

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 648, FOOD AND DRUGS ACT.

ADULTERATION OF OLIVES.

On or about February 4, 1910, P. Pastene & Co., a corporation, New York City, shipped from the State of New York to the State of Pennsylvania 9 barrels of olives. Examination of samples of this product made by the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report thereon that the said shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Eastern District of Pennsylvania.

In due course a libel was filed in the District Court of the United States for said district, charging the above shipment, alleging the product so shipped to be adulterated in that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance, and praying seizure and condemnation of the product. Thereupon said P. Pastene & Co. intervened and filed an answer denying the allegations of said libel. The cause coming on for hearing, the issues were tried by the court without a jury and the evidence and arguments of counsel on the part of both parties having been heard and considered, the court rendered the following opinion:

OPINION.

Hon. J. B. MCPHERSON, *District Judge.*

The food product under inquiry in this case is black olives imported from Greece. The shipment was seized under the authority of section 10 of the Food and Drugs Act of 1906. The importer appeared and claimed the goods, and a trial was had before the court without a jury in which witnesses were examined and other evidence was produced.

The claimant objects to the jurisdiction of the court on the ground that no preliminary hearing was had by the Secretary of Agriculture in accordance with the provisions of section 4. To this it is enough to reply that section 10 of the act under which the present seizure was made is independent of section 4. This has already been decided by Judge Norris in *United States v. 50 Barrels of Whiskey*, 165 Fed., 966, and by Judge Dayton in *United States v. 50 Casks, etc.*, 170 Fed., 449, and I agree with the result of these decisions. The precise scope of section 4 need not now be determined; it is enough to say for the present that it does not apply to a libel for forfeiture. Under section 10 provision is made for a hearing in court under this well known process according to the practice of the district court in admiralty, and a preliminary hearing going over the same ground would be superfluous. Of course if the act required such a hearing the court would obey the statute, but in my opinion the procedure under section 10 is complete in itself, and is not a mere continuation of the proceeding referred to in section 4.

Another defense is that the claimant has given the bond required by section 11, and that the acceptance of this bond by the government is equivalent to an official declaration that the olives had been found to comply with the act. I do not so understand the section, which reads as follows:

“The Secretary of the Treasury shall deliver to the Secretary of Agriculture, upon his request from time to time, samples of foods and drugs which are being imported into the United States or offered for import, giving notice thereof to the owner or consignee, who may appear before the Secretary of Agriculture, and have the right to introduce testimony, and if it appear from the examination of such samples that any article of food or drug offered to be imported into the United States is adulterated or misbranded within the meaning of this act or is otherwise dangerous to the health of the people of the United States or is of a kind forbidden entry into, or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, or is otherwise falsely labeled in any respect, the said article shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, such consignee shall forfeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importations made by such owner or consignee.”

In other words, if an examination is in progress before the Secretary of Agriculture the importer may take the risk that the result will be what he desires, and may obtain possession of the goods by giving bond to return them in case the result should be adverse. This section does not appear to be so connected with section 10 as to present any obstacle to the remedy by forfeiture.

It only remains to add that, having heard and considered the evidence and the arguments of counsel, I am of opinion, and so find, that the olives in ques-

tion consist in whole or in part of a decomposed vegetable substance and should therefore be condemned.

An appropriate judgment may be entered in favor of the United States.

Whereupon, on motion of the United States attorney for said district, the court issued its decree, condemning and forfeiting the said nine barrels of olives to the United States for the cause in said libel set forth, and ordering their destruction by the marshal of said district, which order was forthwith executed.

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

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *October 6, 1910.*

