

of the exception or proviso, that they are in fact "an imitation of another article," viz., genuine imported champagne, and are labeled and branded so as to deceive or mislead the purchaser, and are not labeled, branded, or tagged so as to plainly indicate that they are imitations, and the word "imitation" is not on the package. It must be borne in mind that in stating that this wine was actually offered for sale and sold under the distinctive name "champagne" I do not mean that the word champagne was on the bottles, labels, or packages, but that the purchaser ordered champagne and expected to get champagne, and the seller knew this and supplied this cheap, carbonated wine put up in these bottles, dressed, ornamented, and labeled in close imitation of champagne, and by these acts represented to the purchaser that he was selling and shipping to him genuine champagne. I think these facts bring the act of the seller within the language of the act "offered for sale under the distinctive name of another article." Hence I hold that within the meaning of this statute this wine was not only offered for sale but actually sold "under the distinctive name of another article"—that is, genuine champagne. Again, these bottles containing this wine—that is, the package containing it, both bottles and box—bore designs and devices thereon plainly intended to relate to the contents of such bottles and indicate to the purchaser and user thereof the nature and character of the substance contained in such bottles. In addition to the marks and words and designs mentioned there were the words "Extra Dry," indicating a grade of champagne, and these words were a plain misrepresentation and misstatement as to the character and quality of the contents which were not "extra dry." These designs and devices very plainly said to a purchaser, "champagne," and were intended by the seller to say to the purchaser, "this bottle contains extra dry champagne." These designs and devices were false and misleading. The designs and devices and certain of the words on these bottles could relate to the substances contained therein only and had but one purpose and meaning. It was the purpose of Congress in enacting this "The Food and Drugs Act, June 30, 1906," to put a stop to the transportation and sale in interstate commerce of adulterated and misbranded articles of food, drink, and drugs. It was intended to reach all forms of misrepresentation by misbranding, by the use of words, or by the use of designs or devices, pictures, etc., calculated to mislead and deceive, cheat, or defraud the purchasers. If A in New York orders of B in Illinois one thousand 1-pound packages of corn and one thousand packages are shipped and transported from the one State to the other in fulfillment of the order and such packages have labels reading "Fine Illinois" with the picture thereon or on the package itself of an ear of corn, but the packages in fact contain sawdust only, is there or is there not an offer for sale under the distinctive name of another article, and is or is not the package so labeled or branded as to deceive or mislead the purchaser, and does or does not the package containing the sawdust or its label bear a design or device regarding the substance contained in such package which is false or misleading in any particular? What does the picture of the ear of corn on the package say? And, in such case, is there or is there not a violation of the act in question? Having in view the evils to be remedied, the purpose of Congress and the language of the act, it seems to me there can be but one answer.

A statute, if its wording will permit, is always to be construed so as to make effectual the intent of the law-making body in enacting it. In selling articles of food, including liquids for drinking, frauds on the public may be perpetrated in two ways, one, by adulterating or artificially coloring, etc., the article itself, and two, by putting it in packages or receptacles so formed or labeled and dressed as to induce the purchaser to take it as one article when in fact it is another. Congress aimed at both modes of committing a fraud on the public.

There will be a judgment of condemnation.

On July 14, 1913, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be released to the said James L. Green or other person rightfully claiming the property in lieu of the retention and destruction thereof upon payment of the costs of the proceeding and the execution of bond in the sum of \$100 in conformity with section 10 of the act.

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

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

3110. Adulteration of tomato pulp. U. S. v. 24 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5229. S. No. 1817.)

On May 19, 1913, the United States Attorney for the Southern 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 24 cases of tomato pulp remaining unsold in the original unbroken packages and in possession of Morris Scherzer, New York, N. Y., alleging that the product had been shipped on or about May 3, 1913, by William P. Andrews from Wingate, Md., and transported from the State of Maryland into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Windmill Brand Tomato Pulp (Picture of ripe tomato) Contents weigh nine ounces or over. Made from tomatoes and fresh tomato trimmings, with great care. Packed by Wm. P. Andrews, Crapo, Md."

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, decayed tomato pulp.

On June 10, 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 21, 1914.*

3111. Adulteration and misbranding of stock feed. U. S. v. 300 Sacks of Stock Feed. Consent decree of condemnation and forfeiture. Product released on bond. (F. & D. Nos. 5230, 5231. S. Nos. 1809, 1811.)

On May 17, 1913, 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 for the seizure and condemnation of 300 sacks of stock feed, remaining unsold in the original unbroken packages and in possession of V. P. Stokes, New Orleans, La., alleging that the product had been shipped on or about April 15, 1913, by the Ozark Feed Co., Neosho, Mo., and transported from the State of Missouri into the State of Louisiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. Part of the product was in cotton sacks and labeled: "100 Lbs. Neozark Molasses Feed. Corn, Oats, Corn Bran, Alfalfa, Screenings, Salt & Molasses. A Well Balanced Ration. Ozark Feed Co., Neosho, Mo." (On a small card attached to sack) "Neozark Molasses Feed Average Guaranteed Analysis: Crude Fat 3 per cent. Crude Protein 11 per cent. Crude Fiber 13 per cent. Carbohydrates 52 per cent. Made from Alfalfa, Molasses, Corn, Oats, Corn Bran, Salt. Ozark Feed Co., Neosho, Mo." (On small tag on sack) "Guaranteed—100 Lbs. E. D. Bruner Com. Season of 1912 & 1913. State of Louisiana." Part was in jute sacks and labeled: "100 Lbs. Neozark Molasses Feed—Corn, Oats, Alfalfa, Corn Bran, Recleaned Screenings, Salt & Molasses. A Well Balanced Ration—Ozark Feed Co., Neosho, Mo." (On small card attached to sack) "Neozark Molasses Feed—Average Guaranteed Analysis: Crude Fat 3 per cent—Crude Protein 11 per cent—Crude Fiber 13 per cent—Carbohydrates 52 per cent. Made from Alfalfa, Molasses, Corn, Oats, Corn Bran, Salt. Ozark Feed Co., Neosho, Mo." (Small tag on sack) "Guaranteed 100 Lbs. E. D. Bruner, Com. Season of 1912 & 1913. State of Louisiana."

It was alleged in the libel that the product was adulterated in the following manner and particulars, to wit, that the samples thereof were analyzed by the Bureau of Chemistry of the Department of Agriculture of the United States; that said analysis of the samples from the 300 sacks of stock feed revealed that it contained: Moisture, 17.04 per cent; ether extract, 2.5 per cent; protein, 9.54 per cent; crude fiber, 11.56 per cent. Analysis of the second samples