

February 10, 1923, from the State of Pennsylvania into the State of New Jersey, of quantities of milk chocolate which was adulterated and misbranded. A portion of the article was labeled in part: "5 Pounds Nissly's * * * Sweet Milk Chocolate * * * Manufactured by Nissly Swiss Chocolate Co. Inc., Florin, Pa. U. S. A." The remainder of the said article was labeled in part: "20 10 cent Blocks Nissly's Sweet Milk Chocolate * * * Manufactured by Nissly Swiss Chocolate Co., Inc."

Analyses of samples of the article by the Bureau of Chemistry of this department showed that it was deficient in milk solids. Examination of 24 of the 5-pound boxes showed an average weight of 4 pounds 13 ounces.

Adulteration of the article was alleged in the information for the reason that a product deficient in milk solids had been substituted for sweet milk chocolate, which the said article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Sweet Milk Chocolate," borne on the boxes containing the article, and the statement, to wit, "5 Pounds," borne on the boxes containing a portion thereof, were false and misleading in that the said statements represented that the article consisted wholly of sweet milk chocolate, and that each of the boxes labeled "5 Pounds" contained 5 pounds of the article, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it consisted wholly of sweet milk chocolate and that each of the boxes labeled "5 Pounds" contained 5 pounds of the said article, whereas, in truth and in fact, it did not consist wholly of sweet milk chocolate but did consist of a product deficient in milk solids, and each of the alleged 5-pound boxes contained less than 5 pounds of the said article. Misbranding was alleged for the further reason that the article was a product deficient in milk solids, prepared in imitation of and offered for sale and sold under the distinctive name of another article. Misbranding of both articles was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On June 20, 1924, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$50.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

12395. Adulteration and misbranding of canned oysters. U. S. v. 11 Cases of Canned Oysters. Default decree of condemnation, forfeiture, and sale. (F. & D. No. 17497. I. S. No. 3451-v. S. No. E-4342.)

On May 3, 1923, the United States attorney for the Northern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 11 cases of canned oysters remaining in the original unbroken packages at Bowdon, Ga., alleging that the article had been shipped by the Shelmore Oyster Products Co. from Charleston, S. C., on or about November 13, 1922, and transported from the State of South Carolina into the State of Georgia, and charging adulteration and misbranding in violation of the food and drugs act as amended.

Adulteration of the article was alleged in the libel for the reason that excessive brine had been mixed and packed with and substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the label bore the statement "Crystal Bay Brand * * * Contains 5 Oz. Oyster Meat, Oysters," which was false and misleading and deceived and misled the purchaser into the belief that each of the cans contained 5 ounces of oyster meat, whereas, in truth and in fact, they did not but did contain a quantity materially less than 5 ounces. Misbranding was alleged for the further reason that the article was in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On June 25, 1924, 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 sold by the United States marshal after the statement of quantity of contents on the labels had been eliminated and the cans relabeled as follows: "Slack Filled. Contents 4½ ozs. Oyster Meat. A can of this size should hold 5 ozs. Oyster meat."

HOWARD M. GORE, *Acting Secretary of Agriculture.*