

the words and phrase "Tr. Ferri Chloridi," meaning and importing to the purchaser thereof that the drug was a tincture of ferri chloridi conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On April 27, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$10.

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

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

**3395. Adulteration of cream. U. S. v. Philip H. Cline. Plea of guilty. Fine, \$10. (F. & D. No. 233-c.)**

On May 9, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of said District an information against Philip H. Cline, Cacocin, Md., alleging shipment by said defendant in violation of the Food and Drugs Act, on April 21 and 28, 1914, from the State of Maryland into the District of Columbia of quantities of cream which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food, to wit, butter fat, was left out and abstracted in whole and in part.

On May 9, 1914, the defendant entered a plea of guilty to the information and the court imposed a fine of \$10.

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

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

**3396. Adulteration of cream. U. S. v. Chas. G. Geisbert. Plea of guilty. Fine, \$10. (F. & D. No. 234-c.)**

On May 22, 1914, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of said District an information against Chas. G. Geisbert, Buckeystown, Md., alleging shipment by said defendant in violation of the Food and Drugs Act, on April 24 and 25, 1914, from the State of Maryland into the District of Columbia, of quantities of cream which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of the article of food, to wit, butter fat, was left out and abstracted in whole and in part.

On May 22, 1914, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$10.

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

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

**3397. Alleged misbranding of Hurdle Brand Holland Gin. U. S. v. 5 Cases of a Liquid Food Known as "Hurdle Brand Holland Gin." Tried to the court. Finding in favor of claimant. Order dismissing libel and directing marshal to release goods. (F. & D. No. 537. S. No. 191.)**

On March 26, 1909, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Supreme Court of said District a libel, and on August 24, 1909, an amended libel, for the seizure and condemnation of 5 cases, each containing 12 bottles of a liquid food known as Hurdle Brand Holland Gin, remaining unsold in the original unbroken packages at Washington, D. C., alleging that the product had been shipped on March 15, 1909, and transported from the State of New York into

the District of Columbia, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: (On cases) In the upper left-hand corner are the initials "B. D. Co."; about the middle thereof is a circular design with the words "Hurdle Brand Geneva," and in the center of said circular design is a picture of a horse jumping over a hurdle; in the lower right-hand corner are the words "Hurdle Brand Holland Gin." (On bottles) "Superfine Double Distilled Holland Gin Hurdle (picture of horse and rider jumping over hurdle) Brand Geneva Distilled By Baird-Daniels Co. Warehouse Point, Conn. Guaranteed under the National Pure Food Law."

Misbranding of the product, in so far as concerned the labels on the cases, was alleged in the amended libel for the reason that said gin was labeled and branded so as to deceive and mislead the purchaser thereof and purported to be a foreign product, when not so, for the reason that the use of the words "Holland" and "Geneva," both singly and in connection with each other, upon the said label in manner and form as aforesaid, signified and imported that said gin had been distilled within the Province of Holland, in the Kingdom of the Netherlands, Europe, and after so having been distilled had been imported into the United States from the said Province of Holland, whereas the said gin had not been distilled in the said Province of Holland, nor imported therefrom into the said United States, but, in fact, the same had been distilled within the said United States at Warehouse Point, in the State of Connecticut. Misbranding in so far as concerned the labels on the bottles was alleged in the amended libel for the reason that said gin was labeled and branded so as to deceive and mislead the purchaser thereof and purported to be a foreign product, when not so, for the reason that the use of the words "Holland" and "Geneva," both singly and in connection with each other, upon the said label in manner and form aforesaid signified and imported that the said gin had been distilled within the Province of Holland, in the Kingdom of the Netherlands, Europe, and after so having been distilled had been imported into the said United States from the said Province of Holland, whereas the said gin had not been distilled in the said Province of Holland, nor imported therefrom into the said United States, but, in fact, the same had been distilled within the said United States at Warehouse Point, in the State of Connecticut.

On November 18, 1909, Albert E. Beitzel, claimant, Washington, D. C., filed his demurrer to the amended libel, and on January 7, 1910, the same was overruled by the court, and thereafter, on February 4, 1910, the answer of said claimant was filed. On November 25, 1913, the case having come on for final hearing, after the submission of evidence in the form of depositions and argument by counsel, the following opinion was rendered by the court (Gould, J.):

#### OPINION OF THE COURT.

The questions involved in this case are raised by a libel filed by the United States under the act of Congress of June 30, 1906 (commonly known as the Food and Drugs Act), in which it is sought to condemn 5 cases, containing 12 bottles each, of a liquid called gin, on the ground that the same are misbranded. The misbranding is charged to consist in labeling the liquid in such manner as to deceive a purchaser into the belief that it is a foreign product distilled in Holland, in the Kingdom of the Netherlands, whereas it was in fact distilled at Warehouse Point, in the State of Connecticut. The claimants are A. E. Beitzel, in whose possession the gin was found, and the Baird-Daniels Co., which distilled it. The label, a facsimile of which contains the alleged misbranding, appears in the libel.

Section 8 of the Food and Drugs Act provides as follows:

"SEC. 8. That the term 'misbranded' as used herein shall apply to all drugs or articles of food or articles which enter into the composition of food, the pack-

age or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

\* \* \* \* \*

"In the case of food:

"First. If it be an imitation of or offered for sale under the distinctive name of another article.

"Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so.

\* \* \* \* \*

"Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular."

On January 31, 1908, the department promulgated what is designated as regulation 19, which deals with the questions raised by the instant case. It reads as follows:

"(b) The use of a geographical name shall not be permitted in connection with a food or drug product not manufactured or produced in that place when such name indicates that the article was manufactured or produced in that place.

"(c) The use of a geographical name in connection with a food or drug product will not be deemed a misbranding when by reason of long usage it has come to represent a generic term and is used to indicate a style, type, or brand; but in all such cases the State or Territory where any such article is manufactured or produced shall be stated upon the principal label.

"(d) A foreign name which is recognized as distinctive of a product of a foreign country shall not be used upon an article of domestic origin except as an indication of the type or style of quality or manufacture, and then only when so qualified that it can not be offered for sale under the name of a foreign article."

Two questions are thus presented for decision:

First. Has the word "Holland," by reason of long usage, come to represent a generic term as applied to gin?

Second. Does the label fairly state the State or Territory where the article in question is manufactured?

If the word "Holland," a geographical name, when used in connection with gin, has acquired a generic meaning as indicating a particular style, type, or brand of gin; and if the place of manufacture is fairly stated upon the label, the claimant, the Baird-Daniels Co., would appear to have complied with the law. Probably the larger question, suggested by the terms of the statute itself, is also involved, viz, whether the label is such as to deceive or mislead a purchaser or purports to be upon a foreign product when not so. For, as Attorney General Wickersham once said, one of the main purposes of the pure-food law is to prevent deception being practiced on the public.

First. The testimony for both the libelant and claimant leaves no room for doubt that Holland gin is essentially a distinct type or kind of gin, differing from either a dry gin or a sloe gin. The experts, having practical knowledge of the methods used in producing each kind, state that the Holland gin is an alcoholic beverage made from small grains, specifically rye, barley, and barley malt, and that, in the distilling, the essential oils of the grain are retained and the fusel oils eliminated, thus giving the liquor its peculiar flavor and rendering it a "Holland" gin, with or without the addition of juniper berries. In a dry gin, on the other hand, the essential oils are entirely eliminated and the pure neutral spirit is distilled from a variety of flavoring materials, one of which is usually juniper berries. The evidence clearly establishes the distinct characters and qualities of the two kinds of gin, the first known as Holland gin and the second as English or dry gin.

It may be observed, although not especially significant, that while Holland gin received its name from the fact that it was distilled in Holland, the evidence shows that the elements are not grown or produced in Holland. The grain is obtained by Holland distillers from Russia, Austria, and the United States and the juniper berries from Italy or Germany.

The evidence also establishes the fact that gin having the genuine characteristics of Holland gin has been manufactured in this country for at least 18 years.

The standard dictionaries and encyclopedias to which it is permitted to resort as authoritative sources for information in such case (U. S. v. Corneo Feed, 188 Fed. Rep., 453) makes clear the distinctive character of Holland gin. The Century Dictionary and Cyclopaedia, volume 3, page 2516, under the word "gin," says:

"Gin. Abbreviation of Geneva, or rather of the older form genever \* \* \* see geneva, juniper. An aromatic spirit prepared from rye or other grain and flavored with juniper berries. The two important varieties of gin are Dutch gin, also called Holland and Schiedam, and English gin, known often by the name 'Old Tom.' Holland gin is almost free from sweetness and is generally purer than English."

In the eleventh edition of the Encyclopedia Britannica, volume 12, page 26, after defining the word "gin" as "an aromatized or compounded potable spirit, the characteristic flavor of which is derived from the juniper berry," and stating that the word is an abbreviation of geneva, both being primarily derived from the French genievre (juniper) says:

"There are two distinct types of gin, namely, the Dutch geneva or Holland and British gin. Each of these types exists in the shape of numerous subvarieties. Broadly speaking, British gin is prepared with a highly rectified spirit, whereas in the manufacture of Dutch gin, a preliminary rectification is not an integral part of the process. The old-fashioned Hollands is prepared much after the following fashion: The mash, consisting of about one-third of malted barley or bere and two-thirds rye meal is prepared and infused at somewhat high temperature. After cooling the whole is set to ferment with a small quantity of yeast. After two or three days the attenuation is complete, and the wash so obtained is distilled, and the resulting distillate (the low wines) is redistilled, with the addition of the flavoring matter (juniper berries, etc.), and a little salt. Originally the juniper berries were ground with the malt, but this practice no longer obtains, but some distillers, it is believed, still mix the juniper berries with the wort and subject the whole to fermentation. When the redistillation over juniper is repeated the product is termed double (geneva, etc.)."

The testimony on behalf of the libelant fully recognized the distinctive character of Holland gin.

It is considered, therefore, that the term "Holland" in connection with the word gin is a geographical name which has become generic by reason of language and represents a style, type, or brand.

Second. The second question above suggested is answered by the label itself. In letters sufficiently large and plain to repel any suggestion that they are deceptive in fact or in intent, it is stated: "Distilled by Baird-Daniels Co., Warehouse Point, Conn."

The conclusion, therefore, is that the claimant has complied with the statute and regulations in respect to branding its product.

It was contended on behalf of the libelant that, admitting that "Holland" as applied to a gin has come to be a generic term; and admitting, further, that the label fairly states the place where the article is manufactured, yet the claimant should qualify his label by adding the word "Domestic" type, style, or process, in juxtaposition to the words "Holland Gin." Two answers to this contention suggest themselves: First. If "Holland" has become generic, and if the gin distilled by the claimant contains exactly the same ingredients and is made by the same process and is, in essence, the same identical thing as gin distilled in Holland, then it is "Holland" gin and not Holland "type," "style," or "process." In other words, it is entitled to be called what it is. Second. On the broader question as to whether the label as used is liable to deceive a purchaser into believing he is buying an imported article, it is rather difficult to understand how a customer who would fail to observe the words "Distilled by Baird-Daniels Co., Warehouse Point, Conn." plainly printed on the label, would be more liable to notice the word "style," or "type," or other similar word used in connection with the words "Holland gin."

There is also a charge of misbranding in the marking of the wooden crates or cases in which the bottles were transported, the words "Warehouse Point, Conn." being omitted. This is stated by the claimant to be an oversight, which will be remedied. The consumer, however, does not see the crates and is not, therefore, liable to be deceived by words, or the omission of words, thereon.

On the whole case, the order will be that the libel be dismissed. The findings of fact will be made in accordance with this opinion.

## FINDINGS OF FACT.

*First.*—That at the time of the filing of the libel herein and seizure made thereunder, one Albert E. Beitzel, a resident of this District, had in his possession 5 wooden boxes or cases, each containing for purposes of sale within the District of Columbia, 12 bottles of a certain liquid drink known and called Holland gin, and said gin having been distilled and produced by Baird-Daniels Co., at Warehouse Point, Conn., and said goods being guaranteed under the pure food law by said producers and distillers.

*Second.*—That upon each of the wooden boxes or cases containing the said bottles of gin, there were certain labels and statements as follows: B. D. Company; Hurdle Brand; Geneva; Hurdle Brand Holland Gin.

*Third.*—That upon each and every one of said bottles of gin contained in said cases and boxes there was a certain label of the design and tenor as follows, to wit:



*Fourth.*—That the word "Holland" as applied to gin is an adjective of the English language designating a distinctive kind or character of gin, differing in flavor from dry gins or sloe gins, and means, according to standard authorities, a gin made in Holland or like that made in Holland.

*Fifth.*—That the distinctive characteristics of Holland gin result from so treating the grains entering into its composition that their essential oils are retained, whereas in the manufacture of a dry gin the grains are so treated that their essential oils are eliminated.

*Sixth.*—That Holland gin is made in various countries and that none of the ingredients entering into its composition is indigenous to the geographical division of the world known as Holland or the Netherlands.

*Seventh.*—That the word "Holland," although possessing a geographical significance, has by long usage come to designate a particular kind or character of gin, and that the gin here in controversy is of that particular kind and is made according to standard formula.

*Eighth.*—That the word "geneva" is a noun of the English language and is the correct English word for "gin," the latter being a contraction of "geneva."

*Ninth.*—That the bottle here complained of is, in respect of shape and color, one of the usual forms of containers of Holland gin.

*Tenth.*—That every word on the label affixed to the bottle here complained of is a word of the English language, and that said label does not bear a word, symbol, or representation solely or necessarily foreign in its significance or visual effect.

*Eleventh.*—That said labels recite the State or Territory in which the gin is made and also the name of the city or town within the State and the name of the manufacturer.

*Twelfth.*—That the crates seized under the libel herein and containing the bottles in controversy do not recite the State or Territory in which the gin is made; that said crates are not the receptacles in which the gin is offered for sale to the consumer; and that the principal label figuring in this controversy is that upon the bottles.

*Thirteenth.*—That there is no testimony that any purchaser of a domestic Holland gin has ever been deceived because of a belief that the gin was of foreign origin, and that there is testimony of numerous dealers that in their experience no such mistake has ever occurred.

*Fourteenth.*—There is no evidence that any purchaser of the Baird-Daniels' Holland gin involved here has ever accepted the same in the belief that it was of foreign origin.

#### CONCLUSIONS OF LAW.

*First.*—That said bottles of gin are not so labeled or branded as to deceive or mislead a purchaser, and that the same does not purport to be a foreign product, and that said label is not calculated to deceive a purchaser into the belief that the gin contained in said boxes was manufactured in Holland.

*Second.*—That the Baird-Daniels Co. in applying the word "Holland" to its gin is using a geographical word which by long usage represents a generic term indicating a kind, character, or style of gin; that upon the principal label bearing the word "Holland" the Baird-Daniels Co. has indicated the State or Territory in which the gin is manufactured; and that these facts are within the provisions of regulation 19(c) of the Department of Agriculture, and that the requirements of said regulation have been fully complied with by the Baird-Daniels Co. in the labeling of the gin in controversy.

Judgment will therefore be entered dismissing the libel and releasing the seized goods.

Thereafter, on March 2, 1914, an order was entered dismissing the libel and directing the United States marshal to release the goods, in conformity with the foregoing opinion.

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

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

**3398. (Supplement to Notices of Judgment 722 and 2549.) Alleged adulteration and misbranding of bleached flour. U. S. v. 625 Sacks of Bleached Flour. Judgment of the Circuit Court of Appeals for the Eighth Circuit, reversing the judgment of the District Court of the United States for the Western District of Missouri for the condemnation, forfeiture, and destruction of the product, affirmed by the Supreme Court of the United States. Case remanded to the District Court for a new trial. (F. & D. No. 1389. S. No. 514.)**

On May 10, 1913, there was filed in the Supreme Court of the United States a petition for writ of certiorari to review the decision of the Circuit Court of Appeals for the Eighth Circuit, which reversed the judgment of the District Court of the United States for the Western District of Missouri, under which judgment 625 sacks of flour which had been shipped from Nebraska into the State of Missouri were condemned and forfeited to the United States and ordered to be destroyed. On May 13, 1913, the Lexington Mill & Elevator Co., respondent, joined in the petition for said writ of certiorari, and on May 26, 1913, said writ was granted.

On February 24, 1914, the case having theretofore been argued before the court, the judgment of the Circuit Court of Appeals reversing the judgment of the District Court was affirmed and the case remanded to the District Court