

3622. Misbranding and alleged adulteration of so-called Londonderry lithia water. U. S. v. 35 Cases of So-Called Londonderry Lithia Water. Consent decree of condemnation and forfeiture. First count of libel of information dismissed. (F. & D. No. 5704. I. S. No. 1393-h. S. No. E-34.)

On April 28, 1914, 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 an information for the seizure and condemnation of 35 cases of so-called Londonderry lithia water, remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped by the Londonderry Lithia Spring Water Co., Nashua, N. H., and transported from the State of New Hampshire into the State of Massachusetts, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the first count of the information for the reason that a substance, to wit, spring water, to which had been added sodium chlorid, sodium bicarbonate, and carbonic-acid gas, had been substituted in part for said food, to wit, for said Londonderry lithia water. Misbranding was alleged in the second and third counts of the information, for the reason that said food and the packages and labels thereof bore a statement, design, and device regarding said food and the ingredients and substances contained therein—that is to say, the words “Londonderry Water, Sparkling Londonderry Lithia Spring Water Co., Londonderry Lithia”—which said statement, design, and device was false and misleading in that it would lead a purchaser to believe that said food was a lithia water, whereas, in truth and in fact, it was not a lithia water. Misbranding was alleged for the further reason that said food, and the packages and labels thereof, bore a statement, design, and device regarding said food and the ingredients and substances contained therein, that is to say, the words “Londonderry Water, Sparkling Londonderry Lithia Spring Water Co., Londonderry Lithia,” which said statement, design, and device was false and misleading in that said food was then and there an imitation of and offered for sale under the distinctive name of another article, to wit, lithia water, whereas, in truth and in fact, said food was not a lithia water.

On October 19, 1914, an agreement was entered into between counsel for the Government and claimant, substantially as follows:

Whereas the claimant in the above-entitled cause has admitted the allegations of the second and third counts of said information, and has agreed not to sell or offer for sale hereafter said water by using on the labels thereof the word “Lithia”;

And whereas said claimant has consented to a condemnation of said water now under seizure, and has given bond to pay the costs of this proceeding;

And whereas said claimant has agreed hereafter to use suitable language in conformity with law on its “sparkling” brand of water to indicate that carbon dioxid gas, salt, and soda have been added thereto in the course of manufacture:

Now, therefore, it is hereby agreed by and between said parties in said cause of action that the first count of said information shall be dismissed without further prosecution.

On October 28, 1914, the case having come on for final hearing, and it appearing that 20 cases of the product had been destroyed under an order of the court upon petition of claimant, and that the claimant had confessed judgment on the second and third counts of the information, it was ordered, adjudged, and decreed that the remaining case, of the 21 cases of the product seized, be forfeited and condemned and disposed of by the marshal in a manner not contrary to law. It was further ordered by the court that the first count of the information should be dismissed in accordance with the agreement of the parties referred to above.

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

WASHINGTON, D. C., *March 12, 1915.*