

On March 25, 1925, the defendant company having demurred to the information on the ground that it did not set forth facts constituting a violation of the law, the demurrer was argued before the court by counsel for the Government and the defendant company, and was sustained, as will more fully and at large appear from the following opinion of the court (Bean, D. J.):

"This is a proceeding against the defendant for an alleged violation of the pure food and drugs act by shipping reworked butter from Portland to San Francisco, consigned to themselves. It is charged that the butter is adulterated, in that a product deficient in milk fat had been substituted in whole or in part, and that it is misbranded for the same reason. It is branded reworked butter, but it is charged that it was adulterated because it is deficient in milk fat. There is no allegation in the bill as to the proportion of milk fat, or that it was the result of the introduction of any foreign substance.

"The pure food law does not define butter. It does define adulterating and misbranding. The adulteration of an article is where another substance has been mixed or packed with it so as to reduce or lower or injuriously affect its quality, or a foreign substance has been substituted in whole or in part, or a valuable constituent has been wholly or partially abstracted, or it has been mixed with coloring matter whereby damage or impurity has been concealed, or where it contains poisons or other deleterious ingredients, or consists wholly or in part of filthy, decomposed, or putrid animal or vegetable matter.

"There is no allegation in the bill that this butter comes within any of the definitions. The pure food law defines misbranding as follows: 'If it be an imitation offered for sale under the distinctive name of another article, or if it shall be labeled or branded so as to deceive the purchaser, or if the contents are not plainly and conspicuously marked or pictured, or if the label shall bear any statement or device regarding the ingredients or substance thereof, which statement or device shall be false or misleading.'

"The oleomargarine act defines butter as a food product usually known as butter and which is made exclusively from milk or cream, or both, with or without common salt, and with or without the addition of coloring matter. And that same act defines adulterated butter as a grade of butter produced by mixing or reworking butter, and where any substance is introduced for the purpose or with the effect of deodorizing or removing the rancidity, or if any substance foreign to butter has been introduced with the intent to cheapen the cost, or with intent to cause the absorption of an abnormal quantity of water, milk, or cream.

"It is not alleged in this bill that the butter in question comes within the definition of adulterated butter under the oleomargarine act. I presume the bill was filed in view of a rule or regulation of the department, in force at that time or which had been formulated prior to the time of the shipment, prescribing the standard for butter, in which it is stated that it shall contain at least 82.5 per cent of milk fat. But it was held in *Lynch v. Tilden Products Co.* recently that the department has no authority under the law to make such regulation or rule. Subsequent to the shipment in question Congress passed an act prescribing the amount of milk fat, but that was not in force at the time the shipment in question was made.

"The demurrer will be sustained."

The defendant was thereupon discharged.

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

13712. Adulteration and misbranding of butter. U. S. v. 150 Pails and 50 Cases of Butter. Decrees of condemnation and forfeiture. Product released under bond. (F. & D. Nos. 19957, 20025. I. S. Nos. 14854-v, 14864-v. S. Nos. C-4672, C-4695.)

On February 26 and March 19, 1925, respectively, the United States attorney for the Eastern District of Louisiana, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 150 pails and 50 cases of butter, remaining in the original packages at New Orleans, La., alleging that the article had been shipped by the Harrow-Taylor Butter Co., Kansas City, Mo., on or about January 28, 1925, and transported from the State of Missouri into the State of Louisiana, and charging adulteration and misbranding in violation of the food and drugs act. A portion of the article was labeled in part: (Carton) "Bluebonnet Creamery Butter One Pound Net Harrow-Taylor Butter Company Kansas City." The remainder of the said article was labeled in part: "Process Butter."

Adulteration of the article was alleged in the libels for the reason that a product deficient in butterfat, or milk fat, had been substituted for the said article, and for the further reason that a product which contained less than 80 per cent by weight of butterfat, or 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. Adulteration was alleged with respect to a portion of the article for the further reason that a product deficient in butterfat had been mixed and packed therewith so as to reduce or lower or injuriously affect its quality and strength.

Misbranding of the article was alleged for the reason that the statement "Butter," borne on the packages containing the said article, was false and misleading, in that it represented that the article consisted wholly of butter, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it consisted wholly of butter, whereas it did not consist wholly of butter but did consist of a product deficient in milk [fat] or butterfat. Misbranding was alleged for the further reason that the statement "Butter," borne on the said packages, was false and misleading, in that it represented that the article was butter, to wit, a product which should contain not less than 80 per cent by weight of milk fat, as prescribed by law, whereas it did not contain 80 per cent by weight of milk fat but did contain a less amount.

On March 17 and 30, 1925, respectively, the Harrow-Taylor Butter Co., Kansas City, Mo., having appeared as claimant for the property and having admitted the allegations of the libels, judgments of condemnation and forfeiture were 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 good and sufficient bonds, in conformity with section 10 of the act, conditioned in part that it be reworked to meet the requirements of the law.

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

13713. Misbranding and alleged adulteration of vinegar. U. S. v. 90 Barrels et al. of Vinegar. Consent decrees of condemnation and forfeiture. Product released under bond. (F. & D. Nos. 15349, 15384, 15396, 15400, 15401, 15414. I. S. Nos. 5746-t, 5966-t, 5969-t, 5970-t, 5973-t, 5974-t, 5975-t. S. Nos. E-3547, E-3557, E-3560, E-3561, E-3569, E-3586.)

On August 27, September 16, 26, 28, and 29, and October 10, 1921, respectively, the United States attorney for the Western District of Pennsylvania, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 457 barrels of vinegar, remaining in the original unbroken packages in part at Pittsburgh, Pa., and in part at Carnegie, Pa., alleging that the article had been shipped by the Douglas Packing Co., Rochester, N. Y., in various consignments, in part from Canastota, N. Y., and in part from Fairport, N. Y., on or about the dates of July 21 and 26 and August 3, 5, 11, and 31, 1921, respectively, and transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the food and drugs act as amended. The article was labeled in part: "Douglas Packing Co. Apple Cider Vinegar Made from Selected Apples * * * Rochester, N. Y."

Adulteration was alleged in the libels with respect to a portion of the product for the reason that vinegar made from evaporated or dried apple products had been mixed and packed with and substituted wholly or in part for pure apple cider vinegar. Adulteration was alleged with respect to 103 barrels of the product for the reason that waste vinegar had been mixed and packed with and substituted wholly or in part for pure apple cider vinegar. Adulteration was alleged with respect to the 28 barrels of the product consigned July 21, 1921, for the further reason that it had been mixed in a manner whereby damage or inferiority was concealed.

Misbranding was alleged with respect to all the product for the reason that it was an imitation of and offered for sale under the distinctive name of another article. Misbranding was alleged with respect to the greater portion of the product for the further reason that the statements "Apple Cider Vinegar Made From Selected Apples" or "Apple Cider Vinegar Made From Selected Apples Reduced To 4½ Per Centum," as the case might be, borne on the labels, were false and misleading and deceived and misled the purchaser. Misbranding was alleged with respect to the 28 barrels of the product consigned July 21,