

On October 24, 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., *May 6, 1914.*

3107. Adulteration and misbranding of "Life-Malt." U. S. v. 60 Barrels of "Life-Malt." Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 5224. S. No. 1812.)

On May 17, 1913, the United States Attorney for the District of South Dakota, 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 60 barrels of "Life-Malt," remaining unsold in the original unbroken packages and in possession of the Jewett Drug Co., Aberdeen, S. Dak., alleging that the product had been shipped on or about May 20, 1912, by the Fred Krug Brewing Co., Omaha, Nebr., and transported in interstate commerce from the State of Nebraska into the State of South Dakota, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled (on barrel head): "9 Doz. Life Malt Small"; (on paster on barrel head): "Intoxicating liquor— $37\frac{7}{10}$ % alcohol—from Fred Krug Brewing Co., 26th and Vinton Sts. Omaha, Neb.—Jewett Drug Co., Aberdeen, South Dakota—D-577"; (on bottles—neck label): "Life-Malt, the tonic you like"; (principal label): "Alcohol $3\frac{1}{2}$ %. Contents 12 ozs. Krug Life-Malt, Reg. U. S. Pat. Office. A highly concentrated Extract of Malt and Hops, prepared only by Fred Krug Brewing Co. Omaha, Neb. Guaranteed by Fred Krug Brewing Company, under Pure Food and Drugs Act, June 30, 1906. No. 3952. Krug-Life-Malt is the ideal food for Brain and Brawn workers, purifies and replenishes the blood, cleanses the liver, builds brain, bone and muscle and regulates the bowels. Is a great boon to nursing mothers, convalescents and those of weak and rundown systems, it aids digestion, repairs waste of tissue, improves the appetite, soothes the nerves, produces healthful sleep."

Adulteration of the product was alleged in the libel for the reason that the barrels and bottles contained a product which was ordinary dark beer, in which some cereal product other than malt had been substituted therefor so as to reduce, lower, and injuriously affect the utility [quality] and strength of the product. Misbranding was alleged for the reason that the said barrels of Life-Malt did not contain "a highly concentrated extract of malt and hops," as the label purported them to contain, but said 60 barrels of Life-Malt and each of them contained ordinary dark beer, in which some cereal product other than malt had been substituted therefor so as to reduce, lower, and injuriously affect the utility [quality] and strength of the product contained in each of the bottles, and for the further reason that the labels on said bottles caused further deception by reason of the fact that they each contained a pictorial representation of barley, and, therefore, the product was labeled and branded so as to deceive and mislead the purchasers.

On August 15, 1913, the said Fred Krug Brewing Co. having entered its appearance as the owner of the product and filed its bill acknowledging the allegations of the libel to be true, 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, and that the said Fred Krug Brewing Co. should pay the costs of the proceedings, amounting to \$43.

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

WASHINGTON, D. C., *May 6, 1914.*

3108. Adulteration of tomato pulp. U. S. v. 100 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5225. S. No. 1814.)

On May 19, 1913, the United States Attorney for the District of New Jersey, 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 100 cases

of tomato pulp, remaining unsold in the original unbroken packages, and in the possession of Marin & Goldberg, Jersey City, N. J., alleging that the product had been shipped on or about May 6, 1913, by Wm. P. Andrews, Wingate's Point, Md., and transported from the State of Maryland into the State of New Jersey, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Windmill brand (picture of a whole ripe tomato) tomato pulp, made from tomatoes and fresh tomato trimmings, with great care. Packed by Wm. P. Andrews."

Adulteration of the product was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance, to wit, tomatoes.

On August 13, 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., *May 6, 1914.*

3109. Misbranding of champagne. U. S. v. 5 Cases of Champagne, So-called. Tried to the court. Finding in favor of the Government. Judgment of condemnation and forfeiture. Goods released on bond. (F. & D. No. 5227. S. No. 1813.)

On or about May 21, 1913, the United States Attorney for the Northern District of New York, 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 5 cases, each containing 24 pint bottles of so-called champagne, remaining unsold in the original unbroken packages, and in the possession of James L. Green, Watertown, N. Y., alleging that the product had been shipped by Henry H. Shufeldt, Peoria, Ill., and transported from the State of Illinois into the State of New York, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: (On cases) "Special Gold Cabinet Superior Quality." (On bottles) "Special Gold Cabinet Superior Quality. Gold Cabinet Superior Quality. Extra Dry."

Misbranding of the product was alleged in the libel for the reason that it was labeled as set forth above and purported and was represented to be champagne, when, in truth and in fact, the cases and bottles aforesaid did not contain champagne, but the article of food therein contained was a wine artificially carbonated in imitation of champagne, and the article by the label aforesaid and the false representations thereon contained was so labeled and branded as to deceive and mislead the purchaser thereof, and said label and representations thereon contained were false and misleading, in that the wine was not a champagne, nor was it a wine of superior quality, nor was it a wine commonly known as "Extra Dry," and said labels and the words thereon printed were false and misleading and constituted a misbranding within the meaning of the statute.

On June 13, 1913, the case having come on for a hearing, the said James L. Green having appeared personally but having interposed no answer and no defense to the libel, and a jury being waived and the cause having been duly tried in court, and witnesses having been sworn and given their testimony in behalf of the libelant, decision was reserved by the court. On June 23, 1913, condemnation of the product was ordered by the court, as will more fully appear from the following opinion by the court (Ray, J.):

About March 15, 1913, James L. Green, a wholesale liquor dealer of Watertown, N. Y., ordered from Henry H. Shufeldt & Co., of Peoria, Ill., five cases of champagne, and said Shufeldt & Co. shipped and billed to him five cases of so-called champagne to fill the order, and same was shipped and transported and received in interstate commerce. Each case contained 24 bottles and each bottle holds about 1 pint of a liquid mixture which on due examination and test is found to consist of a very cheap, ordinary, low-grade carbonated white wine. It is not champagne in any sense of that word, but a low-grade, cheap white wine charged with gas. It is bottled and labeled in the following manner: The bottle itself is of the same shape and made in imitation of the ordinary champagne bottle. This bottle is corked and dressed