

condemnation of 7 packages of San-Methyl, consigned on July 30, 1919, by the Grape Capsule Co., Allentown, Pa., remaining unsold in the original packages at Columbus, Ohio, alleging that the article had been transported from the State of Pennsylvania into the State of Ohio, and charging misbranding in violation of the Food and Drugs Act, as amended.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted essentially of copaiba, cubebs, oils of santal and cinnamon, methylene blue, and phenyl salicylate.

It was alleged in substance in the libel that the article was misbranded for the reason that the packages of the same purported to contain an excellent cure for gonorrhoea, gonorrhoeal rheumatism, gleet, and urethral diseases generally only by reason of statements on the labels thereof, whereas, in truth and in fact, said packages [statements] were false and misleading [fraudulent] in that the product had but little or no ingredients capable of producing the curative and therapeutic effects claimed therefor.

On October 25, 1920, 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.

E. D. BALL, *Acting Secretary of Agriculture.*

8726. Misbranding of Bourbon Poultry Remedy and Bourbon Hog Cholera Remedy. U. S. * * * v. 35 Bottles of Bourbon Poultry Remedy and 11 Bottles of Bourbon Hog Cholera Remedy. Default decree of condemnation, forfeiture, and destruction. (F. & D. Nos. 11576, 11577. I. S. Nos. 8347-r, 8348-r. S. Nos. C-1572, C-1573.)

On November 26, 1919, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 35 bottles of Bourbon Poultry Remedy and 11 bottles of Bourbon Hog Cholera Remedy, consigned by the Bourbon Remedy Co., Lexington, Ky., on August 30, 1919, remaining unsold in the original packages at London, Ohio, alleging that the article had been transported from the State of Kentucky into the State of Ohio, and charging misbranding in violation of the Food and Drugs Act, as amended.

Analyses of samples of the articles by the Bureau of Chemistry of this department showed that both preparations consisted essentially of aqueous solutions containing aloes, free sulphuric acid, sulphates of iron, copper and magnesium, coloring, and flavoring.

It was alleged in substance in the libel that the poultry remedy was misbranded in that the packages purported to contain a product for the cure of roup, gapes, diarrhea, and certain other poultry diseases only by reason of statements on the labels thereof, whereas, in truth and in fact, said packages [statements] were false and misleading [fraudulent] in that the product had but little or no ingredients capable of producing the curative and therapeutic effects claimed therefor.

It was alleged in substance that the hog cholera remedy was misbranded for the reason that the packages purported to contain a product for the cure of cholera, scours, cough, thumps, etc., only by reason of the statements on the labels thereof, whereas, in truth and in fact, said packages [statements] were false and misleading [fraudulent] in that the product had but little or no ingredients capable of producing the curative and therapeutic effects claimed therefor.

On October 25, 1920, 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.

E. D. BALL, *Acting Secretary of Agriculture.*

**8727. Alleged adulteration and misbranding of tomatoes. U. S. * * *
v. 154 Cases of Tomatoes. Motion of claimant to dismiss the libel
sustained. (F. & D. No. 12217. I. S. No. 971-r. S. No. E-1999.)**

On March 3, 1920, the United States attorney for the Western 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 for the seizure and condemnation of 154 cases of canned tomatoes, remaining in the original unbroken packages at Pittsburgh, Pa., alleging that the article had been shipped by the Phillips Packing Co., Cambridge, Md., on or about December 11, 1919, and transported from the State of Maryland into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part, "Castle Haven Brand Tomatoes Packed by Phillips Packing Co., Cambridge, Md. U. S. A."

Adulteration of the article was alleged in the libel for the reason that tomato pulp had been mixed and packed with, and substituted wholly or in part for, the article.

Misbranding was alleged for the reason that the labels contained the statement "Tomatoes" and a cut of a ripe tomato, which were false and misleading and deceived and misled the purchaser, and for the further reason that the article was an imitation of, and was sold under the distinctive name of, another article.

On March 29, 1920, the said Phillips Packing Co. filed its motion to dismiss the libel, and on July 26, 1920, the matter having come on for disposition, said motion was sustained as will more fully appear from the following opinion by the court (Orr, *D. J.*):

This is a proceeding instituted by the United States for the seizure and condemnation of 154 cases of canned tomatoes, upon the ground that they have been adulterated and misbranded, in violation of the Food and Drugs Act. The Phillips Packing Company, which is named in the libel as the shipper, has presented its motion to dismiss the libel for the reason that it does not set forth any facts showing a violation of the act of Congress aforesaid. The libel was signed and filed by the United States attorney. The only affidavit attached to it is by one who says that he is an "inspector of the Bureau of Chemistry, United States Department of Agriculture; that he has read the foregoing libel and the averments contained therein as to his own knowledge are true, except as to those matters and things stated to be of his information and belief, and as to those matters and things he verily believes them to be true." It is unfortunate that there is such a lack of correlation between the affidavit and the libel, that we can not tell what averments in the latter are made upon the knowledge of the affiant and what are made upon his information and belief. There is, therefore, a lack of that certainty of allegation which should always be found in a libel before the property of a citizen should be seized. Turning to the libel, we find a representation to the court that the canned tomatoes are labeled, inter alia, as follows: "Castle Haven Brand Tomatoes Our first quality carefully selected Packed for Fine Family Trade Contents weight 2 lbs. Packed by Phillips Packing Co., Cambridge, Md., U. S. A." We find it further represented in the libel "that said article of food as analyzed by the Bureau of Chemistry, Department of Agriculture, United States of America, is shown to be adulterated in violation of said act of Congress commonly known as the Food and Drugs Act, in that tomato pulp has been mixed and packed with and substituted wholly or in part for the article." This is not an averment that tomato pulp has been mixed and packed with and substituted for the article, but is an averment that a certain analysis shows such mixture, packing, and substitution. In other words, there is the averment that a certain analysis will show an adulteration, yet no averment of