

branding in violation of the food and drugs act. The articles were labeled in part, respectively: (Can) "Derby Brand Sugar Corn Distributed By Wm. Numsen & Sons, Incorporated * * * Baltimore, Md.," and "Farm Queen Brand Packed By Wm. Numsen & Sons Inc. Baltimore, Md. Sweet Corn."

Adulteration of the articles was alleged in the libels for the reason that excessive brine had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength and had been substituted wholly or in part for the said articles.

Misbranding was alleged in substance for the reason that the cans enclosing the respective articles contained labels bearing the statements "Sugar Corn" and "Sweet Corn," which were false and misleading, in that the said statements represented that the said cans contained sugar corn or sweet corn, as the case might be, when in fact they did not.

On April 30, 1925, Newman Numsen having appeared as claimant for the property, judgments of condemnation and forfeiture were 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 bonds in the aggregate sum of \$2,100, in conformity with section 10 of the act, conditioned in part that they be relabeled in accordance with the ruling of this department.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13317. Misbranding of Dr. J. S. Rose's whooping cough remedy. U. S. v. 16 Bottles of Dr. J. S. Rose's Whooping Cough Remedy. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 19906. S. No. E-5154.)

On March 18, 1925, the United States attorney for the District of Maryland, 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 16 bottles of Dr. J. S. Rose's whooping cough remedy, remaining in the original unbroken packages at Baltimore, Md., alleging that the article had been shipped by Aschenbach & Miller, Inc., from Philadelphia, Pa., on or about May 15 and August 22, 1924, and transported from the State of Pennsylvania into the State of Maryland, 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 contained sirup, potassium nitrate, arsenic, and a cyanide.

Misbranding of the article was alleged in the libel for the reason that the following statements, borne on the carton and bottle containing the said article, regarding its curative and therapeutic effect, to wit: (Carton) "Whooping Cough Remedy * * * Symptoms of Whooping Cough It comes on with a slight cough gradually increasing until the patient is almost suffocated; the eyes swell and sometimes the whole face, the nose runs, there is more or less fever and each spell of coughing ends in vomiting, which produces a short respite from suffering, or perfect and complete intermission from all symptoms. * * * Whooping Cough—What is it Physicians have unanimously come to the conclusion that Whooping Cough is not only clearly spasmodic, but may, if neglected, often run into other diseases—as Chronic Inflammation of the Lungs, Consumption and often Dropsy of the Chest. These terminations of the disease, however, they all admit, are only possible when badly treated or left to itself—believing it must run the course of many months, and which it unfortunately often does, if treated in the ordinary way. Discovering early in my practice the disease thus maltreated or misunderstood, I determined to study its Pathology, or nature, and having discovered this, I invented this Compound, since which time I have seldom seen a case last over one or two weeks—relieving after the first day (producing marked improvement) and leaving no bad effect from the disease. * * * In Whooping Cough it is not only necessary to use medicine that will cause expectoration, but it must also remove spasm of the air-cells, and be Tonic in its nature to prevent the frequent returns and long continuation of coughing. Therefore, having always relieved the spasms of Whooping Cough with this Remedy, we most strongly recommend it to all who have now, or may have hereafter, Whooping Cough," (bottle) "Whooping Cough Remedy," were false and fraudulent, since the said article contained no ingredient or combination of ingredients capable of producing the curative and therapeutic effect claimed.

On April 23, 1925, 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.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13318. Adulteration of canned cherries. U. S. v. 17 Cartons and 36 Cartons of Cherries. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 19909. I. S. Nos. 16325-v, 16376-v. S. No. E-5186.)

On March 18, 1925, the United States attorney for the Northern District of Georgia, 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 53 cartons of canned cherries, remaining in the original unbroken packages at Atlanta, Ga., alleging that the article had been shipped by S. E. Comstock & Co., from Fairport, N. Y., on or about November 15, 1924, and transported from the State of New York into the State of Georgia, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: (Can) "Orchard Farm Brand Red Sour Pitted Cherries * * * Guaranteed And Distributed By Mt. Morris Canning Co. Mt. Morris, N. Y." The remainder of the said article was labeled in part: (Can) "Sweet Violet Brand Red Sour Pitted Cherries * * * Guaranteed And Distributed By Finger Lakes Canning Co., Inc. Penn Yan, N. Y."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On April 28, 1925, 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.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13319. Alleged misbranding of butter. U. S. v. Monotti-Larimer. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 18579. I. S. No. 11728-v.)

On June 27, 1924, 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 an information against Monotti-Larimer, a corporation, San Francisco, Calif., alleging shipment by said company, in violation of the food and drugs act as amended, on or about February 5, 1924, from the State of California to the Territory of Hawaii, of a quantity of butter which was alleged to be misbranded. The article was labeled in part: (Package) "Gold Medal Brand Pasteurized Butter * * * Monotti-Larimer, Distributors Net Contents 1 Lb."

Examination by the Bureau of Chemistry of this department of 294 packages from the consignment showed that the average net weight of the packages examined was 15.77 ounces.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "Net Contents 1 Lb.," borne on the packages containing the said article, was false and misleading, in that it represented that each of said packages contained 1 pound net of butter, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that each of said packages contained 1 pound net of butter, whereas each of said packages did not contain 1 pound net of butter but did contain a less amount. Misbranding was alleged for the further 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 March 18, 1925, the case came on for trial before the court and a jury. After the submission of evidence and arguments by counsel, the court delivered the following instructions to the jury (St. Sure, D. J.):

"GENTLEMEN OF THE JURY: I will try and be as brief as possible in my instructions to you. You have sat upon juries here in several cases and you have heard me from time to time deliver instructions upon various matters of law which it is my duty to give to you. It may be that you are already familiar with most of the principles of law which govern in cases of this kind.

"I have pointed out to you, I think, and it becomes my duty to do so again, that you are the exclusive judges of the facts. The court is to pass upon the law in the case and to give to you such rules of law as it deems proper for your