

F. & D. No. 2261.

I. S. Nos. 1521-c, 1522-c, 1525-c, 1526-c, 1527-c.

Issued February 21, 1914.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2707.

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

**U. S. v. Clifton Forge Ice & Bottling Works. Plea of nolo contendere.
Fine, \$25.**

ADULTERATION OF ICE CREAM.

On March 31, 1911, 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 the Clifton Forge Ice & Bottling Works, a corporation, Clifton Forge, Va., alleging shipment by said defendant, during the month of September, 1910, in violation of the Food and Drugs Act, from the State of Virginia into the State of West Virginia, of five consignments of ice cream which was adulterated. Consignment No. 1 was labeled: "5 Gal. V. Caramel Cream. Train No. 13, Date 20 To Cranberry Fuel Co., Prosperity, W. Va. From Clifton Forge Ice & Bottling Works, Wholesale Manufacturers, Clifton Forge, Va. Ice Cream Dept." Consignment No. 2 was labeled: "5 Gal. V. Cream Train No. 13 Date 20 To Dunlop Coal & Coke Co., Dunlop, W. Va. From Clifton Forge Ice & Bottling Works, Wholesale Manufacturers, Clifton Forge, Va. Ice Cream Dept." Consignment No. 3 was labeled: "5 Gal. V. Cream Train 13, Date 21 To New River Collieries Co., Sun, W. Va. From Clifton Forge Ice & Bottling Works, Wholesale Manufacturers, Clifton Forge, Va. Ice Cream Dept." Consignment No. 4 was labeled: "5 Gal. V. Cream Train No. 13, Date 21 To Davis Confectionery Co., Beckley, W. Va., From Clifton Forge Ice & Bottling Works, Wholesale Manufacturers, Clifton Forge, Va. Ice Cream Dept."

Consignment No. 5 was labeled: "5 Gal. V. Cream Train No. 13, Date 21, To Sandage Bros., McDonald, W. Va. From Clifton Forge Ice & Bottling Works, Wholesale Manufacturers, Clifton Forge, Va. Ice Cream Dept."

Analyses of samples of the product from the different consignments by the Bureau of Chemistry of this Department showed the following results: (Sample No. 1) (A) Bacteria per cc after three days on plain agar at 25° C., 2,160,000,000; *B. coli* per cc, 10,000; streptococci per cc, 10,000; (B) bacteria per cc after three days on plain agar at 25° C., 2,180,000,000; *B. coli* per cc, 100,000; streptococci per cc, 1,000,000. (Sample No. 2) (A) Bacteria per cc, after three days on plain agar at 25° C., 2,460,000,000; *B. coli* per cc, 10,000; streptococci per cc, 1,000,000; (B) bacteria per cc after three days on plain agar at 25° C., 1,920,000,000; *B. coli* per cc, 10,000; streptococci per cc, 100,000. (Sample No. 3) Bacteria per cc, after three days on plain agar at 25° C., 100,000,000; *B. coli* per cc, 1,000,000; streptococci per cc, 10,000,000. (Sample No. 4) Bacteria per cc, after three days on plain agar at 25° C., 500,000,000; *B. coli* per cc, 10,000,000; streptococci per cc, 10,000,000. (Sample No. 5) Bacteria per cc, after three days on plain agar at 25° C., 1,270,000,000; *B. coli* per cc, 100,000,000; streptococci per cc, 1,000,000. Adulteration of the product was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid animal or vegetable substance.

On June 23, 1911, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, a charge was delivered to the jury, in part as follows, by the court (McDowell, J.):

The court instructs the jury that although they may believe from the evidence beyond a reasonable doubt that some part of the cream in question was putrid, filthy or decomposed, yet the defendant cannot be convicted and must be acquitted if any of the ingredients of said cream was purchased by the defendant under a guaranty, as provided in the Act of June 30, 1906, and said constituent or ingredient was without the knowledge of defendant filthy, putrid or decomposed, and the fault of the ice cream was solely due thereto without fault or neglect of the defendant, and if there is a reasonable doubt in the minds of the jury upon the evidence as to whether or not the condition of such ingredient was the sole cause of fault of the ice cream, they should acquit the defendant.

The court instructs the jury that if they believe beyond a reasonable doubt from the evidence that the defendant company delivered for shipment and caused to be transported in interstate commerce an article of food, as alleged in the information, said article of food purporting to be ice cream, as therein alleged, and that said article of food consisted in part of a filthy, decomposed or putrid animal or vegetable substance, they should find the defendant guilty, unless the jury further believes that the defendant has established by the evi-