

"In *McDermott v. United States* (228 U. S. 130) the court showed clearly that it considered that the word 'article' referred to the adulterated thing itself, rather than the package or case in which it came in shipment.

"Again, if the reasoning in the *Anderson* case is accepted, and the word 'article' is to be taken generically, still the conclusion reached in that opinion does not follow, that proof that of the cans examined one-fifth were bad and four-fifths were good would authorize the jury to find the whole product bad. It might well be as in the oyster case (*Notice of Judgment 4922*), opinion by Judge Hand, that where only a part of the shipment was examined, and that part ran uniformly bad, the jury would be authorized to find, if that was a fair sample, that it indicated that the whole shipment was bad; but it would not at all follow, but rather the contrary, that if a shipment was examined, and the examination showed as it proceeded that one-fifth was bad and four-fifths good, that the court could order the whole product condemned.

"The case, in short, is not one where the Government has proven a part of it bad as a basis for the inference that all was bad, but one in which the very proof of the Government establishes that part of it is not bad within the meaning of the statute, and I am inclined to think that if the Government depended for its condemnation upon subdivision 6 of section 7 of the act, in accordance with the general rule of law that the burden is upon the Government to prove its case, the Government would have to be cast in this suit or would have to take the alternative of examining and testing every can of the shipment.

"Since, however, the goods are to be condemned for misbranding, the court now makes it known that it is of the opinion that some part of the shipment is bad, and that the goods will not be released under bond to the owner merely for rebranding but only upon condition that the goods be reexamined and reclassified, the good being separated from the bad.

"Since it is not known whether any application for the withdrawal of the goods will be made, it is sufficient now to direct that a judgment of condemnation and forfeiture be entered."

On July 3, 1923, a decree of the court was entered adjudging the product to be misbranded and ordering its condemnation, and it was further ordered that the product might be released to the claimants, the Seaboard Co. and Rush Este, upon the execution within ten days from the entry of the decree of a good and sufficient bond, conditioned upon the separation by the claimants of the good from the bad portion of the product, otherwise, that it be destroyed. Subsequently, the claimants having failed to furnish bond as required by the said decree, the product was destroyed by the United States marshal.

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

11861. Misbranding of Egyptian regulator tea. U. S. v. 43 Packages, 13 Packages, and 1 Package of Egyptian Regulator Tea. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 14486. I. S. No. 10513-t. S. No. W-875.)

On February 1, 1921, the United States attorney for the Northern District of California, 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 43 small packages, 13 medium packages, and 1 large package of Egyptian regulator tea, remaining in the original unbroken packages at Sacramento, Calif., alleging that the article had been shipped by the Kells Co., from Newburgh, N. Y., in part September 3 and in part October 30, 1919, and transported from the State of New York into the State of California, and charging misbranding in violation of the Food and Drugs Act, as amended.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted of compressed herbs, including senna, coriander, dog grass, licorice root, ginger, sambucus, cinnamon, and dandelion root.

Misbranding of the article was alleged in substance in the libel for the reason that it was labeled in part on the circulars or wrappers accompanying the said article, as follows, (white circular, all sizes) "A Speedy and Positive relief for * * * Dyspepsia, Liver Complaint, Sick Headache, Nervousness * * * Nature's Own Gift To Dyspeptic, Debilitated Men, to Wornout, Nervous Women, to Mothers of Peevish and Sickly Children, to Girls Just

Budding into Womanhood, to Sufferers from Defective Nutrition and Blood Diseases, to Corpulent People, whether Male or Female, Old or Young. * * * Rheumatism, Neuralgia, Sick Headache, pains in all parts of the body, Running Sores, Pimples, Boils, Carbuncles and Skin Diseases. * * * Lung Trouble and Consumption. Premature Old Age, Lack of Youthful Energy, Beauty and Vigor, Sallow Complexion and Haggard, Careworn Look * * * diabetes * * * Malaria * * * killing the Disease Germs * * * Heart troubles, Paralysis, Rheumatism, Gout * * * apoplexy," (blue wrapper, small and medium sizes) "Egyptian Regulator Tea A Remedy For * * * Dyspepsia, Sick Headache, and all Disorders of the Stomach. Its daily use will Purify the Blood, Remove all Blotches from the Face, and Restore the Complexion. Ladies will find this a valuable remedy for all Female Complaints. Also for Liver and Kidney trouble," (blue wrapper, large size) "Egyptian Regulator Tea An Excellent Remedy for * * * Dyspepsia * * * Rheumatism, Nervousness, Liver Complaints, Sick Headache, Also Corpulency, Etc.," which said statements were false and fraudulent, in that the article contained no ingredients or combination of ingredients capable of producing the curative and therapeutic effects claimed.

On July 28, 1921, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

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

11862. Adulteration and misbranding of wheat shorts. U. S. v. 160 Sacks of Alleged Wheat Shorts. Product released under bond to be used as dairy feed. (F. & D. No. 16382. I. S. No. 2853-t. S. No. C-3650.)

On June 7, 1922, the United States attorney for the Northern District of Alabama, 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 160 sacks of alleged wheat shorts at Bessemer, Ala., alleging that the article had been shipped by the Sutherland Flour Mills Co., Cairo, Ill., February 24, 1922, and transported from the State of Illinois into the State of Alabama, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Tag on sack) "100 Lbs. Net When Packed Wheat Shorts with Mill Run Ground Screenings Guaranteed Analysis: Protein not less than 16.00% Fat not less than 4.00% Carbohydrates not less than 56.00% Crude Fiber not more than 8.50% Manufactured by Sutherland Flour Mills Co. Cairo, Ill. Wheat Shorts."

Adulteration of the article was alleged in the libel for the reason that reground brand [bran] had been mixed and packed with and substituted wholly or in part for wheat shorts with mill run ground screenings.

Misbranding of the article was alleged for the reason that the statement appearing in the labeling, "Wheat Shorts with Mill Run Ground Screenings," was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was an imitation of and was offered for sale under the distinctive name of another article.

On July 21, 1922, the Bessemer Feed Mills, Bessemer, Ala., having appeared as claimant for the property and having agreed that the product should be used as dairy feed, in consideration of its release, and having executed a bond in the sum of \$500 to secure the performance of the said agreement, a decree of the court was entered ordering that the case be dismissed without prejudice to the rights of the Government in the event of the breach of the said bond.

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

11863. Misbranding of Eckman's alterative. U. S. v. 20 Dozen Packages and 34 Dozen Packages of Eckman's Alternative [Alterative]. Decree providing for release of product under bond to be re-labeled. (F. & D. Nos. 16714, 16715. I. S. Nos. 7902-v, 7904-v. S. Nos. W-1181, W-1182.)

On August 4, 1922, the United States attorney for the Southern District of California, 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 20 dozen packages and 34 dozen packages of Eckman's alternative [alterative], remaining in the original unbroken packages at Los Angeles, Calif., consigned by the Burrows-Little-White Co., alleging that the article had been shipped in various consignments, namely, on or about April 12,