

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 916, FOOD AND DRUGS ACT.

ALLEGED ADULTERATION AND MISBRANDING OF OLIVE OIL.

On or about April 26, 1910, Gaetano Marchesini, doing business under the firm name of Marchesini Brothers, New York City, shipped from the State of New York into the State of New Jersey a quantity of alleged olive oil, which was labeled: "Olio per Insalata Sopraffino Fiore Brand, Cotton Salad Oil, Extra Qualita" and "Olio Sopraffino Remo Fabrrini Fubmeo." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and the product was found to consist largely of cottonseed oil. As the findings of the analyst and report thereon indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the said Gaetano Marchesini and the party from whom the samples were procured were afforded opportunities for hearings. As it appeared after hearings held that the above shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney General with a statement of the evidence upon which to base a prosecution.

In due course an indictment was brought by the grand jurors of the United States in and for the Southern District of New York against the said Gaetano Marchesini, charging the above shipment and alleging that the product above described as "Olio Sopraffino Remo Fabrrini Fubmeo" was misbranded because the label thereon indicated that the article was a foreign product, namely olive oil, when in truth and in fact it was not a foreign product but was of domestic origin, and alleging said product to be adulterated because cottonseed oil had been substituted in part for olive oil therein, and further alleging that the product bearing the other of the labels above set forth was misbranded because the label thereon indicated that the product was olive oil when in truth and in fact it consisted largely of cottonseed oil. The indictment further charged that the said Gaetano Marchesini had previously, to wit, on April 14, 1910, pleaded guilty to an information charging him with the shipment of a quantity of misbranded olive oil from the State of New York into the State of

Texas on March 17, 1909, on which plea of guilty said defendant was fined \$100 on April 28, 1910, and that the offense upon which the present indictment was based was, therefore, a "subsequent offense" for which the punishment provided in section 2 of the act is "not exceeding \$300 or imprisonment not exceeding one year or both, in the discretion of the court."

On February 21, 1911, the cause came on for hearing and defendant having entered a plea of not guilty to the above indictment, evidence was heard on the part of the plaintiff, at the conclusion of which the attorney for the defendant moved to dismiss the indictment on the ground of failure on the part of the prosecution to sustain the charge that the oil in question was sold for the purpose of misleading the public, which motion was sustained by the court, and the jury directed to return a verdict for the defendant because (in the language of the court) "In the case of one of the cans of cottonseed oil involved all of the statements as to its being olive oil had been erased and all that appeared on the face of said can was that it was oil for salad, the price charged for the product being such as to prevent any customer from being deceived in respect to the contents of said can, taken in connection with the other facts in the case." To this ruling of the court the Government noted an exception.

Decisions of United States District and Circuit Courts and United States Circuit Courts of Appeals, adverse to the Government, will not be considered final until acquiescence shall have been published.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *May 26, 1911.*