

question should be disposed of as a question of fact. The parties thereupon by stipulation duly filed, waived the right to a trial by jury and submitted the case to the Court sitting without a jury. We accordingly thus dispose of it.

Findings of Fact. 1. The evidentiary facts are found in accordance with the stipulation entered into by the parties.

2. The ultimate fact finding is made in favor of the respondent that the salad oil in question is not represented by the label to be an olive oil nor is it represented to have been made in the Kingdom of Italy.

Discussion. Judge Forman, of the New Jersey District, in the kindred case of the United States against cases of salad oil has so well and so satisfactorily discussed the merits of this cause that we deem further discussion unnecessary. We accordingly limit ourselves to a statement of the conclusions of law reached.

Conclusions of Law. 1. The label set forth and complained of in the libel is not in violation of the provisions of the Food and Drugs Act.

2. The libel should be dismissed.

A formal order dismissing the libel may be submitted.

On August 27, 1936, judgment was entered dismissing the libel and ordering the return of the product to the intervenor.

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

26104. Misbranding of salad oil. U. S. v. 27 Cans of Salad Oil. Exceptions to libel filed. Motion to strike exceptions granted. Consent decree of condemnation and destruction. (F. & D. no. 84689. Sample no. 21277-B.)

This product consisted essentially of sunflower oil with some cottonseed oil and was sold as salad oil.

On January 3, 1935, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 27 cans of salad oil at Bridgeport, Conn., alleging that the article had been shipped in interstate commerce on or about October 8, 1934, by the Agash Refining Corporation, from Brooklyn, N. Y., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Messina Brand Extra Fine Oil for Salads."

The article was alleged to be misbranded in that the following statements appearing on the label, "Marca Messina Olio Extra Fino Per Insalate, Cucina e Mayonnaise Pure Vegetable Salad Oil L'olio vegetale contenuto in questa scatola viene altamente raccomandato per uso di tavola, per insalate, per mayonnaise, e per cucinare. Si garantisce ad essere assolutamente puro", were misleading and tended to deceive and mislead the purchaser since they created the impression that the product was Italian olive oil; whereas it was not. The article was alleged to be misbranded further in that it purported to be a foreign product when not so.

The Lucca Importing Co., Bridgeport, Conn., appeared as claimant for the goods and the Agash Refining Corporation intervened as manufacturer and filed exceptions to the libel. On October 23, 1935, the Government filed a motion to strike the exceptions of the Agash Refining Corporation. On November 15, 1935, the Government's motion to strike was heard and was granted, the court handing down the following memorandum decision:

HINCKS, Judge. In this matter the Agash Refining Corporation was admitted as an intervenor upon the representation that it was the manufacturer of the subject matter of seizure. The matter comes before the court upon a motion of the Government, as libellant, to strike the exceptions of the intervenor to the libel.

Thereafter, however, the consignee claiming to be the owner of the goods in question, by answer admitted the allegations of the libel, and influenced doubtless by the small value of the seizure, consented to a forfeiture praying, however, for a return of the goods under bond.

On argument, the intervenor protested against the judicial elimination of its exceptions on the ground that a decree of forfeiture was a reflection, with serious commercial consequences, upon its trade-mark which appeared on the labels on the goods seized. The exceptions, however, seem not to support that contention, for the exceptions contain no reference to any trade-mark owned by the intervenor.

Consequently, by reason of the limited language of the exceptions, it does not appear that the intervenor has any standing to oppose a forfeiture which the Government seeks, and which the claimant has consented to. That being so, there is no need for the court to pass upon the underlying question as to whether an intervenor who has no standing in the case other than its owner-

ship of the trade-mark appearing on the goods is in a position to contest the allegations of the libel, when the claimant has admitted the same.

This matter being in admiralty, the decree will operate only upon the res; neither in word nor in effect will it touch any right of the intervenor with respect to its trade-mark. And since in open court the intervenor expressly disclaimed any desire to repossess the goods, and expressed consent to any decree which does not disparage its trade-mark, it cannot possibly suffer prejudice from this ruling.

And so, without prejudice to the intervenor with respect to its trade-mark, and without expressing any disagreement with the decision of Judge Thomas in a similar case wherein it appears that the same label as that here involved did not constitute a misbranding within the meaning of the Pure Food and Drugs Act, I rule only that the motion to strike the exceptions may be granted and that

A decree of forfeiture may enter.

On July 28, 1933, the Lucca Importing Co. having consented to the entry of a decree, judgment of condemnation was entered and it was ordered that the product be destroyed.

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

26105. Misbranding of salad oil. U. S. v. 52 Gallon Cans of Salad Oil. Default decree of condemnation. Product distributed to charitable institutions. (F. & D. no. 34460. Sample no. 21224-B.)

This case involved a product that consisted of sunflower oil which was sold as salad oil.

On or about December 6, 1934, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 52 gallon cans of salad oil at Hartford, Conn., alleging that the article had been shipped in interstate commerce on or about October 1, 1934, by A. Krasno from New York, N. Y., and charging misbranding in violation of the Food and Drugs Act.

The article was labeled in part: "Italian Cook Brand Pure Vegetable Salad Oil * * * Agash Refining Corp. Bush Terminal, Brooklyn, N. Y."

The article was alleged to be misbranded in that the following statements on the label and the use of the Italian national colors thereon were misleading and tended to deceive and mislead the purchaser, since they created the impression that the product was Italian olive oil; whereas it was not: "Italian Cook Italian Cook Oil Per insalate * * * ha quel sapore delicato che mesce perfettamente con altri cibi. Per Friggere * * * da al vostro cibo quella crosta con crespazza bruna—esso non penetra, rendendo moscio il cibo. Per informare * * * non e troppo spesso o troppo tennuo. Mesce perfettamente. Per tutti i cibi informati. Per Mayonnaise * * * puo essere usato con qualsiasi ricetta—non occorre sperimentare. * * * e un'olio vegetale puro." Misbranding was alleged for the further reason that the statement on the label, "Pure Vegetable Salad Oil", was misleading and tended to mislead the purchaser since this term might include olive oil. Misbranding was alleged for the further reason that the article purported to be a foreign article when not so.

On April 22, 1935, no claimant having appeared, judgment of condemnation was entered and it was ordered that the product be distributed to charitable institutions.

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