

voices, under section 13 of the act of June 10, 1890, it was not within the power of the board of general appraisers to order a reappraisal of the merchandise, which would be necessary to determine the value of the separated parts, and that for the purpose of such reappraisal the board of general appraisers was only an appellate tribunal. It was further argued that the importer having filed in the circuit court no statement of errors against the decision of the board of general appraisers, under section 15 of the above-mentioned act of June 10, 1890, the only matter before the circuit court was the determination of the question raised by the collector's appeal, which was only that the board erred in ordering the values of the separated parts of the robes to be segregated for the purposes of duty.

Edward Mitchell, U. S. Atty., and *James T. Van Rensselaer*, Asst. U. S. Atty.

Curie, Smith & Mackie, for importer.

LACOMBE, Circuit Judge. The decision of the board of appraisers is affirmed, and the court declines to go into the question as to whether they correctly determined that the silk embroidery made the article upon which it was placed dutiable as if it had been embroidered in wool, for the reason that there has been no statement of any error of law or fact complained of, touching such decision, filed in this court, or any application for review thereof in that particular.

UNITED STATES v. FORD.

(District Court, E. D. Missouri, E. D. May 3, 1892.)

1. OLEOMARGARINE ACT—VIOLATION.

Act Cong. Aug. 2, 1886, § 6, requires retail dealers to sell oleomargarine only from the original stamped packages, "and to pack it in suitable packages, marked and branded as the commissioner of internal revenue, with the approval of the secretary of the treasury, shall prescribe," and imposes a specific penalty for its violation. Held that, the required approval of the department being merely as to the kind of marks to be used, an indictment may be had for neglect to conform therewith. *U. S. v. Eaton*, 12 Sup. Ct. Rep. 764, distinguished.

2. SAME—INDICTMENT.

In indictments under section 6 for neglect to properly mark the package of oleomargarine, the regulation covering marks and brands made by the commissioner of internal revenue should be pleaded in substance.

At Law. Prosecution of *Anderson F. Ford* for neglect to properly mark packages of oleomargarine. On demurrer to the indictment. Overruled.

George D. Reynolds, U. S. Atty.

D. P. Dyer, for defendant.

THAYER, District Judge, (orally.) In this case the indictment is under the sixth section of the oleomargarine act against *Anderson F. Ford*, a retail dealer in oleomargarine, for selling oleomargarine in packages with-

out marking the packages with the word "Oleomargarine." A demurrer has been filed, and the question arises whether, under the recent decision of the supreme court of the United States in *U. S. v. Eaton*, 12 Sup. Ct. Rep. 764, (No. 291, October term, 1891,) the indictment is valid or invalid. In the case of *U. S. v. Eaton* it appears from the decision that the defendant, who was a wholesale dealer in oleomargarine, had failed to keep a book showing the oleomargarine received by him, and from whom and to whom the same was sold and delivered. For this he was indicted under section 18 of the act of August 2, 1886, (24 St. p. 212,) for neglecting, omitting, and refusing to do a thing required by law to be done. The court held that the act of August 2, 1886, did not require a wholesale dealer in oleomargarine to keep such a book as the indictment in that case described, or to keep any book in fact; that the duty of keeping the book was a duty that had been imposed solely by a regulation of the commissioner of internal revenue, and that a person could not be punished criminally for failing to discharge a duty so imposed. The decision in effect holds that congress had not declared the particular act complained of to be an offense; that it was an offense created, if at all, by a regulation of the commissioner of internal revenue, and that the regulation was an exercise of legislative powers, not vested in the commissioner. In the case at bar the facts are quite different. By section 6 of the act of August 2, 1886, congress specifically provided that all oleomargarine should be packed by manufacturers in firkins, tubs, or other wooden packages not before used, each containing not less than 10 pounds, the same to be marked, stamped, and branded "as the commissioner of internal revenue, with the approval of the secretary of the treasury, shall prescribe." Retail dealers were required to sell only from the original stamped packages in quantities not exceeding 10 pounds, and to pack the same in suitable wooden or paper packages, marked and branded "as the commissioner of internal revenue, with the approval of the secretary of the treasury, shall prescribe." The very same section of the law imposed a specific penalty for selling oleomargarine in any other form than in wooden or paper packages as above described. This section of the law, therefore, fully and completely describes a criminal offense. It requires packages of oleomargarine to be packed in a given way, and to be branded and marked before they are sold in such manner as the commissioner of internal revenue shall prescribe. It also imposes a specific penalty if they are not so marked and branded when sold. The decision in the case of *U. S. v. Eaton* does not go to the extent of holding that because congress left it to the commissioner of internal revenue to prescribe the kind of marks and brands to be used, which was a mere matter of detail, therefore dealers cannot be punished for selling oleomargarine without such marks and brands. The difficulty in the *Eaton Case* was that congress had not created any such offense as that for which the defendant was indicted. The commissioner had in fact assumed to amend the law. But in the case at bar there is no such difficulty. The offense charged in the indictment is one fully described in the sixth section of the act. The marks

and brands prescribed by the commissioner are such as he was specially authorized to prescribe. In the case at bar, therefore, the indictment states an offense against the laws of the United States, unless the decision in *U. S. v. Eaton* is understood to mean that no regulation of the commissioner of internal revenue can have the force and effect of law. My opinion is, in view of numerous decisions of the supreme court in prior cases, that that is not the meaning which the court intended to convey.

Another question arises in this case, and that is whether the regulation made by the commissioner of internal revenue concerning marks and brands is pleaded. I think such regulations should be pleaded in substance in indictments, but I am of the opinion that the regulation of the commissioner is sufficiently set out in this indictment. The demurrer is therefore overruled.

UNITED STATES v. GREENHUT *et al.*

(District Court, D. Massachusetts. May 16, 1892.)

ILLEGAL TRUSTS AND MONOPOLIES—INDICTMENT.

Act Cong. July 2, 1890, (26 St. p. 209.) "to protect trade and commerce against unlawful restraints and monopolies," provides, in section 2, that "every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor," etc. *Held*, that an indictment thereunder which fails to allege that defendants monopolized, or conspired to monopolize, trade and commerce among the several states, or with foreign nations, fails to state an offense, even though it does allege that they did certain acts with intent to monopolize the traffic in distilled spirits among the several states, and that they have destroyed free competition in such traffic in one of the states, and increased the price of distilled spirits therein.

At Law. Prosecution of Joseph B. Greenhut and others for violation of the law against monopolies. Indictment quashed.

Frank D. Allen, U. S. Atty.

Elihu Root, *Richard Olney*, *Simpson*, *Thacher & Barnum*, *Charles A. Prince*, and *Bordman Hall*, for defendants.

NELSON, District Judge. This is an indictment under the second section of the act of congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." 26 St. p. 209. The indictment sets forth that the defendants are the officers of the Distilling and Cattle Feeding Company, a corporation chartered by the laws of the state of Illinois, and having its principal place of business in Peoria, in that state; that, as such officers, they purchased or leased seventy-eight theretofore competing distilleries within the United States; and, within certain dates specified, used, managed, controlled, and operated said distilleries, and manufactured sixty-six million gallons of distilled spirits, and sold the product within the United States, part of it in the district of Massachusetts, at prices