

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 799, FOOD AND DRUGS ACT.

ADULTERATION OF FLOUR.

Some time during the month of April, 1910, the Kansas Milling and Export Company, Kansas City, Mo., shipped from the State of Missouri into the State of Tennessee 1,200 sacks of flour, of which 400 contained 48 pounds each, and 800 24 pounds each, all of said sacks being labeled: "Made from hard wheat for the Kansas Milling and Export-Co., Kansas City, U. S. A., Stability Flour." Analysis by the Bureau of Chemistry, United States Department of Agriculture, of samples taken from this shipment showed said flour to have been bleached with nitrogen peroxid gas and to contain nitrous nitrogen in the proportion of 1.3 parts per million. As it appeared from the findings of the analyst and report made that the product was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, and liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Middle District of Tennessee.

In due course a libel was filed in the District Court of the United States for said district against the said 1,200 sacks of flour, charging the said shipment and alleging that the flour so shipped was adulterated within the meaning of section 7 of the act because, as a result of bleaching with nitrogen peroxid gas, said flour contained 1.3 parts per million of nitrous nitrogen, an added poisonous and deleterious ingredient which rendered said product injurious to health, and praying seizure, condemnation, and forfeiture of said product.

On May 23, 1910, said libellant filed an amended libel, setting forth in greater particularity the facts and circumstances of the above-mentioned shipment and adulteration. Thereupon the Kansas Milling and Export Company, Kansas City, Mo., entered its appearance, set up claim to the said product, and filed an answer to said libel, which answer said libellant moved to be stricken from the files for the reason, among others, that it was not responsive to the allegations of the amended libel. By agreement between the attorneys for the Government and the claimant, this motion was not

argued nor passed upon by the court, but instead a stipulation was entered into by and between the parties to this suit, through their respective attorneys, whereby it was stipulated that the allegations of the libel and the amended libel in this cause be taken by the court to be true; that all the matters of fact so taken to be true should have the same force and effect as though found and determined by the court after hearing testimony on the part of the libellant therein, and that a decree of court be entered in said suit without notice, further agreeing that said stipulation should be made without prejudice as to any question of law or fact which may be involved in any other similar clauses then pending or thereafter instituted in the United States or other courts or to the right of counsel for the claimant therein in any such cases to contend for a decree, decision, or finding contrary to that therein stipulated to be made.

Whereupon, after due consideration of all the records and proceedings, the court entered its decree finding that said flour was liable to be seized, condemned, and confiscated as an adulterated article of food within the meaning of the Food and Drugs Act, approved by Congress June 30, 1906, for the reason that said flour before shipping the same from Missouri into Tennessee was treated by a process for the bleaching and whitening of flour, known as the Alsop process, whereby—

(a) Certain substances known as nitrites, nitrite reacting material, and nitrogen peroxid gas had been mixed and packed with said flour so as to reduce, lower, and injuriously affect its quality and strength in these respects, viz, that the capacity of said flour to change and improve as it would have changed and improved if aged and conditioned by natural processes, had been destroyed; that the elasticity of the gluten content of said flour had been lessened and impaired and other ingredients of said flour had been injuriously affected so as to reduce, lower, and impair its bread-making qualities;

(b) Said flour had been and was mixed, colored, and stained in a manner whereby damage and inferiority was concealed in these respects, among others, viz, that the inferiority or freshness or newness, an inferiority which is present in flour made from new wheat or in flour freshly milled from wheat that is either old or new, and an inferiority which manifests itself, among other things, in color, elasticity of gluten, and the quality of other ingredients which affect its value for bread-making purposes, had been and was concealed and said flour had been caused to simulate the appearance of flour made from wheat properly aged and conditioned by natural processes and of flour which had been properly aged and conditioned by natural processes after being milled, and that said treatment by the Alsop process concealed the inferiority of said flour by giving it the appearance of a better grade of flour than it really was;

(c) Said flour had been caused to contain and did contain added poisonous or other added deleterious ingredients, to wit, nitrites, nitrite reacting material, and nitrogen peroxid gas, which may render said flour injurious to health.

It was therefore ordered that the flour contained in the said 1,200 sacks be condemned and confiscated to the United States of America as an adulterated article of food and that the same be destroyed by the marshal; provided, however, that if the Kansas Milling and Export Company, the claimant therein, within thirty days from the date of said decree should pay to the United States all costs and charges incurred in said libel proceedings and execute a good and sufficient bond conditioned that the said flour or any part of it should not be sold or otherwise disposed of contrary to the provisions of the Food and Drugs Act, or contrary to the laws of any State, Territory, District or insular possession, the marshal should deliver all of said flour to said claimant.

On October 24, 1910, the bond was duly executed by the Kansas Milling and Export Company in accordance with the provisions of the above-mentioned decree, which bond was filed with the court on October 31, 1910, the costs of these proceedings paid, and said flour was duly released to said claimant.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. HAYS,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *March 2, 1911.*