

remaining in the original unbroken packages at Denver, Colo., consigned by the Childress Cotton Oil Co., Childress, Tex., alleging that the article had been shipped from Childress, Tex., on or about March 31, 1926, and transported from the State of Texas into the State of Colorado, and charging misbranding in violation of the food and drugs act. The article was labeled in part: "Prime Cottonseed Meal or Cake * * * Guaranteed Analysis Protein not less than 43 per cent."

Misbranding of the article was alleged in the libel for the reason that the statement "Protein not less than 43 per cent," borne on the labels, was false and misleading and deceived and misled the purchaser, since the said article did not contain 43 per cent of protein.

On May 20, 1926, the Childress Cotton Oil Co., Childress, Tex., having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$500, conditioned in part that it not be sold or otherwise disposed of contrary to law.

W. M. JARDINE, *Secretary of Agriculture.*

14353. Adulteration and misbranding of salad oil and misbranding of olive oil. U. S. v. Elias Germack. Tried to a jury. Verdict of guilty. Fine, \$450. (F. & D. No. 17696. I. S. Nos. 1536-v, 2088-v, 2089-v, 2090-v.)

On November 13, 1923, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Elias Germack, a member of a copartnership trading as the Armenian Importing Co., New York, N. Y., alleging shipment by said defendant, in violation of the food and drugs act as amended, on or about September 26, 1922, from the State of New York into the State of Pennsylvania, of quantities of olive oil which was misbranded, and on or about October 14, 1922, from the State of New York into the State of Rhode Island, of a quantity of salad oil which was adulterated and misbranded. The olive oil was labeled in part: (Can) "Pure Olive Oil Sopraffino Italia Brand * * * Net Conts. $\frac{1}{8}$ Gall." (or "Net Contents $\frac{1}{4}$ Gall." or "Net Contents $\frac{1}{2}$ Gall."). The salad oil was labeled in part: (Can) "Superior Quality Oil Greek Patriot Brand Winter Pressed Cotton Salad Oil Flavored With High Grade Olive Oil A Compound Net Contents 1 Gall."

Misbranding of the olive oil was alleged in the information for the reason that the statements "Net Conts. $\frac{1}{8}$ Gall.," "Net Contents $\frac{1}{4}$ Gall.," and "Net Contents $\frac{1}{2}$ Gall.," borne on the various sized cans containing the article, were false and misleading, in that the said statements represented that each of said cans contained $\frac{1}{8}$ gallon, $\frac{1}{4}$ gallon or $\frac{1}{2}$ gallon, as the case might be, of olive oil, 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 said cans contained $\frac{1}{8}$ gallon, $\frac{1}{4}$ gallon, or $\frac{1}{2}$ gallon, as the case might be, of olive oil, whereas the said cans did not each contain the amount represented on the label but did contain a less amount.

Adulteration of the salad oil was alleged for the reason that a product which contained no flavor of olive oil had been substituted for a product flavored with olive oil, which the article purported to be.

Misbranding of the salad oil was alleged for the reason that the statements, to wit, "Flavored With High Grade Olive Oil," and "Net Contents 1 Gall.," borne on the label, were false and misleading, in that they represented that the article was a product flavored with high grade olive oil and that each of the cans contained 1 gallon net thereof, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was flavored with high grade olive oil and that each of the said cans contained 1 gallon net thereof, whereas the article was not a product flavored with high grade olive oil but was a product which contained no flavor of olive oil, and each of the cans did not contain 1 gallon of the article but did contain a less amount.

Misbranding was alleged with respect to both products for the further reason that they were foods in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages.

On November 20, 1925, the case came on for trial before the court and a jury. After hearing the evidence and arguments by counsel the court charged the jury as follows (Goddard, *D. J.*):

"Gentlemen of the jury, I think you understand that the Government passed this pure food and drugs act with several purposes in mind. One of them was to protect the citizens of the country from adulterated foods and short weight and so forth. Most of those adulterations are done to only a slight degree. By that I mean they do not take out a large percentage of the can or bottle or container; it is usually one or two or three per cent which is taken out. But the Government intends that every container should contain 100 per cent, and the Government has made the law quite clear. These people here are charged with three breaches of that law: One, that the container did not state on the outside how much it contained; again, that it should have stated the exact amount, and also that it failed to contain the amount stated on the outside that it did contain. The third charge against these defendants is that there was no olive oil in this container at all, although it was advertised and sold to the public with the representation that it did contain olive oil. You can realize how important it is for such a statute to be held inviolate.

"The Government says to you, 'We will not concern ourselves with the intention of the people.' It is not a defense to this case, gentlemen, to say that they did not intend that there should be a shortage of weight, or that they did not intend that the label should not fully indicate, or they did not intend to leave out the olive oil. If they in fact did give short weight, or did in fact fail to state on the outside; if in fact they did omit to put the olive oil in, and you find that they did, you should find them guilty.

"In a criminal case like this, and this was tried in a short time, I shall not attempt, because I think no good purpose would be served, to restate the facts to you. They are all fresh in your mind. You have seen the witnesses called by the Government, various inspectors, and you have seen the Government chemists; you have seen the witnesses that the other side called, that were called by the defendants, two witnesses, both of whom, as I recall, were customers of these defendants, or who did business with them. You will consider in your mind what interest any witness in this case may have had. Of course, if you find any witness has made a material statement of fact with the intention of misleading you, you have the right to disregard all of that witness's testimony if you see fit.

"As I remember, the shortages varied from 3.83 to 4.07 per cent in some of the containers. It seems that all of the containers are short weight.

"You know, having been in this criminal court a few days, that everyone is presumed to be innocent under the law until shown to be guilty beyond a reasonable doubt. You also know from having been in the criminal court that a reasonable doubt means a reasonable doubt or a doubt which a reasonable man has after hearing all the facts and circumstances in the case.

"As I stated to you before, gentlemen, the question of intent does not enter into this case at all. It is whether in fact the Government has proved beyond a reasonable doubt this charge against these defendants.

"Now there are nine counts here, gentlemen. The first six counts relate to the various sized cans; the last three counts relate to the alleged charge; the seventh count was to the effect that it is charged there is no olive oil at all in the containers.

"Now, gentlemen, the case is simple. You are a jury of business men and experienced. You have seen these witnesses. You will retire, and by your verdict you will decide whether or not there was a shortage in the containers and whether or not they failed to put any olive oil in as required under the law."

MR. WHITTINGHAM: "If your Honor please, I would like to offer a slight correction in your Honor's statement as to the information. It does not charge there was no olive oil; it charges there was no flavor of olive oil."

THE COURT: "No flavor of olive oil."

MR. WHITTINGHAM: "If your Honor please, I ask your Honor to charge the jury that the test in determining the guilt of the defendants is whether the article was at the time of the sale by the defendants the identical thing that the brand indicated it to be."

THE COURT: "Yes, gentlemen, that is very true, of course."

MR. WHITTINGHAM: "Also that the condition of the goods at the time of the seizure by the Government is not conclusive evidence as to their condition at the time of the sale by the defendants."

THE COURT: "Those circumstances, like everything else, gentlemen, you will take into consideration."

MR. WHITTINGHAM: "Also, that unless the jury are convinced beyond a reasonable doubt that there was misbranding as alleged in the indictment, they must find the defendants not guilty."

THE COURT: "That is correct. If you have reasonable doubt about it you have not the conviction that is required to convict. I think that covers it, doesn't it?"

MR. COUDERT: "Except it might be well to state that they can find the defendants guilty on any one or all of the counts?"

THE COURT: "Gentlemen, you are to understand you will decide and in your verdict state whether you find the defendants guilty on any one or all of these nine counts."

MR. WHITTINGHAM: "May I also ask that you instruct the jury they can have the exhibits with them?"

THE COURT: "The jury may have the exhibits."

On November 24, 1925, the jury returned a verdict of guilty on all nine counts of the information, and the court imposed a fine of \$450.

W. M. JARDINE, *Secretary of Agriculture.*

14354. Adulteration of shell eggs. U. S. v. William H. Eubank (W. H. Eubank). Plea of guilty. Fine, \$5. (F. & D. No. 19340. I. S. No. 12731-v.)

On March 12, 1925, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against William H. Eubank, King & Queen Court House, Va., alleging shipment by said defendant, in violation of the food and drugs act, on or about August 21, 1924, from the State of Virginia into the State of Maryland, of a quantity of shell eggs which were adulterated. The article was labeled in part: "From W. H. Eubank King & Queen C. H."

Examination by the Bureau of Chemistry of this department of the one case comprising the shipment showed 18.6 per cent of inedible eggs.

Adulteration of the article was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid animal substance.

On April 6, 1926, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$5.

W. M. JARDINE, *Secretary of Agriculture.*

14355. Adulteration of canned cherries. U. S. v. 229 Cases of Canned Cherries. Default decree of condemnation, forfeiture and destruction. (F. & D. No. 21028. I. S. No. 5774-x. S. No. E-5713.)

On or about April 23, 1926, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 229 cases of canned cherries, at Brockport, N. Y., alleging that the article had been shipped by Lafer Bros., from Detroit, Mich., on or about January 28, 1926, and transported from the State of Michigan into the State of New York, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Lafer Bros. Special Pack Cherries Lafer Bros. Distributors Detroit, Mich."

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed or putrid vegetable substance.

On May 29, 1926, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

W. M. JARDINE, *Secretary of Agriculture.*

14356. Misbranding of cottonseed meal. U. S. v. 80 Sacks and 100 Sacks of Cottonseed Meal. Decrees of condemnation and forfeiture. Product released under bond. (F. & D. Nos. 20989, 20990. I. S. Nos. 6303-x, 6304-x. S. Nos. E-5697, E-5698.)

On March 20, 1926, the United States attorney for the District of New Jersey, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying seizure and condemnation of 180 sacks of cottonseed meal, in part at Hackettstown, N. J., and in part