19235. Misbranding of cottonseed screenings. U. S. v. Cooper Cotton Oil Co. Plea of guilty. Fine, $50. (F. & D. No. 25713. I. S. No. 18301.)

Sample sacks of cottonseed screenings from the shipment herein described having been found to contain less than the declared weight, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Texas.

On April 18, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid an information against the Cooper Cotton Oil Co., a corporation, Cooper, Tex., alleging shipment by said company in violation of the food and drugs act as amended, on or about June 26, 1930, from the State of Texas into the State of Kansas, of a quantity of cottonseed screenings which were misbranded. The article was labeled in part: "100 Pounds Net 'Chickasha Prime' (Composed of Cottonseed Only) * * * Manufactured by or for Chickasha Cotton Oil Company Chickasha, Oklahoma."

It was alleged in the information that the article was misbranded in that the statement "100 Pounds Net," borne on the tags attached to the sacks containing the article, was false and misleading in that the said statement represented that the sacks each contained 100 pounds of the article, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that the sacks each contained 100 pounds of the article, whereas the said sacks did not each contain 100 pounds of the said article, 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 packages, since the sacks contained less than represented.

On December 14, 1931, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of $50.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19236. Alleged adulteration and misbranding of Capon Springs water. U. S. v 94 Half-Gallon Bottles, et al., of Capon Springs Water. Tried to the court. Libels ordered dismissed and product restored to claimant. (F. & D. Nos. 22406, 23209. I. S. Nos. 20264-x, 03231. S. Nos. 501, 1318.)

These cases involved the interstate shipment of two lots of Capon Springs water contained in 5-gallon and half-gallon bottles. Examination of the article showed presence of nitrites, and of organisms of the colon-aerogenes group (*B coli*) in small quantities of the samples. The labels of the half-gallon bottles bore the words "'Ca-Ca-Paon' Healing Water." The Secretary of Agriculture reported to the United States attorney for the Eastern District of Pennsylvania, in whose district the goods were located, the results of the examinations and requested seizure of the product for violation of the law; since the samples examined failed to meet the standard of purity established by the United States Public Health Service; and since the word "Healing," appearing on the label taken in conjunction with certain collateral advertising introduced in evidence at the trial, was deemed to be false and fraudulent when applied to spring water of the chemical analysis of this product.

On January 28 and November 23, 1928, the United States attorney filed libels praying seizure and condemnation of two shipments of the said Capon Springs water, the former covering 94 dozen half-gallon bottles, and the latter 450 five-gallon bottles and 124 cases, each containing 12 half-gallon bottles. The libels charged that the article had been shipped by the Capon Water Co., from Capon Springs, W. Va., in part on January 20, 1928, and in part on November 16, 1928, that it had been transported from the State of West Virginia into the State of Pennsylvania, that it remained in the original unbroken packages at Philadelphia, and that it was adulterated and misbranded in violation of the food and drugs act as amended.

The Capon Water Co., Capon Springs, W. Va., intervened as claimant and owner in both cases, the lawfulness of the seizure of the product libeled November 23, 1928, being first attacked through a motion to quash and a demurrer to the libel. The motion to quash and the demurrer were overruled by the court in the following opinion handed down on January 18, 1929 (Dickinson, *J.*):

"There are several of these cases but the questions raised are two. One of the questions is the lawfulness of the issue of and return to a search warrant issued by a justice of the peace under the State law; the other is a demurrer to a libel (in the form of a motion to dismiss) upon which an attachment