

Misbranding of the product was alleged in the information for the reason that the product was branded so as to deceive and mislead the purchaser thereof by having on each of the bottles the label set forth above, which said statement on the labels and bottles of beer would mislead the purchaser thereof into believing that the beer was brewed solely and only from barley and German hops, whereas, in truth and in fact, the said beer was not brewed solely and only from barley and German hops, but, on the contrary, the said beer was brewed from barley, German hops, and rice. Misbranding was alleged for the further reason that the statement on the labels on the bottles of beer aforesaid would mislead the purchaser into believing that the beer was brewed solely and only from barley and German hops, whereas, in truth and in fact, the said beer was not brewed solely and only from barley and German hops, but, on the contrary, was brewed from barley, German hops, rice, corn, and sugar. Misbranding was alleged for the further reason that the statement on the labels on the bottles of beer would mislead the purchaser thereof into believing that it was brewed solely and only from barley and German hops, whereas, in truth and in fact, it was not brewed solely and only from barley and German hops, but, on the contrary, it was brewed from barley, German hops, and some cereal other than barley and German hops, the exact nature of said cereal being unknown, and which therefore could not be more particularly described in the information. (The basis of the charge of misbranding, as reported by this department to the Department of Justice, was solely that the product had not been "brewed exclusively from barley, malt, and hops, but from barley, malt, and hops, and some other cereal or cereal product.")

On January 20, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of \$25 and costs.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *April 14, 1914.*

3091. Misbranding of vinegar. U. S. v. 55 Barrels, More or Less, Vinegar. Decree of condemnation. Product released on bond. (F. & D. No. 5196. S. No. 1775.)

On May 3, 1913, the United States attorney for the District of Indiana, 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 55 barrels of vinegar, remaining unsold in the original unbroken packages and in possession of Ragon Bros., Evansville, Ind., alleging that the product had been transported from the State of Ohio into the State of Indiana, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "Elks Pride Brand Cider Vinegar. Made by The Harbauer Company, Toledo, Ohio, March 11, 1913. Guaranteed under the Food and Drugs Act, June 30, 1906. Serial No. 8904. Made from apple juice diluted to 4% acidity." The barrels were also marked with figures indicating the net contents in gallons of said barrels, as follows, to wit, 3 barrels with the figures "44"; 2 barrels with the figures "45"; 5 barrels with the figures "46"; 3 barrels with the figures "47"; 10 barrels with the figures "48"; 11 barrels with the figures "49"; 4 barrels with the figures "50"; 2 barrels with the figures "51"; 4 barrels with the figures "52"; 3 barrels with the figures "53"; 6 barrels with the figures "54"; 2 barrels with the figures "55."

Misbranding of the product was alleged in the libel for the reason that the statements, brands, and marks on the barrels regarding the measure in net gallons of the contents of the barrels were false and misleading in that the statements as to the net contents and gallons of vinegar contained in the barrels were incorrect; that, in truth and in fact, said barrels contained 6.13 per cent less vinegar in net gallons than the amount indicated by the figures marked on the barrels indicating the net gallon contents thereof, and the variations between the marks, brands, and labels indicating the net contents in gallons and the actual net contents in gallons of said barrels were not reasonable variations and said barrels were not small packages.

On May 15, 1913, The Harbauer Co., Toledo, Ohio, claimant, having entered its appearance and the case coming on for hearing, judgment of condemnation was entered and it was ordered by the court that the product should be sold by the United States marshal after the obliteration of all marks, brands, and labels as to the contents of the barrels. It was provided, however, in the order of the court that the product should be released to said claimant upon payment of all costs of the proceedings and the execution of bond in the sum of \$600 in conformity with section 10 of the act.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *April 14, 1914.*

3092. Adulteration and misbranding of strawberry flavor. U. S. v. Maury-Cole Co. Plea of guilty. Fine, \$25 and costs. (F. & D. No. 5199. I. S. No. 1247-e.)

On August 11, 1913, the United States attorney for the Western District of Tennessee, 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 Maury-Cole Co., a corporation, Memphis, Tenn., alleging the sale under a guarantee by said company for shipment in interstate commerce, in violation of the Food and Drugs Act, on or about August 1, 1912, of a quantity of strawberry flavor which was adulterated and misbranded. The information further alleged that the purchaser of the product afterward shipped the same in the original unbroken packages from the State of Tennessee into the State of Arkansas. The product was labeled (on cartons): "Choctaw Brand, Flavoring, Strawberry. (Guaranty Legend.) Serial No. 1126. Put up by Maury-Cole Co., Memphis, Tenn. Formula on bottle," and on the flaps of said carton, the words: "Choctaw Brand, Strawberry" (on bottles) "Choctaw Brand. Imitation Flavoring, Strawberry. Manufactured and guaranteed by Maury-Cole Co., Memphis, Tenn. Serial No. 1126. Harmless coloring."

Adulteration of the product was alleged in the information for the reason that a substance, to wit, an imitation of strawberry flavor, had been mixed and packed with said article of food in such manner as to reduce, lower, and injuriously affect its quality and strength, and for the further reason that a substance, to wit, an imitation strawberry flavor, had been substituted in whole or in part for the genuine article, and for the further reason that it was colored in a manner whereby its inferiority was concealed. Misbranding was alleged in the libel for the reason that the statement "Flavoring Strawberry," borne on the carton, and the statement "Strawberry," borne on the bottle, were false and misleading because they conveyed the impression that the product was a genuine strawberry flavor, whereas, in truth and in fact, it was not a genuine strawberry flavor, but an imitation of strawberry flavor, the word "Imitation" which appeared inconspicuously on the label on the bottle being insufficient to correct the false impression conveyed by the statements "Flavoring of Strawberry" and "Strawberry."

On November 13, 1913, the defendant company entered a plea of guilty to the information and the court imposed a fine of \$25, with costs of \$15.85.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *April 14, 1914.*

3093. Adulteration of tomato conserve. U. S. v. 50 Cases of Tomato Conserve. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5201. S. No. 1798.)

During the month of May, 1913, the United States attorney for the Northern District of California, 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 50 cases of tomato conserve, remaining unsold in the original unbroken packages at San Francisco, Cal., alleging that the product had been shipped on February 5, 1913,