

The recent decision of the Supreme Court, while not at hand, involved, as I understand from the press report, the construction of the fifth subdivision of section 7, and not the one involved in this controversy.

I conclude, therefore, that the motions for nonsuit and directed verdict should be overruled, and that a decree should be entered in favor of the Government, as prayed for in the libel.

On March 10, 1914, a formal decree of condemnation and forfeiture was entered and it was ordered by the court that the product should be dealt with or destroyed in conformity with the instructions of the Secretary of Agriculture of the United States and usual in such cases.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3373. Adulteration of tomato catsup. U. S. v. 10 Cases \* \* \* Adulterated Tomato Catsup. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 5495. I. S. No. 3034-h. S. No. 2059.)

On December 18, 1913, the United States attorney for the District of Oregon, 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 10 cases, each containing six 1-gallon bottles of adulterated tomato catsup, remaining unsold in the original unbroken packages at Portland, Oreg., alleging that the product had been shipped on or about November 15 [5], 1913, and transported from the State of California into the State of Oregon, and charging adulteration in violation of the Food and Drugs Act. The shipping containers were branded: "6 only—1 gal. C. Z. E. Pkrs. Flint Red Rose Brand Catsup" (Top of case) "Glass With Care M. M. C. Co. Portland, Or." Each of the bottles in said cases was branded: "Red rose (Picture of rose) Catsup Put up by Lewis Packing Co., San Francisco, Cal. Prepared from Fresh Ripe Tomatoes without Fermentation. Not Artificially Colored. Made from Whole Ripe Tomatoes. Flavored and Preserved with Sugar, Glucose, Salt, Vinegar, Pure spices and One-fifth of one per cent Benzoate of Soda."

Adulteration of the product was alleged in the libel for the reason that said catsup consisted in whole or in part of filthy, decomposed, and [or] putrid vegetable substance.

On February 26, 1914, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be dealt with or destroyed in conformity with instructions of the Secretary of the Department of Agriculture and usual in such cases.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

**3374. Adulteration and misbranding of malt extract. U. S. v. P. Ballantine & Sons. Plea of non vult. Fine, \$50.** (F. & D. No. 5502. I. S. No. 2516-e.)

On March 27, 1914, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against P. Ballantine & Sons, a corporation, Newark, N. J., alleging shipment by said company in violation of the Food and Drugs Act, on or about May 29, 1912, from the State of New Jersey into the State of Pennsylvania, of a quantity of Ballantine's Ideal Malt Extract, which was adulterated and misbranded. The product was labeled: "Average quantity Alcohol contained 3 7/10 per cent by volume. Ballantine's Ideal Malt Extract P. Ballantine & Sons, 134 Cedar St., New York. Foot Fulton St., Newark, N. J. A fully matured preparation of

malt, with a delicate flavor. It is grateful to the weakest stomach. Recommended by eminent physicians for its purity. Convalescents enjoy its agreeable and bracing effects. This extract is thoroughly ripened, carefully bottled and pasteurized. The malt is especially prepared; the hops selected and the whole carefully brewed and aged. This product of over seventy years' experience in brewing is the Ideal Malt Extract. Directions \* \* \*. (Analysis furnished physicians on application.)"

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

Alcohol (per cent by volume)-----	3.23
Extract (per cent by weight)-----	8.34
Extract original wort (per cent by weight)-----	13.48
Degree fermentation-----	37.39
Volatile acid as acetic (grams per 100 cc)-----	0.019
Total acid as lactic (grams per 100 cc)-----	0.223
Maltose (per cent)-----	4.46
Dextrin (per cent)-----	2.96
Ash (per cent)-----	0.177
Protein (per cent)-----	0.309
Undetermined (per cent)-----	0.43
P <sub>2</sub> O <sub>5</sub> (per cent)-----	0.049
Polarization, undiluted (°V.)-----	58
Color (degrees in ¼-inch cell, Lovibond)-----	50

This is not a malt extract because it is a fermented product and does not contain diastase. Further, it is not made from malt alone, some cereal or cereal products having been substituted in part for malt.

Adulteration of the product was alleged in the information for the reason that a beverage made in part from hops and a cereal substance or substances other than malt had been substituted wholly or in part for true malt extract, a beverage prepared exclusively from malt, which said article of food purported to be. Misbranding was alleged for the reason that the label aforesaid bore the following statement, to wit, "Malt Extract," which said statement was false and misleading in that it purported and represented to purchasers of said article of food that the same was true malt extract, a beverage prepared exclusively from malt, whereas, in truth and in fact, it was not a true malt extract, but a beverage prepared in part from hops and a cereal substance or substances other than malt. Misbranding was alleged for the further reason that the said label bore the statement, "A fully matured preparation of malt," which said statement was false and misleading in that it purported and represented to purchasers of said article of food that the same was prepared exclusively from malt, whereas, in fact, the same was not prepared exclusively from malt, but was prepared in part from hops and a cereal substance or substances other than malt. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, in that the statement "Malt Extract," and the statement "A fully matured preparation of malt" purported and represented that said article of food was a true malt extract, a beverage prepared exclusively from malt, whereas, in fact, the same was not a true malt extract, but a beverage prepared in part from hops and a cereal substance or substances other than malt.

On April 14, 1914, the defendant company entered a plea of non vult to the information and the court imposed a fine of \$50.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*