

"4. The petition filed by plaintiffs herein does not disclose any cause of action against the defendants named therein since said defendants do not and are not authorized to institute libel for condemnation or other suits in any court of the United States, and there is no mandatory duty vested in United States Attorneys or the Department of Justice to institute libel for condemnation or other suits on referral by or recommendation of defendants.

"5. The plaintiffs herein have not established that they have suffered or will suffer any irreparable or legal injury by the institution of libel for condemnation actions under the Federal Food, Drug, and Cosmetic Act against their product Pso-Ridisal.

"6. Since the petition filed by plaintiffs herein sought to restrain defendants, officials of the Federal Government, from performing their statutory functions, the action instituted by plaintiffs herein was a suit against the United States which had not consented to be sued, and this Court does not have jurisdiction of the subject matter of this action.

"7. The petition filed by plaintiffs herein establishes no grounds for equitable relief and fails to state facts which entitle the plaintiffs to the relief sought by them.

"8. The motion made by plaintiffs herein for a preliminary injunction should be denied.

"9. The motion made by defendants herein to dismiss this action and for summary judgment should be granted.

"Let the foregoing Findings of Fact and Conclusions of Law be filed, and order and decree be entered accordingly."

DRUGS FOR VETERINARY USE*

2141. Misbranding of Federal Swine Compound. U. S. v. Joseph Borkovec (Federal Chemical Co.). Plea of not guilty. Tried to the court and jury. Verdict of guilty. Fine, \$500 and costs. (F. D. C. No. 17843. Sample Nos. 19227-H, 19228-H.)

INFORMATION FILED: April 12, 1946, Northern District of Illinois, against Joseph Borkovec, trading as the Federal Chemical Company, Willow Springs, Ill.

ALLEGED SHIPMENT: The product, together with a number of leaflets entitled "Information Blank" and a number of pamphlets entitled "Stop Hog Losses," was shipped from the State of Illinois into the State of Iowa. The product was shipped on or about March 27, 1945, and the leaflets and pamphlets were shipped on or about March 5, 1945.

LABEL, IN PART: "Federal Original Swine Compound An All Liquid Hog Medicine * * * Oats Medicine * * * Drinking Water Medicine * * * Jess W. Jones, Willow Springs, Illinois (Owner and Producer Since 1917) Formerly Federal Chemical Company, Omaha, Nebr."

NATURE OF CHARGE: *Oats Medicine* and *Drinking Water Medicine*. Misbranding, Section 502 (a), the label statements "An All Liquid Hog Medicine * * * A Tested Prescription * * * Treatment Consists of Two Different Medicines, Oats Medicine [or "Drinking Water Medicine"]," as well as certain statements in the leaflets and pamphlets which accompanied the articles were false and misleading since they represented and suggested that the articles when used in combination would be efficacious in maintaining hogs in good condition and in bringing back to normal condition hogs which were not in good condition; that the articles would be efficacious in the prevention and treatment of necro, "bull-nose" or sniffles, necrotic enteritis, scours and bloody scours, "flu," swine plague, pneumonia, typhoid and paratyphoid infections in hogs, mixed infections, and parasites and worms; that they would be efficacious in the treatment of sick hogs and would stop hog losses; that they would aid in the correction and prevention of swine diseases; that they would go directly to the source of the disease; and that they would assure hog health. The articles would not be efficacious for the purposes stated or implied.

DISPOSITION: On May 5, 1947, the defendant having entered a plea of not guilty, the case came on for trial before a jury and resulted in a verdict of guilty. On May 16, 1947, the court imposed a fine of \$250 on each of the 2 counts of the information.

* See also No. 2114.