

had been substituted in whole or in part for said oranges and granulated sugar. Misbranding was alleged for the reason that the statements "Orangeade made from the finest selected fruit and granulated sugar," and "Made from ripe California oranges and granulated sugar," borne on the labels, were false and misleading in that they created the impression that the product was made solely from orange juice and sugar, when in truth and in fact said product contained citric acid and a coal-tar dye, the words "color added" appeared on said labels in such small type as not to correct the false impression created by the remainder of the label, and the presence of citric acid not being declared at all.

On September 2, 1913, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$10 and costs.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 9, 1914.*

**2865. Adulteration of tomatoes. U. S. v. 75 Cases of Tomatoes. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 4060. S. No. 1409.)**

On June 1, 1912, the United States Attorney for the Southern District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 75 cases of tomatoes remaining unsold in the original unbroken packages and in the hands of M. Forchheimer & Co., Mobile, Ala., alleging that the product had been shipped on December 2, 1911, by the John Boyle Co., Baltimore, Md., and transported from the State of Maryland into the State of Alabama, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Victory Brand, for soup, strained tomato trimmings and tomatoes. Always empty contents in a glass or earthen dish as soon as opened. Packed by the John Boyle Co., at Baltimore, Md., average weight 10 oz."

Adulteration of the product was alleged in the libel for the reason that it consisted in part of, to wit, 40,000,000 bacteria per cubic centimeter, to wit, 50 yeasts and spores per one-sixtieth cubic millimeter, and to wit, mold filaments found in 83 per cent of the microscopic fields examined, and that the same further contained pieces of decayed tissue of microscopic size, the exact amount of which was unknown to the United States Attorney, and was therefore adulterated in that it consisted in part of filthy and decomposed vegetable substance.

On April 15, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 9, 1914.*

**2866. Alleged adulteration of milk. U. S. v. William Elliott. Tried to the court and a jury. Verdict of not guilty by the jury. (F. & D. No. 4122. I. S. No. 1565-d.)**

On July 15, 1912, the United States Attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against William Elliott, Central Village, Conn., alleging shipment by said defendant, in violation of the Food and Drugs Act, on September 6, 1911, from the State of Connecticut into the State of Rhode Island, of a quantity of milk which was alleged to have been adulterated. The can containing the product had a wooden plug marked "W. E. 5."

Bacteriological examination of a sample of said product by the Bureau of Chemistry of this Department showed the following results: 13,000,000 bacteria per cc, plain agar, 37° C., for 48 hours; 13,000,000 bacteria per cc, litmus lactose agar, 25° C., for 48 hours; 8,000,000 acid organisms per cc; 1,000,000 gas-producing organisms per cc; 100,000 streptococci; temperature at collection, 21° C. Adulteration of the product

was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid animal or vegetable substance.

On July 23, 1912, the defendant entered a plea of not guilty to the information and thereafter filed his demurrer to the information and plea to the jurisdiction, both of which were overruled by the court on the ground that they were filed too late, as the defendant had entered his plea of not guilty when first arraigned.

On September 24, 1913, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the following charge was delivered to the jury by the court:

MARTIN, *Judge*. Gentlemen of the Jury: The constitutional right of liberty is so sacred that every person coming into court charged with a crime, whether it be a felony or a misdemeanor, is presumed to be innocent until the evidence overcomes that presumption of innocence to a decree arising to the mental condition of the jury, whereby there shall be no reasonable doubt. By reasonable doubt we mean just what those words indicate; a doubt arising beyond reason that develops from the evidence—that grows out of the evidence; not beyond a conjecture of a doubt, but a reasonable doubt. This respondent, Mr. Elliott, is charged here with the violation of the Pure Food Act, so-called. Now a little analysis of the law may aid you somewhat, probably materially in disposing of this question. The law, as applied to this case, is, to use the language of the law—"that it shall be unlawful for any person to manufacture within the territory of the United States, any article of food or drug which is adulterated or misbranded." You observe the language;—adulterated or misbranded—unlawfully to manufacture any article of food that is adulterated or misbranded. It is also unlawful for any person to ship or deliver for shipment from one State or Territory to another, any such manufactured, adulterated or misbranded article of food. Now, that is the law and in order to convict, you must find, beyond a reasonable doubt that this man did adulterate. No claim that he manufactured. No claim but what this was milk that came from his dairy of cows. The claim is that he adulterated that milk and then, in the language of the law, "delivered it for shipment into another State." Now, to sustain that you must find, beyond a reasonable doubt, both of those things; first, that he did adulterate and second, that he delivered it for shipment into another State and those two questions you must find beyond a reasonable doubt.

Now, you will naturally ask right off when you retire, what does "adulterate" mean; does it mean the accidental dropping of something into the milk or that something accidentally got into the milk and thereby changed its quality? Is that what is meant by adulteration? Well, now, the law itself says—"if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter," it covers the meaning of "adulterated." Now you want to think of that pretty carefully; filthy, decomposed or putrid matter—putrid animal or vegetable substance. The law limits it right down to filthy, decomposed or putrid animal or vegetable substance.

Take the general scope of this Pure Food and Drug Act, which in my judgment is one of the most wholesome acts ever passed by Congress and it is the duty of the courts to see that it is enforced, was primarily driving at manufactured articles of drugs and food. Now the question is whether we have a case here that comes up to that point and we must keep within the law, and you will have to find from this evidence, beyond a reasonable doubt, that not only that milk was impure but that impurity consisted of a filthy or a decomposed or of a putrid animal or vegetable substance, in order to bring this man within the law. The law addresses itself to your common sense as to whether those things that were found in this milk show a state of facts that satisfy you, beyond a reasonable doubt, that those things were some one of these that I have enumerated and that this defendant, either through a purpose on his part or through carelessness—no claim of its being done on purpose, nobody claims that for it is conceded here that he is a good, upright man, now that may be by carelessness and a criminal carelessness, that is for you to say, but if you do not find that this milk was adulterated with some of these things that I have now enumerated, that is the end of your inquiry and your verdict should be "Not guilty." If you do find that the impurities in that milk come within the definition that I have just read to you, then you should inquire as to whether or not the evidence satisfies you, beyond a reasonable doubt, that it was the defendant's carelessness that got that impurity into the milk, and you will find that in the evidence.

There are just two branches of evidence—one is as to just what the chemists found there and the other as to the care the defendant took, and if in considering those two

questions you have a reasonable doubt, then you are to find in behalf of the defendant, if not, then it is your duty to convict. So the case rests right there.

And I want to say right here that no matter what the court may have said about the facts in this case as indicating to your mind what I think you ought to do, that is of no consequence; whether I think this man was guilty or not. You are not to guess as to what I think; you are to pass upon that and when I allude to the testimony, it is merely to illustrate the law and the question of the law; you take care of the facts.

Thereupon the jury retired and after due deliberation returned into Court with its verdict of not guilty.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 9, 1914.*

**2867. Adulteration and alleged misbranding of vinegar. U. S. v. Harbauer-Marleau Co. Plea of nolo contendere to count 1 of the information. Fine, \$100 and costs. Count 2 nolle prossed.** (F. & D. No. 4146. T. S. No. 9791-d.)

On November 23, 1912, the United States Attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Harbauer-Marleau Co., a corporation, Toledo, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, on or about October 9, 1911, from the State of Ohio into the State of Indiana, of a quantity of vinegar which was adulterated and alleged to have been misbranded. The product was labeled: (On barrel) "HO-Made Brand Pure Fermented Cider Vinegar Made for Ragon Brothers, Evansville, Indiana." "44 Oct. 9, 1911, Guaranteed under the pure food and drugs act, June 30, 1906, Serial No. 8904."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results:

Solids (grams per 100 cc).....	1. 78
Reducing sugars, direct, after evaporation (grams per 100 cc).....	. 59
Nonsugars (grams per 100 cc).....	1. 19
Ash (grams per 100 cc).....	. 30
Alkalinity of water soluble ash (cc N/10 acid per 100 cc).....	29. 7
Ash in nonsugars (per cent).....	25. 2
Total phosphoric acid (mg per 100 cc).....	22. 2
Total acid, as acetic (grams per 100 cc).....	4. 02
Fixed acid, as malic (grams per 100 cc).....	. 025
Glycerol (grams per 100 cc).....	. 11

Adulteration of the product was alleged in the first count of the information for the reason that a substance, to wit, a dilute solution of acetic acid or distilled vinegar and a product high in reducing sugars and mineral matter, mixed and prepared in imitation of cider vinegar, had been and was substituted wholly or in part for the article (pure fermented cider vinegar). Misbranding was alleged in the second count of the information for the following reasons:

(1) That the statement "Pure fermented cider vinegar" borne on the package was false and misleading in that the product was not pure fermented cider vinegar but consisted in whole or in part of a dilute solution of acetic acid or a distilled vinegar and a product high in reducing sugars and mineral matter, mixed and prepared in imitation of cider vinegar.

(2) That it was an imitation of cider vinegar and was offered for sale under the distinctive name of another article, to wit, "Pure fermented cider vinegar."

(3) That it was so labeled and branded as to mislead and deceive the purchaser, being labeled and branded "Pure fermented cider vinegar" when as a matter of fact it was not pure fermented cider vinegar but consisted in whole or in part of a dilute solution of acetic acid or distilled vinegar, and a product high in reducing sugar and mineral matter, which had been mixed and prepared in imitation of pure fermented cider vinegar.