

On February 4, 1925, the Douglas Packing Co., Rochester, N. Y., having appeared as claimant for the product and the cases having been consolidated into one action, judgment of the court was entered, finding the product misbranded and ordering its condemnation and forfeiture, and it was further ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13537. Adulteration and misbranding of strawberry preserves. U. S. v. 17 Cases and 7 Cases of Strawberry Preserves. Default decree of condemnation, forfeiture, and destruction. F. & D. Nos. 19822, 19823. I. S. Nos. 13416-v, 13805-v. S. Nos. E-5155, E-5156.)

On February 20 and 21, 1925, respectively, the United States attorney for the District of New Jersey, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 24 cases of strawberry preserves, in part at Newark, N. J., and in part at Paterson, N. J., alleging that the article had been shipped by George S. Murphy, Inc., New York, N. Y., in two consignments, namely, on or about December 4, 1924, and December 23 (1924), respectively, and transported from the State of New York into the State of New Jersey, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: "Honeydew Brand Pure Strawberry Preserves Contents 1 Lb. George S. Murphy Inc. New York."

Adulteration of the article was alleged in the libels for the reason that substances, pectin and sugar, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and for the further reason that a substance, an acidified compound pectin sugar and fruit preserve, had been substituted wholly and in part for the said article.

Misbranding was alleged for the reason that the statement "Pure Strawberry Preserves," borne on the labels, was false and misleading and deceived and misled the purchaser, and for the further reason that the article was offered for sale under the distinctive name of another article.

On June 22, 1925, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13538. Misbranding and alleged adulteration of fruit jam. U. S. v. 34 Dozen Jars of Alleged Pure Fruit Jam With Apple Grape. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 17713. I. S. No. 2759-v. S. No. E-4467.)

On August 15, 1923, the United States attorney for the Middle 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 praying the seizure and condemnation of 34 dozen jars of alleged pure fruit jam with apple grape, remaining in the original unbroken packages at Wilkes-Barre, Pa., alleging that the article had been shipped by the Paul Delaney Co., from Brocton, N. Y., on or about May 12, 1923, and transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: (Jar) "Pure Fruit Jam With Apple Grape Packed By The Paul Delaney Co. Inc. Brocton, N. Y."

Adulteration of the article was alleged in the libel for the reason that pectin had been mixed and packed therewith so as to reduce and injuriously affect its quality and strength and for the further reason that a mixture of pectin, sugar, and grape jam had been substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the statement "Pure Fruit Jam With Apple Grape," borne on the labels, was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was an imitation of or offered for sale under the distinctive name of another article.

On February 14, 1925, Williams Bros. & Co., Wilkes-Barre, Pa., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of the court was entered, finding the product misbranded

and ordering its condemnation and forfeiture, and it was further ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$500, in conformity with section 10 of the act.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13539. Alleged adulteration and misbranding of butter. U. S. v. Charles T. Myers (Alamosa Creamery Co.). Directed verdict of not guilty. (F. & D. No. 19003. I. S. Nos. 8548-v, 8549-v, 11945-v, 11946-v, 11947-v, 20632-v, 20633-v.)

On March 18, 1925, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Charles T. Myers, trading as the Alamosa Creamery Co., Alamosa, Colo., alleging shipment by said defendant, in violation of the food and drugs act as amended, in various consignments, namely, on or about February 20, 1924, from the State of Colorado into the State of Arizona, and on or about February 20 and 21, 1924, respectively, from the State of Colorado into the State of New Mexico, of seven consignments of butter which was alleged to be adulterated and misbranded. The article was labeled in part: "Golden Purity Butter 1 Pound 4 Pieces Manufactured by Alamosa Creamery Company Alamosa—Colorado Pure Creamery Butter * * * Net Weight 16 Ounces."

Analysis by the Bureau of Chemistry of this department of 4 samples from each of the seven consignments showed an average of 79.1 per cent, 79 per cent, 79.4 per cent, 79.4 per cent, 79.2 per cent, and 79.6 per cent, respectively, of milk fat. Examination of 30 packages from each of five consignments and 60 packages from each of the two remaining consignments showed an average weight of 15.88 ounces, 15.87 ounces, 15.73 ounces, 15.82 ounces, 15.76 ounces, 15.74 ounces, and 15.72 ounces, respectively.

Adulteration of the article was alleged in the information for the reason that a product deficient in milk fat had been substituted for butter, which the said article purported to be, and for the further reason that a product which contained less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat, as defined by the act of March 4, 1923.

Misbranding was alleged for the reason that the statements, to wit, "Creamery Butter * * * Net Weight 16 Ounces," borne on the packages containing the article, were false and misleading, in that the said statements represented that the article was butter, to wit, a product containing not less than 80 per cent by weight of milk fat, as defined and prescribed by the act of March 4, 1923, and that the said packages contained 16 ounces of the said article, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was butter and that the said packages contained 16 ounces of the article, whereas it was not butter, in that it contained less than 80 per cent by weight of milk fat and the packages did not contain 16 ounces of the said article but did contain a less amount. Misbranding was alleged for the further reason that the article was an imitation of and offered for sale under the distinctive name of another article and for the further reason that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the quantity stated was more than the actual contents of the package.

On April 15, 1925, the case came on for disposition before the court and a jury. After the submission of certain evidence a motion to suppress the evidence was made by counsel for the defendant and sustained by the court. On April 16, 1925, the court delivered the following instructions to the jury, directing a verdict of not guilty:

The Court: "The defendant in this case has made timely motion to suppress the evidence that has been offered, or, rather, testified to by the witness Kathe, on the ground that it violates the constitutional rights of the defendant and also is in violation of the post-office regulations or acts pertaining to the post office.

"It is stipulated and agreed by both sides that Mr. Kathe, an inspector of the Bureau of Chemistry of the United States Department of Agriculture, who is not connected in any official way with the Post Office Department, without a