

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1016.

SUPPLEMENTAL TO NOTICE OF JUDGMENT NO. 83.

(Given pursuant to section 4 of the Food and Drugs Act.)

BOND FORFEITURE (WINE).

On April 20, 1908, there was entered in the District Court of the United States for the Eastern District of Louisiana at New Orleans a decree of condemnation and forfeiture against 1,298 barrels of misbranded wine which had been seized by process of libel under section 10 of the Food and Drugs Act of June 30, 1906. Part of the wine was labeled: (a) "Claret Wine, Serial No. 3255. Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and 1/10 of 1% benzoate of soda." (b) "Vino Type, Serial No. 3255. Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and 1/10 of 1% benzoate of soda."

The decree pronounced the 1,298 barrels of wine misbranded and contained a proviso that the product should be released to the claimants (John G. Dorn, the Sweet Valley Wine Co., and the A. Schmidt Jr. & Bros. Wine Co.) on the filing of a satisfactory bond in the sum of \$1,000 each that the wine should not be disposed of by them contrary to the provisions of the Food and Drugs Act. Satisfactory bond in the amounts specified by the court having been filed, the wine was released. Subsequently, on the 28th day of April, 1908, John G. Dorn, through his agent, Thomas F. Cunningham, sold and delivered to Henry Lochte Co. (Ltd.), a corporation doing business in the city of New Orleans, La., five barrels of the wine which had been condemned in the above-mentioned decree and which formed part of the wines released under the provisions of the bond filed by claimants, without, prior to such sale and delivery, changing the labels of said wine, but on the contrary retaining thereon the original labels, which, on three of the said barrels were as follows: "Vino Type, Serial No.

3255, Guaranteed under the National Pure Food and Drugs Act. Containing 1/10 of 1% benzoate of soda," and on two barrels: "Claret Wine, Serial No. 3255, Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and 1/10 of 1% benzoate of soda."

On the 20th day of May, 1908, John G. Dorn, through his agent, Thomas F. Cunningham, sold and delivered to F. Hollander & Co. one barrel of wine which had been condemned by the decree of the court and which formed part of the wines released under the aforementioned bond. While a new label was placed on the said barrel, to wit, "Grape Pomace, Wine Vino—Made with Grape Sugar—Containing harmless color and 1/10 of 1% of benzoate of soda," in point of fact the substance used in said wine as one of its constituent parts was starch sugar instead of grape sugar, and therefore the wine was misbranded, as the label represented it to be what it was not, in violation of the conditions of the said bond.

Acting on a report of the Secretary of Agriculture, the United States attorney filed a petition alleging that the said sale was in violation of the terms of the bond, and praying forfeiture of the amount of the bond.

On May 19, 1910, judgment was entered in favor of the United States in solido for the sum of \$1,000, with legal interest thereon from June 16, 1908, until paid, and all costs of the suit.

On May 28, 1910, a petition for a writ of error was filed, which was granted on the same day. The case was heard in April, 1911, in the Court of Appeals for the Fifth Circuit, where the judgment of the lower court was affirmed.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 6, 1911.*