

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2186.

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

ADULTERATION AND MISBRANDING OF PHILLIPS' DIGESTIBLE COCOA.

On August 15, 1912, the United States Attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and on September 16, 1912, an amended supplemental libel, for the seizure and condemnation of 72 packages of Phillips' Digestible Cocoa, alleging that the product had been shipped on or about July 29, 1912, by the Charles H. Phillips Chemical Co., New York, N. Y., and transported from the State of New York into the State of Louisiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: (On shipping cases) "One Dozen Phillips' Digestible Cocoa Keep in a Cool Dry Place Made in Glenbrook, Conn." (On front of cans) "Sweet Cocoa Phillips' Digestible Cocoa A Delicious and Highly Nutritious Compound Easily Digested Half Pound Prepared by The Chas. H. Phillips Chemical Company New York." (On back of cans) "Phillips' Digestible Cocoa Compound of Cocoa, Sugar, Phosphates, with Vanilla Flavoring. A small proportion of phosphates is added, with a view of furnishing increased nutriment."

Adulteration of the product was alleged in the libel for the reason that the label on the shipping cases, set forth above, represented the product to be digestible cocoa, when, in fact, it was not genuine pure cocoa, but was a compound of cocoa, sugar, phosphates, and vanilla flavor, and there had been thus mixed and packed with the cocoa so as to reduce, lower, and injuriously affect its quality and strength, and there had been substituted in part for said cocoa, sugar, phosphates, and vanilla flavoring. Misbranding was alleged for the reason that the label on the shipping cases, set forth above, represented the product to be digestible cocoa, when, in truth and in fact, it was a compound of cocoa, sugar, phosphates, and vanilla flavoring, which fact was not declared upon the label appearing on the shipping cases, and said label in this way bore a statement regarding the prod-

uct and the ingredients thereof which statement was false and misleading and was such as to deceive and mislead the purchaser into believing that the article was genuine cocoa, when in truth and in fact it was not. Misbranding was alleged for the further reason that the principal label upon the cans appeared in large and conspicuous type and bore the statement relative to the contents of the cans, that it was digestible cocoa, when in truth and in fact, it was not, but was a compound of cocoa, sugar, phosphates, and vanilla flavoring, and that, by reason of the position of said principal label and the bold and conspicuous type in which printed and the manner of its display, the statement contained in the label which appeared on the back of the can in smaller type and less conspicuously displayed, that the product was a compound of cocoa, sugar, and phosphates, with vanilla flavoring, was, by reason of its position on the back of the can, where the purchaser would not be likely to see same, and by reason of the size and inconspicuousness of the type in which it was printed, not sufficient to correct the false and misleading statement that the product was cocoa which appeared in bold and conspicuous type on the principal label on the front of the can, and so the product was misbranded in that the label bore a statement as to the ingredients thereof which was false and misleading, and it was such as to deceive and mislead the purchaser.

On November 1, 1912, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was further ordered that the product should be sold by the United States marshal, after relabeling.

W. M. HAYS,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *January 8, 1913.*

