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

magnesia shall contain not less than 7 percent of magnesium hydroxide; and its difference in strength and quality from the official standard was not plainly stated on the label. It was alleged to be misbranded in that the statement "Milk of Magnesia U. S. P.," appearing in its labeling, was false and misleading.

The chloroform liniment 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 38.1 percent of alcohol by volume, whereas the Pharmacopoeia provides that it shall contain from 43 to 47 percent of alcohol by volume; and its difference in strength and quality from the official standard was not plainly stated on the label. It was alleged to be misbranded in that the statement "Chloroform Liniment * * * Alcohol 45% to 47%," appearing in its labeling, was false and misleading. It was alleged to be misbranded further in that it was in package form and did not bear a label containing an accurate statement of the quantity of contents since the bottle label bore the statement "One Pint," whereas the bottle contained not more than 14.6 fluid ounces of the drug.

The ammonia water 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 7.54 grams of ammonia per 100 cc., whereas the Pharmacopoeia provides that ammonia water shall contain not less than 9 grams of ammonia per 100 cc.; and its difference in strength and quality from the official standard was not plainly stated on the label. It was alleged to be misbranded in that the statement "Ammonia Water U. S. P.," appearing in its labeling, was false and misleading; and in that it was in package form and its label failed to bear the name and place of business of the manufacturer, packer, or distributor of such drug.

The saturated solution of boric acid was alleged to be adulterated in that it consisted in whole or in part of a filthy substance; and in that it purported to be and was represented as a drug, the name of which is recognized in the National Formulary, but its strength differed from and its quality fell below the standard set forth therein since one shipment of the drug contained not more than 3.1 grams of boric acid per 100 cc. and the other shipment contained not more than 3.75 grams per 100 cc., whereas the Formulary provides that solution of boric acid, which is a synonym for saturated solution of boric acid, shall contain not less than 4.25 grams of boric acid per 100 cc., and its difference in strength and quality from such standard was not plainly stated on the label. This drug was also alleged to be misbranded in that the statements appearing on its label "Saturated Solution of Boric Acid," and "As an eye wash, use full strength in an eye cup as often as necessary," were false and misleading since they represented that the drug was a saturated solution of boric acid and that the drug would be suitable for use as an eye wash, whereas it was not a saturated solution of boric acid and it would not be suitable for use as an eye wash by reason of the fact that one shipment of the drug was contaminated with an oily substance and the other shipment was contaminated with a moldy substance.

On February 25, 1943, the defendant having entered a plea of nolo contendere, the court imposed a fine of $25 on each of the 10 counts, totaling $250.

915. Adulteration of Athlete's Isopropyl Alcohol Compound. U. S. v. The Spark'l Paulette Co., Inc. Plea of guilty. Fine, $1,000. (F. D. C. No. 7677. Sample No. 77201–E.)

On April 3, 1943, the United States attorney for the Eastern District of New York filed an information against the Spark'l Paulette Co., Inc., Brooklyn, N. Y., alleging shipment on or about April 20, 1942, from the State of New York into the State of Pennsylvania of a quantity of Athlete's Isopropyl Alcohol Compound which was adulterated.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy substance by reason of the presence therein of rodent hairs, human hairs, insect larvae, metal fragments, rust, and miscellaneous dirt. It was alleged to be adulterated further in that it had been prepared and packed under insanitary conditions whereby it might have become contaminated with filth.

On April 22, 1943, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $1,000.