

(To redeliver merchandise, to produce documents, to pay duties and charges due on final liquidation, etc., and to perform all conditions required by Part 3 of Title IV of the Tariff Act of 1922, and all other laws and regulations made in pursuance thereof.)

Of the actual intention of the parties there can be no doubt. We think the bond, though inartistically drawn, is adequate to express that intention.

Appellant relies upon several cases which it urges compel the conclusion that a bond omitting specific provisions required by statute will not be construed to contain them. *United States v. Starr*, 20 F. (2d) 803 (C. C. A. 4); *United States v. American Fence Construction Co.*, 15 F. (2d) 450 (C. C. A. 2); *United States v. Stewart*, 288 F. 187 (C. C. A. 8); *United States v. Montgomery Heating & Ventilation Co.*, 255 F. 683 (C. C. A. 5); *Babcock & Wilcox v. American Surety Co.*, 236 F. 340 (C. C. A. 8). *United States v. Starr, supra*, which may be taken as typical, was an action by materialmen to recover on a bond given by a contractor for the faithful performance of a contract with the United States. Neither the bond nor the contract, which the bond incorporated by reference, contained any obligation for the payment of laborers and materialmen. The contract did, however, require the contractor to furnish a bond for the protection of "laborers and/or materialmen, as may be required by the laws of the United States." The court denied recovery, refusing to construe the bond as incorporating the condition of a bond such as the statute specified. We think those cases do not control the construction of the bond now in suit. The bonds there involved made no reference to the statute and were conditioned only on performance of the contracts, which, as already stated, contained no obligation for the payment of materialmen. Although the contract bound the contractor to furnish a bond in the statutory form, there was nothing in the bond actually furnished to indicate that it was intended to be so conditioned. In the present case, however, the bond furnished expressly refers to the statute (section 486) and this reference would be meaningless unless construed as we have indicated.

The appellant requests us to take judicial notice that the form of the bond in suit (Customs Form 7553) was subsequently revised so as to provide expressly for redelivery of the merchandise when demanded by the collector (T. D. 45474, Treasury Decisions, Vol. 61, page 369). Assuming that such judicial notice is permissible, we cannot accept the argument based upon it. The Treasury Department's revision of Customs Form 7553 may well have been out of abundant caution, or for some other reason, and is by no means an administrative interpretation or admission that the original form did not bind the obligors to redeliver the merchandise to the collector. In our opinion the district court correctly construed the bond, and the judgments are affirmed.

W. R. GREGG, *Acting Secretary of Agriculture.*

**25056. Adulteration and misbranding of fluidextract of ginger. U. S. v. Rebecca Toy, Philip Toy, and the Empire Spice Co. Pleas of nolo contendere. Fines, \$9.** (F. & D. no. 26565. I. S. no. 026585.)

This case was based on an interstate shipment of fluidextract of ginger which was represented to be of pharmacopoeial standard. Examination showed that the article did not conform to the standard laid down in the United States Pharmacopoeia, since it contained rosin, an ingredient not prescribed by that authority; that it contained less alcohol than declared on the label; and that the labeling contained unwarranted curative and therapeutic claims.

On December 3, 1931, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Rebecca Toy and Philip Toy, individuals, and the Empire Spice Co., a corporation, Boston, Mass., alleging shipment by said defendants in violation of the Food and Drugs Act as amended, on or about February 20, 1930, from the State of Massachusetts into the State of Rhode Island of a quantity of fluidextract of ginger which was adulterated and misbranded.

The article was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia and differed from the standard of strength, quality, or purity as determined by the test laid down in that authority in that it contained rosin, and it contained 69.24 percent of alcohol; and 1,000 cubic centimeters of the article did not represent 1,000 grams of ginger; whereas the pharmacopoeia does not prescribe rosin as a constituent of fluidextract of ginger, and provides that fluidextract of ginger shall contain

not less than 78 percent of alcohol, and that 1,000 grams of ginger with not less than 78 percent of alcohol will represent 1,000 cubic centimeters of fluid-extract of ginger, and the standard of strength, quality, or purity of the article was not declared on the container. Adulteration was alleged for the further reason that the strength and purity of the article fell below the professed standard and quality under which it was sold, since it was represented to be fluidextract of ginger of pharmacopoeial standard and to contain approximately 85 percent of alcohol; whereas it did not conform to the standard prescribed in the said pharmacopoeia and contained less than 85 percent of alcohol, namely, 69.24 percent of alcohol.

Misbranding was alleged for the reason that the statements, "Absolutely Pure", "Fluid Extract of Ginger U. S. P.", and "Alcohol approximately 85%", borne on the bottle label, were false and misleading. Misbranding was alleged for the further reasons that the article contained alcohol and the label failed to bear a statement of the quantity or proportion of alcohol contained therein, and that certain statements appearing on the bottle label falsely and fraudulently represented that it was effective as a family medicine for the relief of cramps and diarrhoea.

On August 5, 1935, the defendants entered pleas of nolo contendere and were each fined \$3.

W. R. GREGG, *Acting Secretary of Agriculture.*

**25057. Misbranding of Liq Medc in Bulk. U. S. v. Austin E. Dolan, trading as Dolan Drug & Chemical Co. Plea of nolo contendere. Fine. \$10.** (F. & D. no. 28173. I. S. no. 029678.)

The package of this article failed to bear a statement on the label of the quantity or proportion of alcohol in the article.

On February 14, 1933, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Austin E. Dolan, trading as Dolan Drug & Chemical Co., Chelsea, Mass., alleging shipment by said Dolan, in violation of the Food and Drugs Act, on or about February 24, 1930, from Boston, Mass., to Cincinnati, Ohio, of a quantity of a drug described as Liq Medc in Bulk which was misbranded. The article was labeled in part: (Barrels) "Dolan Drug & Chem. Co., Boston, Mass. 454-86."

Analysis of a sample of the drug disclosed that it was not fluidextract of ginger, U. S. P., but a mixture of substances including alcohol (83.36 percent by volume), rosin, and tricresyl phosphate (2.2 grams per 100 cubic centimeters of the article).

Misbranding was charged in that the article contained alcohol, and the label on the package failed to bear a statement of the quantity or proportion thereof in the article.

On August 19, 1935, a plea of nolo contendere was entered and a fine of \$10 was imposed.

W. R. GREGG, *Acting Secretary of Agriculture.*

**25058. Misbranding of Ray X Water. U. S. v. Nine Cases of Ray X Water. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 30063. Sample no. 4608-A.)**

The label of this product bore a statement and a design that misrepresented its composition, and contained unwarranted curative and therapeutic claims.

On October 27, 1933, the United States attorney for the Northern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of nine cases of Ray X Water at Ft. Wayne, Ind., alleging that the article had been shipped in interstate commerce on or about February 27, 1933, by the Ray X Corporation, Toledo, Ohio, from that place to Fort Wayne, Ind., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Bottle) "One Gallon \* \* \* Ray X Registered U. S. Pat. Office Ray-X-Corporation 337 20th Street Toledo Ohio."

The bottle label bore a circular design with lines radiating from it and the term "Ray X" forming a part of such design.

Analysis showed that the article consisted of water containing small proportions of salts in solution and that it possessed no radioactivity.

The article was alleged to be misbranded in that appearing upon and within the packages and cases of the article were statements importing and implying