

13576. Adulteration and misbranding of butter. U. S. v. 16 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 20210. I. S. No. 24750-v. S. No. E-5400.)

On June 29, 1925, the United States attorney for the Southern District of New York, 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 tubs of butter, remaining in the original unbroken packages at New York, N. Y., alleging that the article had been shipped by the Adams Creamery, Adams, N. D., through the McDougall Terminal Warehouse Co., from Duluth, Minn., on or about June 17, 1925, and transported from the State of Minnesota into the State of New York, 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 butterfat had been mixed and packed therewith so as to reduce or lower or injuriously affect its quality or strength and had been substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the article was an imitation of or offered for sale under the distinctive name of another article.

On July 14, 1925, the Adams Creamery Co., Adams, N. D., claimant, having admitted the allegations of the libel and having 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 \$500, in conformity with section 10 of the act, conditioned in part that it be reworked and reprocessed so as to contain at least 80 per cent of butterfat.

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

31577. Adulteration and misbranding of canned tomatoes. U. S. v. Rufus G. Layman, J. Wilbur Layman, Lowell N. Layman (R. G. Layman & Sons). Pleas of guilty. Fine, \$50 and costs. (F. & D. No. 17244. I. S. No. 18242-t.)

On July 24, 1923, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Rufus G. Layman, J. Wilbur Layman, and Lowell N. Layman, copartners, trading as R. G. Layman & Sons, Cloverdale, Va., alleging shipment by said defendants, in violation of the food and drugs act, on or about February 1, 1922, from the State of Virginia into the State of Texas, of a quantity of canned tomatoes which were adulterated and misbranded. The article was labeled in part: (Can) "Springdale Brand Hand Packed Tomatoes * * * Packed By R. G. Layman & Sons Cloverdale, Va."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained added water.

Adulteration of the article was alleged in the information for the reason that water had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and strength and in that added water had been substituted for tomatoes, which the article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Tomatoes," borne on the labels attached to the cans containing the article, was false and misleading, in that it represented that the said article consisted wholly of tomatoes, 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 tomatoes, whereas it did not so consist but did consist in part of added water.

On August 8, 1923, the defendants entered pleas of guilty to the information, and the court imposed a fine of \$50 and costs.

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

13578. Adulteration and misbranding of canned peas. U. S. v. Elkhart Lake Canning Co. Plea of guilty. Fine, \$10. (F. & D. No. 17251. I. S. Nos. 3776-v, 15027-t.)

On June 2, 1923, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Elkhart Lake Canning Co., a corporation, Elkhart Lake, Wis., alleging shipment by said company, in violation of the food and drugs act as amended, on

or about July 29, 1921, from the State of Wisconsin into the State of New York, and on or about July 11, 1922, from the State of Wisconsin into the State of Illinois, of quantities of canned peas, the former consignment of which was adulterated and misbranded and the latter of which was adulterated. The consignment of July 29, 1921, was labeled in part: (Can) "Star of Wisconsin Brand Wisconsin Extra Sifted Early June Peas * * * Contents 6 Lbs. 12 Ozs. * * * Packed By Elkhart Lake Canning Co., Elkhart Lake, Wisconsin." The other consignment was labeled in part: (Can) "Sifted Early June Peas."

Analyses of samples of the article by the Bureau of Chemistry of this department showed that it contained excessive liquid. Examination of 24 cans of the Star of Wisconsin brand showed an average net weight of 6 pounds 9.7 ounces.

Adulteration of the article was alleged in the information for the reason that excessive water, or brine, had been substituted in part for peas, which the said article purported to be.

Misbranding was alleged with respect to the portion of the product consigned July 29, 1921, for the reason that the statement, to wit "6 Lbs. 12 Ozs.," borne on the labels, was false and misleading, in that it represented that each of the cans contained 6 pounds and 12 ounces of the article, 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 the said cans contained 6 pounds and 12 ounces of the said article, whereas each of said cans did not contain the amount declared on the labels but did contain a less amount. Misbranding was alleged with respect to the said portion of the product consigned July 29, 1921, for the further reason that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On June 13, 1925, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$10.

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

13579. Alleged adulteration and misbranding of Sparkling Concord beverage. U. S. v. Milwaukee-Waukesha Brewing Co. Demurrer to the information sustained. (F. & D. No. 14542. I. S. No. 4133-t.)

On June 16, 1921, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Milwaukee-Waukesha Brewing Co., a corporation, Waukesha, Wis., alleging shipment by said company, in violation of the food and drugs act, on or about April 24, 1920, from the State of Wisconsin into the State of Illinois, of a quantity of a product labeled "Sparkling Concord" which was alleged to be adulterated and misbranded. The article was labeled in part: (Bottle) "Fox Head Sparkling Concord Made With Waukesha Spring Water Milwaukee-Waukesha Brewing Co. Waukesha, Wis."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was a carbonated sugar solution artificially colored and flavored.

Adulteration of the article was alleged in the information for the reason that an artificially flavored sugar solution artificially colored to conceal its inferiority had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and strength and had been substituted in whole or in part for the said article, so as to injuriously affect its quality.

Misbranding was alleged for the reason that the statements, to wit, "Sparkling Concord Made With Waukesha Spring Water," borne on the labels attached to the bottles containing the article, were false and misleading, in that the said statements represented that the article was made with Concord grape juice and Waukesha spring water, whereas it was not made with Concord grape juice and Waukesha spring water but was an artificially flavored sugar solution artificially colored to conceal its inferiority.

On July 5, 1921, a demurrer to the information was filed on behalf of the defendant company. On June 13, 1925, the demurrer came on for argument before the court and was sustained, and the defendant was discharged.

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