

9476. Misbranding of pears. U. S. * * * v. Robert L. Rich. Plea of guilty. Fine, \$25 and costs. (F. & D. No. 13168. I. S. No. 7742-r.)

On December 20, 1920, the United States attorney for the Eastern 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 Robert L. Rich, Cobden, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about September 19, 1919, from the State of Illinois into the State of Minnesota, of a quantity of pears which were misbranded. The article was not labeled.

Misbranding of the article was alleged in the information for the reason that it was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On April 11, 1921, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$25 and costs.

C. W. PUGSLEY,

Acting Secretary of Agriculture.

9477. Adulteration of evaporated apples. U. S. * * * v. J. W. Teasdale & Co., a Corporation. Plea of guilty. Fine, \$275 and costs. (F. & D. No. 13180. I. S. Nos. 17480-r, 613-r, 7758-r, 8276-r, 8473-r, 8767-r, 8879-r, 8889-r, 10626-r, 10627-r, 8883-r.)

On December 29, 1920, 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 J. W. Teasdale & Co., a corporation, trading at St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 15, 1920, November 29, December 30, and December 4, 1919, and January 28, 1920, from the State of Missouri into the States of Georgia, Indiana, Arkansas, Kansas, and West Virginia, respectively, on or about December 2, 1919, and January 17, 24, and 30, 1920, respectively, from the State of Missouri into the State of Minnesota, and on or about January 13 and 31, 1920, respectively, from the State of Missouri into the State of Illinois, of quantities of evaporated apples which were adulterated.

Analyses of samples of the article by the Bureau of Chemistry of this department showed that the apples contained excessive moisture.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and strength, and had been substituted in part for evaporated apples, which the article purported to be.

On May 23, 1921, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$275 and costs.

C. W. PUGSLEY,

Acting Secretary of Agriculture.

9478. Misbranding of hog feed. U. S. * * * v. 426 Bags of * * * Economy "Special" Hog Feed * * *. Default decree condemning the product as misbranded and permitting its release under bond. (F. & D. No. 13712. I. S. No. 11555-t. S. No. C-2512.)

On November 3, 1920, the United States attorney for the Western District of Michigan filed in the District Court of the United States for said district a libel for the seizure and condemnation of 426 bags of Economy "Special" hog feed, remaining unsold in the original unbroken packages at Augusta, Mich., alleging that the article had been shipped on or about September 2, 1920, and transported from the State of Indiana into the State of Michigan, and charging misbranding in violation of the Food and Drugs Act.

Misbranding of the article was alleged in substance in the libel for the reason that the label on the packages containing the said article bore certain statements regarding the ingredients and substances contained therein, as fol-

lows, "Economy 'Special' Hog Feed 100 lbs. Net Weight Guaranteed Analysis Protein, 12½ per cent Fat, 06 per cent Carbohydrates, 56 per cent Fibre, not over 13 per cent Contents: Old Process Linseed Oil Meal, Rice Bran, Winter Wheat Bran, Winter Wheat Middlings, Digester Tankage, Oat Shorts, Oat Middlings, Oat Hulls, Cotton Seed Meal and Hominy. Manufactured By Chas. F. Bartlett Co. Grand Rapids, Mich.," which statements were false and misleading, and the said article was labeled so as to deceive and mislead the purchaser, in that it contained more than 13 per cent of fiber, to wit, 23 per cent thereof, and less than 6 per cent of fat, to wit, 2.4 per cent less of fat, and the said article was deficient in protein to the amount of 2.5 per cent.

On May 6, 1921, the Charles F. Bartlett Co., Grand Rapids, Mich., having entered an appearance as claimant for the property and having filed an answer in which it was contended that the product was not subject to seizure because the purpose of the transportation thereof was not for sale, upon motion of the United States attorney it was ordered by the court that the said answer be stricken from the records, and a formal decree of condemnation was entered, as will more fully appear from the following opinion of the court (Sessions, D. J.):

This is a proceeding under section 10 of the Food and Drugs Act of 1906 to condemn 426 bags of feed owned by claimant and, under its direction, shipped and transported in interstate commerce from Milford, Ind., to Augusta, Mich. At the time of the shipment and transportation and of the seizure the feed was misbranded in that the labels upon the bags contained false and misleading statements as to percentages of its ingredients. Claimant faintly urges that such false statements in the labels did not constitute misbranding within the meaning of the act of Congress; but this insistence is so plainly without foundation as not to require discussion. Claimant was the original manufacturer of the feed in question and had sold and shipped it to one of its customers at Milford, Ind. Upon being notified that the feed did not contain the percentages of ingredients stated and set forth in the labels, claimant instructed and directed its customer to reship the feed to Augusta, Mich., in order that it might be remanufactured, or remixed, and thus made to conform to the statements in the labels. The shipment and transportation of the feed from Indiana to Michigan was not for sale. At the time the libel in this case was filed and the seizure made, the transportation of the feed in interstate commerce had been completed, but the feed still remained in the possession of claimant and in the original unbroken packages.

The principal contention of claimant is that the feed in question is not subject to seizure and forfeiture because the purpose of the transportation thereof from Indiana to Michigan was not for sale. The question thus presented was settled adversely to claimant by the Supreme Court in the case of *Hipolite Egg Co. v. United States*, 220 U. S., 45, and is not now an open one. In that case the decisions of the lower courts, upon which claimant relies, were mentioned and briefly discussed, but not approved; indeed, the result reached was a distinct disapproval. The prohibition of the statute is directed against the transportation in interstate commerce of misbranded and adulterated articles of food alike. Some of the later cases directly in point are the following: *United States v. 12 Crates of Frozen Eggs*, 208 Fed. Rep., 950; 215 Fed. Rep., 584 and 585; *Philadelphia Pickling Co. v. United States*, 202 Fed. Rep., 150; *United States v. 9 Barrels of Butter*, 241 Fed. Rep., 499; *United States v. 2 Barrels of Desiccated Eggs*, 125 Fed. Rep., 302; *United States v. 300 Cans of Frozen Eggs*, 189 Fed. Rep., 351; *Weigle v. Curtice Bros. Co.*, 248 U. S., 285-287; *Weeks v. United States*, 245 U. S., 618-622. Since the *Hipolite* case, above cited, there have been no decisions to the contrary.

The motion to strike claimant's answer from the files and for a decree of condemnation will be granted.

On the same date it was ordered by the court that upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, the product might be released to the said claimant.

C. W. PUGSLEY,

Acting Secretary of Agriculture.