

United States Department of Agriculture,
OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 835, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF PEPPER.

On or about December 16, 1908, Jacob Frank, Charles Frank, and Emil Frank, a partnership, doing business under the firm name and style of the Frank Tea and Spice Company, Cincinnati, Ohio, shipped from the State of Ohio into the State of Nevada a quantity of a food product labeled "Perfection Mills Compound White Pepper, Composed of ground white pepper and ground cereals, Put up expressly for J. R. Bradley Co., Reno, Nev., Put up in Cincinnati, Ohio, under Serial No. 4932." Samples of this shipment were procured and examined by the Bureau of Chemistry, United States Department of Agriculture, and it was found to contain a large amount, approximately 50 per cent, of a corn product. As the findings of the analyst and report thereon indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the said Jacob, Charles, and Emil Frank, and the party from whom the samples were procured, were afforded opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Southern District of Ohio against the said Jacob, Charles, and Emil Frank, charging the above shipment and alleging that the product so shipped was adulterated in that another substance, to wit, 35 per cent of a corn product, was substituted in part for the article which said packages purported to contain, to wit, white pepper, and in that said 35 per cent corn product was so mixed and packed with said article of food as to reduce and

lower its quality and strength, and alleging the product to be misbranded, in that it was labeled as above set forth, the words "Perfection Mills, Compound White Pepper", being in large and plain letters, while the words "Composed of ground white pepper and ground cereals" were placed in small and inconspicuous type upon said label so as not to be readily noticed by the purchaser, the product being composed of 35 per cent of a corn product and 65 per cent of ground white pepper, said label and branding being, therefore, calculated and intended to deceive and mislead the purchaser, and in that said article contained two food products, to wit, 35 per cent of a corn product and 65 per cent of ground white pepper, when it was marked and branded with the name of only one of said products, to wit, white pepper. Thereupon said defendants appeared by their attorneys and demurred to the above information on the grounds that the facts therein stated did not constitute a violation of the act in question, that the said information and the matters therein contained in manner and form as therein alleged and charged were not sufficient in law to maintain the aforesaid action, and that the said act was unconstitutional and void. The last of these grounds was by leave of court subsequently stricken from said demurrer, which being then argued, was overruled by the court, to which ruling defendants by their counsel duly excepted.

Thereupon the case was submitted to the court on the following agreed statement of facts:

It is hereby stipulated and agreed by and between Jacob Frank, Charles Frank and Emil Frank, the defendants herein, and the United States of America, the plaintiff herein, and their respective counsel, that, for the purposes of the trial of this case, the following allegations contained in the information herein are hereby agreed and admitted to be true:

That they, the said defendants, did, on or about, December 16th, 1908, ship and cause to be shipped and delivered for shipment from Cincinnati, Ohio, in interstate commerce, to J. R. Bradley & Co., at Reno, Nevada, four dozen five-pound cans of an article of food, labeled as follows: in large type "Perfection Mills Compound White Pepper," and in smaller type "Composed of Ground White Pepper and Ground Cereals;" and it is also admitted to be true that said article of food contained about 65% of ground white pepper and about 35% of ground cereals.

The said defendants further admit it to be true that one of said cans of pepper, so contained in said shipment, was purchased from said J. R. Bradley Company, as a sample can, by H. C. Kitchen, an Inspector of the Bureau of Chemistry, United States Department of Agriculture, and that said sample can was, by him, sealed and labeled and designated as I. S. No. 12435-a; that said sample can, so labeled and sealed was, by said H. C. Kitchen, transmitted intact to B. J. Howard, Analyst of the United States Department of Agriculture, who received the same in the identical condition in which it was so shipped and transmitted; that said B. J. Howard, Analyst as aforesaid, forthwith analyzed said sample can of pepper, and thereupon and again sealed, labeled and designated said sample can in the manner aforesaid; that

said sample can intact and sealed, labeled and designated as aforesaid, is now in the possession of Sherman T. McPherson, United States Attorney for the Southern District of Ohio, for use in the trial of this case.

But the said defendants deny and plead not guilty to the charge that said article of food, so shipped and so labeled as above admitted, was misbranded or adulterated in violation of the Food and Drugs Act.

The cause coming on for hearing, the court being fully informed in the premises, found said defendants guilty in manner and form as charged in said information, and imposed a fine of \$50 and costs, to which judgment the defendants, by their counsel, duly excepted. Motion for new trial having been overruled, to which defendants excepted, appeal was taken by said defendants to the Circuit Court of Appeals of the Sixth Circuit, where it is now pending.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. L. MOORE,

Acting Secretary of Agriculture.

WASHINGTON, D. C., *April 7, 1911.*