"I cannot impress upon you too much but to point out to you again, to repeat, that the issue is whether this beer that these defendants put out, that the corporation put out, that Kaufman put out, and sent interstate is deleterious. The question is, is fluorine itself deleterious?

"The next element the Government must prove is that the fluorine was unsafe within the meaning of the statute, and what is unsafe has been defined, so I charge you that if the Government has proved beyond a reasonable doubt that the fluorine was not required and could be avoided by good manufacturing practice, you would be warranted in finding that the beer was unsafe, the food here or beer was unsafe within the meaning of the statute.

"We have had with respect to that particular issue the testimony of the brewer from the Boston Brewing Company. There was no other evidence in the case on that point. He said categorically, as I remember, that fluorine was not necessary in the production of beer and it could be avoided by good manufacturing practice.

"I have outlined all the essential elements charged, and if you can find that the Government has proved them all beyond a reasonable doubt you will find both the defendants guilty. On the other hand, if the Government has failed to prove any one of the essential elements of the charge, you will find the defendants not guilty.

"There is just one other matter and I am done. In many offences that we try here in the criminal court, intent, knowledge or conscious wrong-doing is an essential element of the offence. This is referred to generally and commonly as 'criminal intent'. However, the Government does not have to establish any criminal intent here. Kaufman, if he shipped beer or shared in the responsibility or participated in the shipping of this beer interstate, did so at his own risk. The Government does not have to prove he knew it contained fluorine. If he shared in the responsibility of the shipments, the beer contained added fluorine and that fluorine was poisonous and deleterious and unsafe within the meaning of the statute, that is, it was adulterated, it would be of no consequence whether or not the beer was adulterated through his intention or negligence, or that he had knowledge of it or that he was acting in good faith. As Mr. Lewis pointed out here good faith is no defense, and as I said before, the defendants, if they shipped adulterated beer, they did so at their own risk.

"There is just one other matter to point out to you. In a criminal case verdicts are rendered orally. When you return to this court room you will be asked to give me your verdict with respect to each separate count and you will be asked whether or not you find the defendants guilty or not guilty, with respect to Count One right through to Count Eight.

"I will see counsel now."

(After a conference with counsel, the court further charged the jury):

THE COURT: "Just one additional thing, Mr. Foreman and gentlemen. You will take the case and retire to your jury room and decide it. It is not encumbent upon the Government to show specifically how the fluorine, if you find it was added, was put into the beer. There has been no testimony as I understand it, and the Government experts could not determine the exact form in which it was put into the beer, so that I charge you that it is not encumbent on them to show specifically how the added substance, if it was added, was added. The burden is on them to show it was added. There is no burden upon them to show how it came into the beer."

The jury returned a verdict of guilty on all counts against both defendants, and on June 6, 1945, the court imposed fines of $5,000 against each defendant, and further imposed a suspended sentence of 6 months in jail upon the individual defendant and placed him on probation for 3 years.

7927. Adulteration of beer and ale. U. S. v. 1,160 Cases of Beer (and 30 other seizure actions against beer and ale). Decrees of condemnation. Products ordered destroyed. Cases and bottles in a number of instances ordered salvaged. (F. D. C. Nos. 13906, 13975, 13979, 14020, 14051, 14052, 14065, 14066, 14070, 14074, 14087 to 14090, incl., 14095, 14097, 14318, 14326, 14330, 14377, 14397, 14401, 14404, 14432, 14621, 14666, 14875, 14876, 14904, 15470, 15471. Sample Nos. 19218-F, 58893-F, 61385-F, 61934-F, 63594-F to 63600-F, incl., 63750-F, 63752-F to 63754-F, incl., 63778-F, 63929-F, 64201-F, 79687-F to 79691-F, incl., 79735-F, 79740-F to 79742-F, incl., 79931-F, 88236-F, 88247-F, 88559-F, 88562-F, 88569-F, 92918-F, 30930-H, 31508-H, 31509-H.)

LIBELS FILED: Between the approximate dates of October 7, 1944, and March 5, 1945, Middle and Western Districts of North Carolina, Eastern District of Texas, Southern District of Mississippi, Southern District of West Virginia, District of Maine, Southern District of Florida, Eastern District of Virginia,

District of Massachusetts, Southern District of California, and Western District of South Carolina.

ALLEGED SHIPMENT: Between the approximate dates of July 21 and November 2, 1944, in most instances by the Commonwealth Brewing Corporation, from Springfield and Boston, Mass. A number of lots which had been originally shipped by this firm were returned to Springfield during this period by the consignees from Jacksonville, Fla., Fayetteville, N. C., Richmond, Va., Schenectady, N. Y., Norfolk, Va., Raleigh, N. C., Charleston, W. Va., and Greenville, N. C. Two lots were shipped by the Manhattan Distributing Co., from Springfield, Mass., during the same period.

PRODUCT: Beer or ale: 17,628 cases at Springfield, Mass., 3,697 cases at Rock Hill, S. C., 2,158 cases at Norfolk, Va., 1,157 cases at Charlotte, N. C., 188 cases at Greenville, S. C., 494 cases at Gastonia, N. C., 1,298 cases at Aberdeen, N. C., 1,160 cases at Beaumont, Tex., 1,728 cases at Hattiesburg, Miss., 1,999 cases at Fort Fairfield, Maine, 96 cases at Jacksonville, Fla., 1,600 cases at Richmond, Va., 228 cases at Graham, N. C., 2,177 cases at Greensboro, N. C., 1,102 cases at Los Angeles, Calif., 680 cases at Inglewood, Calif., and 2,000 cases at Charleston, W. Va.

LABEL, IN PART: "Gold Medal Tivoli Beer [or "Bay State Beer," "Dartmouth Cream Ale," "Oxford Brand Beer," "Oxford Brand Ale," or "Victory Extra Rich Old Stock Beer"] Commonwealth Brewing Corporation, Springfield, Mass.," "New England Ale," or "Ace-Hi Brand Deluxe Beer Bottled Exclusively for Schafer Distributing Co. Little Rock, S. C. By Commonwealth Brewing Co. Springfield, Mass."

VIOLATION CHARGED: Adulteration, Section 402 (a) (2), the product contained an added poisonous and deleterious substance, fluorine, which was unsafe within the meaning of the law since it was a substance not required in the production of the product and could have been avoided by good manufacturing practice.

DISPOSITION: Between October 17, 1944, and May 4, 1945. The Commonwealth Brewing Corporation, Springfield, Mass.; Ben Hefner, Beaumont, Tex.; Louis R. F. Murad, trading as the Central Distributing Co., and Lee Cassis, Charleston, W. Va.; the Charlotte Wine and Beer Distributing Co., Charlotte, N. C.; James Ingram, Los Angeles, Calif.; and Charles Ehrlich, Los Angeles, Calif., having appeared as claimants for respective lots, judgments of condemnation were entered and the products were ordered released, conditioned upon the destruction of the beer and ale. The bottles and cases were returned to the claimants or the shipper. No claimant having appeared for the remaining lots, judgments of condemnation were entered and the products were ordered destroyed. In some instances, the court ordered the cases and bottles salvaged.

7928. Adulteration of strawberry juice. U. S. v. 44 Cans of Strawberry Juice. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 10715. Sample No. 35602–F.)

LIBEL FILED: On or about September 11, 1943, Northern District of Georgia.

ALLEGED SHIPMENT: On or about June 28, 1943, by the Sunshine Packing Corporation, from North East, Pa.

PRODUCT: 44 5-gallon cans of strawberry juice at Atlanta, Ga.

VIOLATION CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: April 20, 1945. The Sunshine Packing Corporation, claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be destroyed or brought into compliance with the law, under the supervision of an officer designated by the Federal Security Agency.

CEREALS AND CEREAL PRODUCTS

ALIMENTARY PASTES

7929. Adulteration of alimentary paste. U. S. v. The Kansas City Macaroni & Importing Co. (the American Beauty Macaroni Co. and the Western Union Macaroni Products Co.). Plea of guilty. Fine, $750. (F. D. C. No. 12610. Sample Nos. 58134–F, 58139–F, 58246–F, 58350–F, 58351–F, 69124–F.)

INFORMATION FILED: November 6, 1944, District of Colorado, against the Kansas City Macaroni & Importing Co., a corporation, trading as the American Beauty Macaroni Co. and the Western Union Macaroni Products Co., Denver, Colo.