"This does not fail to state a case under the statute, and did not make the libel subject to demurrer or motion to quash. It would be sustained by evidence sufficiently showing the false and fraudulent character of any one of the various claims recited. If defendant needed a better specification of the particulars upon which the Government would rely, if it did not rely upon all the statements, a motion for a bill of particulars would doubtless have been granted or an amendment of the libel permitted.

"The record in this case does not present the question whether mineral spring water as it comes from the earth is or is not a drug, for the reason that the Crab Orchard concentrated mineral water is not transported and marketed in its original condition. While it appears that the constituent drug elements are not completely extracted therefrom and transported and sold without the admixture of other elements, nevertheless the processes of separation are carried to such an extent that the water can no longer be used as a beverage, but only in small quantities or doses, as a medicine. For this reason Crab Orchard concentrated mineral water can not be classified as 'food' but, on the contrary, comes fairly within the meaning of 'drug' as used in the Pure Food Act and amendments thereto.

"Upon the trial of the issue of fact joined by the libel, charging the misbranding of mineral water, and the answer of the intervenor, expert evidence may be properly admitted. If it appears from the testimony of a witness upon preliminary examination that he is learned in the science of chemistry or has been regularly and legally admitted to the practice of medicine, that he has knowledge of the drug elements contained in the article transported in interstate commerce and their efficacy or lack of efficacy as curative agents, used either separately or in combination in the treatment of the diseases specified on the label, his opinion on that subject is competent evidence, regardless of whether he has had actual experience or observation of the effect of the use of such drugs in the exact form in which they are transported in interstate commerce. The weight of his evidence is a question for the jury.

"This court has no authority to determine the weight of the evidence or reverse the judgment for the reason that the verdict is against the weight of the evidence where the verdict of the jury is sustained by substantial evidence. (R. S. 1011 (Comp. Stat. Sec. 1672), Bullock *v.* U. S., 289 Fed. 29–32; Atlantic Ice & Coal Co. *v.* Van, 276 Fed. 646.)

"The Government having charged misbranding in general terms and no motion being made to require it to file a bill of particulars, the general verdict must be sustained if there is substantial evidence that any one of the statements made on the label is false or fraudulent, but the verdict and judgment relates to and affects only the particular label on the bottles seized in interstate commerce. This general verdict is sustained by substantial evidence.

"For the reasons stated, the judgment of the District Court is affirmed."

W. M. JARDINE, *Secretary of Agriculture.*

12845. Adulteration and misbranding of butter. U. S. v. 7 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond to be reprocessed. (F. & D. No. 18934. I. S. No. 12657–v. S. No. E–4928.)

On August 29, 1924, the United States attorney for the District of Maryland, 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 7 tubs of butter, remaining in the original unbroken packages at Baltimore, Md., consigned on or about August 11, 1924, alleging that the article had been shipped by Schlosser Bros., from Frankfort, Ind., and transported from the State of Indiana into the State of Maryland, and charging adulteration and misbranding in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that a substance low in butterfat had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength and had been substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the article was offered for sale under the distinctive name of another article.

On September 17, 1924, Schlosser Bros., Frankfort, Ind., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the

sum of $150, in conformity with section 10 of the act, conditioned in part that it be reprocessed under the supervision of this department so that it should contain not less than 80 per cent of milk fat.

W. M. JARDINE, *Secretary of Agriculture.*

12846. Misbranding of linseed meal. U. S. v. Spencer Kellogg & Sons, a Corporation. Defendant found in default. Fine, $50 and costs. (F. & D. No. 9719. I. S. Nos. 15403-p, 15404-p.)

On May 20, 1919, the United States attorney for the Western District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Spencer Kellogg & Sons, a corporation, trading at Superior, Wis., alleging shipment by said company, in violation of the food and drugs act, in two consignments, on or about September 12 and 13, 1917, respectively, from the State of Wisconsin into the State of Michigan, of quantities of linseed meal which was misbranded.

Analysis of a sample of the article taken from each consignment by the Bureau of Chemistry of this department showed that the said samples contained 26.86 and 27.39 per cent, respectively, of protein.

Misbranding of the article was alleged in the information for the reason that the statement "Protein 30.00%," borne on the sacks containing the article, regarding the said article and the ingredients and substances contained therein, was false and misleading, in that the said statement represented that the article contained not less than 30 per cent of protein, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 30 per cent of protein, whereas, in truth and in fact, it did contain less than 30 per cent of protein.

On November 10, 1924, the case having come on for final disposition, the court directed the defendant in default and assessed a fine of $50 and costs against the said defendant.

W. M. JARDINE, *Secretary of Agriculture.*

12847. Adulteration and misbranding of linseed meal. U. S. v. Spencer Kellogg & Sons, a Corporation. Defendant found in default. Fine, $100 and costs. (F. & D. Nos. 8311, 8324. I. S. Nos. 6252-m, 6253-m, 6262-m, 6263-m, 16351-m, 16352-m, 16354-m, 16355-m, 16356-m, 16357-m, 16359-m.)

On October 8, 1919, the United States attorney for the Western District of Wisconsin, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Spencer Kellogg & Sons, a corporation, trading at Superior, Wis., alleging shipment by said company, in violation of the food and drugs act, between the dates of October 2 and October 19, 1916, from the State of Wisconsin, in part into the State of Maryland and in part into the State of Illinois, of quantities of linseed meal which was adulterated and misbranded. The article was labeled in part: "Old Process Linseed Meal * * * Ingredients Flax Seed Products."

Examination of the article by the Bureau of Chemistry of this department showed that it contained from 25 to 30 per cent of screenings.

Adulteration of the article was alleged in the information for the reason that weed seeds or screenings had been mixed and packed therewith so as to lower or reduce and injuriously affect its quality and strength and had been substituted in part for linseed meal and flaxseed products, which the said article purported to be.

Misbranding was alleged in substance for the reason that the statements in the labeling, namely, "Linseed Meal * * * Ingredients Flax Seed Products," with respect to a portion of the product, and "Old Process Linseed Meal * * * Ingredients Flax Seed Products," with respect to the remainder thereof, regarding the said article and the ingredients and substances contained therein, were false and misleading in that they represented that the article was linseed meal composed of flaxseed products, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was linseed meal composed of flaxseed products, whereas, in truth and in fact, it was not linseed meal composed of flaxseed products but was a product composed in part of weed seeds or screenings.

On November 10, 1924, the case having come on for final disposition, the court directed the defendant company in default, and assessed a fine of $100 and costs against the said company.

W. M. JARDINE, *Secretary of Agriculture.*