

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 482, FOOD AND DRUGS ACT.

ADULTERATION OF EGGS.

On December 29, 1909, the Buffalo Cold Storage Co., a corporation, Buffalo, N. Y., shipped from the State of New York to the State of Pennsylvania a consignment of eggs. Samples from this shipment were procured and examined by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Buffalo Cold Storage Co., and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that the said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course an indictment was brought in the District Court of the United States for the Western District of New York against said Buffalo Cold Storage Company, charging the above shipment, and alleging that the product was adulterated within the meaning of the act in that said eggs consisted in part of a filthy, decomposed, and putrid animal substance and were unfit for food.

On March 16, 1910, the defendant filed a demurrer, alleging the indictment to be insufficient on the ground that the act was unconstitutional.

On May 2, 1910, the court overruled the demurrer by an order in substance and form as follows:

DISTRICT COURT OF THE UNITED STATES, WESTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, *Plaintiff,* }
against }
BUFFALO COLD STORAGE COMPANY, *Defendant.* }

ON DEMURRER TO INDICTMENT.

JOHN LORD O'BRIAN, United States Attorney.
KELLOGG & BAKER, for defendant.

HAZEL, J.

The demurrer of the defendant, Buffalo Cold Storage Company, to the indictment is predicated upon the claim that the statute entitled: "An Act for

preventing the manufacture, sale, or transportation of adulterated, misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes", was intended solely to apply to a manufacturer or dealer and as it is not charged in the indictment that said defendant was either a manufacturer, owner or dealer in the commodity, the indictment is fatally defective and must be dismissed. With this contention I do not agree. The statute forbidding the act provides that: "Any person who shall ship or deliver for shipment from any State or territory, etc., to any other State or territory any such article so adulterated or misbranded shall be guilty of a misdemeanor." Concededly the shipment and delivery of the commodity for transportation from Buffalo to Pittsburgh in adulterated or impure condition is within the letter of the statute. It is unquestionably true that the inhibition of an act may be so plainly expressed by a statute that he who runs and thinks may comprehend its complete import and still not be within the contemplation of the law makers, but the provision under consideration does not fall within this class. Congress by its enactment intended to promote honesty and fair dealing in trade and secure to the public pure and wholesome food and drugs and manifestly there must be a reasonable construction of the act to carry out the intention of Congress in this regard. There is nothing in the act which will result in any absurdity or lead to injustice or oppression as was the case in *Church of the Holy Trinity vs. United States* (143 U. S., 457), and other cases of similar description cited in defendant's brief.

I have carefully read the excerpts of the debates in Congress on the subject prior to the passage of the act and I think from what was said by Senators Heyburn and Money that the prohibition was expressly couched in broad language to include those who ship or deliver for transportation commodities of the character forbidden by the statute. It is quite true that warehousemen who deliver such commodities for transportation may not have knowledge of the deleterious character of the food and may be wholly innocent of criminal intent but this is a question which may be safely left to the trial jury. The indictment charges the offense in the language of the statute and particularizes the nature of the offense in such a way as to apprise the defendant as to what he will be required to meet on the trial and under the authorities this is sufficient. (*Ledbetter vs. United States*, 170 U. S., 606; *Armour Packing Co. vs. United States*, 209 U. S. 56; *Bruton vs. United States*, 202 U. S. 344.)

The demurrer is overruled.

Trial of the issues was had on May 12 and 13, 1910, resulting in a verdict of guilty, upon which the court imposed a fine of \$200.

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., *June 25, 1910.*

