ing that the article had been shipped by the Humphreys-Godwin Co., from Memphis, Tenn., on or about April 20, 1923, and transported from the State of Tennessee into the State of Massachusetts, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "100 Pounds Net Danish Brand Cotton Seed Meal Guaranteed Analysis Protein 36.00% Equivalent Nitrogen 5.75% * * * Crude Fibre (Max.) 15.00% * * * Manufactured For Humphreys-Godwin Company Memphis, Tenn."

Adulteration of the article was alleged in the libel for the reason that a substance, to wit, a substance low in protein, nitrogen, and containing excessive crude fiber, had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength and had been substituted in whole or in part for the said article.

Misbranding was alleged for the reason that the article was a product low in protein and containing excessive crude fiber and was offered for sale and sold under the distinctive name of another article, to wit, cottonseed meal. Misbranding was alleged for the further reason that the article was labeled, "Cotton Seed Meal Guaranteed Analysis Protein 36.00% Equivalent Nitrogen 5.75% * * * Crude Fibre (Max.) 15.00%," which statements were false and misleading and deceived and misled the purchaser, in that they represented to purchasers that the article was cottonseed meal containing 36 per cent of protein, the equivalent of 5.75 per cent of nitrogen, and that it contained not more than 15 per cent of crude fiber, whereas, in truth and in fact, it was not cottonseed meal containing 36 per cent of protein, the equivalent of 5.75 per cent of nitrogen, and containing not more than 15 per cent of crude fiber, but was a product containing less than 36 per cent of protein, the equivalent of 5.75 per cent of nitrogen, and contained more than 15 per cent of crude fiber.

On July 12, 1923, the Humphreys-Godwin Co., Inc., Memphis, Tenn., having entered an appearance as claimant for the property and having filed a satisfactory bond in conformity with section 10 of the act, judgment of condemnation was entered, and it was ordered by the court that the product might be released to said claimant upon payment of the costs of the proceedings.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

11709. Adulteration and misbranding of butter. U. S. v. 13 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 17641. I. S. No. 4307–v. S. No. C–4063.)

On July 11, 1923, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 13 tubs of butter, remaining unsold in the original tubs at Chicago, Ill., alleging that the article had been shipped by the Cuba City Creamery Co., Cuba, Wis., July 5, 1923, and transported from the State of Wisconsin into the State of Illinois, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that a substance deficient in milk fat and high in moisture had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength and had been substituted in whole or in part for the said article. Adulteration was alleged for the further reason that a valuable constituent of the article, to wit, butterfat, had been in part abstracted therefrom.

Misbranding was alleged for the reason that the article was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On July 14, 1923, the H. C. Christians Co., Chicago, Ill., claimant, having admitted the allegations of the libel and consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that it be reprocessed under the supervision of this department and that the tubs be marked with the net contents thereof.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

11710 (supplement to N. J. 10371). Adulteration and misbranding of red, ponceau red, orange yellow, amarath red, and lemon colors, and alleged adulteration and misbranding of amaranth and caramella colors. U. S. v. W. B. Wood Mfg. Co., a Corporation. Decision of the Circuit Court of Appeals for the Eighth Circuit affirming the judgment of conviction in the lower court. (F. & D. No. 10915. I. S. Nos. 16316–p, 16317–p, 16318–p, 16319–p, 1459–p, 12007–p, 19865–p.)

On August 3, 1923, the case having come before the Circuit Court of Appeals for the Eighth Circuit on a writ of error, the judgment of the district court was affirmed as will more fully and at large appear from the following opinion of the court (Stone and Kenyon, *C. J.*, and Trieber, *D. J.*) (Stone, *C. J.*):

"From a conviction for adulteration and misbranding of 'Red Color,' a coloring powder used in food preparations, this writ of error is sued out.

"The adulteration, causing misbranding, consisted of excessive quantities of sodium chloride, sodium sulphate, and some other substances which reduced the quality and strength of the powder.

"The errors here urged are: (1) Insufficiency of evidence; (2) five rulings upon evidence; and (3) improper comment by the court.

"We have carefully examined the evidence and entertain no doubt of its sufficiency to sustain the verdict and conviction.

"The first and second objections to the rulings on evidence are to the admission of certain testimony of the witness Jablonski. He was a fully qualified chemical expert who had specialized in coloring substances and compounds. He had chemically examined the precise cans of powder upon which the information was based. The substance of the criticised testimony was that the presence of the named substances in the quantity, or proportion, found by him in the powder would have the effect of lowering and lessening the quality and strength of the powder as a coloring substance. There was testimony in the record of the proportion of these substances present in properly prepared commercial powders. We think the witness was qualified to and properly did testify to the effect of such presence, in the quantities found, upon the powder.

"The third challenge as to rulings on evidence is to the exclusion of certain testimony of witness Kendall on cross-examination. The substance of these questions was whether it was customary to dilute a certain substance when using it in the manufacture of food colors. This was properly excluded for two reasons: The standard set by the statute is not what is customarily done by manufacturers but what is properly done by them; and this error was clearly invited by an earlier objection by this plaintiff in error, which was sustained, to the same character of evidence when offered by the Government. Error can not be inserted in a trial by thus alternately blowing hot and cold.

"The fourth objection is to the exclusion of certain testimony of witness Heath who was a manufacturer of such colors. The question was: 'What per cent of colors sold for food contain ten to fifty per cent of salt?' This was objected to and properly excluded as immaterial.

"The fifth objection is to exclusion of certain testimony of witness Wood, a manufacturer and jobber in colors. He was asked whether he had ever had any complaints from his customers concerning a certain coloring powder sold by his company. This evidence was clearly immaterial.

"The comment by the court, which is claimed to be objectionable, is not set out in the assignment of errors and only a portion thereof can be at all identified, even in the brief. This portion was not objected to nor any exception thereto preserved.

"The judgment is affirmed."

HOWARD M. GORE, *Acting Secretary of Agriculture.*

11711 (supplement to N. J. 9290). Misbranding of Newton's Eggno. U. S. v. Newton Tea & Spice Co., a Corporation. Decision of the Circuit Court of Appeals for the Sixth Circuit affirming the judgment of conviction in the lower court. (F. & D. No. 11123. I. S. No. 15473–r.)

On April 5, 1923, the case having come before the Circuit Court of Appeals for the Sixth Circuit on a writ of error, the judgment of the district court was affirmed as will more fully and at large appear from the following opinion of the Court (Knappen, Denison, and Donahue, *C. J.*) (Knappen, *C. J.*):

"Plaintiff in error was proceeded against by information for the violation of the misbranding provisions of the National Food and Drugs Act (Act June 30, 1906, 34 Stat. 768, Chap. 3915, Secs. 2 and 8; U. S. Comp. Stat. 1916, Secs. 8717 and 8724). The article of food in question is an egg substitute