

2819. Adulteration of tomato catsup. U. S. v. 90 Barrels of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 3262. S. No. 1201.)

On December 1, 1911, the United States Attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 90 barrels of tomato catsup remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped by the Huss-Edler Preserve Co., Chicago, Ill., and transported from the State of Illinois into the State of Massachusetts, and charging adulteration in violation of the Food and Drugs Act. The product bore no label.

Adulteration of the product was alleged in the libel for the reason that it consisted in part of filthy, decomposed, and putrid animal and vegetable substance.

On February 5, 1913, Fred C. Edler, doing business as the Huss-Edler Preserve Co., claimant, having failed to appear, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal, and that the costs of the proceedings, amounting to \$101.18, be recovered of said claimant.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 3, 1914.*

2820. Alleged misbranding of gin. U. S. v. 36 Bottles of London Dry Gin. Tried to the court and a jury. Verdict for claimant. Motion for a new trial refused. Bill of exceptions, assignments of error, petition for writ of error and writ of error filed. Judgment of district court reversed by the United States Circuit Court of Appeals for the Third Circuit and a new trial granted. (F. & D. No. 3265. S. No. 1223.)

On January 8, 1912, 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 a libel for the seizure and condemnation of three cases each containing 12 quart bottles of gin remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about December 19, 1911, and transported from the State of New York into the State of Pennsylvania, and charging misbranding in violation of the Food and Drugs Act. The product was labeled "Sir Robert Burnett & Co. Celebrated Trade Mark London Dry Gin Distilled in New York, as at Vauxhall Distillery, London, in glass stoppered bottles which will entirely prevent any possibility of discoloration or loss from evaporation. By this arrangement corkscrews are entirely superseded. Direction.—The stopper is taken out by pressing the thumb first on one side and then on the other." (Blown in bottle) "Sir Robt. Burnett & Co. London Dry Gin."

Misbranding of the product was alleged in the libel for the reason that it was labeled and branded so as to purport to be a foreign product when not so, in that each of the bottles bore a label in substance and character as set forth above by virtue of which said label and brand the article purported to be a foreign product, to wit, a product of London, in the Kingdom of Great Britain, whereas, in truth and in fact, the said article of food was not a product of London in the Kingdom of Great Britain, but had been produced in the city of New York, in the State of New York, in the United States of America.

On February 2, 1912, Sir Robert Burnett & Co. (Inc.), claimant, New York, N. Y., filed its demurrer and exceptions to the libel, which were argued on February 5, 1912, and on February 7, 1912, the exceptions to the libel were overruled, without prejudice, as will more fully appear in the following opinion by the court:

McPHERSON, *C. J.* With nothing whatever before me except the libel and the claimant's objections (whether they are named exceptions or demurrers is of slight importance), I do not think I should decide now that this libel is either sufficient or insufficient. The district court in Michigan (*United States v. Schurman*, 177 Fed. 581) evidently had affidavits before it showing certain facts which influenced the decision; the ruling does not rest upon the mere language of the libel.

The objections are overruled, but without prejudice, etc.