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500 For the information of the public there follows a decision recently
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Vinegar Act of 1897 as amended by the Act of 1901, relative to the
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**DEPARTMENT OF AGRICULTURE.
DAIRY AND FOOD DIVISION.**

JAMES FOUST, Dairy and Food Commissioner.

**Important Decision on Cider Vinegar Containing
Added Water.**

For the information of the public there follows a decision recently handed down by the District Court of Dauphin County interpreting the Vinegar Act of 1897 as amended by the Act of 1901, relative to the addition of water in the manufacture of cider vinegar intended for sale. Prefixed to the decision are given (1) the Vinegar Act as amended (2) the statement of facts and the offers made in the case of the Commonwealth vs. C. W. Burtnett, in which the decision was handed down.

VINEGAR ACT.

AN ACT

Providing for the regulation of the manufacture and sale of distilled and fermented vinegars, prescribing their standard, to prevent the adulteration of the same, providing for the enforcement thereof, and punishment for the violation of the same.

Section 1. Be it enacted, &c., That from and after the passage of this act no person, firm or corporate body shall manufacture for sale, offer for sale or expose for sale, sell or deliver, or have in his, her or their possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this act. **No vinegar shall be sold or exposed for sale as apple or cider vinegar which is not the legitimate product of pure apple juice, or vinegar not made exclusively of said apple cider, or vinegar in which foreign substances, drugs or acids shall have been introduced, as may appear upon proper test; no vinegar shall be branded fruit vinegar unless the same be made wholly from grapes, apples or other fruits.—Amendment of May 21, 1901.**

Section 2. All vinegar made by fermentation and oxidation without the intervention of distillation, shall be branded "fer-

mented vinegar," with the name of the fruit or substance from which the same is made. And all vinegar made wholly or in part from distilled liquor shall be branded as "distilled vinegar," and all such distilled vinegar shall be free from coloring matter, added before, during or after distillation, and from color other than that imparted to it by the process of distillation, and shall contain not less than four per centum, by weight, of absolute acetic acid. And all vinegar shall be made wholly from the fruit or grain from which it is represented to be made, and shall contain no foreign substance: Provided, That this shall not be construed to prohibit the use of such an amount of spices as are necessary for flavoring, provided such spices do not color the vinegar.—Amendment of 21st May, 1901.

Section 3. No person, firm or corporate body shall manufacture for sale, offer for sale, or have in his, her or their possession with intent to sell or expose for sale any vinegar found upon proper test to contain any preparation of lead, copper, sulphuric or other mineral acid, or other ingredients injurious to health. And all packages containing vinegar shall be plainly and distinctly marked on each head of the cask, barrel or keg containing such vinegar, or if sold in other packages, each package shall be plainly and distinctly marked with the name and residence of the manufacturer, together with the brand required in section two thereof.

Section 4. Every person, firm or corporate body who shall violate any of the provisions of this act shall, for every such offense, forfeit and pay not less than fifty dollars nor more than one hundred dollars, which shall be recoverable, with costs, including expense of inspection and analysis, by any person suing in the name of the Commonwealth as debts of like amount are by law recoverable: Provided, That the Department of Agriculture, through its officer known as the Dairy and Food Commissioner, together with the deputies, agents and assistants, shall be charged with the enforcement of this act, and shall have full access to all places of business, factories, mills, buildings, carriages, cars, vessels, barrels, tanks and packages of whatever kind used in the manufacture and transportation and sale of any vinegar, or of any adulteration or imitation thereof, or any package in which vinegar is mixed with articles of food. They shall

also have power and authority to open any package, barrel or vessel containing any vinegar, or any adulteration or imitation thereof, which may be manufactured, sold or exposed for sale, and they shall also have full power and authority to take the samples therefrom for analysis upon tendering the value of said samples. And all charges, accounts and expenses of the Department for the enforcement of this act, through the said Commissioner and his deputies, agents, assistants, chemists, and counsel employed by him, in carrying out the provisions of this act, shall be paid by the Treasurer of the State in the same manner as other accounts and expenses of the said Department are paid.

Penalties and costs for the violation of the provisions of this act shall be paid to the said Dairy and Food Commissioner by his agents, and by him immediately covered into the State Treasury, to be kept as a fund for the use of the Department, to be drawn out upon the warrant signed by the Commissioner of Agriculture and the Auditor General.

5. Every person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten nor more than thirty days, or both fine and imprisonment for the first offense, and a fine of one hundred dollars and imprisonment for thirty days for every subsequent offense: Provided, That all fines and costs, including the expense of inspection and analysis imposed under this act, shall be covered into the State Treasury as provided by section four of this act, and all vinegar sold or offered for sale in violation of the provisions of this act shall be subject to forfeiture and spoliation.

Section 6. Magistrates and justices of the peace throughout this Commonwealth shall have jurisdiction to hear and determine actions arising for violations of the provisions of this act, and to hold for court, or impose the penalties provided therein, subject to appeal as the law shall direct.

Section 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved—The 18th day of June, A. D. 1897.

mented vinegar," with the name of the fruit or substance from which the same is made. And all vinegar made wholly or in part from distilled liquor shall be branded as "distilled vinegar," and all such distilled vinegar shall be free from coloring matter, added before, during or after distillation, and from color other than that imparted to it by the process of distillation, and shall contain not less than four per centum, by weight, of absolute acetic acid. And all vinegar shall be made wholly from the fruit or grain from which it is represented to be made, and shall contain no foreign substance: Provided, That this shall not be construed to prohibit the use of such an amount of coloring matter as are necessary for flavoring, in the vinegar.—Amendment of 2

Section 3. No person, firm or corporation shall manufacture for sale, offer for sale, or sell with intent to sell or export upon proper test to contain a sulphuric or other mineral acid to health. And all packages containing such vinegar, or if so labeled shall be plainly and distinctly marked with the residence of the manufacturer, in section two thereof.

Section 4. Every person, firm or corporate body who shall violate any of the provisions of this act shall, for every such offense, forfeit and pay not less than fifty dollars nor more than one hundred dollars, which shall be recoverable, with costs, including expense of inspection and analysis, by any person suing in the name of the Commonwealth as debts of like amount are by law recoverable: Provided, That the Department of Agriculture, through its officer known as the Dairy and Food Commissioner, together with the deputies, agents and assistants, shall be charged with the enforcement of this act, and shall have full access to all places of business, factories, mills, buildings, carriages, cars, vessels, barrels, tanks and packages of whatever kind used in the manufacture and transportation and sale of any vinegar, or of any adulteration or imitation thereof, or any package in which vinegar is mixed with articles of food. They shall

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also have power and authority to open any package, barrel or vessel containing any vinegar, or any adulteration or imitation thereof, which may be manufactured, sold or exposed for sale, and they shall also have full power and authority to take the samples therefrom for analysis upon tendering the value of said samples. And all charges, accounts and expenses of the Department for the enforcement of this act, through the said Commissioner and his deputies, agents, assistants, chemists, and counsel employed by him, in carrying out the provisions of this act, shall be paid by the Treasurer of the State in the same manner as other accounts and expenses of the said Department are paid. And all penalties and costs for the violation of the provisions of this act shall be paid to the said Dairy and Food Commissioner, or his agents, and by him immediately covered into the State Treasury, to be kept as a fund for the use of the Department, and to be drawn out upon the warrant signed by the Secretary of Agriculture and the Auditor General.

Section 5. Every person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten nor more than thirty days, or both fine and imprisonment for the first offense, and a fine of one hundred dollars and imprisonment for thirty days for every subsequent offense: Provided, That all fines and costs, including the expense of inspection and analysis imposed under this action, shall be covered into the State Treasury as provided by section four of this act, and all vinegar sold or offered for sale in violation of the provisions of this act shall be subject to forfeiture and spoliation.

Section 6. Magistrates and justices of the peace throughout this Commonwealth shall have jurisdiction to hear and determine actions arising for violations of the provisions of this act, and to hold for court, or impose the penalties provided therein, subject to appeal as the law shall direct.

Section 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved—The 18th day of June, A. D. 1897.

OCT 8 1914

COMMONWEALTH } Dauphin County Quarter Sessions.
 vs. } No. 191 September Sessions, 1913.
 C. W. BURTNETT } Selling Adulterated Vinegar.

Oct. 24, 1913. Trial before Hon. S. J. M. McCarrell, A. L. J.
 and a Jury.

Appearances:

For Commonwealth:

Michael E. Stroup, Esq., District Attorney.
 Wm. M. Hargest, Esq., Deputy Attorney General.
 A. H. Woodward, Esq., Special Counsel.

For Defendant:

Charles C. Stroh, Esq.,
 W. W. Armstrong, Esq.

Mr. Hargest opened for Commonwealth.

CHARLES C. LINTON, sworn, testified as follows:

Examined by Mr. Hargest:

Q. Where do you live?

A. Harrisburg, this county.

Q. What is your occupation?

A. I am a special agent for the Dairy and Food Division of
 the Department of Agriculture.

Q. Will you state whether you purchased any vinegar from
 the defendant?

A. I purchased two quarts of vinegar in separate bottles
 from Mr. Burtnett on September 18th last.

Q. What did you do with those two bottles?

A. I gave the one to Dr. Cochran at West Chester; the other
 was sent to Prof. Evans at Erie.

Q. You delivered one in person to Dr. Cochran at West Ches-
 ter?

A. I did.

Q. Who is Dr. Cochran?

Mr. Armstrong:

We do not propose to deny the regularity of the taking of this
 sample, its analysis or the results as stated by Mr. Hargest in

his opening to the jury. We concede the facts, if that will save
 any time.

Mr. Hargest:

It is admitted by the defendant that the sample of vinegar in
 question was purchased by the agent of the Dairy and Food
 Department from the defendant, was submitted to Dr. Cochran,
 a chemist of the Dairy and Food Department by the agent who
 purchased the same, and that the vinegar in question does con-
 tain approximately twenty per cent. of water added to it in the
 process of its manufacture, and that Mr. Burtnett sold the vine-
 gar in the City of Harrisburg.

The Court:

Q. You bought that in Harrisburg?

A. I bought that in Harrisburg.

Mr. Hargest:

We offer the following as the analysis:

Total solids,	2.01 gms. per 100 C. C.
Ash,	0.24 gms. per 100 C. C.
Non-volatile reducing substance, ..	0.398 gms. per 100 C. C.
Volatile reducing substance,	0.083 gms. per 100 C. C.
Acidity,	4.37 gms. per 100 C. C.
Alkalinity of soluble ash,	24.6 C. C. N/10 acid.

Contains at least 20 per cent. of water not derived from cider
 vinegar.

(Copy of analysis hereto annexed and marked "Com. Ex.
 No. 1").

Mr. Hargest:

Commonwealth rests.

Mr. Armstrong:

I move that the following instructions be given to the jury,—
 to acquit the defendant on the ground that the facts proved do
 not show any violation of the statute which was cited by Mr.
 Hargest.

(Discussion.)

The Court:

The motion for binding instructions is overruled and an exception noted for the defendant.

(Exception to Defendant).

Mr. Armstrong opened for Defendant.

JAMES D. BASHFORD, sworn, testified as follows:

Examined by Mr. Armstrong:

Q. Where do you live?

A. Lyons, New York.

Q. What part of New York State is that in?

A. Between Rochester and Syracuse in the western part.

Q. What is your business?

A. Cider vinegar manufacturer.

Q. Are you the manufacturer of this vinegar in question?

A. I am.

Q. About what is the capacity of your manufacturing plant?

Mr. Hargest:

That is objected to. We ask for an offer.

Mr. Armstrong:

I offer to show by this witness that the capacity of his factory is about fifteen thousand barrels a year; that there are located in western New York and in his neighborhood a great many factories, both of smaller and larger capacity, and also that he is familiar with the method of manufacture of cider vinegar in these plants and by many vinegar manufacturers in the State of Pennsylvania; that the method used by him is the one practiced which is generally used by all manufacturers of cider vinegar. I offer to show that as a preliminary to his testimony as to how this particular vinegar in question has been made and to show that the process followed by him is the usual and general and ordinary practice of the manufacturers of cider vinegar; that in it the use of water is necessary as a part of the process of manu-

facture, and that the use of water in that process is so recognized by the general practice adopted by cider vinegar manufacturers. Mr. Woodward:

It is objected to, because the admission on the record by the defendant that the vinegar in question has been diluted by the addition of approximately twenty per cent. of water shows under a proper construction of this Act of Assembly a violation of the Act. The method of manufacture, either of this particular vinegar or the method of manufacture in general use of vinegars, is incompetent and irrelevant, because such methods are forbidden by the Act of Assembly under which the defendant is indicted, which prohibits the addition of water. Objected to generally as incompetent, irrelevant and immaterial.

(Discussion).

Adjourned to 2 o'clock P. M.

Two o'clock P. M. Court convened pursuant to adjournment.

(Discussion resumed).

The Court:

We are of opinion that the evidence tendered is incompetent, irrelevant and immaterial. We note an exception for the defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show by this witness that the article which the public knows and recognizes as cider vinegar is one made from apple cider, of an acetic acid content of from 4 to 4½ per cent.; that the article which the legislature described by the phrase "the legitimate product of pure apple cider" is that article; and that a cider vinegar of higher acetic acid content is not palatable or fit for domestic purposes.

The offer is made for the purpose of showing that there has been no adulteration or offense committed within this law in the manufacture and sale or possession of this vinegar within the State of Pennsylvania.

Mr. Woodward:

The offer is objected to, because under the admitted facts of the case, the question whether there has been a violation of this Act of Assembly is for the Court. It is also objected to as being incompetent, immaterial and irrelevant, throwing no light on the question we are trying in this indictment.

The Court:

The objection is sustained, the offer excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to prove by this witness that the cider vinegar in question is the legitimate product of pure apple cider; that it was made exclusively from pure apple cider in the usual and customary manner, which has been recognized as legitimate in this country for more than twenty-five years; and that the introduction into it of more of the same substance which it already contained, such as yeast, oxygen and water, in order to make a product fit for human consumption, was not a violation of the law.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show that an apple is composed of about 84 per cent. of water, about 12 per cent. of sugar and about 4 per cent. of cellulose, gums and other substances in very small percentages, of no consequence as far as the question here is concerned.

Mr. Woodward:

For what purpose.

Mr. Armstrong:

For the same purpose.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose, that the principal vinegar constituent of value in apples is sugar; and that the process of making cider vinegar, both by the barrel or farmer's method and by the generator or manufacturer's process, consists in extracting, as far as possible, an infusion of this sugar in water, and converting it first into alcohol and then into acetic acid by alcoholic and subsequent acetous fermentations.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the process followed generally by manufacturers in this country, including Pennsylvania, and the process followed in the manufacture of this vinegar is as follows: Fresh apples are first ground to pulp and the resultant pomace pressed in heavy, power-driven process to extract the juice which consists of about 85% water and the remainder principally sugar in solution. The resultant apple juice or cider is then fermented in wooden vats, through the action of ferments artificially added or derived from the air, until the sugar is converted into alcohol, and the alcohol in this fermented cider is then subjected to an acetous fermentation by running it through generators. These generators are large, upright, cylindrical wooden structures about 16 feet in height and 6 feet in diameter, filled with corn cobs or beech shavings to bring the cider in contact with the air. During the slow leaching of the fermented cider through these generators, the alcohol

is so oxidized and acted upon by ferments which with the generators have been charged or derived from the air, that the alcohol is converted into acetic acid and the effluent from these generators is usually filtered or otherwise clarified.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the effluent thus produced by the generators is of varying degrees of acetic acid content, usually too strong to be palatable or for use for domestic purposes.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that during these operations the water remains unchanged, and acts only as a vehicle or menstrum in which the other substances are held in solution.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the quantity of sugar in apples, and, hence, the acetic acid derivable from them, varies greatly with the variety, the season, the locality where grown, and the degree of their maturity; and that while most apples

will generate an effluent of high acetic acid content, some, particularly early or inferior apples, cannot be made to produce an effluent of 4% of acetic acid content.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the art and success of the manufacturer consist in first obtaining from the apple the largest amount of sugar possible, and then converting the highest percentage possible of it first into alcohol and then into acetic acid, and that the constant effort of the manufacturer is to obtain the highest percentage of acetic acid from a given quantity of apples.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the public is accustomed to a cider vinegar of from 4 to 4½% of acetic acid content, and that the manufacturer is accustomed, when this effluent is too low in acidity, to raise it by mixing it with a stronger effluent, and, when too high, to reduce its acidity with water to the acidity thus recognized by the public.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the addition of pure water causes no chemical change, and does not affect the bouquet or flavor, and that the acetic acid content of vinegar regulates its price.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the effluent from the generator from which the vinegar in question was made, had an acetic acid content of $5\frac{1}{2}\%$, and that the vinegar in question was made from this effluent by reducing this acetic acid content to $4\frac{1}{2}\%$ by adding 8 gallons of pure, distilled water to 37 gallons of the effluent.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that this 37 gallons of effluent before reduction was worth \$3.33, and that the 45 gallons after reduction was worth \$3.26.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the vinegar in question was made by this generator process in Lyons, N. Y., from

whence it was shipped by Mr. Bashford to the defendant at Harrisburg; that the package containing it was branded as required by law, and, in addition, with the words "Reduced to $4\frac{1}{2}\%$," and in all other respects complied with the law of this State, except the alleged addition of water.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the generator process is in no essential respect different from the farmer's method, except that there is usually a smaller proportion of sugar in the juice produced by the farmer, and the fermentation of the sugar into alcohol and the conversion of the alcohol into acetic acid is much slower in the barrel, taking from a year to a year and a half, while the generator process produces vinegar in from a month to six weeks. That the farmer deems his cider to be vinegar whenever it has become sour enough to suit his taste. That the longer it remains in the barrel, the sourer it gets through more complete acetification and evaporation, and that when its proportion of acetic acid becomes too high, the farmer reduces it to suit his taste or that of his customers, and that has been the custom in this state for more than twenty-five years.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the quantity of acetic acid and solids in vinegar depends upon the quality of apples used and the extent to which the sugar has been fermented; that fermentation may be arrested by improper methods, and

that the amount of acetic acid in vinegar depends upon the quality of apples used and the thoroughness with which the sugars have been fermented.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that cider vinegar consists of acetic acid, solids and water, and that all cider vinegar contains from 92 to 94% of water.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the solids in cider vinegar have no food value; that any one of them could be omitted without destroying its character as cider vinegar, but that neither acetic acid nor water could be so omitted without destroying its character as vinegar.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that in the process of making cider vinegar, yeast and oxygen are added, and solids,

water and carbonic acid gas eliminated; and that the loss in volume in the process is about 15%.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that acetic acid is a poison.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the profit to the manufacturer of cider vinegar is less than one-half cent per gallon.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that there is no ratio in cider vinegar between the amount of water it may contain and the acetic acid and solids.

Mr. Woodward:

Denied as a matter of fact, but same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that if made of inferior apples or by unskillful methods, reduction would not be necessary by water.

Mr. Woodward:

Objected to for the same reasons.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that there is not enough weak vinegar made to reduce the stronger vinegar made to a 4 or 4½% acid content.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the effluent from the generator is usually too strong to be palatable or for use for pickles or salads or domestic purposes.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception for Defendant).

Mr. Armstrong:

I offer to show for the same purpose that a proof gallon under the U. S. Tariff Law is 4.37% of acidity; that under the U. S. Dispensatory it is 4.60%; that the army and navy requirement is for a 4.50%; that Worcester's Dictionary defines cider vine-

gar as not to exceed 5%; and that the last U. S. Pharmacopoeia which contained vinegar, the edition of 1873, contained a requirement of 4.60%.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the federal requirement is 4%; that the federal regulation recognizes the reduction of vinegar with water; that 40 states of the Union have a 4% requirement, 2 a 4½% requirement, and the rest either no law or no requirement.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that for more than 25 years cider vinegar has been imitated in various ways:

1. By fabrication, as described in the report of the Pennsylvania Department of Agriculture for 1899.
2. By coloring and flavoring white distilled vinegar.
3. By using wood acid.
4. By adding boiled cider to vinegar made from other sources than apples

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that apples have been grown in this country containing 16% of sugar, and abroad containing 26% of sugar.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that cider vinegar cannot be accurately reduced organileptically.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that reduction with water is part of the process of manufacturing the article which the public knows and recognizes as cider vinegar.

Mr. Woodward:

Same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

I offer to show for the same purpose that the manufacturer seeks, as did the farmer, to produce an article of uniform acidity which the public knows and recognizes and expects to get when it asks for cider vinegar.

Mr. Woodward:

Denied as a matter of fact, but same objection.

The Court:

The objection is sustained, the offer is excluded and bill sealed for defendant.

(Exception to Defendant).

Mr. Armstrong:

The case which has been presented to you is in a certain sense a test case, although it is an actual one, in which Mr. Burtnett is a defendant at our request; and I suggest, without knowing what your practice requires, that such a disposition of this case be made as will permit us to review your rulings without undue personal penalization of Mr. Burtnett.

The Court:

As the case now stands, we shall be obliged to instruct the jury to convict the defendant, if they believe his admissions to be true, because, according to his own admissions, we regard the law as having been violated. You can make a motion in arrest of judgment and for a new trial and upon that motion we will hear you further if you desire. Let it be understood that fifteen days will be given the defendant to file a motion and reasons in arrest of judgment and for a new trial, and if argument is desired by either side it can be put upon the argument list for Nov. 25th.

The Court:

Gentlemen of the Jury: C. W. Burtnett is indicted for selling adulterated vinegar. An Act of the General Assembly of Pennsylvania passed in 1901 prohibits the sale of any article as and for cider vinegar which contains anything except the natural and legitimate product of apple juice. It is admitted by Mr. Burtnett that the vinegar sold in this case contained twenty per cent. of added water, which was not the legitimate product of apple juice and in the light of that admission the law has apparently been violated, and we instruct you that you may render a verdict of guilty as indicted, if you are satisfied beyond any reasonable doubt, that the defendant's admissions are true.

Mr. Armstrong:

Counsel for defendant, before verdict, except to the charge of the Court and ask that bills of exceptions be sealed, and that the charge, together with the notes of testimony, be reduced to writing and filed of record.

(Exception to Defendant).

Nov. 3, 1913, counsel notified that foregoing transcript has been lodged with the Clerk of the Court of Quarter Sessions.

FRANK E. ZIEGLER,
Official Stenographer.

COMMONWEALTH vs. C. W. BURTNETT { In the Court of Quarter Sessions of Dauphin County, Penn'a. September Sessions, 1913. No. 191.

MOTION IN ARREST OF JUDGMENT AND FOR A NEW TRIAL.

BY THE COURT:

The defendant has been convicted of selling "as and for apple or cider vinegar a certain substance, article and compound which was not then and there the legitimate product of pure apple juice and not made exclusively of apple cider." The indictment charges a violation of the Act of June 18, 1897, (P. L. 168) as amended by the Act of May 21, 1901, (P. L. 275) and is substantially in the words of the Act.

The defendant admitted the making of the sale and that the vinegar sold contained approximately 20% of water added to it in the process of manufacture. With this admission the Commonwealth closed its case. The defendant asked that the jury be instructed to acquit on the ground that the facts proved did not show any violation of the statute. This request was refused and an exception noted for the defendant. The defendant then offered to prove by James D. Bashford that he was a cider vine-

gar manufacturer at Lyons, New York; that he manufactured the vinegar sold in this case; that the capacity of his factory was about 15,000 barrels a year; that he was familiar with the usual methods of making cider vinegar and that the use of water is necessary as part of the process of manufacture and is so recognized in the practice of cider vinegar manufacturers. Upon objection by the Commonwealth this evidence was excluded and an exception noted for the defendant. Various other offers were made of like character relating to the process of manufacture; the acetic acid content of the effluent produced by manufacturing process and the supposed necessity of adding water to adapt it to domestic use. All these various offers were objected to as immaterial and irrelevant and they were excluded with exception to defendant. The substance of all these offers was to show that the use of water was necessary in the manufacture of vinegar from cider or apple juice, and that the use of water was necessary to reduce the acetic acid content so as to adapt it to domestic use. The defendant contends that if the use of water is customary and necessary the Act must be so construed as to permit its use. We are unable to assent to this proposition. The legislature must be presumed to have been familiar with the methods of manufacturing vinegar from cider or apple juice, and if the use of water was necessary for any purpose in the process of manufacturing, provision for its use would undoubtedly have been made. The language of the statute seems to us too clear to permit any doubt as to the legislative intent. It expressly forbids the sale or offering for sale as apple or cider vinegar any article (a) "which is not legitimate product of pure apple juice," or, (b) "vinegar not made exclusively of said apple cider." The legitimate product of pure apple juice means a product derived from apple juice by the operation thereon or therein of natural laws without any addition, subtraction or artificial manipulation. The second paragraph of the prohibition "not made exclusively of said apple juice" explains the first and makes the statutory meaning clear beyond peradventure. The rules of statutory construction are well settled.

In *Mercer vs. Watson*, 1 Watts 339, it is held that "Statutes are generally to be understood and construed according to the ordinary meaning and common acceptance of their terms."

In *Commonwealth vs. Wells*, 110 Pa. 467, it is said, "We are to look to the words in the first instance and when they are plain we are to decide on them. If they be doubtful we are then to have recourse to the subject matter."

In *Commonwealth vs. Matthews*, 210 Pa. 392, it was held that testimony to explain the legislative intent or to point out the objects the Legislature had in view is wholly inadmissible.

The general principles of statutory construction as gathered from numerous cases are clearly stated in *Endlich of Statutes*, Section 4, page 7, as follows:

"Where the words of a statute are plainly expressive of an intent not rendered dubious by the context, the interpretation must conform to and carry out that intent. It matters not, in such cases, what the consequence may be. It has therefore been distinctly stated from early times down to the present day that Judges are not to mould the language of statutes in order to meet an alleged convenience or an alleged equity; are not to be influenced by any notions of hardship or of what in their view is right and reasonable or is prejudicial to society; are not to alter clear words, though the Legislature may not have contemplated the consequence of using them; are not to tamper with words for the purpose of giving them a construction which is supposed to be more consonant with justice than their ordinary meaning. Where by the use of clear and unequivocal language capable of only one meaning anything is enacted by the Legislature it must be enforced, even though it be absurd or mischievous. If the words go beyond what was probably the intention, effect must nevertheless be given to them. They cannot be construed contrary to their meaning as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced. However, unjust, arbitrary or inconvenient the intention conveyed may be, it must render its full effect."

It is not the duty of the Court to make the law reasonable, but to expound it as it stands according to the real sense of the words.

The first section of the Act of May 21, 1901, contains the prohibition above referred to. The second section relates to vinegar made by fermentation, and declares that it shall be branded "fermented vinegar." It also provides that all vinegar made wholly or in part from distilled liquor shall be branded as "dis-

tilled vinegar" and "all such distilled vinegar shall be free from coloring matter added before, during or after distillation and from color other than that imparted to it by the process of distillation, and shall contain not less than four per centum by weight of absolute acetic acid." This is the only provision in the statute in regard to acetic acid and it relates only to distilled vinegar and not to apple or cider vinegar. The statute fixes no percentage of acetic acid for cider or apple vinegar, but as already stated, clearly prohibits the sale of any article as apple or cider vinegar which is not the legitimate product of pure apple juice or not made exclusively of said apple cider. The suggestion contained in the several offers made by defendant, above referred to, that the use of water was necessary in order to reduce the acetic acid content does not seem to us to have any relevancy to cider vinegar, with respect to the acetic acid of which, the statute is entirely silent. It is clearly intended to prevent any fraud or imposition upon the public in the sale of cider vinegar, and there is no contention that the Act is in itself unconstitutional.

We are therefore constrained to give full force and effect to the words found in the first section of the Statute and conclude that the defendant has been properly convicted of a violation thereof. The motion in arrest of judgment and for a new trial is accordingly overruled and the Commonwealth is at liberty to move for the entry of judgment upon the verdict.

**End of
Title**