

Issued July 26, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2464.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 30 Barrels Vinegar. Decree of condemnation by consent. Goods released on bond.

MISBRANDING OF VINEGAR.

On January 11, 1913, the United States Attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 30 barrels of vinegar, remaining unsold in the original unbroken packages and in possession of the Bollinger-Babbage Co. (Inc.), Louisville, Ky., alleging that the product had been shipped on December 30, 1912, by the Ohio Cider Vinegar Co. (Inc.), Cincinnati, Ohio, and transported from the State of Ohio into the State of Kentucky, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "The Ohio Cider Vinegar Co., Cincinnati. Fermented Apple Vinegar Apple Product Fermented Apple Juice from Apple Waste. Water added in Fermentation to Legal Standard December 12," and each of the barrels was marked with numerals to indicate in terms of measure the number of gallons of vinegar contained therein, two of the barrels being marked "47," ten being being marked "48," nine being marked "49," six being marked "50," two being marked "51," and one being marked "52."

Misbranding of the product was alleged in the libel for the reason that the arabic numerals upon each of the 30 barrels were intended by the manufacturer and shipper and were understood by the public generally and the trade to indicate that each of the barrels contained

the number of gallons indicated by said numerals, and it was and still is the custom of the trade in vinegar in the United States to mark the measure of vinegar shipped in interstate and intrastate commerce by the use of arabic numerals alone without the word or symbol to indicate the word "gallons," and when the contents were so marked in arabic numerals alone such numerals were and still are understood by and among the vinegar trade and the public generally to indicate the contents in gallons of the vinegar contained in such packages, and the product was billed and invoiced and transported in interstate commerce at the number of gallons as aforesaid indicated upon the 30 barrels by the arabic numerals thereon respectively, whereas, in truth and in fact, the actual measure of the vinegar contained in each of the 30 barrels was less than the number of gallons as aforesaid indicated by said arabic numerals marked thereon, that is to say, the contents of each of the 30 barrels was much less than the number of gallons so indicated upon the barrels respectively, to wit, more than 10 per cent less.

On February 11, 1913, the said Ohio Cider Vinegar Co. having filed its claim for the product and given bond for costs and consented to the submission of the case to the court, judgment of condemnation and forfeiture was entered, and it was further ordered that the product should be released and delivered to said claimant upon the execution of bond in the sum of \$200, in conformity with section 10 of the Act, and the payment of the costs of the proceedings, amounting to \$27.50.

B. T. GALLOWAY,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *May 26, 1913.*