

are disclosed from which he may prepare a beverage. In practice the jug is placed upon the retailer's counter with the full label in plain view, and the dilution is made in the customer's presence.' But Judge Foster even dissented from the majority view that the consumer would not be deceived and said: 'I consider the label tends to deceive and mislead the ultimate purchaser and therefore the article is misbranded within the prohibition of the Food and Drugs Act.' In the orange juice case, there was no finding of fact that the ultimate consumer would be misled. In the instant case, the contrary is true. In the orange juice case, the adulteration occurred after the product was no longer in interstate commerce; in the instant case, the adulteration occurred before the goods were placed in interstate commerce and existed at the time of seizure.

"The other case which the district court considered controlling, *United States v. Lexington Mill Co.*, 232 U. S. 399, 409, expressly recognized that the primary purpose of Congress in enacting the Food and Drugs Act was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated foods; and that 'if this purpose has been effected by plain and unambiguous language, and the act is within the power of Congress, the only duty of the courts is to give it effect according to its terms.' On the facts of the case, the bleaching of the flour in the manner employed was not deemed deceptive; while, in the instant case, the district court found that the inferiority of the article shipped in interstate commerce was concealed from the consumer, and the article was made to appear to him better or of greater value than it is.

"In our judgment, the other four citations in the opinion of the district court are irrelevant in the context.

"The Circuit Court of Appeals for the Second Circuit has held that the intended use to which adulterated food is to be put, after it has been shipped in interstate commerce, is immaterial on the issue of the government's right to forfeit the food because of the interstate commerce shipment. *United States v. 52 Drums Maple Syrup*, 110 F. (2d) 914. See also *Union Dairy Co. v. United States*, 250 Fed. 231, 233 (C. C. A. 7).

"As was declared in *United States v. Thirteen Crates of Frozen Eggs*, 215 Fed. 584, 585 (C. C. A. 2), the Food and Drugs Act could not be enforced if the government is compelled to establish a wrongful intent on the part of those who ship prohibited articles in interstate commerce. It is enough that the articles are prohibited; and all that is necessary to be shown to justify condemnation is that the adulterated article of food has been transported in interstate commerce.

"Appellee stresses *United States v. Ten Cases, More or Less, Bred Spred*, 49 F. (2d) 87 (C. C. A. 8). In that case, there was no showing of the inferiority of the food product sought to be condemned. Here, the poppy seeds shipped by the appellee were of less commercial or market value; were of smaller size; and were artificially colored so that, as found by the district court, 'a person inexperienced in such matters would fail to notice the difference between the Dutch blue or Turkish grey poppy seeds and the artificially colored British India white poppy seeds.' The Eighth Circuit decision, therefore, gainsays nothing which we have said in this opinion, and, moreover, adheres to the doctrine that the primary purpose of the Food and Drugs Act is to prevent injury to the public health by the transportation in interstate commerce of misbranded and adulterated foods.

"The judgment of the district court is reversed, with direction that a decree of condemnation be entered in conformity with the prayer of the libel in rem filed by the United States."

7186. Adulteration of salt. U. S. v. 30 Sacks of Salt. Default decree of condemnation and destruction. (F. D. C. No. 13967. Sample No. 85840-F.)

LIBEL FILED: October 19, 1944, District of Colorado.

ALLEGED SHIPMENT: On or about September 5, 1944, from Hutchinson, Kans.

PRODUCT: 30 100-pound sacks of salt at Denver, Colo., in the possession of Farmers Equity Co-operative Creamery Association.

This product had been stored, after shipment, under insanitary conditions. Urine stains and rodent excreta pellets were observed on the bags. Examination showed that the article had become contaminated with urine.

VIOLATIONS CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance; and, Section 402 (a) (4), it had been held under insanitary conditions whereby it might have become contaminated with filth.

DISPOSITION: November 24, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

7187. Adulteration of imitation lemon flavor. U. S. v. 24 Cases and 16 Cases of Imitation Lemon Flavor. Default decree of condemnation and destruction. (F. D. C. No. 13078. Sample No. 68504-F.)

LIBEL FILED: August 2, 1944, Southern District of Ohio.

ALLEGED SHIPMENT: On or about May 2, 1944, by Purex Products, Inc., Baltimore, Md.

PRODUCT: 24 cases, each containing 24 8-ounce bottles, and 16 cases, each containing 48 3-ounce bottles, of imitation lemon flavor, at Columbus, Ohio.

LABEL, IN PART: "Ken-Dawn Imitation Lemon Flavor * * * Distributed by C. D. Kenny Division Sprague Warner-Kenny Corporation, Baltimore, Maryland".

VIOLATIONS CHARGED: Adulteration, Section 402 (b) (2), a solution containing a trace of citral, having little or no value as a flavoring, had been substituted in whole or in part for "Imitation Lemon Flavor"; Section 402 (b) (3), inferiority had been concealed by mixing with water and color; and, Section 402 (b) (4), water had been added thereto so as to reduce its strength, and color had been added thereto so as to make it appear better or of greater value than it was.

DISPOSITION: September 14, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

7188. Adulteration of imitation lemon flavor. U. S. v. 37 Cases and 15 Cases of Imitation Lemon Flavor. Default decree of condemnation and destruction. (F. D. C. No. 12097. Sample Nos. 60224-F, 60225-F.)

LIBEL FILED: March 28, 1944, Northern District of California.

ALLEGED SHIPMENT: On or about July 13, 1943, by Whitehall Food Manufacturing Corp., from Jersey City, N. J.

PRODUCT: 37 cases, each containing 24 8-ounce bottles, and 15 cases, each containing 36 3-ounce bottles, of imitation lemon flavor at San Francisco, Calif.

LABEL, IN PART: (Bottles) "Maison Royal Imitation Lemon Flavor."

VIOLATIONS CHARGED: Adulteration, Section 402 (b) (2), a solution containing a trace of citral, having little or no value as a flavoring, had been substituted in whole or in part for imitation lemon flavor; Section 402 (b) (3), inferiority had been concealed by mixing with water and color; and, Section 402 (b) (4), water had been added to the article so as to reduce its strength, and color had been added thereto so as to make it appear better or of greater value than it was.

DISPOSITION: August 3, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

7189. Misbranding of vanilla extract. U. S. v. 10 Cases of Vanilla Extract. Decree of condemnation. Product ordered released under bond to be repackaged. (F. D. C. No. 12668. Sample No. 52629-F.)

LIBEL FILED: June 12, 1944, District of Massachusetts.

ALLEGED SHIPMENT: On or about May 9, 1944, by Certified Extracts, Inc., from New York, N. Y.

PRODUCT: 10 cases, each containing 1 gross cartons of 1½-ounce bottles, of vanilla extract at Cambridge, Mass.

LABEL, IN PART: (Carton) "Sunny Rose Pure Extract * * * This extract is * * * guaranteed to comply with all state and national pure food laws"; (bottle) "Sunny Rose Pure Extract Vanilla Distributed By Commonwealth Grocery Company Boston, Mass."

VIOLATIONS CHARGED: Misbranding, Section 403 (a), the statement, "This extract * * * is guaranteed to comply with all state and national pure food laws," was false and misleading since the product did not comply with the Federal Food, Drug, and Cosmetic Act; and, Section 403 (d), its container was so made as to be misleading since the carton was too large for the bottle.

DISPOSITION: June 26, 1944. Certified Extracts, Inc., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond to be repacked under the supervision of the Food and Drug Administration.