

3341. Misbranding of coffee. U. S. v. Stewart Brown and William Harman, jr. (Fiske & Brown). Plea of guilty. Sentence suspended.
(F. & D. No. 4512. I. S. No. 15674-d.)

At the March, 1914, term of the District Court of the United States for the Southern District of New York, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said court an information against Stewart Brown and William Harman, jr., doing business under the firm name and style of Fiske & Brown, New York, N. Y., alleging shipment by said defendants in violation of the Food and Drugs Act on April 4, 1912, from the State of New York into the State of Missouri, of a quantity of coffee which was misbranded. The product was labeled: "Java & Mocha from Fiske & Brown. Olive Oil, Coffees & Teas, 103 Water St., New York."

Examination of a sample of the product by the Bureau of Chemistry of this department showed that the package contained a blend of about three parts Padang, from the island of Sumatra, and about one part Mocha.

Misbranding of the product was alleged in the information for the reason that the words on the aforesaid label, "Java & Mocha," would indicate that the article was a coffee consisting in part of Java coffee, whereas in truth and in fact no Java coffee was present in said article, but said article consisted of about three parts Padang coffee and one part of Mocha coffee.

On March 26, 1914, a plea of guilty was entered on behalf of the defendant firm and the court suspended sentence.

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

WASHINGTON, D. C., *September 24, 1914.*

3342. Misbranding of vinegar. U. S. v. 25 Barrels, and 25 Half Barrels; and U. S. v. 10 Barrels, and 10 Half Barrels of Vinegar. Product released on bond. (F. & D. No. 4552. I. S. Nos. 3821-e, 3822-e. S. No. 1512.)

On September 21, 1912, the United States attorney for the Southern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 25 barrels and 25 half barrels, and 10 barrels and 10 half barrels of vinegar remaining unsold in the original unbroken packages at Huntington, W. Va., alleging that the product had been transported from the State of Ohio into the State of West Virginia, and charging misbranding in violation of the Food and Drugs Act. The 25 barrels and 25 half barrels were labeled: "Union Vinegar Co., Distributors, Colored Distilled Vinegar 40 Gr. Cincinnati, O. Made 2-3-12." The 10 barrels were labeled: "Old Kentucky Cider Vinegar Works—O. K.—Fermented Apple Product Vinegar Made by Fermentation, Covington, Ky. Fermented Apple Juice Pressed from Apple Waste Reduced to Legal Standard with Water." The 10 half barrels were labeled: "Old Kentucky Cider Vinegar Works O. K. Brand Fermented Apple Vinegar Made by Fermentation, Covington, Ky. Made 8-8-12 Reduced to 40 G. Guaranteed to comply with the Pure Food Law."

Misbranding of the 25 barrels and 25 half barrels was alleged in the libel, for the reason that said barrels and half barrels were branded as follows: That said barrels and each of them were branded and marked to contain the following quantities, that is to say, 2 barrels marked 46 gallons, 17 barrels marked 47 gallons, and 6 barrels marked 48 gallons, when, in truth and in fact, neither [none] of said barrels contained the quantity which was indicated to be therein by the markings, labels, and branding thereon, but each of said barrels was substantially short in quantity from [of] the amount indicated by the said labels and markings, the total shortage in said 25 barrels being 18 gallons, or 19.1 per cent; that said half barrels were branded and marked to

contain the following quantities, that is to say, each of said half barrels was marked to contain 32 gallons, when, in fact and in truth, neither [none] of said half barrels contained the quantity which was indicated to be therein by the markings, labels, and branding thereon, but each of said half barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, the total shortage in the said 25 half barrels being 11 gallons, or 16.9 per cent; that the labeling of said barrels and half barrels was misleading and false, so as to deceive and mislead the purchaser, and was a misbranding within the meaning of said act. It was further alleged in the libel that each of said 25 barrels and each of said 25 half barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, and said barrels and half barrels did not contain the amount of vinegar as [that] the markings would indicate. Misbranding of the 10 barrels and 10 half barrels was alleged for the reason that said barrels were branded and marked to contain the following quantities, that is to say, 1 barrel containing 48 gallons, 4 containing 49 gallons, 1 containing 50 gallons, 1 containing 51 gallons, 2 containing 52 gallons, and 1 containing 54 gallons, when, in truth and in fact, neither [none] of said barrels contained the quantities which were indicated to be therein by the markings, labels, and branding thereon, but each of said barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, the total shortage in said 10 barrels being 23 gallons, or 11.5 per cent; that the said half barrels were branded and marked to contain the following quantities, that is to say, each of said 10 half barrels was marked to contain 32 gallons, when, in truth and in fact, neither [none] of said half barrels contained the quantities which were indicated to be therein by the markings, labels, and branding thereon, but each of said half barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, the total shortage in the said 10 half barrels being 22 gallons, or 17.2 per cent; that the labeling of said barrels and half barrels was misleading and false, so as to deceive and mislead the purchaser, and was a misbranding within the meaning of said act. It was further alleged in the libel that each of said 10 barrels and 10 half barrels was substantially short in quantity from [of] the amount indicated by said labels and markings, and said barrels and half barrels did not contain the amount of vinegar as [that] the markings would indicate. [The shortage of 18 gallons, or 19.1 per cent, was not in the 25 barrels of the product, but in 2 of the 25 barrels; the shortage of 11 gallons, or 16.9 per cent, was not in the 25 half barrels, but in 2 of the 25 half barrels; the shortage of 23 gallons, or 11.5 per cent, was not in the 10 barrels, but in 4 of the 10 barrels; and the shortage of 22 gallons, or 17.2 per cent, was not in the 10 half barrels, but in 4 of the 10 half barrels.]

On October 9, 1912, the cause having come on for a hearing upon the libel and upon the answer of the Union Vinegar Co., Cincinnati, Ohio, claimant, it was considered by the court that the product was misbranded within the meaning of the Food and Drugs Act and subject to seizure thereunder. The said Union Vinegar Co., by its answer having asked that it be allowed to give bond on condition that the vinegar should not be sold in violation of the Food and Drugs Act and to pay the costs of the proceeding and to have restored to it the product, and having tendered a bond for the performance of these conditions, and said bond having been approved, it was considered by the court that upon payment of the costs of the proceeding the product should be restored to said Union Vinegar Co.

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

WASHINGTON, D. C., *September 24, 1914.*