

butterfat, you will find the defendant guilty; but if, on the other hand, you have a reasonable doubt as to whether there was 40 pounds of butter in the shipment of December 3, you will find the defendant not guilty on those. Likewise, if you have a reasonable doubt as to whether there was 80 per cent of butterfat in the shipment of December 3, you will find the defendant not guilty on that charge. That's all there is to the case, gentlemen. Any suggestions by the district attorney or defendant?

"Mr. Gardner is appointed foreman. Your verdict will be oral. You will say guilty or not guilty. If you find the defendant guilty, you will say on which count."

Mr. AMEY: "If it please your honor, there was nothing said about the weight of the wrappers on the butter."

COURT: "You will take into consideration all the evidence as to the wrappers and everything else, gentlemen."

The jury then retired and after due deliberation returned a verdict of not guilty.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13708. Adulteration and misbranding of butter. U. S. v. 14 Tubs Churn #5 (Butter). Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 20305. I. S. No. 6894-x. S. No. E-5439.)

On July 20, 1925, the United States attorney for the Southern District of New York, 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 14 tubs of butter, remaining in the original unbroken packages at New York, N. Y., alleging that the article had been shipped by the Alta Vista Farmers Creamery Co., Alta Vista, Iowa, on or about July 10, 1925, and transported from the State of Iowa into the State of New York, 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 deficient in butterfat and containing excessive moisture had been mixed and packed therewith so as to reduce, lower, or injuriously affect its quality or strength and had been substituted in whole 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 July 30, 1925, the Fredericksburg Butter Factory, Fredericksburg, Iowa, 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 \$450, in conformity with section 10 of the act, conditioned in part that it be reworked so as to contain at least 80 per cent of butterfat.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13709. Adulteration and misbranding of butter. U. S. v. 30 Cases of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 20304. I. S. Nos. 6415-x, 6419-x. S. No. E-5378.)

On July 20, 1925, 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 30 cases of butter, remaining in the original unbroken packages at Atlanta, Ga., alleging that the article had been shipped by the Beatrice Creamery Co., from Topeka, Kans., on or about July 8, 1925, and transported from the State of Kansas into the State of Georgia, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: "Meadow Gold Butter * * * Beatrice Creamery Company, General Office, Chicago, Ill."

Adulteration of the article was alleged in substance in the libel, in that a substance containing less than 80 per cent of milk fat had been substituted in part for butter, in that a substance, to wit, water, had been substituted in part for butter, and in that a product deficient in milk fat had been substituted in part for butter, and in that it contained less than 80 per cent by weight of milk fat.

Misbranding was alleged for the reason that the article was labeled "Butter" so as to deceive and mislead the purchaser into the belief that it was butter,

whereas it was not butter as defined by law, in that it did not contain 80 per cent by weight of milk fat.

On August 1, 1925, the Beatrice Creamery Co., Chicago, Ill., claimant, having admitted the material 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 \$750, in conformity with section 10 of the act, conditioned in part that it be reworked and relabeled to comply with the law.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13710. Adulteration and misbranding of butter. U. S. v. 26 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 20270. I. S. No. 6031-x. S. No. E-5402.)

On July 11, 1925, the United States attorney for the Eastern 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 praying the seizure and condemnation of 26 tubs of butter, remaining in the original unbroken packages at Philadelphia, Pa., consigned by the Royal Creamery Co., New Matamoras, Ohio, from Friendly, W. Va., alleging that the article had been shipped on or about July 7, 1925, and transported from the State of West Virginia into the State of Pennsylvania, 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 containing less than 80 per cent of butterfat had been mixed and packed therewith so as to reduce, lower, or injuriously affect its quality or strength and had been substituted wholly or in part for the said article. Adulteration was alleged for the further reason that a valuable constituent of the article, butterfat, had been wholly or in part abstracted.

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

On July 24, 1925, the Royal Creamery Co., New Matamoras, Ohio, 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 \$1,300, in conformity with section 10 of the act, said bond providing that the product be reconditioned in accordance with the ruling of this department.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13711. Alleged adulteration and misbranding of butter. U. S. v. Swift & Co. Demurrer to the information sustained. (F. & D. No. 17247. I. S. Nos. 14426-t, 14437-t.)

On May 16, 1923, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Swift & Co., a corporation, trading at Portland, Oreg., alleging shipment by said defendant, in violation of the food and drugs act, in two consignments, namely, on or about March 11 and April 15, 1922, respectively, from the State of Oregon into the State of California, of quantities of butter which was alleged to be adulterated and misbranded. The article was labeled in part: "Reworked Butter Swift & Co. San Francisco."

Examination by the Bureau of Chemistry of this department of samples from each shipment showed 76.44 per cent and 78 per cent, respectively, of milk fat.

Adulteration of the article was alleged in the information for the reason that a product deficient in milk fat had been substituted in whole or in part for butter, which the article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Butter," borne on the boxes containing the article, was false and misleading, in that the said statement represented that the article consisted wholly of butter, 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 butter, whereas it did not so consist but did consist of a product deficient in milk fat. Misbranding was alleged for the further reason that the article was an imitation of and was offered for sale and sold under the distinctive name of another article, to wit, butter.