

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 658, FOOD AND DRUGS ACT.

ADULTERATION OF MACARONI.

During the months of February and March, 1910, V. Viviano & Bros., St. Louis, Mo., shipped from the State of Missouri into the State of Illinois 9,110 boxes of macaroni in five shipments of 1,725, 2,100, 1,950, 1,635, and 1,700 boxes, respectively, of which 3,825 boxes were labeled "La Regina Trade Mark Spaghetti, Artificial Coloring Marka de Fabbrica Registered. Manufactured by V. Viviano & Bros., St. Louis, Mo."; 1,950 boxes were labeled "La Regina Trade Mark Foratini Artificial Coloring Marka de Fabbrica Registered. Manufactured by V. Viviano & Bros., St. Louis, Mo."; 1,635 boxes were labeled "La Sicilia Spaghetti Artificial Coloring, Made by S. V. B., St. Louis, Mo."; and 1,700 boxes were labeled "La Stella Superiori Spaghetti Artificial Coloring. Made by S. V. B., St. Louis, Mo."

Analysis of samples of these products made in the Bureau of Chemistry, United States Department of Agriculture, showed them to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made thereon that the shipments were subject to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Northern District of Illinois. On April 4, 1910, five libels were filed in the District Court of the United States for said district against said 1,950 boxes, 1,635 boxes, 1,700 boxes, 1,725 boxes and 2,100 boxes of macaroni, respectively, charging the above shipments and alleging that the products so shipped were adulterated in that they and each of them contained martius yellow, a poisonous color, which rendered the said articles of food injurious to health, and praying seizure and condemnation of said products.

On or about April 21, 1910, an answer was filed in each of the said five cases by said V. Viviano & Bros., admitting the interstate shipment of said products and the jurisdiction of the court and that there was a very small percentage of a yellow coloring used in the manufacture of said macaroni, to wit, about 1 ounce to every 250 gallons of water, but denying that such coloring as used in the manufacture of said products was poisonous or that it rendered the said articles of food injurious to health. On May 16, 1910, the above five cases came on for hearing, and having been consolidated, the court having heard the evidence and arguments of counsel on the part of libellant and claimant, delivered the following opinion:

KENESAW M. LANDIS, *District Judge.*

These libels seek the destruction of five interstate shipments of macaroni charged to have been adulterated by the addition of a coal-tar dye known as Martius yellow, alleged to be a poison rendering the food product injurious to health (Food and Drug Act, section 7, paragraph 5). The question is whether the article proceeded against "contains any added poisonous * * * ingredient which may render it injurious to health."

The proof shows macaroni to be composed of wheat flour and water; that to change its natural color and make its appearance more inviting Martius yellow was added; that this coloring matter is not an ingredient of macaroni. serves no purpose other than to change its color, and is a poison which will kill.

It is the duty of the court to give the act a fair and reasonable construction for the accomplishment of its object. That object is the exclusion from interstate commerce of food products so adulterated as to endanger health. And where, as here, it clearly appears that a poisonous substance wholly foreign to the food product has been added to it, solely to mislead and deceive, the court is under no duty to endeavor to protect the offender against loss from destruction of the adulterated article by indulging in hair-splitting speculation as to whether the amount of poison used may possibly have been so nicely calculated as not to kill or be of *immediate* serious injury. With a portion of our population macaroni is a staple article of food, and under the evidence here the cumulative effect of the poison in the substance under examination would be injurious to health. Let there be a decree of condemnation and destruction.

On the same day, upon motion of the United States attorney for said district, the court issued its decree condemning and confiscating the said 9,110 boxes of macaroni to the United States of America, as being a food of a poisonous and deleterious character, and ordering that all of the same be destroyed by the marshal of said district, which order was forthwith executed, and that the libellant recover from the claimants herein the costs and charges allowed by law.

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

W. M. HAYS,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *November 1, 1910.*