

9681. Adulteration and misbranding of vinegar. U. S. * * * v. Clem Herbis, Edward J. Herbis, and Anthony B. Mayer (The Banner Vinegar Co.). Plea of guilty by Clem Herbis. Fine of \$280 and costs. Nolle prosequi as to remaining defendants. (F. & D. No. 9501. I. S. Nos. 12179-m, 12184-m, 12185-m, 12187-m, 12188-m, 12711-m, 12712-m.)

On July 12, 1919, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Clem Herbis, Edward J. Herbis, and Anthony B. Mayer, copartners, trading as the Banner Vinegar Co., Cincinnati, Ohio, alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about March 10, 19, and 23 and May 15, 1917, respectively, from the State of Ohio into the State of Indiana, and on or about April 25 and 30 and June 7, 1917, respectively, from the State of Ohio into the State of Kentucky, of quantities of vinegar which was adulterated and misbranded. The article was labeled in part, respectively, "Melrose Brand Pure Cider Vinegar * * *," "Melrose Brand Pure Apple Vinegar * * *," "Peerless Brand Fermented Apple Vinegar * * *," "Yale Brand Pure Cider Vinegar * * *," or "Ho-Made Brand Pure Apple Vinegar * * *."

Analyses of samples of the article by the Bureau of Chemistry of this department showed that it contained distilled vinegar or dilute acetic acid and material high in phosphates.

Adulteration of the article was alleged in the information for the reason that substances, to wit, either distilled vinegar or dilute acetic acid and ash materials, had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and had been substituted in part for pure cider vinegar, pure apple vinegar, or fermented apple vinegar, as the case might be, which the article purported to be. Adulteration was alleged for the further reason that the said article was a product composed in part of either distilled vinegar or dilute acetic acid, prepared in imitation of cider vinegar, apple vinegar, or fermented apple vinegar made from apple products, as the case might be, and was mixed with ash materials so as to simulate the appearance of cider vinegar, apple vinegar, or fermented apple vinegar made from apple products, in a manner whereby its inferiority to said cider vinegar, apple vinegar, or fermented apple vinegar was concealed.

Misbranding was alleged for the reason that the statements, to wit, "Pure Cider Vinegar," "Pure Apple Vinegar," and "Fermented Apple Vinegar made from apple products," borne on the barrels containing the article, regarding the article and the ingredients and substances contained therein, were false and misleading in that they represented that the said article consisted wholly of pure cider vinegar, pure apple vinegar, or fermented apple vinegar made from apple products, as the case might be, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it consisted wholly of pure cider vinegar, pure apple vinegar, or fermented apple vinegar made from apple products, whereas, in truth and in fact, it did not so consist but did consist in part of either distilled vinegar or dilute acetic acid and added ash materials.

On November 15, 1920, the defendant Clem Herbis entered a plea of guilty to the information, and the court imposed a fine of \$280 and costs. The charges were nolle prossed with respect to the remaining defendants.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*