

purchasing the product for cooking and baking purposes were so deceived, then your verdict will be not guilty.

Refused—would require government to establish actual deceit of purchasers. (Signed) Peck, J.

No. 10.

The court instructs the jury that in considering whether the product involved in this case is or is not a substitute for eggs for baking and cooking purposes, the question as to its own food value or the food value (so far as the question of nutrition is concerned) of the finished baked or cooked foods imparted to them by it, is immaterial and you should disregard all testimony relative to the same.

Refused—same ground as No. 8. (Signed) Peck, J.

The jury thereupon retired and after due deliberation returned a verdict of guilty, whereupon the court imposed a fine of \$200 and costs. Thereupon the defendant, by counsel, gave notice of appeal, and on May 10, 1921, the defendant's bill of exceptions was allowed and filed. The case is now pending on appeal in the Circuit Court of Appeals for the Sixth Circuit.

E. D. BALL, *Acting Secretary of Agriculture.*

9291. Adulteration of tomato catsup. U. S. * * * v. 500 Cases and 25 Barrels of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction. (F. & D. Nos. 12127, 12128. I. S. Nos. 9501-r, 9502-r. S. No. C-1703.)

On February 2, 1920, the United States attorney for the Eastern District of Louisiana, 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 500 cases and 25 barrels of tomato catsup, remaining unsold in the original unbroken packages at New Orleans, La., alleging that the article had been shipped by R. C. Chances Sons, of Mount Holly, N. J., and Philadelphia, Pa., from Mount Holly, N. J., on or about September 20 and November 7, 1919, respectively, and transported from the State of New Jersey into the State of Louisiana, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Chances Table Talk Tomato Catsup * * * R. C. Chances Sons, Mount Holly, N. J. Philadelphia, Pa."

Adulteration of the article was alleged in the libel for the reason that it consisted wholly or in part of a filthy, decomposed, and putrid vegetable substance.

On or about April 26, 1921, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

E. D. BALL, *Acting Secretary of Agriculture.*

9292. Alleged adulteration and misbranding of macaroni. U. S. * * * v. Albert C. Krumm, Jr. (A. C. Krumm & Son). Demurrer to the information sustained. (F. & D. No. 12334. I. S. No. 15497-r.)

On February 28, 1920, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Albert C. Krumm, Jr., trading as A. C. Krumm & Son, Philadelphia, Pa., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about May 25, 1919, from the State of Pennsylvania into the State of Maryland, of a quantity of an article known as "Krumm's Continental Brand Macaroni," which was alleged to be adulterated and misbranded.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, a product prepared from flour, had been substituted in whole or in part for macaroni, to wit, a product prepared from semolina, which the article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Macaroni," borne on the packages containing the article, regarding the article and the ingredients and substances contained therein, was false and misleading in that it represented that the said article was macaroni, to wit, a product made from semolina, whereas, in truth and in fact, the said article was not macaroni, to wit, a product made from semolina, but was a product made from flour.

On July 2, 1920, a demurrer to the information was filed by the defendant, and on February 9, 1921, the case having come on for final disposition, the demurrer to the information was sustained, as will more fully appear from the following decision of the court (Thompson, *D. J.*):

The United States attorney filed an information against the defendant charging violation of the Food and Drugs Act in shipping and delivering from Philadelphia, Pa., to Baltimore, Md., a number of packages, each containing an article of food labeled, marked, and branded as "Krumm's Macaroni." The first count charged that the article of food was adulterated "in that a substance, to wit, a product prepared from flour, had been substituted in whole or in part for macaroni, to wit, a product prepared from semolina, which the article purported to be." The second count charged that the article of food was misbranded in that the word "macaroni" "was false and misleading in this, that it represented that said article was macaroni, to wit, a product made from semolina, whereas, in truth and in fact, said article was not macaroni, to wit, a product made from semolina, but was a product made from flour."

The defendant demurs upon the ground that the information does not set out any offense against the United States; that it is not averred that the packages were original unbroken packages; that it is not averred that semolina is not flour or a product made from flour; that it is not averred that macaroni is a product wholly prepared from semolina; that the definition of the word "macaroni" as given in the information is not in consonance with its meaning as accepted by the general public, and that it is not set forth that the article of food contained in the packages was dangerous to the health or welfare of the people or intended to deceive the purchaser.

The first ground of demurrer may be dismissed for the reason that while the Food and Drugs Act prohibits shipping or delivering for shipment in interstate or foreign commerce any articles of food which is adulterated or misbranded, it does not restrict the offense of shipping or delivering for shipment to articles in original unbroken packages, the restriction to original unbroken packages applying only to those who receive in interstate commerce and, having received, deliver in original unbroken packages any adulterated or misbranded articles.

As to the averments in relation to the substance contained in the packages, I think they are lacking in that particularity in both counts which should be observed to inform the defendant with certainty of the charge he is to meet at the trial. The offense under the first count, adulteration, arises in the case of food, "if any substance has been substituted wholly or in part for the article," and the offense of misbranding arises "if the packages containing it or its label shall bear any statement, design, or device regarding the ingredients or substance contained therein, which statement, design, or device shall be false or misleading in any particular." According to the Century Dictionary, macaroni is a paste or dough prepared originally and chiefly in Italy from the glutinous granular flour of a hard variety of wheat. According to the Standard Dictionary, it is an Italian paste made into slender tubes from the flour of hard glutinous wheat mixed with water. Semolina is defined to be the hard grains retained in the bolting machine after the fine flour has passed through.

If the article in question, as averred in the first count, was prepared from flour, or, as averred in the second count, was made from flour, it was apparently macaroni. But if it is intended to charge that macaroni is not made from the whole of the flour which comes from the mill, but in order to be macaroni must be made from the large, hard grains retained in the bolting machine after the fine flour had passed through, the counts are lacking in averments that semolina is not a part of the substance known as flour. Flour may be fine or coarse, it may be made from the whole grains of the wheat, as, "whole-wheat flour," or it may be the fine-bolted flour. If it is meant by the indictment to charge that in order for a substance to be macaroni, it must be made wholly from semolina and not contain any of the fine flour which leaves a residuum of semolina, the information should plainly so state. It is of vast importance to the public

that foodstuffs shall be what they purport to be through the labels, marks, and brands upon the packages. It is a matter of common knowledge that in the fine wheat flour of commerce much of the nutritive property of the grain is absent which remains in "whole-wheat flour." A purchaser of an article labeled "whole-wheat flour" is entitled to receive what he is led to believe he is purchasing from what appears upon the label. Similarly, one who is purchasing an article labeled "macaroni" is entitled to receive the article containing nutritive ingredients which genuine macaroni is known to contain. Otherwise the party substituting some other substance for the proper ingredients or designating it by names which falsely represent the contents or mislead the public is liable to the penalties of the act. If, however, one is charged under the act with adulteration and misbranding, he must be informed with sufficient particularity and certainty of the charge against him to enable him to prepare his defense. This particularity and certainty are obviously lacking in the information filed.

It may be that in the course of manufacture, trade, and public use the same "macaroni" has come to mean an article made from flour without regard to its containing semolina alone, and it may be that the word as accepted by the general public is not consonant with what was intended to be set out in the information. These, however, are trial questions. As to the remaining ground of demurrer, it is not necessary under the Pure Food and Drugs Act that an article in order to be unlawfully adulterated or misbranded must be dangerous to the health of the people.

Demurrer sustained.

E. D. BALL, *Acting Secretary of Agriculture.*

9293. Adulteration of prunes. U. S. * * * v. 250 Boxes * * * of Prunes. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 13848. I. S. No. 4903-t. S. No. C-2573.)

On November 9, 1920, 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 a libel for the seizure and condemnation of 250 boxes, more or less, of prunes, at Chicago, Ill., alleging that the article had been shipped by the Garcia & Maggini Co., San Francisco, Calif., on June 22, 1920, and transported from the State of California into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in substance in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On April 15, 1921, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

E. D. BALL, *Acting Secretary of Agriculture.*

9294. Adulteration of soup vegetables. U. S. * * * v. 2,313 Cases * * * of Soup Vegetables. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 13870. I. S. Nos. 4904-t, 4905-t. S. No. C-2581.)

On November 19, 1920, 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 a libel for the seizure and condemnation of 2,313 cases of soup vegetables, at Chicago, Ill., alleging that the article had been shipped by the Portland Evaporating Co., Portland, Ore., on April 22 and June 12, 1918, respectively, and transported from the State of Oregon into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in substance in the libel for the reason that it consisted in part of a filthy vegetable substance, for the further