

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1303.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED ADULTERATION AND MISBRANDING OF MILK POWDER.

On May 11, 1911, the United States Attorney for the District of New Jersey, acting upon a report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of three barrels of powdered milk, found in possession of Marfield Chocolate & Cocoa Co., Jersey City, N. J. The product was labeled: "Merrell-Soule blended—to contain at least 27½ per cent butter fat—Merrell-Soule Co.—Merso—food products—Syracuse, N. Y.—Milk Powder, guaranteed by Merrell-Soule Co. under the Food and Drugs Act June 30, 1906, Serial No. 25, Merrell-Soule Co., principal offices, Syracuse, N. Y."

An analysis of a sample of said product was made by the Bureau of Chemistry of the United States Department of Agriculture, and the report thereof indicated that the product contained but 15 per cent of butter fat, and the Secretary of Agriculture therefore reported the product for seizure because of the apparent adulteration and misbranding shown by the report of the above analysis. Subsequent analysis of this and other samples made by the Bureau of Chemistry showed that the product did contain the equivalent of 27½ per cent of butter fat as stated on the label thereof. The libel which had been filed prior to the subsequent findings of the Bureau of Chemistry alleged that the product, after shipment by Merrell-Soule Co., of Frewsburg, N. Y., to the State of New Jersey, remained in the original, unbroken packages, and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure for confiscation. Adulteration and misbranding were alleged against the product in the libel as follows: "That the said so-called milk powder was and is adulterated within the meaning of the Act aforesaid in that a circular included in each barrel referred to the product as containing 27½ per cent butter fat, whereas in truth and in fact the said product contains but

15 per cent butter fat, and is therefore powdered skim milk. That the so-called milk powder was misbranded in that the labels purported to show that the product contained $27\frac{1}{2}$ per cent butter fat, whereas in truth and in fact the said product contained but 15 per cent of butter fat, and instead of being milk powder as alleged on the label the same was and is powdered skimmed milk." On May 26, 1911, the Merrell-Soule Co. appeared and filed answer to the libel, which answer was subsequently amended, to wit, on June 3, 1911, in which the adulteration and misbranding of the aforesaid product was denied.

The Secretary of Agriculture, upon receipt of the report of the Bureau of Chemistry to the effect that its further investigation disclosed no adulteration or misbranding of the product, so advised the United States Attorney for the District of New Jersey and recommended that the proceedings instituted against the same be dismissed upon the merits of the case.

On June 7, 1911, the case coming on for hearing, and it appearing that the marshal had seized two barrels of said product, the court entered a decree in part as follows: "Upon motion of Edgar F. Brown, Proctor for the said Merrell-Soule Co., and John B. Vreeland, United States Attorney for the District of New Jersey, consenting hereto, it is ordered that said libel be and the same is hereby dismissed upon the merits and the said two barrels of powdered milk be and same are hereby released and possession thereof awarded to the said Merrell Soule Company, said claimant herein."

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *January 22, 1912.*

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