

**6142 (Supplement to Notice of Judgment 5561). Adulteration of milk. U. S. \* \* \* v. Union Dairy Co., a corporation. Decision of the United States Circuit Court of Appeals for the Seventh Circuit, affirming the judgment of conviction in the lower court. (F. & D. No. 7626. I. S. No. 11710-1.)**

On July 20, 1917, a petition for a writ of error to the District Court of the United States for the Southern District of Illinois was filed and granted in a case involving the interstate shipment by the Union Dairy Co., a corporation, doing business at Troy, Ill., in violation of the Food and Drugs Act, of a quantity of adulterated milk, in which case the judgment of conviction was entered in said district court June 7, 1917.

On February 20, 1918, the case having come on for final disposition before the United States Circuit Court of Appeals for the Seventh Circuit (before Baker, Alschuler, and Evans, circuit judges), the judgment of conviction in the lower court was affirmed, as will more fully appear from the following decision of said circuit court of appeals:

Writ of error to review judgment in favor of the Government and against plaintiff in error for violation of Food and Drugs Act.

Plaintiff in error is charged with having shipped 75 cans of milk from Troy, Illinois, to itself at St. Louis, Missouri, which milk was adulterated through the addition of water, and it was further charged that "filth, putrid and decomposed animal substance" was found therein.

EVANS, *Circuit Judge.*

Plaintiff in error contends that it was shipping the milk from a receiving station in Illinois to itself in Missouri, there to be treated, impurities removed, and the milk standardized; that while in transit it was not an article of food such as was defined by the Food and Drugs Act; and did not become such an article of food until after treatment.

Were we to adopt this conclusion, it would do violence to the plain language of Sec. 2 of the act under which prosecution is brought. The first sentence of Sec. 2 reads:

"The introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia or from any foreign country, or shipment to any foreign country, of any article of food or drugs which is adulterated or misbranded, within the meaning of this act, is hereby prohibited."

Sec. 6 of the act provides:

"The term 'food' as used herein shall include all articles used for food, drink, confectionery, or condiment by man or other animals whether simple, mixed, or compound."

Our conclusion is strengthened by another section of the act. Sec. 9 provides:

"No dealer shall be prosecuted under the provisions of this act when he can establish a guarantee signed by the wholesaler, jobber, manufacturer, or other party, residing in the United States, from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it."

In *Hipolite Egg Co. v. United States*, 220 U. S. 45, the court said:

"Transportation in interstate commerce is forbidden to them (decayed eggs), and in a sense they are made culpable as well as their shipper. It is clearly the purpose of the statute that they shall not be stealthily put into interstate commerce and be stealthily taken out again at their destination and be given asylum in the mass of property in the State."

In passing this act, Congress was endeavoring to protect the public by keeping out of commerce certain illicit articles, debased by adulteration, and it would be an unjustifiable construction of the act to make liability turn upon a difference in identity of consignor and consignee, or the secret intent with which a shipper made the shipment.

Plaintiff in error further contends that the evidence fails to show any adulteration at all, or such an adulteration as injured the milk as food. We have carefully examined the record, and giving the stipulation of the parties the fair meaning which we believe was intended, the adulteration was clearly established. It was unnecessary for the court to receive evidence to establish the fact that the addition of water to milk injuriously affected the quality or strength of milk. (See Sec. 7 of the act.)

Judgment is affirmed.

R. A. PEARSON, *Acting Secretary of Agriculture.*