

3876. Misbranding of Londonderry lithia water. U. S. v. 4 Cases of Londonderry Lithia Water. Consent decree of condemnation and forfeiture. Product ordered destroyed. Subdivision (b) of count 3 of the libel dismissed. (F. & D. No. 3287. I. S. No. 1975-d. S. No. 1208.)

On December 9, 1911, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Supreme Court of the District aforesaid, holding a district court, a libel for the seizure and condemnation of 4 cases, each containing 50 bottles of sparkling Londonderry lithia spring water, so-called, remaining unsold in the original unbroken packages at Washington, D. C., alleging that the product had been transported from the State of New Hampshire into the District of Columbia, and charging misbranding in violation of the Food and Drugs Act. The product was labeled in part: "Sparkling Londonderry Lithia Spring Water—Londonderry Lithia Spring Water Co., Nashua, N. H. U. S. A.—Lay on side in cool place—Trade Mark Reg. N. 52334 Londonderry Lithia—See That the Cork is branded 'Londonderry Lithia'.—Guaranteed under the Food and Drugs Act, June 30, 1906, Serial No. 3139.

Misbranding of the product was alleged in subdivision (a) of the third count of the libel for the reason that each and every bottle in the cases purported to contain a food and drug, that is to say, a liquid known as lithia water, the said cases and bottles bearing labels as aforesaid, which said labels bore certain statements regarding said food and drug which were false and misleading in that said statements imported that the product was a lithia water, whereas, in truth and in fact, the food and drug contained in said bottles was not a lithia water, nor entitled by reason of its ingredients to be so called. Misbranding was alleged for the further reason that the product was offered for sale under the distinctive name of another article, to wit, under the name of lithia water, when, in truth and in fact, it was not a lithia water, nor entitled to be so called. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser thereof.

Misbranding was further alleged in subdivision (b) of the third count of the libel for the reason that each of the bottles was labeled and branded so as to deceive and mislead the purchaser thereof, for that the label thereon signified and imported that the product was a sparkling lithia water, whereas, in truth and in fact, it was not a sparkling lithia water, and was not a natural sparkling water, nor entitled to be so called, but was an artificially carbonated water containing added substances and ingredients, that is to say, sodium chlorid, sodium bicarbonate, and carbon dioxid, and that none of these added substances and ingredients was named or set forth upon said labels as being contained in said water, and that said sodium chlorid, sodium bicarbonate, and carbon dioxid were not contained in the water in its natural state.

On November 28, 1914, the following agreement or stipulation between counsel for the Government and the Londonderry Lithia Spring Water Co., Nashua, N. H., claimant, was filed nunc pro tunc as of November 20, 1914:

Whereas, the claimant in the above entitled cause has admitted the allegations of subdivision A of count three in said information, and has agreed not to sell or offer for sale hereafter said water by using on the labels thereof the word "lithia";

And whereas, said claimant has consented to a condemnation of said water now under seizure and has given bond to pay the costs of this proceeding;

And whereas, said claimant has agreed hereafter to use suitable language on its "sparkling" brand of water, to indicate in conformity to law that carbon dioxide gas, salt, and soda have been added thereto in the course of manufacture;

Now, therefore, it is hereby agreed by and between said parties in said cause of action that subdivision B of count three of said information shall be dismissed without further prosecution.

On November 20, 1914, the case having come on for final hearing, judgment of condemnation and forfeiture was entered in conformity with the provisions of the foregoing agreement, and it was ordered by the court that the product should be destroyed, that subdivision (b) of count 3 of the libel be dismissed, and that the said Londonderry Lithia Spring Water Co. pay the costs of the proceedings.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *May 26, 1915.*