruled, the court on March 6, 1935, handing down the following memorandum decision:

WEST, *Judge.* "The first count charges adulteration of a drum of cold tablets shipped by defendant in interstate commerce in that each of said tablets was adulterated, its strength and purity falling below the professed standard and quality under which it was sold.

"I do not agree with defendant's view that the professed standard of quality must be found in the label on the goods. The information charges that defendant made representations to the consignee by letters of the amount of acetanilid and quinine sulfate contained in the cold tablets; and that the tablets in fact contained less of these drugs than was so represented. The letters contained a professed standard within the meaning of section 8 of the Food and Drug Acts [sic]; and as the cold tablets fell below this standard, they were adulterated within the meaning of the same section and it was unlawful to ship them in interstate commerce.

"Count 2 charges misbranding of the same tablets in that while they contained acetanilid, the label on the cask or drum containing them failed to bear a statement of the quantity or proportion of acetanilid as mentioned in section 10 of the act. Defendant cites *U. S. v. 65 Casps* [sic] *Liquid Extracts*, 170 Fed. 449, affirmed 175 Fed. 1022, and claims that the facts when developed will bring the case within those decisions. But no such facts appear on the face of the information, and the cases have no present application. In this connection see *Hipolite Egg Co. v. U. S.*, 220 U. S. 45, at 52 et seq., where the court discusses these cases. At page 54 Mr. Justice McKenna says: 'All articles, compound or single, not intended for consumption by the producer, are designed for sale, and, because they are, it is the concern of the law to have them pure.' It is at least doubtful whether the Supreme Court holds the views expressed by the lower court in the Knowlton cases.

"But the allegations of the second count are sufficient to state a case of misbranding.

"The demurrer and motion to quash is overruled with exceptions to defendant."

Whereupon, the defendant, by its attorney, filed a plea of not guilty to the information, and the case came on for trial before the court, a jury having been waived. On February 14, 1938, the court adjudged the defendant guilty of the