

tion as a matter of course. Section ten of the act provides for the restoration of the goods on payment of the costs and the giving of a sufficient bond to the effect that the articles will not be sold or otherwise disposed of contrary to the provisions of the act. Under this provision the defendant in error may, and will doubtless be permitted to, separate the good from the bad, and the burden of so doing should rest upon it, and not upon the Government or the ultimate consumer. If it can not do this, it is its own misfortune and it must suffer the consequences.

"The judgment of the court below is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion."

Steps are being taken on behalf of the claimant to have the decision of the Circuit Court of Appeals reviewed by the Supreme Court of the United States.

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

11443. Adulteration and misbranding of butter. U. S. v. 10 Cases of Avondale Creamery Butter. Decree of condemnation entered. Product released under bond to be reworked and relabeled. (F. & D. No. 16378. I. S. No. 8196-t. S. No. E-3895.)

On or about June 6, 1922, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 10 cases of Avondale creamery butter, remaining unsold in the original unbroken packages at Savannah, Ga., alleging that the article had been shipped by Morris & Co., from Nashville, Tenn., May 23, 1922, and transported from the State of Tennessee into the State of Georgia, and charging adulteration and misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: "Avondale Fine Creamery Butter One Pound Net."

Adulteration of the article was alleged in the libel for the reason that excessive water had been mixed and packed with and substituted in part for the said article.

Misbranding of the article was alleged for the reason that the statements on the labels of the cartons containing the article, regarding the article, "Butter One Pound Net," were false and misleading since the said article was not pure butter and the packages did not contain one pound net but did contain less than that amount. Misbranding was alleged for the further reason that the article was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On or about June 20, 1922, Morris & Co., Inc., having appeared as claimant for the property and having admitted the allegations contained in the libel and filed a bond in the sum of \$310.50, in conformity with section 10 of the act, conditioned upon the compliance by the claimant with the decree of the court, judgment was entered ordering that the product be released to the claimant to be reshipped to the Belle Meade Butter Co., Nashville, Tenn., to be reworked, repacked, and relabeled by the said Belle Meade Butter Co., under the supervision of this department.

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

11444. Misbranding of vinegar. U. S. v. 417 Kegs of Vinegar. Default decree of condemnation, forfeiture, and sale. (F. & D. No. 16605. I. S. Nos. 8538-t, 8539-t. S. No. E-4040.)

On or about July 12, 1922, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 417 kegs of vinegar, remaining unsold in the original kegs at Sewell's Point, Va., alleging that the article had been shipped by the Brocton Products Co., Brocton, N. Y., on or about May 24, 1922, and transported from the State of New York into the State of Virginia, and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "16 Gall. Pure Cider Vinegar 45 Gr."

Misbranding of the article was alleged in substance in the libel for the reason that the following statements regarding the said article, to wit, "16 Gall. Pure Cider Vinegar," were false since the article contained evaporated apple products.

On March 14, 1923, 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 rebranded and sold by the United States marshal.

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