recover on a claim * * * or to obtain a declaratory judgment' (under Rule 56, F. R. C. P.) this being a condemnation proceeding and not an orthodox civil action. The contention rests on the language of the Act (Sec. 334 (b)) prescribing that procedure in condemnation cases 'shall conform, *as nearly as may be*, to the procedure in Admiralty.' [Emphasis supplied.] The argument is predicated upon the holding in two district court cases.[4]

"The heart of this part of appellant's argument is presented in the statement that 'this case presents a genuine issue of fact as to which Alberty is entitled [as it requested] to a jury trial' (as in ordinary civil cases)—this because the pleadings raised the question of whether directions given by Alberty for the use of the tablets are 'adequate for its intelligent and effective use.' Appellant supports this contention by reliance on two cases from this Circuit[5] but we think that they do not aid its case.

"Because of the nature of seizure cases, like the one at bar, a question has arisen in the past as to whether Admiralty rules apply in such seizure actions under the Act. After the enactment of the present statute the Sixth Circuit (United States v. 935 Cases, etc., 136 F. 2d 523) held that proceedings of the character here involved are not intended to be likened to those in admiralty *beyond the seizure of the property by process in rem under the statutes*. See also 443 Cans of Frozen Egg Product v. United States, 226 U. S. 172, 183. As appellee points out, an imposing group of authorities now support the proposition that despite a contrary holding in certain of the earlier cases dealing with enforcement of the 1938 Act, the better rule is that the Rules of Civil Procedure apply in these seizure actions as soon as the property proceeded against has been seized.[6] We prefer to accept and adopt the principle announced in these later cases and hold that the Admiralty rules do not apply in seizure actions like this beyond apprehension of the property. The lower court did not err in entering its Summary Judgment under Rule 56 (a) unless it can be said that the labeling here involved was not a misbranding of the drug, a view we have refused to accept.

"The record clearly discloses that a genuine issue of fact was not presented to the court. The basic question presented and properly considered by the lower court was whether the labeling on the drug failed to bear 'adequate directions for use' in violation of Sec. 352 (f) (1) of the Act. Having concluded, as a matter of law, that the labeling of the drug wholly and completely failed to conform to the requirement of this Section, the court properly held that the drug was misbranded. In this posture of the case it presented only a question of law and this clearly justified entry of the summary judgment as authorized in cases where the civil rules apply.

"The lower court correctly decided the case and its judgment is affirmed."

3311. Misbranding of diathermy device. U. S. v. 19 Devices * * *. (F. D. C. No. 25693. Sample No. 37847–K.)

LIBEL FILED: October 13, 1948, Western District of Washington.

ALLEGED SHIPMENT: On or about July 6 and September 15, 1948, by David Bogen Co., Inc., from New York, N. Y.

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[4] United States v. 720 Bottles, etc., 3 F. R. D. 466 (1944); United States v. 149 Gift Packages, etc. 52 F. Supp. 993 (1943).

[5] Gifford v. Travelers Protective Ass'n., 153 F. 2d 209, and Koepke v. Fontecchio, 177 F. 2d 125.

[6] See further: Eureka Productions, Inc. v. Mulligan, 2 Cir., 108 F. 2d 760, 761; United States v. 88 Cases, etc., 5 F. R. D. 503 (1946); United States v. 300 Cans, etc., 7 F. R. D. 36 (1946); United States v. 935 Cases, etc., 6 Cir. (1943), 136 F. 2d 523, 525, cert. denied 320 U. S. 778; United States v. 20 Cases, etc., 77 F. Supp. 231 (1947); C. C. Co. v. United States, 5 Cir. (1945), 147 F. 2d 820, 824; United States v. 5 Cases, etc. 2 Cir. (1950) 179 F. 2d 519, 522, 524, notes 9 and 15. In this case the court said: "It now appears well established that the Rules of Civil Procedure do apply to condemnation proceedings." And see cases cited in Fed. Prac. and Procedure, Barron and Holtzoff, Vol. 1, page 219 (case cited as being in 8 F. R. D. 81 is at same page in Vol. 9, F. R. D.).

PRODUCT: 19 *diathermy devices* at Seattle, Wash. The device consisted of a cabinet containing radio tubes, transformer, resistors, and adjustable plate condensers. Connected to the device were two 8'' x 10'' diathermy pads, which transmit short electrical waves to the portion of the body to be treated.

LABEL, IN PART: "David Bogen Co., Inc., New York 12, New York Model No. 5–A * * * Short Wave Diathermy."

NATURE OF CHARGE: Misbranding, Section 502 (f) (1), the labeling of the device failed to bear adequate directions for use in the treatment of sinus, colds, etc., elbow, wrist, leg, stiff neck, sprained ankle, hand, shoulder, knee, and upper back and lower back, which were the parts of the anatomy and abnormalities to affect and treat, for which the article was offered in its labeling, namely, in an accompanying leaflet headed "Illustrations of Pad, Mask, Cuff and Cable Placement for Typical Treatment Employing Bogen Portable Short Wave Diathermy Model 5–A."

DISPOSITION: November 18, 1950. George B. Quinn, Seattle, Wash., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the devices be released under bond for relabeling, under the supervision of the Federal Security Agency.

DRUGS AND DEVICES ACTIONABLE BECAUSE OF DEVIATION FROM OFFICIAL OR OWN STANDARDS

3312. Adulteration and misbranding of surgical dressing. U. S. v. Surgical Dressings, Inc. Plea of guilty. Fine, $250. (F. D. C. No. 29427. Sample Nos. 30230–K, 30240–K, 33682–K to 33684–K, incl.)

INFORMATION FILED: October 3, 1950, District of Massachusetts, against Surgical Dressings, Inc., Boston, Mass.

ALLEGED SHIPMENT: Between the approximate dates of August 25 and November 12, 1949, from the State of Massachusetts into the State of California.

LABEL, IN PART: "Sterilastic Dressing Bandage."

NATURE OF CHARGE: Adulteration, Section 501 (c), the purity and quality of the article differed from that which it purported and was represented to possess since it purported to be, and was represented as, a sterile product, whereas it was not a sterile product but was contaminated with viable micro-organisms.

Misbranding, Section 502 (a), the statements in the labeling of the article which represented and suggested that the article was a sterile product were false and misleading.

DISPOSITION: December 12, 1950. A plea of guilty having been entered, the court imposed a fine of $250.

3313. Adulteration and misbranding of clinical thermometers. U. S. v. 9 Gross * * *. (F. D. C. No. 29366. Sample No. 81854–K.)

LIBEL FILED: June 21, 1950, Southern District of Florida.

ALLEGED SHIPMENT: On or about May 9, 1950, by the Cardinal Thermometer Co., from Brooklyn, N. Y.

PRODUCT: 9 gross of *clinical thermometers* at Miami, Fla. Examination of 24 thermometers showed that 5 failed to comply with the Commercial Standard C. S. 1–32 since 2 failed to repeat readings and 3 did not give readings of the accuracy required by C. S. 1–32.

LABEL, IN PART: "Car-Nor" or "Cardinal."