

was labeled in part: (Can) "Blanchard Brand Alaska Pink Salmon Packed By Beauclaire Packing Co. Port Beauclerc, Alaska. One Pound Net."

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

On August 19, 1924, the Beauclaire Packing Co., claimant, having admitted the allegations of the libel and consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant 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, conditioned in part that the product be sorted under the supervision of this department, the good portion released and the remainder disposed of in accordance with law.

W. M. JARDINE, *Secretary of Agriculture.*

12843. Misbranding of butter. U. S. v. 350 Packages of Willowdale Creamery Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 18870. I. S. No. 18320-v. S. No. C-4441.)

On July 16, 1924, the United States attorney for the Eastern District of Tennessee, 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 350 packages of Willowdale creamery butter, at Chattanooga, Tenn., alleging that the article had been shipped by the Dalton Creamery Co., Dalton, Ga., July 10, 1924, and transported from the State of Georgia into the State of Tennessee, and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: "Willowdale Creamery Butter, Dalton Creamery Company, Dalton, Georgia, One Pound Net Weight."

Misbranding of the article was alleged in substance in the libel for the reason that it was labeled "One Pound Net," which statement was false and misleading, in that the said packages did not contain 1 pound of butter but did contain a less amount.

On July 23, 1924, the Dalton Creamery Co., Dalton, Ga., having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$500, in conformity with section 10 of the act, conditioned in part that the said packages be brought up to the correct weight.

W. M. JARDINE, *Secretary of Agriculture.*

12844 (Supplement to Notice of Judgment 11784). Misbranding of Crab Orchard concentrated mineral water. Idie C. Goodwin and L. H. Goodwin & Co. v. United States of America. Judgment of the lower court in favor of the Government affirmed. (F. & D. No. 15395. I. S. No. 903-t. S. No. C-3245.)

On November 3, 1924, the case involving the shipment of 22 bottles of Crab Orchard concentrated mineral water by L. H. Goodwin & Co., from Crab Orchard, Ky., to Cincinnati, Ohio, in which case verdict and judgment were entered for the Government in the District Court for the Southern District of Ohio on November 28, 1922, came before the Circuit Court of Appeals for the Sixth Circuit on appeal by the claimant, Idie C. Goodwin, for and on behalf of L. H. Goodwin & Co., and the judgment of the District Court was affirmed, as will appear from the attached opinion of the court (Donahue, C. J.):

"The food and drugs act of 1906 and the amendments of 1912 do not confer and do not purport to confer admiralty jurisdiction upon the United States District Courts, in proceedings to condemn property seized under the provisions of that act and amendments thereto. The provision that a libel shall be filed and the proceedings shall conform as near as may be to the proceedings in admiralty, relate only to procedure and not to jurisdiction. (443 Cans of Frozen Egg Product v. U. S., 226 U. S. 172, and cases there cited.)

"This prosecution was based solely on the amendment of 1912 to section 8. The libel quoted from the label a long list of ailments for which the water was said to be beneficial with 'healing powers' and a 'reliable remedy.' It then denied that the water 'is capable of producing the therapeutic effects claimed in the statements upon and in said cartons as hereinbefore set forth.'

"This does not fail to state a case under the statute, and did not make the libel subject to demurrer or motion to quash. It would be sustained by evidence sufficiently showing the false and fraudulent character of any one of the various claims recited. If defendant needed a better specification of the particulars upon which the Government would rely, if it did not rely upon all the statements, a motion for a bill of particulars would doubtless have been granted or an amendment of the libel permitted.

"The record in this case does not present the question whether mineral spring water as it comes from the earth is or is not a drug, for the reason that the Crab Orchard concentrated mineral water is not transported and marketed in its original condition. While it appears that the constituent drug elements are not completely extracted therefrom and transported and sold without the admixture of other elements, nevertheless the processes of separation are carried to such an extent that the water can no longer be used as a beverage, but only in small quantities or doses, as a medicine. For this reason Crab Orchard concentrated mineral water can not be classified as 'food' but, on the contrary, comes fairly within the meaning of 'drug' as used in the Pure Food Act and amendments thereto.

"Upon the trial of the issue of fact joined by the libel, charging the misbranding of mineral water, and the answer of the intervenor, expert evidence may be properly admitted. If it appears from the testimony of a witness upon preliminary examination that he is learned in the science of chemistry or has been regularly and legally admitted to the practice of medicine, that he has knowledge of the drug elements contained in the article transported in interstate commerce and their efficacy or lack of efficacy as curative agents, used either separately or in combination in the treatment of the diseases specified on the label, his opinion on that subject is competent evidence, regardless of whether he has had actual experience or observation of the effect of the use of such drugs in the exact form in which they are transported in interstate commerce. The weight of his evidence is a question for the jury.

"This court has no authority to determine the weight of the evidence or reverse the judgment for the reason that the verdict is against the weight of the evidence where the verdict of the jury is sustained by substantial evidence. (R. S. 1011 (Comp. Stat. Sec. 1672), *Bullock v. U. S.*, 289 Fed. 29-32; *Atlantic Ice & Coal Co. v. Van*, 276 Fed. 646.)

"The Government having charged misbranding in general terms and no motion being made to require it to file a bill of particulars, the general verdict must be sustained if there is substantial evidence that any one of the statements made on the label is false or fraudulent, but the verdict and judgment relates to and affects only the particular label on the bottles seized in interstate commerce. This general verdict is sustained by substantial evidence.

"For the reasons stated, the judgment of the District Court is affirmed."

W. M. JARDINE, *Secretary of Agriculture.*

12845. Adulteration and misbranding of butter. U. S. v. 7 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond to be reprocessed. (F. & D. No. 18934. I. S. No. 12657-v. S. No. B-4928.)

On August 29, 1924, the United States attorney for the District of Maryland, 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 7 tubs of butter, remaining in the original unbroken packages at Baltimore, Md., consigned on or about August 11, 1924, alleging that the article had been shipped by Schlosser Bros., from Frankfort, Ind., and transported from the State of Indiana into the State of Maryland, and charging adulteration and misbranding in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that a substance low in butterfat had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength and had been substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the article was offered for sale under the distinctive name of another article.

On September 17, 1924, Schlosser Bros., Frankfort, Ind., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the