

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 251, FOOD AND DRUGS ACT.

MISBRANDING OF CANNED TOMATOES.

On or about October 1, 1909, J. W. Macklin, Willoughby, Md., shipped from Maryland to New York 400 cases, more or less, of canned tomatoes, each can labeled "Monogram Brand Delaware Tomatoes, Strasbauch Silver & Company, Aberdeen, Md., selling agents, Guarantee Legends, serial No. 9977," and each case containing cans marked "Monogram Delaware tomatoes, packed by the Silver Canning Co., Greenwood, Delaware." An examination of the product by the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906, and as it appeared that the shipment therefore was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Southern District of New York.

In due course a libel was filed against the said 400 cases of canned tomatoes, charging that they were misbranded in that they were labeled in a manner to give the impression that they were Delaware tomatoes, whereas in fact they were not Delaware tomatoes but tomatoes grown and packed in Maryland, and praying seizure, condemnation and forfeiture.

On January 4, 1910, there being no claimant of record, the case came on for final hearing, and the court rendered its decree of condemnation and forfeiture in substance and form as follows:

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held in the United States Court Rooms, in the City of New York, in the said District on the 4th day of January in the year of our Lord one thousand nine hundred and ten.

Present, The Honorable GEORGE B. ADAMS, *U. S. Judge.*

THE UNITED STATES
vs.
FOUR HUNDRED (400) CASES MORE
or less of Canned Tomatoes. }

The monition issued in this cause, having been heretofore returned, and the usual proclamation having been made, and the default of all persons being

duly entered, it is therefore, on motion of Henry A. Wise, Esq., Attorney for the United States, ordered, sentenced and decreed by the Court, now here, and his Honor the District Judge, by virtue of the power and authority in him vested, doth hereby order, sentence and decree that the goods, wares and merchandise above mentioned be, and the same accordingly are, condemned as forfeited to the United States.

And upon like motion it is further ordered, sentenced and decreed that the Clerk of this Court issue a writ of Venditioni Exponas to the Marshal of the District, returnable on the first Tuesday of February next. And that upon the return thereof he distribute the proceeds according to law. Sale to take place in the United States Court and Post Office Building in the City and County of New York, Borough of Manhattan.

It is provided, however, that upon payment of all costs in the proceedings herein, including the costs of hauling, storage, watchmen, publication, and all costs incidental to or contracted in these proceedings, and the execution and delivery by Seeman Brothers to the libellant of a good and sufficient bond in the penalty of Two hundred and fifty dollars (\$250.) conditioned that the said Four Hundred cases, more or less, of canned Tomatoes, with contents misbranded as alleged in the libel filed in the above entitled action, shall not be sold or otherwise disposed of contrary to the provisions of the said Act of June 30, 1906, the said Marshal shall redeliver the said four hundred cases, more or less, of Canned Tomatoes to the said Seeman Brothers or their agents in lieu of disposing of them by sale as aforesaid; the said bond to be filed herein, if at all, on or before the 10th day of January, 1910.

(Sgd) GEO. B. ADAMS, D. J.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *March 8, 1910.*

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