

United States Department of Agriculture

SERVICE AND REGULATORY ANNOUNCEMENTS

BUREAU OF CHEMISTRY

SUPPLEMENT

N. J. 13251-13300

[Approved by the Acting Secretary of Agriculture, Washington, D. C., June 20, 1925]

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the food and drugs act]

13251. Adulteration and alleged misbranding of butter. U. S. v. South Hero Creamery Assoc. Tried to the court and a jury. Verdict of guilty on adulteration charge and of not guilty on misbranding charge. Fine, \$25. (F. & D. No. 19269. I. S. No. 16844-v.)

At the February, 1925, term of the United States District Court, within and for the District of Vermont, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in the district court aforesaid an information against the South Hero Creamery Assoc., a corporation, South Hero, Vt., alleging shipment by said company, in violation of the food and drugs act as amended, on or about June 23, 1924, from the State of Vermont into the State of Massachusetts, of a quantity of a product invoiced as butter, which was alleged to have been adulterated and misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed that the average butterfat content of five samples was 78.39 per cent.

Adulteration of the article was alleged in the information for the reason that a product deficient in butterfat had been substituted for butter, which the said article purported to be, and for the further reason that a product which consisted of less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat, as prescribed by the act of March 4, 1923, which the said article purported to be.

Misbranding was alleged for the 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 March 13, 1925, the case came on for trial before the court and a jury. After the submission of evidence and arguments of counsel, the court delivered the following instructions to the jury (Howe, D. J.):

"GENTLEMEN OF THE JURY: There are just two questions of fact in this case for you to decide; one question of fact on each charge. There are two charges that the Government makes against the South Hero Creamery. First, they say that they shipped in interstate commerce some butter that didn't contain 80 per cent of butterfat, that that shipment was made on the 23rd day of June; and second, they say that they shipped this butter in interstate commerce without marking on the tubs the weight. It is an offense against the laws of the United States to ship in interstate commerce any butter that contains less than 80 per cent of milk fat, or butterfat; those terms we have

been told mean the same thing, and it is equally an offense to ship food, and, among other things, butter, without marking the weight on the tubs, if it goes in tubs. Whatever the packages are [they] must have the weight marked on them. Those are the two questions of fact. You can find the creamery guilty of both of these offenses, you can find it not guilty of either offense, or you can find it guilty of one and not guilty of the other.

"Now, this is a criminal case, and the same rules that I have given you here repeatedly apply to this case just as much as to any other criminal case. The creamery is presumed to be innocent, and that presumption is to be weighed in its favor as evidence in the case. If there are two theories in the case, each equally reasonable, it is your duty to adopt the theory leading to innocence, rather than the one leading to guilt. I think you have all been on several trials in which we have gone over this. Is there anyone on this panel who hasn't heard these rules? The reason is, gentlemen, that different lawyers come in, and they don't know how often you have heard these rules. It would be an error on the part of the court to submit a case to the jury without giving these rules. No unfavorable inference can be drawn against the creamery because it has been complained of and charged with this crime. Remember that. The reasonable doubt doctrine, you will remember that. The defendant can not testify, because it is a corporation. It is an invisible person, so I won't need to say anything about the defendant's testimony. The butter maker has testified, and the inspector and the chemist and the professor. Now, the young man that makes the butter over there testified. You have heard some questions asked him about what he told down in Boston to the Chief of the Agricultural Department. You weigh the testimony of all these witnesses and give them just such credit as you think they ought to have. It is for you to say whether you are satisfied that this lot of butter didn't have 80 per cent of butterfat while it was in transit.

"There is no offense committed here, gentlemen, unless you are satisfied beyond a reasonable doubt that when that butter was taken to the station over there, at the South Hero railroad station, and while it was on those cars to Boston, in transit, it must have contained less than 80 per cent of butterfat. The evidence of the Government is that it didn't contain 80 percent, except one of the samples. The evidence of the young man that made it is that he tested it and it tested all right, 80 per cent. He says he understood the law required him to put on weights. He understood that when he was before this man down in Boston.

"You take the evidence in the case, gentlemen, and all the circumstances and all the inferences to be drawn from the evidence, and, if you are satisfied beyond a reasonable doubt, after giving the creamery the benefit of the presumption of innocence, if you are satisfied beyond a reasonable doubt that when this butter was delivered to the railroad station, and while it was in transit to Boston, it didn't contain 80 per cent, you will find the defendant guilty under the first count. If you are not satisfied of those facts beyond a reasonable doubt you will find it not guilty. As to the second count, take into consideration all the evidence in the case. If you are satisfied beyond a reasonable doubt that the weight wasn't marked on these 36 tubs of butter, you will find the creamery guilty under the second count. If you are not satisfied beyond a reasonable doubt that the tubs were not marked, you will find the defendant not guilty under the second count. You may take the case, gentlemen."

The jury then retired and after due deliberation returned a verdict of guilty on the adulteration charge and of not guilty on the misbranding charge, and the court imposed a fine of \$25.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13252. Adulteration and misbranding of canned tuna. U. S. v. 4 Cases, et al., of Tuna. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 19936, 19937, 19938, 19939. I. S. Nos. 14145-v, 14146-v, 14147-v, 14148-v. S. No. E-5194.)

On March 27, 1925, 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 libels praying the seizure and condemnation of 19 cases, each containing 48 cans and 46 cans, of tuna, remaining in the original unbroken packages in various lots at Reading and Allentown, Pa., respectively, consigned by the M. de Bruyn Importing Co., New York, N. Y., alleging that the article had been shipped from New York,