

2852. Adulteration and misbranding of banana brandy and apricot brandy. U. S. v. One Hundred Quart Bottles "Pan Dandy Banana Brandy" and One Hundred Quart Bottles "Pan Dandy Apricot Brandy." Decree of condemnation by consent. Product released on bond. (F. & D. No. 3937. S. No. 1375.)

On May 9, 1912, the United States Attorney for the Northern District of Alabama, 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 100 quart bottles of Pan Dandy Banana Brandy and 100 quart bottles of Pan Dandy Apricot Brandy, remaining unsold in the original unbroken packages and in possession of A. D. Walstrom, Birmingham, Ala., alleging that the product had been shipped from the State of Ohio into the State of Alabama and charging adulteration and misbranding in violation of the Food and Drugs Act. The banana brandy was labeled: "Pan Dandy Banana Brandy Cordialized. Harris Johnson and Company, Cincinnati, O."; the apricot brandy was labeled: "Pan Dandy Apricot Brandy Cordialized. Harris Johnson & Company, Cincinnati, O."

Adulteration of the products was alleged in the libel for the reason that they consisted of a flavored and colored solution of alcohol and sugar substituted for cordialized apricot and banana brandy and so mixed and colored as to conceal inferiority. Misbranding was alleged for the reason that the goods were neither brandy nor cordialized brandy and the labels were false and misleading.

On November 5, 1913, Samuel L. Harris, Morton Harris, and Fred A. Johnson, co-partners, trading under the name of Harris, Johnson & Co., Cincinnati, Ohio, having appeared and consented to a decree, judgment of condemnation and forfeiture was entered and it was ordered by the court that the products should be delivered to said claimants upon payment of the costs of the proceedings and execution of bond in the sum of \$400 in conformity with section 10 of the act.

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

WASHINGTON, D. C., February 10, 1914.

2853. Adulteration and misbranding of extract of vanillin and coumarin. U. S. v. McConnon & Co. Tried to a jury. Verdict of guilty. Fine, \$75. (F. & D. No. 3951. I. S. No. 12082-d.)

On May 20, 1913, the United States Attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against McConnon & Co., a corporation, Winona, Minn., alleging shipment by said company, in violation of the Food and Drugs Act, on July 10, 1911, from the State of Minnesota into the State of Tennessee, of a quantity of so-called McConnon's extract of vanillin and coumarin which was adulterated and misbranded. The product was labeled: "McConnon's Extract of Vanillin and Coumarin. Alcohol 24% Net contents from 4½ to 4¾ oz. Burnt sugar color Prepared only by McConnon & Company, proprietors McConnon's Remedies, Winona, Minnesota. * * *"

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results:

Specific gravity at 15.56°C./15.56°C	1.1060
Ethyl alcohol (per cent by volume).....	19.7
Methyl alcohol.....	None
Solids (per cent by weight).....	33.3
Coloring matter.....	Caramel.
Volume in container (claim, 4½ to 4¾ ounces).....	5.12
Vanillin (per cent by weight).....	0.46
Coumarin (per cent by weight).....	0.18
Coumarin (Leach's test).....	Present.
Vanilla resins, none detected; lead precipitate, none.	

Adulteration of the product was alleged in the information for the reason that it purported to be and was represented to be an extract of vanillin and coumarin, whereas in truth and in fact it was a compound of vanillin and coumarin, mixed and colored with burnt sugar in a manner whereby the inferiority of said product was concealed. Misbranding of the product was alleged for the reason that the label and brand thereon contained and bore a statement regarding such article which was false and misleading, and that by said label and brand the article purported to be and represented to be an "Extract of Vanillin and Coumarin burnt sugar color," whereas, in truth and in fact, it was not an extract of vanillin and coumarin, but was a compound of said vanillin and coumarin, artificially colored with burnt sugar in imitation of vanilla extract. Misbranding was alleged for the further reason that the product labeled and branded as aforesaid purported to be and was represented to be an extract of vanillin and coumarin, whereas, in truth and in fact, it was a compound of said substances with burnt sugar color, and prepared in imitation of vanilla extract and offered for sale without being labeled as an imitation of vanilla extract. Misbranding was alleged for the further reason that the product purported to be and was represented to be an extract of vanillin and coumarin, whereas, in truth and in fact, it was a compound of vanillin and coumarin and was not labeled and branded so as to plainly indicate that it was a compound, with the word "Compound" plainly stated upon the package in which it was offered for sale.

On May 22, 1913, the case having come on for trial before the court and a jury, after the introduction of evidence and argument by counsel, the following charge was delivered to the jury by the court:

MORRIS, *Judge*. Gentlemen of the Jury: The defendant company in this case stands here charged with the violation of what is known as the Pure Food and Drugs Act, passed by Congress on the 30th day of June, 1906. It is charged with violating this act in two respects. First, with violating the section against misbranding of articles of food; and second, with violating the section of the act against adulteration of food. The charge rests upon the label placed upon the bottles of the preparation here in question. The first count in the indictment charges a misbranding, and the section of the law, as far as it is necessary to be considered here, is as follows: "That the term misbranding as used herein shall apply to all articles of food or articles which enter into the composition of food, packages the labels of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular." * * * "That for the purposes of this act an article shall also be deemed to be misbranded" * * * in the case of food, first, if it be an imitation of another article; second, if it be labelled or branded so as to deceive or mislead the purchaser." The third subdivision I need not read. "And fourth, if the package containing it or its label shall bear any statement, design or device regarding the ingredients of the substances contained therein, which statement, design, or device shall be false or misleading in any particular."

The defendant stands here charged with having violated that section of the act, in that, in this label he has caused people to buy what is in reality an imitation of another article, to-wit, vanilla extract or extract of vanilla. In this first count it is also charged that by this label this preparation was so labelled as to mislead purchasers, and third, it is charged that the label and brand contain statements regarding the ingredients contained therein, which statements are false or misleading. Those are the three particulars in which this act is alleged in this information to have been violated in the misbranding. In this information it is also charged that this preparation was adulterated, and thereby violated this provision of the act, "That for the purposes of this act an article shall be deemed to be adulterated if it be colored in a manner whereby inferiority is concealed."

Then first, as to the misbranding that is charged. You know what the label is, the bottle is there and the label is on it. It is charged that that label is such that it causes people to believe that it is something that it is not. In other words, that the label makes this preparation an imitation of another article, that is, an imitation of vanilla extract. Also that the package is so labelled as to deceive or mislead the purchaser; and third, that the label contains a statement in regard to the ingredients or substances contained therein which is false or misleading.

The object of this act, as has been stated by counsel on both sides, is twofold. First, to prevent people who have articles to sell from placing them in ingredients that are injurious or deleterious to the health of people, and causing them to buy without knowing that fact. Now, as far as this information is concerned, that may be left out of the question, because there is no charge and no proof of that; indeed, it is admitted here in court that there is nothing in this preparation which is injurious to the health of anybody. So that we pass to the second object of this act, and that is the one which it is charged here this defendant has violated. The second object of the statute is to prevent people from so labelling an article that a man buying it will think that he is buying one thing, when in reality he is buying another. In this case the charge is that this label is so made that people purchasing this preparation would think, and would have good reason to think, and the label would lead them to believe, that they were buying vanilla extract, when in truth and in fact they were buying something else, to-wit, a preparation, whether we call it an extract or a compound or a mixture, made of vanillin and coumarin and burnt sugar. So that it seems to me the whole of this case simmers down to one proposition, and that is this: Is that label so worded and so printed, taking it as it looks and as it is, the type on it and everything about it, and in connection with the color of the preparation,—is that label such that a purchaser of this article would think, and have reason to think and believe, when he reads the label, that he was buying vanilla extract, when he was in fact buying another thing? The whole question simmers itself down to that.

As to the misbranding; Is that article so branded, first, that it is an imitation of vanilla extract; that people buying it and looking at the brand, and looking at the article, would think that it was vanilla extract? That is the first charge. Second, Is this so branded as to deceive and mislead anyone buying it into the belief that he was buying vanilla extract, when in fact he was buying another mixture? And, third, does it contain a statement which is false or misleading?

You cannot say that the label is false, unless the word "extract" makes it false; that I shall come to hereafter. As to its ingredients, you cannot say that the label is false, because the label says that it does contain vanillin, that it does contain coumarin, that it does contain burnt sugar, and that it does contain alcohol. These things it says it contains. But is it misleading? Is it misleading in that it has the words extract of vanillin and coumarin colored with burnt sugar and with so much alcohol in it? Is it misleading by reason that the word extract is used instead of some other word, as, for instance, compound or flavoring, or some word other than extract? Does that make it misleading? Would that make a man going into a store and buying it, or buying it from a traveling vendor, looking at that label, think that he was buying extract of vanilla which is extracted from the vanilla bean,—not something made from a composition or extract of vanillin and coumarin, but an extract of the vanilla bean? Would the words used on that label, in the connection in which they are used, considering the color of the preparation that is in the bottle, would that make a man buying it believe that he was buying vanilla extract? That is the whole question.

Now, I come to the word extract. This label must be taken as meaning what would be ordinarily understood by the public in reading it. The ordinary and customary meaning given to the word is what should govern you in determining this question, and not the technical meaning of it. What impression, in other words, does that label produce upon the mind, your mind and my mind, when we go to buy that preparation? What impression, what meaning? That you must determine from all the testimony which has been offered here with reference to that question.

Extract of vanillin and coumarin, what meaning does that convey to our minds, the ordinary mind? What meaning does it convey to people who go and buy a bottle of flavoring for food? If that label, framed as it is, worded as it is, would cause an ordinary man to believe that he was buying vanilla extract, then this defendant is guilty. If it would not, then the defendant is not guilty, that is, on the first count of this information. That is the whole question. Take that label now as it stands, as it is, look at it with the wording on it and the coloring of the mixture in the bottle, would that cause the ordinary purchaser who wanted a flavoring extract to think and believe, and have good reason to believe, that he was buying vanilla extract, and not a compound of vanillin and coumarin with burnt sugar in it? If it would so mislead that purchaser, then that bottle is mislabelled and misbranded under this act, and this defendant is guilty. If it would not, then this defendant is not guilty, upon that proposition.

Now as to the adulteration part of it. "An article shall be deemed to be adulterated according to this act, if it be colored in a manner whereby inferiority is concealed." And this brings us right back to the same question. Does the coloring cause a man to believe when he wants vanilla extract that he is getting that or something that is not inferior to vanilla extract? Do I make myself understood? Does the coloring

in that bottle with that burnt sugar so operate that it would cause a man buying it, when he wanted vanilla extract, to think that it was the superior article and to get something which without that coloring he would have thought was an inferior article? That is the question on this second count. If that coloring matter does do that then this defendant is guilty on the second count; if it does not then it is not guilty.

So after all, it comes down to a single question as to whether or not the purchaser of that article has been deceived into buying a preparation of vanillin and coumarin when he thought he was buying extract of vanilla. That is about all there is of this case. A man has a right to use coloring matter in any article, provided that the coloring matter is not employed to imitate any natural product or another product of recognized name and quality. If this defendant employed that coloring matter for imitating the vanilla extract, and making people believe that they were getting vanilla extract, then it was employing it to imitate the natural product or some other product of recognized name and quality. That is where this coloring matter comes in. It comes in as bearing upon the intention of this defendant, as bearing upon the natural result of that labeling in connection with the coloring matter.

Now as to whether this defendant put that label on the bottle with the intention of causing this deception. If the putting of the label on the bottle must naturally and probably have produced that result, a man is held to intend to produce the natural and probable results of his action. Of course, if you believe from the evidence that this defendant colored that mixture and put that label on it with the actual intention of deceiving people who might buy it, then he violated this law. If the natural and probable result of putting that coloring matter in there and that label on the bottle would be to mislead the public, and to cause a man to think that he was buying vanilla extract when he was buying something else, then the defendant would be held to intend the natural and probable result of what he did even though you may not believe that such was his actual intention. That is all there is of this case.

This defendant stands here charged with an offence, which while it is a misdemeanor, gives him the right to the same degree of proof that he would have a right to in any criminal action. The facts which are necessary to be proved in order to convict him must be shown beyond a reasonable doubt, and the evidence must satisfy you beyond a reasonable doubt either that the defendant intended to accomplish the deceit, or that the natural and probable result or tendency of the label was to accomplish such deceit. The evidence must show and satisfy you of either of these matters beyond a reasonable doubt. I cannot give you any definition that would clear up what we mean by a reasonable doubt. The law writers and the judges have been trying to do that for a long time, and after all they get back to the words reasonable doubt. Those words mean exactly what they say; a reasonable doubt, not an imaginary or fanciful doubt, but a doubt such as you would act upon in the most important affairs of your own life. A doubt coming out of the evidence; a doubt arising from the evidence; not one that can be conjured up by the mind, not an imaginary, not a fanciful one, but a reasonable one. That is what it means. That doubt must be based upon the testimony. The Government must establish the fact of the defendant's guilt beyond a reasonable doubt. If this testimony does not so satisfy your minds, then this defendant is entitled to an acquittal. But, if it does so satisfy your minds, then there should be a conviction, and the defendant should be found guilty as charged either in the first or in the second count, or as in the entire information.

I have been talking to you about 15 or 20 minutes, and have got back to the original proposition. All there is in this case is, Did the defendant intend to accomplish a deceit, or was the natural tendency of this label to accomplish a deceit? Was that label such, taken in connection with the coloring of the product, taken in connection with what you believe to be the customary meaning of the word extract,—was that label such that it would naturally and probably cause a purchaser of that preparation to believe that he was buying vanilla extract when he was buying this preparation which is not vanilla extract? That is the whole thing.

The only way I can aid you in deciding that question, is put yourself in the place of a purchaser who wanted to buy a flavoring extract, an extract that would give the peculiar fragrant and delicious aroma that a product of the vanilla bean gives, that we all know vanilla gives. Put yourself in the place of a man buying and being presented with that bottle with that label on it, with that coloring in it, and ask yourself the question, "Would I be deceived when I read that label into believing that I was buying vanilla extract?" If you believe that you would be or that an ordinary purchaser would be so deceived, then this defendant is guilty; but unless you are satisfied of that fact beyond a reasonable doubt, then this defendant is not guilty, and should be so found by any man who comes to that conclusion.

That is all, so far as I can see, that there is in this case. I have been presented with a number of instructions, but I think that I have got the law boiled down, and I think

I have got this case so that the jury understands it. Put yourselves in the place of a man buying a bottle of flavoring fluid,—that is what this is intended for,—to flavor food. Ask yourself, if a man comes to sell me that preparation—I look at it and read the label, I examine the color; would I be deceived into believing that I was buying vanilla extract instead of something else? That is the whole question.

Now, gentlemen of the jury, you have heard all the testimony and you will decide the case upon the testimony that has been offered here in court. There has been a whole lot of it; some of it I have not quite understood, I do not know whether you have or not, most of it I have. But, gentlemen, all these witnesses have been very frank, especially these scientific gentlemen; they have acted like men who are standing upon scientific principles. They have been frank and open, they have been clear, and if any part of their testimony I have not understood, it is not due to them, it is due to my own stupidity, or to my own lack of scientific training perhaps. But from all of this testimony you have got to decide this question. Was this defendant branding an article so that it would make people think, who were buying one thing, that they were buying another? Did the coloring matter in this fluid so change its character from what it would otherwise have been, as to make people believe that they were buying vanilla extract when they were buying something else? That is the whole question for you to decide.

After due deliberation the jury returned into the court with a verdict of guilty, and the court thereupon imposed a fine of \$75.

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

WASHINGTON, D., C., *February 10, 1914.*

2854. Adulteration and misbranding of mace. U. S. v. Halligan Coffee Co. Plea of guilty. Fine, \$25 and costs. (F. & D. No. 3954. I. S. No. 17401-d.)

On October 12, 1912, the United States Attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Halligan Coffee Co., a corporation, Davenport, Iowa, alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 26, 1911, from the State of Iowa into the State of Illinois, of a quantity of mace which was adulterated and misbranded. The product was labeled: "Reliable Pure Mace packed for The Reliable Tea Co., Moline, Ill."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results:

Nonvolatile ether extract (per cent).....	49.30
Total ash (per cent).....	2.15
Ash insoluble in hydrochloric acid (per cent).....	0.23
Hefelmann's test for Bombay mace.....	Positive.
Waage's test for Bombay mace.....	Positive.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, Bombay mace, had been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength, and in that a substance, to wit, Bombay mace, had been substituted in part for the article, mace. Misbranding was alleged for the reason that the statement, "Pure Mace," borne on the label was false and misleading because it deceived the purchaser into the belief that the product was composed entirely of true mace, whereas, in truth and in fact, it consisted in part of Bombay mace, which is not a true mace; and further, in that the product was so labeled and branded as to deceive and mislead the purchaser, being labeled and branded "Pure Mace," whereas, in truth and in fact, it was not pure mace but consisted in part of Bombay mace, which is not a pure mace as that term is understood by the trade and public.

On April 25, 1913, the defendant company entered a plea of guilty to the information and the court imposed a fine of \$25 and costs.

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

WASHINGTON, D. C., *February 10, 1914.*