

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 854, FOOD AND DRUGS ACT.

ALLEGED ADULTERATION OF A DRUG PRODUCT—ASAFŒTIDA.

On or about May 3 and May 10, 1910, T. M. Curtius, New York City, shipped from the State of New York into the State of Pennsylvania two consignments of, respectively, five and nine boxes of alleged asafœtida. Samples from these shipments were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and the result thereof showed that the percentage of alcohol-soluble material therein ran from 17.95 per cent to 49.41 per cent, the average being 34.34 per cent, while the percentage of ash found ran from 14.81 per cent to 57.22 per cent, the average being 42.82 per cent, which was below the requirements of the United States Pharmacopœia, that is to say the ash content exceeded 15 per cent, and the alcohol-soluble material was less than 50 per cent. As the findings of the analyst and report thereon indicated that the said shipments were liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Eastern District of Pennsylvania.

In due course libels were filed in the District Court of the United States for the said district, one against each of said shipments, praying condemnation and forfeiture, and alleging that the product so shipped was adulterated, in that it was sold under a name recognized in the United States Pharmacopœia and differed from the standard of strength, quality, and purity as determined by the test laid down in the United States Pharmacopœia, which requires and provides that not less than 50 per cent of the said asafœtida should dissolve in alcohol, and when incinerated that the alcohol should yield not more than 15 per cent of ash, whereas, less than 50 per cent of the said asafœtida, contained in the fourteen boxes aforesaid, was soluble in alcohol, and, when incinerated, the said alcohol contained in the fourteen boxes aforesaid did then and there yield more than 15 per cent of ash. Thereupon, The Smith, Kline & French Company, consignees of the boxes aforesaid, filed their answer to the above libel, admitting the interstate shipment of the asafœtida and that the product remained, at the time of the seizure, in the original unbroken packages in which shipped, save that each package had been broken for the purpose of

sampling the said asafœtida; that the product was adulterated at the time of its consignment and transportation, but denying that it was adulterated at the time seizure was effected, because immediately after the receipt of the product and before the seizure they caused the standard of strength, quality, and purity to be plainly stated upon the containers thereof. It was further alleged by the answer that payment had been made for the said product before its seizure and that the consignees had not delivered it in original unbroken packages, for pay or otherwise, or offered to deliver it to any other person before the containers of the said asafœtida were duly marked as aforesaid.

The causes coming on for argument on the above libel and answer, the court, being fully informed in the premises, issued its decrees, dismissing the libels and ordering the restoration of the product to the above-mentioned claimant, on the ground that under section 7 of the act the product was adulterated only in case its standard of strength, quality, and purity was not plainly stamped upon the containers at the time of seizure, but if so marked it was not adulterated. The opinion of the court was based on the above-mentioned shipment of five boxes of asafœtida, and will be found set forth in full in Circular No. 41, Office of the Solicitor, United States Department of Agriculture, and also in the Federal Reporter, volume 181, page 561. The facts in the case of the nine boxes of asafœtida being identical with those in the case of the five boxes above referred to, no separate opinion was rendered thereon, but the libel in the latter case was likewise dismissed.

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., *April 26, 1911.*