

Net Quapaw Brand 41% Protein Cottonseed Cake," or "Equity Brand Cottonseed Cake & Meal Guaranteed Analysis Protein not less than 43%."

The Quapaw brand was alleged to be misbranded (1) in that the statement regarding the net weight, borne on the tag was false and misleading since such statement represented and suggested that each of the sacks contained not less than 100 pounds of the article, whereas a large number of said sacks contained substantially less than 100 pounds; and (2) in that the tag or label failed to bear an accurate statement of the quantity of the contents of the sacks in terms of weight.

The Equity brand was alleged to be misbranded in that the statement "Guaranteed Analysis Protein not less than 43%," borne on the tag, was false and misleading since the article contained not more than 40.56 percent of protein.

On October 13, 1942, a plea of nolo contendere having been entered on behalf of the defendant, the court imposed a fine of \$50.

**4220. Misbranding of cottonseed screenings. U. S. v. Swift & Co. (Swift & Co. Oil Mill). Plea of guilty. Fine \$100 and costs. (F. D. C. No. 7283. Sample 68909-E.)**

On July 21, 1942, the United States attorney for the Eastern District of Illinois filed an information against Swift & Co., a corporation, trading under the name of Swift & Co. Oil Mill at Cairo, Ill., alleging shipment on or about October 10, 1941, from the State of Illinois into the State of Kansas of a quantity of cottonseed screenings that was misbranded. The article was labeled in part: (Tag) "Cotton Bloom 41% Protein Cottonseed Meal."

The article was alleged to be misbranded in that the statements "41% Protein Cottonseed Meal \* \* \* Guaranteed Analysis Crude Protein not less than 41.00% \* \* \* Crude Fibre not more than 13.00%" borne on the tag, were false and misleading since it contained not more than 38.81 percent of protein and not less than 13.86 percent of crude fibre.

On September 8, 1942, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of \$100.

**4221. Misbranding of peanut meal. U. S. v. Wilmington Oil & Fertilizer Co. Tried to the court and a jury. Verdict of guilty. Fine, \$250. (F. D. C. No. 7216. Sample No. 18677-E.)**

On June 26, 1942, the United States attorney for the Eastern District of North Carolina filed an information against the Wilmington Oil & Fertilizer Co., a corporation, Wilmington, N. C., alleging shipment on or about July 17, 1941, from the State of North Carolina into the State of Maryland of a quantity of peanut meal which was misbranded. The article was labeled in part: (Tag) "100 lbs. Net Peco Brand Peanut Meal \* \* \* Guaranteed Analysis Protein Not Less Than 41.00%."

The article was alleged to be misbranded in that the protein declaration on the tag was false and misleading since it represented and suggested that the article contained 41 percent of protein, whereas it contained not more than 38.62 percent.

On October 26, 1942, the defendant having entered a plea of not guilty, the case came on for trial before a jury which returned a verdict of guilty. The court thereupon imposed a fine of \$250.

## POULTRY

Nos. 4222 to 4230 report cases involving various shipments of dressed poultry, samples of which were found to be diseased, decomposed, emaciated, insufficiently bled, or bruised.

**4222. Adulteration of dressed poultry. U. S. v. H. & H. Poultry Co., Homer H. Pepper, and Samuel H. Sahn. Pleas of not guilty. Tried to a jury. H. & H. Poultry Co. found guilty and fined \$1,500. Directed verdict of not guilty with respect to Homer H. Pepper. Jury disagreed with respect to Samuel H. Sahn and nolle prosequi ordered. (F. D. C. No. 7320. Sample No. 69349-E.)**

On October 20, 1942, the grand jurors of the United States in and for the District of Delaware presented an indictment against the H. & H. Poultry Co., Selbyville, Del., Homer H. Pepper, and Samuel H. Sahn, alleging shipment on or about February 23, 1942, from the State of Delaware into the State of New York of a quantity of poultry that was adulterated in that it consisted in whole or in part of a decomposed substance, and in that it was in whole or in part the product of diseased animals, namely, diseased poultry.

On November 9, 1942, pleas of not guilty having been entered on behalf of the defendants, the case came on for trial before the court and a jury. The trial was concluded on November 10, the court delivering the following instructions to the jury:

LEAHY, *District Judge*: "In this case the United States has brought an indictment against H. & H. Poultry Company, one Samuel Sahn, and one Homer H. Pepper. While you were out to lunch, I heard an argument on behalf of Mr. Tunnell, asking the court to direct a verdict of not guilty as against Mr. Pepper for the reason there was no testimony in this case at all connecting him with the enterprise. I have found in favor of Mr. Tunnell insofar as Mr. Pepper is concerned. It is my recollection that while his name was mentioned they have not connected him into the enterprise and it is my duty to direct you to bring in a directed verdict of not guilty as to Mr. Pepper.

"We have got to decide this case on the facts presented before you.

"In this case the defendant maintains a place of business in Selbyville, Del., and the indictment charges that on February 23d. of this year the defendants, that is, the corporation and Sahn, being the only defendant left, introduced into interstate commerce at Selbyville, Del., and consigned to Loyal Blanchard in New York, two barrels containing dressed chickens. The Government claims these birds were, under the Federal law, adulterated.

"Let us look at the statute. I am only going to give you the portions of the statute which come within the channels of this indictment. This indictment does not charge that the goods were unfit for food, the words of the statute is that they were putrid, but the Government has restricted itself in its charge in the indictment and to its proof that the fowl was decomposed and diseased. Let us look at the statute. It provides: 'The following is prohibited, the introduction into interstate commerce of any food \* \* \* that is adulterated.' Now, we have to turn to another section of the law and find out what food is and I find Congress defining food under this act, and I quote 'The term food means articles used for food for man or other animals.' Now, we come to what is adulterated food, and I am quoting 'A food shall be deemed to be adulterated if it consists in whole or in part of any decomposed substance or if it is wholly or in part the product of a diseased animal.'

"The defendants before you have entered their pleas of not guilty, which means they deny every material allegation contained in the indictment. In this case, as in all other cases, the burden of proof is upon the Government to prove the defendants guilty beyond a reasonable doubt, as that term will be hereinafter defined for you by me. This burden of proof applies to every material issue in the case and it should be stated that the burden of proof is never upon a defendant to prove himself innocent. Every person charged with a criminal act is, by the law, presumed to be innocent of that charge and the defendant in this case is entitled to the presumption of innocence during your deliberation and until such time as the Government, by evidence, has convinced you beyond a reasonable doubt to the contrary.

"By that I mean that the presumption of innocence is with the defendant, not only when he pleaded not guilty and through this whole trial, but always until such time as the evidence establishes to your satisfaction, his guilt beyond a reasonable doubt. This presumption of innocence is not a mere idle, legal theory to be cast aside by the jury, but it is a substantial part of the law of the land and follows the defendant throughout the entire case and must not be lost sight of by the jury until it has been overcome by evidence establishing the defendant's guilt beyond all doubt.

"This rule, which clothes every person accused of crime with the presumption of innocence and imposes upon the Government the burden of establishing guilt beyond a reasonable doubt, is not intended to aid anyone who is in fact guilty of crime; it is not an aid to him to escape; but it is a humane provision of the law intended, so far as human agencies can, to guard against the danger of an innocent person being unjustly convicted.

"Whenever in this charge I have used the expression the Government must prove its case beyond a reasonable doubt, that is a doubt which is meant as the term itself implies—a doubt for which you can give a good reason and not a speculative or imaginary or conjectural doubt. It is a doubt which will cause a reasonable, prudent man to consider, hesitate or waive in the graver and more important concerns of life. It is not necessary for the Government to prove the defendant guilty beyond all possibility of doubt. Such is not the requirement of the law and if this would be so, in many cases, it would be impossible to prove

a person guilty. Reasonable doubt is such a doubt that a man of ordinary prudence and decision in determining the issues of life concerning his own affairs would make him pause or hesitate before arriving at his conclusion.

"It is the function of the court to instruct and charge you upon the law applicable to this case. It is the function of the jury, and the law makes you the sole and exclusive judges of the facts. You are not bound by any expression of opinion which I made through this trial. If at any place in this charge, the court has expressed or intimated or should express or attempt to intimate any opinion as to the facts, you are not bound upon any such expression and any expression of opinion which I may have heretofore made, you will understand, is made for the sole purpose of guiding and assisting you and I had no purpose in mind to bind you to adopt any such opinion I may have expressed, either direct or by intimation.

"I will charge as to the law: It is the law that whoever directly commits any act constituting an offense defined in any law of the United States, or who aids, abets or procures its commission, is a principal. I charge you as a matter of law that if an agent does an illegal act on behalf of his principal, such agent makes not only the principal liable for his act, but himself as well.

"This case, involving as it does, a charge of the commission by the defendants of a misdemeanor, is presented by what is called an indictment. I instruct you that this indictment is sufficient as a matter of law to justify this prosecution. Therefore, it is your sole duty to consider the evidence and to determine whether the indictment is supported by the evidence that has been offered by the Government. In that connection I will turn the indictment over to you and you will read the charges set forth therein and then see if the Government has produced evidence to sustain these particular charges.

"As I have heretofore instructed you, not only is one who directly commits an act constituting an offense defined in any law of the United States guilty of that offense, but one who aids or abets its commission is also liable as a principal. Therefore, if you should find that the defendants or any of them aided or abetted the corporation, H & H Poultry Company, Inc., in the commission of any of the offenses charged, such person would be as guilty as the corporation.

"Although the individual defendant is referred to in the indictment as an officer of the H & H Poultry Company, it is not essential to the Government's case that they be shown to be such officer in order to authorize the conviction of the remaining defendant. If you find the individual defendant remaining was not an officer, but you find he acted for the corporation in the acts complained of such defendant may be found guilty. Moreover, if you find in so acting for the corporation such defendant did so as its duly authorized representative, the corporation in turn is bound by the action he took on its behalf.

"I instruct you that it is unlawful to introduce or cause to be introduced into interstate commerce poultry that constitutes in whole or in part any decomposed substance, any poultry that is in whole or in part diseased, or the product of a diseased animal. Such poultry is adulterated under the Federal Food, Drug, and Cosmetic Act and its shipment from Delaware to another State, New York, is prohibited.

"You are further instructed, as a matter of law, that intention or knowledge of the defendants that the poultry was adulterated is not an element of the offense charged in this case. If you find that any one or more or all of the defendants introduced or caused to be introduced, or delivered for introduction or caused to be delivered for introduction into interstate commerce poultry that was decomposed or was the product of a diseased animal, then you should find for the Government.

"In discharging your duty as judges of the facts in this case, you may take into account the intelligence or lack of intelligence displayed by any witness, the opportunity or lack of opportunity on the part of any witness, to know or be informed about the matters upon which he testified. You may also take into account the interest any witness may have in the outcome of the case and weigh his testimony accordingly.

"I think in all we had 17 witnesses, 7 of which were expert. I shall now charge with respect to the law as to expert witnesses. Ordinarily, in the trial of cases witnesses are confined in their testimony to facts within their personal knowledge and they are not permitted to draw conclusions or express opinions. That is the general rule. But there is an exception to that rule where the points in issue arise out of a particular science or art concerning which there are trained minds who have special knowledge, learning or schooling in that particular field. Such persons are called experts and because of that special training

or learning they are entitled to express opinions concerning the matters at issue. You will, of course, weigh and evaluate the testimony of the expert witnesses in this case precisely as you weigh the testimony of any non-expert witnesses; that is to say, you will take into account the probability and reasonableness of the matters to which they have testified, the schooling of the person giving it, the learning that he has in his profession, or the want of it, and the breadth of his experience in the field which would enable him to arrive at a correct conclusion. In other words, his testimony should be given such weight as you believe it entitled to receive.

"As I said before, you are the sole judges of the facts in this case in determining the weight and credit you desire of the testimony of any witness you will take into consideration the tenor of the witnesses, the opportunity the witness has to know the things he is speaking about, his interest or lack of interest. In weighing the evidence of any witness, whether it is a witness for the Government or for the defendants, you will take into consideration the interest or lack of interest that witness may have had, bearing in mind, of course, that the defendant himself in this case is an interested witness—I am sorry, ignore that. I thought the defendant had taken the stand in his own behalf.

"You will determine where the truth lies and determine who told the truth and the extent and the weight to be given to the testimony. In other words, in determining the credibility of any witness you will, as reasonable men, apply the same test you would in determining the truthfulness of a person you might meet in the ordinary course of affairs in your own life.

"I leave the case to you, gentlemen, and ask the bailiff be sworn."

MR. TUNNELL: "May I ask that an exception be noted for the defendants?"

LEAHY, J.: "It is so noted."

The jury returned a verdict of guilty against the corporation and a verdict of not guilty with respect to Homer H. Pepper, as directed by the court. The jury reported that it was unable to reach a verdict with regard to Samuel H. Sahn and on November 23, 1943, a nolle prosequi was entered by the United States attorney.

**4223. Adulteration of poultry. U. S. v. Jacob Udell (Eagle Poultry Company). Pleas of guilty. Fine \$2,000, 6 months' jail sentence suspended and defendant placed on probation for 6 months. (F. D. C. No. 7714. Sample No. 69375-E.) U. S. v. Jacob Udell (Eagle Poultry Company). Plea of guilty. Fine of \$1,000. (F. D. C. No. 7714A. Sample No. 17622-F.)**

On October 20, 1942, the grand jurors of the United States in and for the District of Delaware presented two indictments against Jacob Udell, trading as Eagle Poultry Co. at Frankford, Del., alleging shipment on or about March 10 and August 8, 1942, from the State of Delaware into the States of New York and Maryland of quantities of poultry that was adulterated in that it consisted in whole or in part of the product of diseased animals.

On November 27, 1942, the defendant having entered pleas of guilty, the court imposed a fine of \$2,000 and a jail sentence for the shipment into the State of New York, which jail sentence was suspended and defendant was placed on probation for 6 months. The defendant was also fined \$1,000 for the shipment into the State of Maryland.

**4224. Adulteration of poultry. U. S. v. George Byron Parsons (Parsons Produce Co.) Plea of guilty. Fine \$25. (F. D. C. No. 7253. Sample No. 71581-E.)**

On June 17, 1942, the United States attorney for the District of South Dakota filed an information against George Byron Parsons, trading as Parsons Produce Co., Woonsocket, S. Dak.; alleging shipment within the period from on or about December 5 to on or about December 11, 1941, from the State of South Dakota into the State of Iowa of a quantity of poultry that was adulterated in that it was in whole or in part the product of diseased animals.

On October 19, 1942, the defendant entered a plea of guilty and the court imposed a fine of \$25.

**4225. Adulteration of poultry. U. S. v. Agar Poultry Farms Corporation. Plea of nolo contendere. Fine, \$500 and costs. (F. D. C. No. 7310. Sample No. 69344-E.)**

On June 29, 1942, the United States attorney for the District of Maryland filed an information against Agar Poultry Farms Corporation at Berlin, Md., alleging shipment on or about February 23, 1942, from the State of Maryland into the State of New York, of a quantity of poultry that was adulterated in that it was in whole or in part the product of diseased animals. The article was labeled in part: "Del-Mar-Va Farms Brand."