

**NATURE OF CHARGE:** Misbranding, Section 403 (g) (1), the product purported to be nonfat dry milk solids or defatted milk solids, a food for which a definition and standard of identity has been prescribed by the regulations, but it failed to conform to such definition and standard since it was not made from sweet milk of cows but was made from neutralized sour skim milk; and, Section 403 (g) (2), it further failed to conform to the definition and standard of identity since its label failed to bear the name of the food specified in the definition and standard, i. e., nonfat dry milk solids or defatted milk solids.

**DISPOSITION:** July 16, 1945. A plea of nolo contendere having been entered on behalf of the defendant, the court imposed a fine of \$300.

### FEEDS AND GRAINS

**8587. Action to enjoin and restrain the interstate shipment of alfalfa meal and alfalfa leaf meal. U. S. v. Saunders Mills, Inc., Clarence M. Saunders, and Evelyn M. Crow. Consent decree granting permanent injunction against Saunders Mills, Inc. Action dismissed with respect to individual defendants. (Inj. No. 66.)**

**COMPLAINT FILED:** June 9, 1944, Southern District of Ohio, against the Saunders Mills, Inc., Toledo, Ohio, and Clarence M. Saunders, president, and Evelyn M. Crow, treasurer, of the corporation; amended December 30, 1944.

**NATURE OF CHARGE:** That since on or about August 4, 1941, the defendants had been manufacturing, preparing, distributing, and delivering, and causing to be manufactured, prepared, distributed, and delivered for shipment in interstate commerce quantities of alfalfa meal and alfalfa leaf meal which contained a smaller amount of protein and a larger amount of crude fiber than was declared on the labels;

That the defendant corporation had been subjected to criminal prosecution for violation of the Federal Food, Drug, and Cosmetic Act, and on October 12, 1942, had entered a plea of guilty to an information charging such violation; and that on April 30, 1943, the defendant entered a plea of nolo contendere to an information containing similar charges;

That on September 11, 1941, a libel was filed against a quantity of alfalfa leaf meal and alfalfa meal shipped by the defendant corporation; and that on October 30, 1941, a decree was entered based upon an admission of the allegations of the libel on behalf of the corporation;

That prior to the enactment of the Federal Food, Drug, and Cosmetic Act, four criminal prosecutions were brought against this firm under the Federal Food and Drugs Act of 1906; and that in three instances the defendant entered a plea of nolo contendere and in one instance a plea of guilty.

**PRAYER OF COMPLAINT:** That a temporary restraining order issue; that after due proceedings a preliminary injunction be granted; and that after further appropriate proceedings a permanent injunction issue restraining the defendants from introducing and causing the introduction into interstate commerce of alfalfa products which were misbranded.

**DISPOSITION:** November 30, 1944. A motion was filed on behalf of the corporation to strike various allegations from the complaint. On December 7, 1944, the court handed down the following memorandum opinion sustaining the defendant's motion in part and overruling it in part:

**FRANK L. KLOEB, District Judge:** "This is an action brought by the plaintiff for the purpose of obtaining an injunction restraining the defendants from violating the provisions of the Federal Food, Drug, and Cosmetic Act by placing in interstate commerce alfalfa meal products which are alleged to be misbranded. The defendant corporation has filed a motion to strike certain allegations of the complaint on the ground that the same are 'redundant, immaterial and impertinent to the cause of action,' and the individual defendants have filed a similar motion to strike the same allegations on the ground that they are 'redundant, immaterial and impertinent as to each of said defendants.'

"The matters sought to be stricken are recitals of criminal proceedings, condemnation proceedings and the results thereof, brought against the defendant corporation. The complaint alleges that, as to the criminal proceedings, pleas of guilty were entered at various times, and in one instance a plea of nolo contendere. It is alleged that, in one condemnation proceeding, the defendant admitted the allegations of the libel. The defendants contend that 'an adjudication in a criminal case is not an adjudication in a civil action concerning the same transaction,' and that a plea of nolo contendere is limited to the case in which it is made, is not an admission for any other purpose, and

a judgment rendered thereon is not an adjudication for any other purpose. The plaintiff admits that this latter contention of the defendants is probably well taken.

"As to the various pleas of guilty, and the admission of the allegations of the libel in the condemnation suit, it is to be noted that such allegations are certainly relevant and material. The real objection to them is that they constitute a pleading of evidentiary facts rather than ultimate facts. While it is true that a judgment in a criminal prosecution cannot be received in evidence in a civil action to establish the truth of the facts on which it was rendered, there is a well recognized exception that a plea of guilty may be received in evidence as a deliberate declaration or admission against interest. In 23 Ohio Jurisprudence, page 995, quoted by the defendant, it is stated '\* \* \* a plea of guilty to a criminal charge may be received in a civil action as an admission against interest \* \* \*.'

"It is a general rule, also, that admissions by a defendant in an answer in a civil proceeding are admissible, if relevant, in subsequent proceedings between the same parties. 20 American Jurisprudence, Section 644, page 543, 90 ALR, page 1597. The allegations objected to are, therefore, clearly relevant and material, but do constitute the pleading of evidentiary facts.

"Under the Federal Rules of Civil Procedure, a pleading should be construed in the light of Rule 1 'to secure a just, speedy, and inexpensive determination of every action \* \* \*'. The provisions of Rule 12 (f) do not require the Court to strike allegations of evidentiary facts, and while it may be contended that allegations of evidentiary matter do not constitute 'a short and plain statement of the claim' and do not make the pleading 'simple, concise, and direct \* \* \*', as required by Rule 8 (a) (c-1), the Court feels that a motion to strike should be granted only when the allegations have no relation to the controversy, and when a failure to strike will prejudice the adverse party. *Groves v. Paden City Glass Mfg. Co.*, 2 FRD 300; *Sinaiko Bros. Coal & Oil Co., et al. v. Ethyl Gasoline Corp., et al.*, 2 FRD 305. It is particularly true, also, that the inclusion of evidentiary matter which tends to give a fuller understanding of the complaint is not objectionable. *Groves v. Paden City Glass Mfg. Co., supra*; *Sinaiko Bros. Coal & Oil Co., et al. v. Ethyl Gasoline Corp., et al., supra*.

"For the reasons stated above, specification 1 of the defendant corporation's motion is overruled, except that there is ordered stricken from Article VII the last clause thereof beginning 'and the defendant corporation was fined,' etc. What disposition was made of the matter after a plea of guilty is immaterial in this case.

"Specification 2 of the defendant corporation's motion is sustained.

"Specification 3 of the defendant corporation's motion is overruled.

"Specification 4 of the defendant corporation's motion is overruled, except that there is ordered stricken the last clause of Article IX beginning 'and thereafter and on October 13, 1941, a judgment of condemnation was entered' etc.

"Specifications 5, 6, 7 and 8 of the defendant corporation's motion are sustained, except that the plaintiff may allege the one instance in which a plea of guilty was entered.

"The motion of the individual defendants is overruled in toto. It is permissible to join the corporation and its officers in an action for injunction, and no objection has been made to such joinder. The allegations complained of pertain to the defendant corporation and will be so limited at the trial.

"The complaint may be amended by interlineation, if desired. The defendants shall file their answer within fifteen (15) days after the complaint is amended."

The complaint was accordingly amended on February 24, 1945; and the defendant, Saunders Mills, Inc., having consented to the entry of a decree, judgment was entered dismissing the complaint against Clarence M. Saunders and Evelyn M. Crow, and permanently restraining Saunders Mills, Inc., and its officers and employees from shipping in interstate commerce any misbranded alfalfa animal feed.

**8588. Misbranding of alfalfa meal and alfalfa leaf meal. U. S. v. The Denver Alfalfa Milling and Products Co. Plea of guilty. Fine, \$600. (F. D. C. No. 15585. Sample Nos. 34421-F, 34801-F.)**

INFORMATION FILED: July 26, 1945, Eastern District of Missouri, against the Denver Alfalfa Milling and Products Co., a corporation, Steele, Mo.