

4822. Alleged adulteration and misbranding of apples. U. S. v. John Johnson, trading as J. Johnson & Co. Tried to the court and a jury. Verdict of not guilty by direction of the court. (F. & D. No. 5533. I. S. No. 5496-h.)

On March 9, 1916, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district an information against John Johnson, trading as J. Johnson & Co., St. Louis, Mo., alleging the unlawful receipt in interstate commerce by said defendant, on or about September 27, 1913, of a quantity of apples shipped from the State of Illinois into the State of Missouri, and for the unlawful sale and delivery of the article by said defendant in original unbroken packages to a purchaser in the city of St. Louis, Mo.

The article was labeled: "55 23 Wine Sap 4981." Examination of a sample of the article by the Bureau of Chemistry of this department showed that the contents of one barrel were divided into three grades, according to size, and designated "small," "medium," and "large." The "small" apples numbered 914, which averaged 30 apples to the pound, and were unfit for any edible purpose. The "medium" apples numbered 1,158 and averaged 15 apples to the pound and were too small for edible purposes. The "large" apples numbered 312 and averaged 9 apples to the pound. The large apples would not grade as No. 2. The apples were not Winesap apples.

Examination of a sample by the Bureau of Plant Industry of this department showed "that it was York Imperial instead of Winesap, and that none of the apples would grade No. 2 in commercial size. The largest of these apples would rank as culls in size, but the smallest of them were too small and too poor to rank even as culls. It required 21 of the smallest apples to weigh $\frac{1}{2}$ pound."

Adulteration of the article was alleged in the information for the reason that the apples were of inferior quality and that they were, to wit, a mixture of cull apples, apples without any merchantable value whatever, and a small percentage of merchantable apples; and said merchantable apples had been mixed with the culls and apples without [any] merchantable value whatever in a manner whereby such inferiority was concealed. Misbranding was alleged for the reason that the following statement regarding the article, appearing on the label aforesaid, to wit, "Wine Sap," was false and misleading in that it indicated to purchasers thereof that the article consisted of merchantable apples of the Winesap variety, and for the further reason that the article was labeled "Wine Sap" so as to deceive and mislead purchasers into the belief that the article consisted of merchantable apples of the Winesap variety, when, in truth and in fact, it did not, but did consist of, to wit, a mixture of cull apples, apples without any merchantable value whatever, and a small percentage of merchantable apples, all of which were of the York Imperial variety.

On May 17, 1916, the case having come on for trial before the court and a jury, after the submission of evidence, a verdict of not guilty was returned by the jury by direction of the court.

CARL VROOMAN,
Acting Secretary of Agriculture.