

# United States Department of Agriculture,

OFFICE OF THE SECRETARY.

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## NOTICE OF JUDGMENT NO. 389, FOOD AND DRUGS ACT.

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### ADULTERATION AND MISBRANDING OF VANILLA EXTRACT.

On or about February 20, 1908, the Charles L. Heinle Specialty Company, of Philadelphia, Pa., sold and delivered to the Merchants' Wholesale Grocery Company, of Philadelphia, Pa., a consignment of a food product each bottle of which was labeled "Heinle's Pure Vanilla" and the carton of which was labeled "Heinle's Pure Vanilla" and "Heinle's Extract." Thereafter, on January 20, 1909, the Merchants' Wholesale Grocery Company shipped the said product in interstate commerce from the State of Pennsylvania to the State of Delaware. Samples were procured from this shipment and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as it appeared from the findings of the analyst and report made that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Charles L. Heinle Specialty Company, the shipper, and the dealer from whom the samples were procured, opportunities for hearings. As it appeared after hearings held that there had been a violation of the act on the part of the Charles L. Heinle Specialty Company, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence on which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Eastern District of Pennsylvania against the Charles L. Heinle Specialty Company, alleging that the product was adulterated in that a solution of vanillin had been mixed and packed with the article in a manner to reduce, alter, and injuriously affect its quality and strength, and said solution of vanillin had been substituted in part for the genuine food product, and that said product was colored in a manner whereby its inferiority was concealed; and was misbranded, in that it was an imitation of another article, namely, vanilla extract, and was labeled "Heinle's

Pure Vanilla ” and “ Heinle’s Extract,” which form of labeling was false and misleading and tended to deceive and mislead the purchaser into the belief that the product was a pure extract of vanilla, whereas, in fact, it was not a pure extract of vanilla but an imitation extract prepared with vanillin and artificially colored in imitation of the genuine vanilla extract, and was further misbranded, in that the bottle containing the product bore a statement regarding the ingredients and substances contained therein as follows: “ Manufactured from Pure Mexican Vanilla Beans Ground in Granulated Sugar and extracted with Water and Pure Grain Alcohol. Only enough Pure Grain Alcohol used to preserve it, making it a soluble Vanilla of the Best and Highest Quality,” which statement was false and misleading in that it purported to represent that the product was substantially manufactured from Mexican vanilla beans, sugar, water, and alcohol, whereas, in fact, the product was not substantially manufactured from Mexican vanilla beans, sugar, water, and alcohol, but was an imitation product manufactured from vanillin and artificially colored in imitation of vanilla extract made from vanilla beans. The information further charged that at the time of the sale of the said article by the Charles L. Heinle Specialty Company to the Merchants’ Wholesale Grocery Company and accompanying the said sale the Charles L. Heinle Specialty Company gave to the Merchants’ Wholesale Grocery Company a signed guaranty to the effect that the said article was not adulterated or misbranded within the meaning of the Food and Drugs Act of June 30, 1906, which said guaranty was contained upon the face and made a part of the invoice covering said sale, and that the said defendant, at the time of making sale and delivery of this product, knew that the said article was likely to be sold in interstate traffic, and that by reason of the fact that the said product was adulterated and misbranded the interstate shipment thereof was unlawfully made, and that by reason of the guaranty given by said defendant it was amenable to the prosecution, fines, and other penalties which would attach because of the said unlawful interstate shipment.

On June 30, 1909, the defendant filed a demurrer to this information and on January 4, 1910, after hearing argument on the demurrer, the court rendered an opinion overruling said demurrer, in substance and form as follows:

HOLLAND, *D. J.*

This is a demurrer filed by the defendant to an information lodged against it by the District Attorney for the Eastern District of Pennsylvania for having sold an adulterated and misbranded article of food manufactured by it and in violation of the Ninth Section of the Pure Food Act of June 30th, 1906, executed and delivered a false guaranty to the effect that the merchandise sold was not adulterated or misbranded within the meaning of the Act. The dealer to whom

this adulterated and misbranded food was sold by the defendant and to whom the false guaranty was given, sold the same in interstate commerce, and upon the discovery by the Government officials that the article was misbranded, it is alleged the dealer who sold the same in interstate commerce established the guaranty of the defendant; whereupon this information was filed.

The defendant's demurrer alleges that the information sets forth no charge or offence for which the defendant can be convicted and punished under the Act of Congress, approved June 30th, 1906, because the Ninth Section, upon which the information is based, is unconstitutional. Under the Second Section of this Act the introduction into interstate commerce of adulterated or misbranded foods is prohibited, and any person violating this provision is guilty of a misdemeanor; subject to certain fines and penalties.

The Ninth Section is as follows:

"That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty to afford protection shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach in due course, to the dealer under the provisions of this Act."

The defendant in this case is charged in the information with having executed and delivered to the dealer who sold the adulterated and misbranded food in interstate commerce the following guaranty, which is alleged to be false:

"We, the vendors of the articles mentioned in the foregoing invoice, hereby guarantee and warrant the same to be in full conformity with the Federal Act of June 30th, 1906, known as the 'Food and Drug Act,' \* \* \* in that the said articles are not adulterated or misbranded within the meaning of \* \* \* the aforesaid Act of Congress."

It is not contended by the defendant that Congress has no constitutional right to prohibit the introduction of adulterated and misbranded foods in interstate commerce, but the claim is that so far as the defendant's connection with the adulterated and misbranded goods was concerned, the entire transaction of manufacturing, selling and delivering by it was consummated within the State, as was the issuance of the false certificate, and as the defendant's connection with the article was entirely within the State, the fact that the certificate indicates that the adulterated and misbranded commodity was intended for interstate commerce can make no difference, because the Federal Courts could have no jurisdiction, whatever the intention of the manufacturer might be, until such goods had been shipped or entered with a common carrier for transportation to another State, or had been started upon such transportation in a continuous route or journey; and cites *Kidd v. Pierson*, 128 U. S. 1.

There is nothing in the Act to indicate that there is an effort on the part of Congress to regulate the manufacturing, selling or delivering of any articles of food within the states. The Act is intended to prevent adulterated and misbranded foods from being sold in interstate commerce; nothing more, and in order that this may be accomplished it prohibits the party who makes or manufactures the food and who knows what it contains from falsely assuring an innocent purchaser that its quality and dress lawfully entitles him to sell the commodity in interstate commerce. Such a certificate, made by a defendant, expressly under the provisions of the Act, if false, could have been made with no purpose other than to defeat the object of the Act. This prohibition is ob-

viously essential to the enforcement of one of the important powers with which Congress is intrusted, to wit: the regulations of interstate commerce.

To punish the dealer who sells the article in another State will not in all cases reach the evil sought to be remedied. He may be entirely innocent of any intention of selling an adulterated or misbranded food, because he may be unable to tell the difference between a pure article and one adulterated, and dealers cannot be expected to employ expert chemists to examine the great variety of commodities which enter into commerce and are dealt in by them; but the evil can soon be cured if the innocent dealer may shift the responsibility for the purity of the commodity to the manufacturer by requiring him to certify to the effect that the article is not adulterated or misbranded, when the manufacturer knows he will be subjected to punishment in case he gives a false certificate prohibited by the Act.

In the case of *United States vs. Fox*, 95 U. S., 670, 24 Law Ed., 538, in passing upon the provision in the bankrupt law which made it a misdemeanor, punishable by imprisonment, for obtaining goods under false pretence with intent to defraud, within three months of the commencement of bankruptcy proceedings, the court held that as this would be no offence under the Act of Congress at the time of the commission of the false pretence, that any subsequent independent act by the party himself or a third party in instituting bankruptcy proceedings, could not make it a crime punishable in the Federal Courts. In the discussion of the question, it was said by Justice Field, that "the criminal intent essential to the commission of a public offence must exist when the act complained of is done; it cannot be imputed to a party from a subsequent independent transaction. There are cases, it is true, where a series of acts are necessary to constitute an offence, one act auxiliary to another in carrying out the criminal design."

In this case, the criminal intent essential to the commission of the offence existed at the time defendant gave the certificate specifying that it was under the Pure Food Act of Congress of June 30th, 1906. With what purpose and intent was the certificate given other than for the purpose of evading the provisions of this Act of Congress? It is averred defendant made and knew the goods were both adulterated and misbranded, and with this knowledge gave a certificate that they were not adulterated or misbranded in order that an innocent purchaser might sell them in interstate commerce, and, in this case, the purpose of the certificate was accomplished. The dealer did just what the defendant intended he should do, that is, the dealer relying on the certificate sold the articles in another state. "Any act committed with a view of evading the legislation of Congress, passed in the execution of any of its powers, or of fraudulently securing the benefit of such legislation, may properly be made an offence against the United States." *U. S. vs. Fox*, supra.

Demurrer overruled.

On March 21, 1910, the defendant entered a plea of guilty and the court imposed a fine of \$25.

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., *May 23, 1910.*