

**3180. Misbranding of bitters. U. S. v. 5 Cases of Ferro China Bitters and 5 Cases of Fernet Milano Bitters. Default decree of condemnation and forfeiture. Product ordered sold.** (F. & D. No. 5331. S. No. 1933.)

On September 22, 1913, the United States Attorney for the Middle District of Pennsylvania, 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 5 cases, each containing 12 bottles of Ferro China bitters, and 5 cases, each containing 12 bottles of Fernet Milano bitters, remaining unsold in the original unbroken packages and in possession of the Columbia Wine & Liquor Co., Wilkes-Barre, Pa., alleging that the product had been shipped on or about September 5, 1913, from the State of New York into the State of Pennsylvania, and charging misbranding in violation of the Food and Drugs Act. The Ferro China was labeled "Ferro-China-Bitters Liquore Tónico—Iron Bitters. This liquor is a compound of Iron-China and other herbs, benefiting those suffering from dyspepsia, lack of appetite, etc., and is recommended by medical celebrities. Net contents 28 ounces. Guaranteed by the General Importing Co., N. Y. Under Pure Food and Drugs Act, June 30, 1906. Serial N." "Anti Malarico." (Neck label) "Ferro China Bitters—Anti Malarico." In addition, the principal label also bore inscriptions in Italian concerning medicinal properties.

The Fernet Milano was labeled "Fernet Milano—Net Contents 29 Ounces Guaranteed by the General Importing Co., N. Y. Under Pure Food and Drugs Act, June 30, 1906, Serial N." In addition the principal label bore inscriptions in Italian to the effect that the article was a vermifuge, febrifuge, and remedy for seasickness.

Misbranding of the products was alleged in the libel for the reason that each bottle and retail package was labeled as set forth above, thereby indicating, declaring and publishing, and intending thereby to publish and declare, that the contents of each bottle was genuine Fernet Milano and Ferro China bitters of Italian manufacture, whereas, in truth and in fact, the contents of each bottle was not such genuine Italian bitters but consisted in whole or in part of domestic spirits and flavorings compounded in the city of New York, State of New York, in the United States of America, and further that the labels upon each bottle and retail package of the bitters hereinbefore mentioned, to wit, Ferro China bitters and Fernet Milano bitters, declared these products to have medicinal value and as such were indicated on said labels for the prevention, mitigation, or cure of certain ailments of man, whereas the percentage of alcohol present in the Ferro China bitters and Fernet Milano bitters aforesaid was not declared on the packages as required by said act of Congress; therefore, these products were misbranded in violation of the first general paragraph of section 8, "Food and Drugs," and paragraph 2 under "Food," and paragraph 2 under "Drugs," of the act of Congress aforesaid.

On November 6, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal.

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

WASHINGTON, D. C., May 26, 1914.

**3181. Adulteration of flour. U. S. v. 350 Sacks of Flour. Consent decree of condemnation and forfeiture. Product released on bond.** (F. & D. No. 5334. S. No. 1936.)

On September 22, 1913, the United States Attorney for the Southern District of New York, 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 350 sacks of flour, remaining unsold in the original unbroken packages and in possession of the Baltimore & Ohio Railroad Co., New York, N. Y., alleging that the product had been shipped on or about July 5, 1913, by the Hardesty Milling Co., Canal Dover, Ohio, and transported from the State of Ohio into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The product bore no label, but some of the sacks or containers were stenciled "Sound, N. Y. Prod. Exch. 'Inspection July 1913.'"

Adulteration of the product was alleged in the libel for the reason that it consisted of a filthy and decomposed vegetable substance, to wit, worms and weevils, contrary to the provisions of section 7, subdivision 6, under "Food," of said Food and Drugs Act.

On November 5, 1913, a claim and stipulation for costs having been filed by Thomas R. Van Boskerck, New York, N. Y., and said claimant having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be redelivered to said claimant upon payment of all costs of the proceedings and the execution of bond in the sum of \$700, in conformity with section 10 of the act.

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

WASHINGTON, D. C., May 26, 1914.

**3182. Adulteration and misbranding of beer. U. S. v. 75 Cases of Beer. Plea of guilty. Goods released on bond. (F. & D. No. 5336. S. No. 1938.)**

On September 26, 1913, the United States Attorney for the Southern District of Iowa, 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 75 cases, each containing 24 24-ounce bottles of beer, remaining unsold in the original unbroken packages and in possession of James B. Foley, Des Moines, Iowa, alleging that the product had been shipped on or about September 13, 1913, by the Jacob Schmidt Brewing Co., St. Paul, Minn., and transported from the State of Minnesota into the State of Iowa, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: (On cases) "Schmidt, St. Paul, 2 dozen, 24 oz. bottles Schmidt Brg. Co. St. Paul, Minn." (On bottles) "Guaranteed by Jacob Schmidt Brg. Co. under the Food and Drugs Act, June 30, 1906, N. D. Serial No. 33, Also under the Pure Food Laws of all the States. \$1000 Reward. Schmidt, St. Paul, Natural Process Export Beer, the Brewery's Own Bottling Jacob Schmidt Brewing Co., St. Paul, Minn." (Neck label) "Brewed from the Choicest Malt and Hops, Warranted Strictly Pure A Perfect Family Tonic. Schmidt, St. Paul. Contents of bottle 24 oz." (On back of bottles) "Schmidt Brg. Co."

Adulteration of the product was alleged in the libel for the reason that it contained a large percentage of a product of distillation of some cereal, either rice or corn, which distillate reduced the amount of malt contained therein and rendered the product of an inferior quality. Misbranding was alleged for the reason that the cases and bottles did not contain the pure product of malt and hops, but, in truth and in fact, they did contain a product consisting in whole or in part of a distillation of a cereal product other than malt. Misbranding was alleged for the further reason that the branding of the cases and bottles as containing a pure product of malt and hops was such as to mislead and deceive the purchaser, and to enable the offering of the contents for sale as being a pure product of malt and hops, when, in truth and in fact, the same was not such as was offered for sale and was an unlawful misbranding within the meaning of the statute aforesaid.

On December 8, 1913, the said Jacob Schmidt Brewing Co., St. Paul, Minn., having filed its answer admitting the charge of misbranding but denying the