

**6563. Alleged adulteration and misbranding of vinegar. U. S. \* \* \* v. 1,000 Cases and 300 Cases \* \* \* of Vinegar. Tried to the court. Finding in favor of claimants. Libel dismissed. (F. & D. Nos. 9009, 9010. I. S. Nos. 8439-p, 8445-p. S. No. C-878.)**

On April 29, 1918, the United States attorney for the District of Nebraska, 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 1,000 cases, and 300 cases, each containing 24 bottles of vinegar, at Omaha, Nebr., alleging that the article had been shipped on or about January 31, 1918, by Curd & Blakemore Co., Inc., Louisville, Ky., and transported from the State of Kentucky into the State of Nebraska, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part, "Blue Grass Belle Brand \* \* \* Pure Apple Cider Vinegar."

Adulteration of the article was alleged in substance in the libel for the reason that distilled vinegar or added dilute acetic acid and material high in reducing substances had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for the article.

Misbranding of the article was alleged for the reason that the statement, to wit, "Pure Apple Cider Vinegar," was false and misleading, and deceived and misled the purchaser into believing that he would be purchasing pure apple cider vinegar, whereas, in truth and in fact, it was not pure apple cider vinegar; and for the further reason that it was an imitation of, and was offered for sale under the distinctive name of, another article.

On July 20, 1918, the said Curd & Blakemore Co., having filed its answer as intervening claimant and the case having come on for trial before the court, after the submission of evidence and argument by counsel, a finding for the claimant was made and the libel was ordered dismissed, as will more fully appear from the following decision of the court (Woodrough, D. J.):

I am persuaded in this case that there were many suspicious circumstances that fully justified the libel being brought, but I am not persuaded that the evidence is sufficient to justify me in the condemnation of the product.

I find that the testimony of the experts is very persuasive; that their practical experience has shown them that good vinegar ought to have certain properties, that in a wide field of investigation have always shown up, that the particular vinegar in question does not have, but that the reasons why it does not have them are purely conjectural and speculative. So now I am left without any foundation to determine why this particular vinegar does not show the properties that these men, after years of experience, find exists in vinegar in general.

I find that the vinegar is manufactured under circumstances that practically put the seal of secrecy on it. Mr. Blakemore is able to testify only from information and belief. As to the elderly man who does supervise the manufacture of the vinegar, however, his testimony is positive. He says there was no adulteration, and sticks to it through a long cross-examination that there was no adulteration. He speaks of the physical difficulties which, in his mind, make it almost an impossibility that there should be, in any practical way, any adulteration.

I find many suspicious circumstances, however. It seems to me a suspicious circumstance that the chemist of this company should concern himself so particularly, time after time, in analyzing the product to see whether or not it came up to the standard set forth in Circular 19. What did he care about that fact, if it was made out of pure apple cider? He seems to have had some purpose in making these investigations. The circumstance looks suspicious to me; looks as though, if he knew it was made out of pure apple cider he wouldn't be concerned with the analysis, as far as that particular circular is concerned, giving as his only excuse that it was a good feeling to have to find that it happened to tally up with the definition in that circular. That is an analysis that had been made, which is admitted by all parties not to be a true

analysis, a complete analysis, of cider vinegar, showing all its component parts, because all the parties here admit that there is another part found in this vinegar, and practically all vinegar that is made by the fermentation process.

But I am unable to reach a conclusion with a sufficient degree of certainty or positiveness to overcome the positive testimony of the man who made the vinegar in question, and to order its condemnation.

I find plenty of opportunity. I find a good deal of incentive in the business conditions existing, where there was such a great discrepancy between the amount manufactured in this particular year, and the amount in other years, and the difficulty of getting apples this year. Seventy thousand gallons against 250,000 gallons would perhaps offer a great incentive. Ample opportunity in the fact that both kinds, the clear white vinegar and the other, were being made in the same place—undoubtedly ample opportunity—sufficient motive—very persuasive circumstances in the analyses that are made by these men who have devoted years to this study, but a lack of certainty sufficient to justify final condemnation.

Therefore there will be a dismissal of the libel.

J. R. RIGGS, *Acting Secretary of Agriculture.*