INDEX—THE NEW FOOD, DRUG, AND COSMETIC LEGISLATION*

ADMINISTRATIVE LAW

ADVERTISING, FALSE
attack on definition of, in S. 1944, 9; issue whether F&DA or FTC should control, discussed, 23, 149; powers of FTC over, increased by W-L Act, 18-19; 91, 139-140; history of provisions for control of, in FD&C bills summarized, 23-24; definition of, under W-L Act, 92, 139-140; actionable at common law, 92-93; criminal liability for, 93-94; "Printers' Ink" statute against, 94; authorship of that bill, 9; denied

AUTHORSHIP
under W-L Act, 91; sought restrictions on multiple seizures, 9; denied

AUTHORSHIP
under W-L Act, 91; sought restrictions on multiple seizures, 9; denied

BAILEY, JOSIAH B.
& M. External Remedy Case, 82

BAILEY, JOSIAH W.
S., sought restrictions on multiple seizures, 13, 16.

BROADCASTERS
qualified exemption of, from criminal liability under W-L Act, 107; liability of, for civil penalty under W-L Act, 109.

CAMPBELL, WALTER G.
Chief of F&DA, supported revision of F&D Act, 6, 111; quoted, 123.

"CHAMBER OF HORRORS"
assembling of, by F&DA, 8.

CHAPMAN, VIRGIL
Rep., presided at House hearings on S. 5, 16; introduced bill to control new drugs, 20; sought Sec. Wallace's views on judicial review, 21.

CLARK, BENNETT C.
S., presided at hearings on S. 5, 13; sought restrictions on multiple seizures, 13, 16; supported FTC on advertising control issue, 14.

CONSUMERS
FD&C Act appraised from standpoint of, 144-150; growing recognition of distinctive interest of, 151-152; increased protection of, from misrepresenta-

tion and deception, 153-155; governmental research in aid of, 154-155; representation of, before ICC, 156, under NRA, 156-157, under AAA, 157-158, before Bituminous Coal Comm'n, 158-159; need for representation of, before Congressional committees, 159-160; governmental activities in promoting organization of, 160; education of, 160-161; need for bureau in federal government to represent interests of, 161-164.

CONSUMERS RESEARCH
aroused interest in defects of F&D Act, 6; criticized first FD&C bill, 8; attacked Sen. Copeland, 9, 12; termed second FD&C bill "emasculated," 11.

CONSTUTIONAL LAW

CONTAINERS
food: grant of power to prescribe standards of fill of, in FD&C Act, 26, 30; containing, as adulteration, 27; misleading, as misbranding, 30; declaration of weight and producer's name and address required on, 30; drug: requirements as to, in, FD&C Act, 39; cosmetic: containing, as adulteration, 41; misleading, as misbranding, 41.

COPELAND, ROYAL S.
S., introduced FD&C bill, 2, 8; charge of industry bias made against, considered, 9-10; introduced S. 2000, S. 2800, and S. 5 (1935), 11-12; opposed Bailey Amendments, 16; introduced S. 5 (1937), 18; proposed amendment to Wheeler-Lea bill, 19; introduced bill to control new drugs, 20; consulted F&DA on amendments, 22.

COSMETICS
recency of regulation of, 111-112, 170; defined, in FD&C Act, 40; precautionary label declaration required for coal-tar hair dyes, 41, 125, 147; misbranding of, by false or misleading labeling, 41, by misleading containers, 41; adulteration of, by injurious or insanitary ingredients, 41, by use of uncertified coal-tar colors, 41, 146; testing of coal-tar colors in, 147; state laws regulating, 170-171.

CRAWFORD, C. W.
represented F&DA before committees, 22.

CRIMINAL LAW

DAVIS, CHESTER C.
AAA Administrator, quoted, 157.

DAVIS, Ewin L.

FEDERAL EMERGENCY DRUG DEVICES

authority of, over misleading statements questioned of jurisdiction of, over false advertising, increased 138-139; with lobbying against submits amendments to requirement, power of Sec'y to grant, from labeling requirements, generally, or use of uncertified coal-tar colors, 34.

DEFECTS OF F&D Act as to, of "official" drugs, 32-33, and changes made by F&D Act, 32-33, objections to, 116-117, constitutionality of, questioned, 117-118; arising from insanitary ingredients, conditions of processing, injurious containers, or use of uncertified coal-tar colors, 34.

false or misleading labeling defined, 34; problem of therapeutic claims under F&D bills and Act, 34-35, 121-125, and constitutional question raised thereby, 123-124; problem of claims for palliatives under F&D bills and Act, 35-36; requirement of label disclosure of certain habit-forming ingredients, 36-37, of ingredients of non-official products, 37, of certain dangerous ingredients, 37, of directions for use and warnings against dangerous uses, 37-38; problem of germicides under F&D bills and Act, 38-39; in case of harmful drugs, 39, of deteriorating drugs, 39.


Emergency Permit Control

Federal Trade Commission, submitted amendments to F&D bill, 12; charged with lobbying against F&D bill, 17; powers of, increased by W-L Act, 10-19, 91, 139-149; basis of jurisdiction of, over false advertising, 91, 112, 138-139; action of, against false advertising, 95; authority of, over misleading statements questioned in courts, 95-96; procedure of, in false advertising cases, before W-L Act, 103-106, under W-L Act, 106-107; administrative problems of, under W-L Act, 107-110; need for coordinating work of, with that of F&D, 140-141. See ADVERTISING, DRUG MISBRANDING.

Federal Trade Comm'n v. Radadam Co., 18, 95, 96

Food Adulteration

necessity of, to determine adulteration, 25; provisions for, of identity in F&D Act, 25-26, 130-132; excision of provision for multiple, of quality, 11, 26, 146; provision for, of quality under McNary-Mapes Amendment, 26, 131, extended in, F&D Act, 26; non-compliance with, as misbranding, 29, 132; types of, of under F&D Act, 131, under McNary-Mapes Amendment, 132-133; importance of, to consumers, 146; under state food and drug laws, 167-168.

Food, Drug, & Cosmetic Act of 1938 structure of Act as a whole, 23; appraised generally, 42, 127-128, 144, 159; enlarged scope of, 113-114; application of, to local transactions, 114-116; effective date of, 130, 143.

Food Misbranding

false or misleading labeling under F&D Act and F&D Act, 25, 94, 138-140; evasion of F&D Act made possible by "distinctive name" provision, 28; requirement in F&D Act of compliance with criteria of standard foods, 29, of disclosure of ingredients in fabricated foods, 29-30, 132-135; of declaration of artificial flavors, colors, and preservatives, 30, of properties of foods for special dietary uses, 30; importance of exemptions from requirement of ingredient disclosure, 133-134.

Hypnotic Drugs

states enacting laws for control of, 170. See Drug Misbranding.

Informative Labeling

conspicuousness of statements comprising, 24; general requirement of, in F&D Act, §201(n), 24-25; emphasis upon, in F&D Act, 145; importance of, to consumers, 145, 153-154.

Judicial Review of Regulations

as major issue, in F&D Act's history, 14-151; evolution of provisions for, 46-48; provisions for, in S. 5 (1937) as reported to House, 20-21; protested, 21, passed, 21; under F&D Act compared to provisions of Fair Labor Standards Act, 45-46, Bituminous Coal Act, 46, to procedure in FTC, BTA, and NLRB cases, 48-49; as influenced by recent Supreme Court decisions, 50-51; relation of

Injunction

remedy of injunction, in libel cases, 71-73, in criminal cases, 85-86; in case of harmful drugs, 39, of deteriorating drugs, 39.

Injunctions

restrictions on multiple seizures, 85-86; factory inspection, 87-88; voluntary seafood inspection, 88; emergency permit control, 30-31, 89-90; publicity by notices of judgment and public warnings, 90. See JUDICIAL REVIEW OF REGULATIONS.

Exemption

power of Sec'y to grant, from labeling requirements, generally, 25; of drugs sold under prescription, 115-116; of foods from ingredient disclosure requirement, 133-135.

Exemption

power of Sec'y to grant, from labeling requirements, generally, 25; of drugs sold under prescription, 115-116; of foods from ingredient disclosure requirement, 133-135.

Federal Trade Commission

submits amendments to F&D bill, 12; charged with lobbying against F&D bill, 17; powers of, increased by W-L Act, 10-19, 91, 139-149; basis of jurisdiction of, over false advertising, 91, 112, 138-139; action of, against false advertising, 95; authority of, over misleading statements questioned in courts, 95-96; procedure of, in false advertising cases, before W-L Act, 103-106, under W-L Act, 106-107; administrative problems of, under W-L Act, 107-110; need for coordinating work of, with that of F&D, 140-141. See ADVERTISING, DRUG MISBRANDING.

Federal Trade Comm'n v. Radadam Co., 18, 95, 96

Food Adulteration

necessity of, to determine adulteration, 25; provisions for, of identity in F&D Act, 25-26, 130-132; excision of provision for multiple, of quality, 11, 26, 146; provision for, of quality under McNary-Mapes Amendment, 26, 131, extended in, F&D Act, 26; non-compliance with, as misbranding, 29, 132; types of, of under F&D Act, 131, under McNary-Mapes Amendment, 132-133; importance of, to consumers, 146; under state food and drug laws, 167-168.

Food, Drug, & Cosmetic Act of 1938 structure of Act as a whole, 23; appraised generally, 42, 127-128, 144, 159; enlarged scope of, 113-114; application of, to local transactions, 114-116; effective date of, 130, 143.

Food Misbranding

false or misleading labeling under F&D Act and F&D Act, 25, 94, 138-140; evasion of F&D Act made possible by "distinctive name" provision, 28; requirement in F&D Act of compliance with criteria of standard foods, 29, of disclosure of ingredients in fabricated foods, 29-30, 132-135; of declaration of artificial flavors, colors, and preservatives, 30, of properties of foods for special dietary uses, 30; importance of exemptions from requirement of ingredient disclosure, 133-134.

Hypnotic Drugs

states enacting laws for control of, 170. See Drug Misbranding.

Informative Labeling

conspicuousness of statements comprising, 24; general requirement of, in F&D Act, §201(n), 24-25; emphasis upon, in F&D Act, 145; importance of, to consumers, 145, 153-154.

Judicial Review of Regulations

as major issue, in F&D Act's history, 14-151; evolution of provisions for, 46-48; provisions for, in S. 5 (1937) as reported to House, 20-21; protested, 21, passed, 21; under F&D Act compared to provisions of Fair Labor Standards Act, 45-46, Bituminous Coal Act, 46, to procedure in FTC, BTA, and NLRB cases, 48-49; as influenced by recent Supreme Court decisions, 50-51; relation of

Injunction

remedy of injunction, in libel cases, 71-73, in criminal cases, 73-75, in libel cases, 75; discretion in instituting proceedings, 73-76; offenses subject to, 76-77, and penalties, 77; requirement of jury trial, 77-78; use of information instead of indictment, 78; nature of seizure in libel cases, 79-80; practice in libel cases, 80-82; restrictions on multiple seizures, 15-16, 82-83; rei judicata in seizure cases, 83-84; remedy of injunction, 85; exclusion of import proceedings, 85-86; embarrasses of foreign products, 86-87; factory inspection, 87-88; voluntary seafood inspection, 88; emergency permit control, 30-31, 89-90; publicity by notices of judgment and public warnings, 90. See JUDICIAL REVIEW OF REGULATIONS.

Exemption

power of Sec'y to grant, from labeling requirements, generally, 25; of drugs sold under prescription, 115-116; of foods from ingredient disclosure requirement, 133-135.

Justice, Department of, criticizes judicial review amendment to S. 5, 21.

Kelley, W. T. Chief Counsel, FTC, quoted, 141.

Labels and Labeling

definitions of, in FD&C Act, 24; conspicuousness of statements on, 24; effect of alteration of, after shipment, 119; practical problems of preparing new, for drug and cosmetic trades, 125-127.

Lea, Clarence F. Rep., chmn. House Comm. on Interstate & Foreign Commerce, supported FTC on advertising control issue, 14; introduced food, drug, and cosmetic amendments to Wheeler bill, 18-19.

Legislative History of FD&C Act

social and economic factors governing nature of, 3-5; drafting of first FD&C bill (S. 1944), 7-8; reactions to S. 1944, 71; hearings on S. 1944, 8-10; revision of S. 1944, 10-11; second FD&C bill (S. 2000) introduced in 1934, 11; S. 2000 revised and supplanted by third FD&C bill (S. 2800), 11; hearings on S. 2800, 12; brought to floor of Senate, 12; fourth FD&C bill (S. 5) introduced in 1935, 12; S. 5 debated in Senate, 13; major issues raised by bills, outlined, 13-15; Bailey Amendments to S. 5 restricting multiple seizures adopted, 15-16; S. 5 passed by Senate, 16; House hearings on S. 5, 16; S. 5 amended and passed by House, 17; conferences disagree, 17; House rejects new Senate amendment to S. 5, 17; fifth FD&C bill (S. 5) introduced in 1937 and passed by Senate, 18; advertising issue settled by W-L Act, 18-19; bills to control new drugs introduced, 20; judicial review amendments in House bill debated and passed, 20-21, 48; report of conferences on S. 5, 21-22; acceptance of conference report and signing of S. 5, 22; drafting of later FD&C bills, 23; evolution of judicial review provisions, 46-48; activities of national women's organizations in, 144-145.

McCarran-Jencks Bill, 11, 12.

McNary-Mapes Amendment

provisions of, extended under FD&C Act, 26; experience under, as indicative of operation of judicial review provisions of FD&C Act, 56-62, 136-138; example of standard fixed under, 131-132.

McReynolds, Sam D. Rep., quoted in debate on S. 5, 17.

Magazines

hostility of, to FD&C bills, 3.

Marihuana

states enacting special laws for control of, 170.

Morgan v. Nolan, 60, 61, 62

Multiple Seizures

as major issue, in FD&C bills' history, 13; Bailey Amendments restricting, 16; restrictions on, in FD&C Act, 22, 82-83.

New Drugs

provision for control of, due to Elixir Sulfanilamide tragedy, 20, 119, 148; "new drug" defined in FD&C Act, 32, in regulations, 119-120; procedure for control of, under FD&C Act, 40, 119; difficult problems in control of, 120-121.

New York Times

tendency of, to ignore FD&C bills, 3, 17.

Panama Refining Co. v. Ryan, 30, 31

Publicity

provision for, of violations of FD&C Act, 90.

Publishers


Rayburn, Sam

Rep., quoted in debate on S. 5, 17.

Regulations under FD&C Act

attack on provisions granting power to Sec'y to promulgate, 9; granting exemptions from labeling requirements, 25; establishing food definitions and standards, 25-26, 131-136; tolerances for unavoidable poisonous food ingredients, 27, standards of fill of containers, 26, 30; governing use of coal-tar coloring, in food, 27, in drugs, 34, in cosmetics, 41; requiring statements of properties of special dietary foods, 30; establishing new tests for "official" drugs, 33; exempting "new drugs" for experimental use, 40; procedure prescribed for formulation and review of, 43-45; compared to that under Fair Labor Standards Act, 45-46, under Bituminous Coal Act, 46, as influenced by recent Supreme Court decisions, 50; probable operation of procedure for, discussed, 53-56, 62. See Judicial Review of Regulations.

Roosevelt, F. D.

Pres., failure of, to press for enactment of FD&C Act, 3; special message of, to Congress on FD&C bill, 12; signed FD&C Act, 22.

Seafood Amendment

inspection service under, 88-89.

Seizures


Sherley Amendment

difficulties of enforcement of, 34, 100, 107.
STATE FD&C LEGISLATION
need for uniform, similar to federal FD&C Act, 165-167; attitude of state enforcement officials toward need for new, 167; scope of existing, 167; power to issue regulations and standards under, 167-169; control of narcotics, hypnotics, and marijuana by, 170; control of cosmetics by, 170-171; agencies for enforcement of, 171; appropriations for, 171-172; need for special seizure powers in, 172-173; trend in recent amendments of, 173-174; proposed form of uniform, 174-178; need for conformity in state regulations as well as, 175.
State v. Emery, 118.
State v. Holland, 118.

TUGWELL, REXFORD G.
initiated drafting of FD&C bill, 5-6; opposition in Congress to, 10; lowered spray residue tolerance, 15.

UNIFORM NARCOTIC ACT
states enacting, 169-170.

VANDENBERG, ARTHUR H.
Sen., sponsored amendment to S. 5 restricting venue of seizure actions, 16.

VENUE
restrictions on, in seizure actions, 16, 22; of criminal actions, 79.

VOLUNTARY INSPECTION SERVICE
provision for, in S. 1944, 31, under Seafood Amendment, 88-89.

WALLACE, HENRY A.
Sec'y of Agriculture, increased spray residue tolerance, 15; protested judicial review amendment to S. 5, 21; suggested creation of Consumer's Counsel in AAA, 157.

WHEELER-LEA ACT
passage of Wheeler bill by Senate, 18; food, drug, and cosmetic amendments added by House, 18-19; passage of amended bill by both houses, 19; appraisal of definition of offense in, 92-103, of adequacy of penalties in, 103-107, of methods of administration of, 107-110. See ADVERTISING, FEDERAL TRADE COMMISSION.