Adulteration of the product was alleged in the information for the reason that it was labeled, sold, and delivered as pure apple butter, whereas, in truth and in fact, another substance, to wit, phosphoric acid, in excess of the quantity normally present in pure apple butter, had been substituted in part for the article of food aforesaid. Adulteration was alleged for the further reason that a substance, to wit, phosphoric acid, in excess of the quantity normally present in pure apple butter, was mixed and packed with the article of food aforesaid so as to reduce, and lower, and injuriously affect the quality and strength of said article. Misbranding was alleged for the reason that the jars containing the article each bore a label in the words and figures set forth above, which said statement on the label appearing on each of the jars containing the article was false and misleading, in that said statement represented to the purchaser that the article of food was a pure apple butter composed entirely of pure fruit butter made from apples, whereas, in truth and in fact, the article of food aforesaid contained a substance, to wit, phosphoric acid, in excess of the quantity normally present in pure apple butter, the presence of which was not declared upon the label on each of the jars containing said article of food. Misbranding was alleged for the further reason that said statement on the label aforesaid deceived and misled the purchaser into the belief that the article of food was a pure apple butter composed entirely of pure fruit butter made from apples, whereas, in truth and in fact, each of the jars aforesaid did not contain pure apple butter, but contained a mixture of apple butter and a substance, to wit, phosphoric acid, in excess of the quantity of said phosphoric acid normally present in pure apple butter, made in imitation of pure apple butter.

On February 6, 1914, the defendant company entered a plea of guilty to the information and the court imposed a fine of $100 and costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 15, 1914.*

3334. Adulteration and misbranding of fruit wild cherry compound, and misbranding of special lemon, lemon terpene and citral. U. S. v. Oscar J. Weeks (O. J. Weeks and Co.). Trial to the court and a jury. Verdict of guilty. Fine, $150 and costs. Pending on appeal and writ of error in the Circuit Court of Appeals for the Second Circuit. (F. & D. Nos. 3553, 4672. I. S. Nos. 1346-d, 14195-d.)

On August 8, 1912, 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 an information against Oscar J. Weeks, doing business under the firm name and style of O. J. Weeks and Co., New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 10, 1911, from the State of New York into the State of Texas, of a quantity of fruit wild cherry compound, which was alleged to have been adulterated and misbranded. The product was labeled: "Fruit Wild Cherry Compound. Guaranteed to contain no Ether or Chloroform. From O. J. Weeks & Co. Specialties for Manufacturing Bakers, Confectioners and Ice Cream Makers, New York, N. Y. U. S. Serial Number 2049." "Guaranteed under the Food and Drugs Act, June 30, 1906."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed it to consist of an imitation wild cherry flavor composed essentially of a solution of benzaldehyde (or oil of bitter almonds) in dilute alcohol. It was artificially colored with a coal tar dye, namely, amaranth.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, an imitation wild cherry essence, had been mixed and packed with said article, purporting to be fruit wild cherry compound, so as

to reduce and lower and injuriously affect the quality and strength of said article, and for the further reason that a substance, to wit, an imitation wild cherry essence, had been substituted in part for the genuine article, fruit wild cherry, which the said article purported to be. Adulteration was alleged for the further reason that the article had been colored in a manner whereby inferiority was concealed.

Misbranding was alleged for the reason that the label and package of the said article bore the statement, "Fruit Wild Cherry Compound," which said statement was false and misleading in that it conveyed the impression that said article was a fruit wild cherry compound, whereas, in truth and in fact, the said article consisted chiefly of imitation wild cherry essence, artificially colored.

Misbranding was alleged for the further reason that the article was labeled and branded, "Fruit Wild Cherry Compound," so as to deceive and mislead the purchaser into the belief that said article was a genuine fruit wild cherry compound, whereas it consisted chiefly of an imitation wild cherry essence, artificially colored.

The defendant thereafter interposed a demurrer to this information, and, on October 28, 1912, the demurrer as to the first count of the information was sustained, and as to the second count was disallowed, as will more fully appear from the following decision by the court (Mayer, *J.*):

There are four cases and the defendants have filed motions to quash in each. As to the three cases (4–426, 475 and 427), I decided on oral argument favorably to the Government's contention on all but one point, and upon that I reserved decision.

The proposition in question is that the information should be quashed because they are not supported by verification or oath showing personal knowledge or probable cause.

The proceeding by information, as in this case, is an ancient method of procedure which has come to us from the common law of England and it is well settled that this method of procedure is proper here. The law on the subject is concisely stated in Bishop on Criminal Procedure.

The demurrers in three of the case are, therefore, disallowed.

In the case against Weeks (No. 4–500), demurrer has been interposed upon the additional ground that the counts of the information and each of them are insufficient and fail to charge an offense. The information is in two counts.

In the first count the information states that the article of food was labeled as follows:

"Fruit Wild Cherry Compound. Guaranteed to contain no Ether or Chloroform. From O. J. Weeks & Co. Specialties for Manufacturing Bakers, Confectioners and Ice Cream Makers, New York, N. Y. U. S. Serial Number 2049." "Guaranteed under the Food & Drugs Act, June 30, 1906," and being so labeled was adulterated in that a substance, to wit, an imitation wild cherry essence, had been mixed and packed with the article of food purporting to be fruit wild cherry compound so as to reduce and lower and injuriously affect the quality and strength of the article.

It is further stated that the article is adulterated in that an imitation wild cherry essence had been substituted in part for the genuine article, fruit wild cherry, which the article purports to be, and further that the article is adulterated in that it has been colored in a manner whereby inferiority is concealed.

Briefly, the information attacks the propriety of the label.

It is obvious from reading the label that there is no suggestion that the article purports to consist wholly of fruit wild cherry. The very phraseology negatives any such suggestion.

In this connection it may be well to comment on Frank *v.* United States, 192 Fed. Rep. at page 869, cited by the Government. There it will be noted that the article was called "compound white pepper." The court said:

"A primary label 'White Pepper Compound' would doubtless fairly indicate that the article is a compound of white pepper and some other ingredient * * *."

Then the court goes on to say that the term "compound white pepper" does not necessarily import the same idea as "white pepper compound" and calls

attention to the fact that the adjective "compound" is sometimes used colloquially as meaning "having added strength."

But the word "compound" in the case at bar, as in the phrase "white pepper compound", is a noun and indicates that the fruit wild cherry is in composition or combination with something else. A good many dictionary definitions will be found, and it is necessary only to cite one which is concise and clearly stated: "that which is compound or compounded; anything that is a combination of two or more elements, ingredients or parts, a compound substance." (Standard Dictionary.)

Assuming that the article does not contain any added poisonous or deleterious ingredients, there is nothing to prevent the combination of fruit wild cherry with an imitation wild cherry essence, and it is obvious that the purchaser is at once notified by the title that the article in question does not consist wholly of fruit wild cherry but that fruit wild cherry is only one of the ingredients in combination with other ingredients.

The Government asks me to hold that the ingredients of the compound must be stated on the package. I find no warrant in the statute for any such holding. The statute was carefully drawn after extended discussion and certainly if Congress had intended that the ingredients of a compound should be set forth upon the label, the statute would have so stated.

I have not overlooked the case of William Henning & Co. *v.* United States, 193 Fed. Rep. 52. In the report of that case there is nothing to indicate how the label read and for all I know, it may have been subject to the criticism for use of the word "compound" as in the Frank case, or there may have been some other fact which contributed to the decision.

The statement under this count, that the article had been colored in a manner whereby inferiority is concealed, is of no consequence. The coloring may have been the proper and natural result of the combination. There is in this count no allegation of artificial coloring.

For the reasons briefly outlined, the demurrer to this count is sustained.

The second count refers to the same label but here it is stated that the article consists chiefly of imitation "wild cherry essence artificially colored."

This, to my mind, presents an entirely different situation. I think the phrase or name "Fruit Wild Cherry Compound" conveys to the mind a representation that the dominant element in the combination is genuine fruit wild cherry and that to this genuine fruit wild cherry has been added something else, for instance, in the nature of an essence or extract which, in combination with the genuine fruit wild cherry, makes the "Fruit Wild Cherry Compound." Of course, the purpose of the statute as to misbranding, was to prevent deception of the public and if it be shown that the dominant element in this compound is the imitation essence and not the fruit, then it seems to me the statute has been violated.

In this count the statement is made that the article consists chiefly of an imitation "wild cherry essence artificially colored." When I use the expression, "dominant" I do not mean that necessarily the fruit wild cherry must be greater in volume than the imitation essence. Sometimes one element of combination, by reason of its character and strength, even if smaller in quantity than another element, may, nevertheless, control the character of the combination This, and questions relevant to it, can best be developed on the trial when the court and jury will have the benefit of expert explanation.

I think it unwise on demurrer, to pass upon the question raised as to artificial coloring, and that a much more satisfactory result will be attained when the court is enlightened upon the trial upon this subject, and it is not necessary to pass upon this point because I have already indicated that I shall disallow the demurrer to this count in any event.

For the reasons stated the demurrer to the second count is disallowed.

On May 21, 1913, the said United States attorney filed in the United States District Court for the Southern District of New York an additional information in this case, and, in this latter information, it was alleged that said product was adulterated in that it was artificially colored with a coal tar dye in such a manner as to simulate a true fruit wild cherry, and in a manner whereby its inferiority was concealed.

Misbranding of the product was alleged in this information for the reason that it was sold and offered for sale by the said defendant under the distinctive

name of another article, to wit, fruit wild cherry, whereas, in truth and in fact, the said article was not fruit wild cherry but was an imitation thereof.

On April 22, 1913, the said United States attorney, acting upon a report by the Secretary of Agriculture, filed in the said District Court of the United States for the Southern District of New York another information against the said defendant, alleging shipment by him, in violation of the Food and Drugs Act, on January 25, 1912, from the State of New York into the State of Georgia, of a quantity of "Special Lemon," so-called, which was misbranded. This product was labeled: "Special Lemon. Lemon Terpene and Citral—O. J. Weeks & Co., New York, N. Y. U. S. Serial number 2049 Guaranteed under the Food & Drugs Act, June 30, 1906."

Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

Citral (per cent)	7.46
Alcohol (per cent)	1.21
Specific gravity at 15.6° C	0.8554

An imitation lemon oil containing alcohol and added citral.

Misbranding of this product was alleged in the information for the reason that the article bore the statement "Special Lemon," regarding it and the ingredients and substances contained therein, which was false and misleading in that the statement would indicate that said article was a product derived from lemon, whereas, in truth and in fact, the said article was not a product derived from lemon, but was a mixture containing alcohol and citral derived from lemon grass, and was in fact an imitation of lemon oil.

Misbranding was alleged for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser thereof in that said label would indicate that the said article was a product derived from lemon, whereas, in truth and in fact, the said article was a product containing alcohol and citral derived from lemon grass, and was in fact an imitation of lemon oil.

Misbranding was alleged for the further reason that the article was an imitation of lemon oil, and was offered for sale by the said defendant under the distinctive name of another article, to wit, a product derived from lemon, whereas, in truth and in fact, the said article was not a product derived from lemon, but was a mixture containing alcohol and citral derived from lemon grass, and was in fact an imitation of a product derived from lemon.

On October 17, 1913, the case based on the two informations first referred to, and the case based on the last mentioned information, having been consolidated into one court proceeding, and having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Hunt, *J.*):

Gentlemen, cases of this character are of course important to the interests of the Government and important to the interests of men engaged in business. The Government as you know has, within the past few years, taken up and given very great consideration through Congress, to legislation which is intended to prevent the manufacture, sale or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines or liquors, and for regulating traffic in such things, and in the execution of its purpose has passed statutes wherein are found those particular sections under which the indictment now in this case before you has to be considered.

On the other hand, as I have intimated, there is no aim on the part of the Government to interfere with legitimate business operations carried on in the manufacture of such products as may be used in the way of drugs, food or medicines, and liquors, unless there is a clear violation of the statutes.

While there are several counts in these indictments, the case is simplified by eliminating the more formal allegations and condensing the substance of the charges in this way.

Let us take the so-called special lemon case. The first count in the indictment in that case charges that the article was misbranded, in that the statement "special lemon" was false and misleading, in that it would indicate that the article was a product derived from lemon, whereas, it is charged, that the article was not a product derived from lemon, but was a mixture containing alcohol and citral, derived from lemon grass, and was in fact an imitation of lemon oil.

The charge also is that it was misbranded so as to mislead and deceive, in that the label, which is in evidence before you, would indicate that it was a product derived from lemon, whereas the Government says it was a product containing alcohol and citral, derived from lemon grass, and was in fact an imitation of lemon oil. That is the first count.

The second count in the special lemon case charges that the article labeled "special lemon," as indicated in the label which is introduced in evidence, was misbranded, in that it was an imitation of lemon oil, and was offered for sale under the distinctive name of another article, namely, a product derived from lemon, whereas it was not a product derived from lemon, but was a mixture containing alcohol and citral, derived from lemon grass and was an imitation of a product derived from lemon.

Next we turn to the law. The indictment uses the word "misbranded" as Congress has defined misbranded. The statute says it shall apply to all articles of food or other articles which enter into the composition of food, of the package or label of which shall bear any statement designed or devised regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

Later on it says: "That for the purpose of this act an article shall also be deemed to be misbranded if it be an imitation of or offered for sale under the name of another article."

Now, take that brand, label—I mean as it is offered in evidence (you will be permitted to take it to your jury room) and ask yourselves whether you are satisfied that it was a misbrand, by its bearing any statement or device or design which was false or misleading in any particular. Was there any imitation, as charged in the indictment, or was it the article offered for sale under the distinctive name of another article than it really was.

You have heard the experts on behalf of the Government and in behalf of the defendant. There is some contradiction of testimony between them as to the composition of the elements which entered into this article. I will not endeavor to recapitulate it. It is somewhat technical in its nature. If you desire to have any of it read, I will ask the stenographer to read it to you, in case you do not recall what anyone said. But the question resolves itself into whether or not as offered, it was misleading and was a misrepresentation, and would ordinarily deceive a purchaser to whom it was offered.

Now, we come to the wild cherry case. You will remember that in the wild cherry case there are two indictments. The first charges substantially that the defendant shipped to Texas an article which entered into the composition of food labeled "fruit wild cherry compound. Guaranteed to contain no ether or chloroform. From O. J. Weeks & Co."

The charge is that this article was misbranded in that the label and the statement on the label was false and misleading, in that it conveyed the impression that the article was a fruit wild cherry compound, whereas the charge is that the article consists chiefly of imitation wild cherry essence artificially colored, and that it is further misbranded in that the label "fruit wild cherry compound" would deceive and mislead a purchaser in the belief that it was a genuine fruit wild cherry compound, whereas it consisted, so it is alleged, chiefly of imitation wild cherry essence artificially colored.

The second indictment in the wild cherry case charges that the article was shipped so adulterated in that it was artificially colored with coal-tar dye, in such a manner that it was intended to simulate a true fruit wild cherry color, and in a manner whereby its inferiority was concealed.

The second count of the second indictment charges that the article was misbranded and sold and offered for sale by Weeks & Co. under the distinctive name of another article, to wit, fruit wild cherry, whereas in truth and in fact the article was not fruit wild cherry, but was an imitation thereof.

As in the other case, you take the label, take the testimony of these gentlemen with relation to what there was in the contents and bottles, and ask

yourselves whether there was a misleading, material misleading element there; whether it would deceive a purchaser. Whether the purchaser would get what the label purported to say he was getting.

In both of these cases, if the label only conveyed ordinarily to the purchaser that which was within the bottle, then the defendant should not be convicted.

If it was misleading and intended to mislead, if it was misbranded as already explained to you, as I have read the statute, and you are satisfied that it was misbranded, was labeled falsely, then you should convict.

The defendant of course is presumed to be innocent. The usual rules apply here that do in all criminal cases. The Government undertakes to satisfy you of his guilt, and the proof must be such as convinces you in a way where you would be willing to act in your own most grave and important concerns of life.

If there is any particular bit of the testimony, as I have said before, that you would like to have read, you are at liberty to call for it. I say that in this case because it is of a technical character, and if I endeavored to recapitulate it myself, as detailed by the chemists, I would feel that I should ask the stenographer to go over it, lest my recollections be imperfect.

You have the testimony as to what entered into those respective articles. Whether or not there was wild cherry, whether or not it was in such an insignificant amount, or such a significant amount as to remove or to prove the charge of misleading as made in the indictment.

What is the meaning of the word used in the lemon case, on the label? I will read that to you. "Special lemon, lemon terpene and citral." We have had some gentlemen tell us here what their ideas were as to what the word "special" means. The essential point is to remember the whole thing "special lemon, lemon terpene and citral."

Ordinarily, special would mean, I should say, something with a particular characteristic out, perhaps, of the ordinary. "Special lemon"—the word lemon appears there. Why was that used? What was its purpose? And followed by "lemon terpene and citral."

You have heard the definition of what terpenes are. I do not know but that I am correct in saying that they may be regarded as perhaps a by-product derived from the lemon rind. Am I correct in that statement? Generally, citral is I think conceded to be a lemon grass product; lemon grass.

I will give you the indictments.

When you have reached a conclusion, you will by your foreman announce what it is.

You may convict upon any of the counts submitted or you may acquit under certain ones and convict under others, or you may acquit under all, as you think the evidence justifies.

Mr. STEPHENSON. Your honor, will you instruct the jury not to consider the first count?

The COURT. I have marked that. I made no reference to that. Gentlemen, you will find my own mark striking out the first count of the indictment in the cherry compound case, which was numbered four.

Mr. CARLIN. I respectfully request the court to charge, under the first subdivision of the fourth section, defining adulterations, and I ask the court to charge there, that if they find that the words "special lemon" was a distinctive name for this article, they must acquit in the special lemon case.

The COURT. I deny that. That is covered.

Mr. CARLIN. I ask the court to charge that that first subdivision applies to and modifies the section one which was read by the court. They both must be considered together, in the law of misbranding.

The COURT. I decline that.

(Exception by defendant.)

Mr. CARLIN. I respectfully ask the court to charge that they must consider in this label, not only the words "special lemon" but also the words "lemon terpene and citral."

The COURT. I have so charged.

Mr. CARLIN. I ask the court to charge, that if they find that this product consisted of lemons, terpene, and citral, they must acquit the defendant.

(Request denied.)

(Exception by defendant.)

Mr. CARLIN. I respectfully ask the court to charge that the jury can only consider the statement on the label, and cannot consider the testimony in regard to the conversation had by a salesman in Atlanta.

The COURT. That is declined. I will however tell the jury that they must remember that while that testimony is admissible, it is only binding on the defendant, provided they are satisfied beyond a reasonable doubt that they were made by his authority and direction. In other words to hold a principal liable in a criminal action, you must be satisfied that the representation was made by his authority.

Mr. CARLIN. Now, in the other case, the second case, I ask the court to charge the law in regard to mixtures and compounds. That is the second subdivision of the fourth, and that that is the law that applies to any compound which is shipped.

The COURT. Gentlemen, you will remember I read to you that "If it be an imitation of or offered for sale under the name of another article," for the purposes of the article, it should be deemed to be misbranded.

There is a clause in the law: "In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said articles have been manufactured or produced," it shall not be deemed to be adulterated or misbranded.

Mr. CARLIN. The second question, if it is labeled a compound and contains no deleterious substance.

The COURT. I think that is covered. I deny that. I think the charge covers that.

(Exception by defendant.)

Mr. CARLIN. I ask the court to charge that it is not contended that this product contained any poisonous or deleterious ingredients, and if that be true, being labeled a compound, the product was properly labeled.

The COURT. I think that is immaterial. There is no suggestion here of any deleterious or poisonous substance.

(Exception by defendant.)

Mr. CARLIN. I ask the court to charge, that if the product is found to have been shipped to the Novelty Candy Company in Jersey City, there is a fatal variance, and the verdict must be for the defendant.

The COURT. No, my view of the law is not in accordance with that. If the defendant sent a package to Jersey City, there to be shipped to Texas for his account, to be delivered in Texas to the consignee, that was a shipment.

(Exception by defendant.)

Mr. CARLIN. The district attorney in summing up spoke of ether and chloroform. I ask your honor to charge that there is no such question in this case.

The COURT. They will not be misled on that.

JUROR No. 6. Will your honor read again that last statement there about excepting compounds?

The COURT. The language is, that—

"If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

"First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced."

That is applicable in cases of mixtures or compounds which are put out as articles of food under their own distinctive names, and not in imitation of or offered for sale under the distinctive name of another article. You will bear in mind, that the charge is that they have been put out under the distinctive name of other articles.

"In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word 'Compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only."

Mr. STEPHENSON. I ask your honor to charge that that last section which you have read does not apply to the article on which the word "compound" appears, if in fact the article is in imitation.

The COURT. That is true. Of course, it does not apply if the article is in imitation.

Mr. CARLIN. I except to that charge, and ask the court to define to the jury the difference between imitation and a compound.

(Denied.)

(Exception by defendant.)

The jury thereupon retired and, after due deliberation, returned into court with a verdict of guilty, and the court thereupon imposed a fine of $100 in the case covered by the first two informations, and a fine of $50 in the case covered by the last information referred to, and costs. Thereafter defendant brought a writ of error and took an appeal from this judgment to the Circuit Court of Appeals for the Second Circuit, in which court the case is now pending.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 15, 1914.*

3335. Adulteration and misbranding of peppermint essence. U. S. v. Royal Chemical Works. Plea of guilty. Fine, $100 and costs. (F. & D. No. 3778. I. S. No. 17347-c.)

On August 4, 1913, the United States attorney for the Northern District of Illinois, 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 Royal Chemical Works, a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on December 12, 1910, from the State of Illinois into the State of Wisconsin, of a quantity of so-called peppermint essence which was adulterated and misbranded. The product was labeled: (On shipping tag) "10 gals. pepp (yellow) See A. M. S. From Royal Chemical Works, 1245-1257 Garfield Ave., Chicago."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Specific gravity at 15.6° C	0.9287
Alcohol (per cent by volume)	52.96
Methyl alcohol: None.	
Solids (grams per 100 cc)	0.06
Peppermint oil (per cent by volume)	0.40
Color: Naphthol Yellow S.	

Adulteration of the product was alleged in the information for the reason that oil of peppermint in the quantity of not less than 3 per centum by volume is an essential ingredient of the article of food known as peppermint essence, whereas a certain dilute essence of peppermint containing not more than 0.4 of 1 per centum by volume of oil of peppermint had been mixed and packed with the article of food aforesaid in such a manner as to reduce and lower and injuriously affect the quality and strength of the article. Adulteration was alleged for the further reason that oil of peppermint in the quantity of not less than 3 per centum by volume is an essential ingredient of the article of food known as peppermint essence, whereas a certain dilute essence of peppermint containing not more than 0.4 of 1 per centum by volume of oil of peppermint had been substituted wholly or in part for the aforesaid essential quantity of oil of peppermint in the article of food. Adulteration was alleged for the further reason that the article of food aforesaid had been colored in a manner