

4036 (Supplement to Notice of Judgment 3400). Adulteration of preserves. U. S. v. Glaser, Kohn & Co. Decision by the Circuit Court of Appeals for the Seventh Circuit affirming the judgment of conviction of the District Court of the United States for the Northern District of Illinois. (F. & D. No. 2688. I. S. No. 3433-c.)

On February 24, 1914, Glaser, Kohn & Co., a corporation, Chicago, Ill., the defendant company, entered its motion for a new trial in a case in the District Court of the United States for the Northern District of Illinois involving the shipment in interstate commerce, on October 14, 1910, from the State of Illinois into the State of Wyoming, of a quantity of a product labeled "Herald Brand Fruit Preserves Blackberry Flavor Apple Preserves 74%, Blackberry Preserves 26%," which had been sold by the defendant company under a written guaranty to the shipper thereof that the same was not adulterated or misbranded within the meaning of the Food and Drugs Act.

Theretofore a jury in said court had found the defendant company guilty upon one of the counts of the information, which charged adulteration of the article for the reason that it consisted in part of a decomposed vegetable substance. On February 25, 1914, after having heard the arguments of counsel, the court denied said motion, to which ruling the defendant company duly excepted and entered a motion in arrest of judgment, which was also overruled and denied, and thereafter, on April 28, 1914, the court imposed on the defendant company a fine of \$200 and costs.

On May 7, 1914, the defendant company filed its bill of exceptions, and on July 6, 1914, its petition for a writ of error and its assignment of errors, praying that the judgment of the district court aforesaid by reason of errors in the record and proceedings be reversed, and on the same date the writ of error was allowed.

On July 30, 1914, a transcript of the record and proceedings was transmitted to the United States Circuit Court of Appeals for the Seventh Circuit, and on May 20, 1915, the case came on for final disposition before said circuit court of appeals (Baker, Kohlsatt, and Mack, *C. J.*), the statement of the facts in the case by said court being as follows:

On or about January 15, 1907, plaintiff in error executed and delivered to Steele-Wedeles Company, of Chicago, Illinois, a guaranty in writing signed by it, which guaranty reads:

STEELE-WEDELES Co., City.

GENTLEMEN:

Replying to your favor 10th inst., would say we hereby guarantee that all goods as furnished you hereafter will comply with the Food and Drugs Act of June 30, 1906, with the understanding, however, that if we at any time use labels or packages furnished by you or gotten up as per your instructions, we shall not be responsible for the form or wording of the same but only guarantee that goods covered by same are not adulterated. It is expressly understood that the above shall hold good until notice of revocation be given in writing.

Truly yours,

GLASER, KOHN & Co.,  
G. D. GLASER, *Pres.*

Afterwards and on or about September 15, 1910, and while said guaranty, by its terms, was in full force, plaintiff in error sold and delivered to said Steele-Wedeles Company two dozen jars of preserves, described as "Herald Brand Fruit Preserves Blackberry Flavor Apple Preserves 74% Blackberry Preserves 26%," which jars of preserves Steele-Wedeles Company shipped in interstate commerce from Chicago to Rock Springs, in the State of Wyoming, on or about October 14, 1910. On or about October 20, 1910, an inspector of the United States bureau of chemistry purchased a sample of these preserves and sent the same, properly sealed, to the bureau of chemistry of the Department of Agriculture, where it was duly examined by experts on or about December 8, 1910, who pronounced the sample analyzed to contain mold and to be partly decomposed and made from partly decomposed fruit. Thereafter the United States filed its information, containing six counts, against plaintiff in error, of which only the fourth count is here involved, which charges plaintiff in error with unlawfully knowingly selling and delivering to Steele-Wedeles Company the said jars of preserves, contrary to the provisions of the so-called pure food law of the United States approved June 30, 1906, entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," in that said jars of preserves, when and where they were so sold and delivered, were an adulterated article of food within the meaning of the act and consisted in part of decomposed vegetable