

say 'We the jury find for the United States.' That is all. If on the contrary you do not believe that and cannot find that this branding was done in this way for the purpose of deceiving—and it might be very strong testimony—it would have been a very strong suggestion but no evidence is here to prove by any purchasers that anybody was deceived. But whether that is so or not, that is not the thing in the case. It might be a circumstance for you to consider. But if you should find from a preponderance of the testimony in this case that this branding was for the purpose of deceiving the purchasers, you should find for the United States; but if upon the other hand you should find that the contrary is the fact, you should say 'We the jury find for the claimant.'

"Take the papers and retire to the jury room, gentlemen, and see if you can reach a verdict."

The jury then retired and after due deliberation returned a verdict for the Government. On November 9, 1920, a motion was made on behalf of the claimant for a new trial, and on December 7, 1920, an order of the court was entered granting a new trial and setting aside the verdict. On May 12, 1921, a stipulation was filed wherein it was admitted by the claimant, "The beans seized in this case are beans which were packed from what is known as Naga Uzura, speckled cranberry, or long cranberry beans," and on the same date judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$300, in conformity with section 10 of the act, conditioned in part that the claimant rebrand and correctly label the product so as to show its true nature and character.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

9795. Misbranding of cottonseed cake. U. S. * * * v. Home Oil & Mfg. Co., a Corporation. Plea of guilty. Fine, \$50 and costs. (F. & D. No. 13085. I. S. No. 5942-r.)

On December 7, 1920, the United States attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Home Oil & Mfg. Co., a corporation, Augusta, Ark., alleging shipment by said company, on or about January 29, 1919, in violation of the Food and Drugs Act, as amended, from the State of Arkansas into the State of Kansas, of a quantity of cottonseed cake which was misbranded.

Examination of 20 sacks from the consignment, by the Bureau of Chemistry of this department, showed an average weight of 98.51 pounds per sack.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "100 Lbs.," borne on the tags attached to the sacks containing the article, regarding the article, was false and misleading in that it represented that each of the said sacks contained 100 pounds of the said article, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that each of the said sacks contained 100 pounds of the article, whereas, in truth and in fact, each of the said sacks did not contain 100 pounds of the said article, but did contain a less amount. Misbranding was alleged for the further reason that the article was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On March 15, 1921, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$50 and costs.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*