

On November 28, 1913, the defendant company entered a plea of *nolo contendere* to the information and the court imposed a fine of \$25 and costs.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1914.*

2958. Misbranding of rice. U. S. v. McFadden, Wiess-Kyle Rice Milling Co. Tried to a jury; verdict of guilty by direction of court. Fine, \$100 and costs. (F. & D. Nos. 4735, 4749. I. S. Nos. 18168-d, 12406-d.)

On February 12, 1913, the United States attorney for the eastern district of Texas, 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 McFaddin, Wiess-Kyle Rice Milling Co., a corporation, Beaumont, Tex., alleging shipment by said defendant, in violation of the Food and Drugs Act, on October 18, 1911, and March 21, 1912, from the State of Texas into the State of Arizona, of quantities of rice which was misbranded. The shipment of October 18, 1911, was labeled (on sacks), "Two Pounds McFaddin's Brand Honduras Fancy Head Rice Packed by McFaddin-Wiess-Kyle Rice Milling Co., Beaumont, Texas." (On back of sacks, in small type) "* * * This rice is finished by a coating of glucose and talc, which is easily removed by washing * * *."

Analysis of a sample of this product by the Bureau of Chemistry of this department showed the following results: Glucose, present (erythrodextrin and reducing sugar test, both positive); talc, present (magnesium, present; silica, present); average net weight, 3 bags, 1.95 pounds; average net weight was found by weighing each of the three bags and subtracting from each weight the tare of one bag.

The shipment of March 21, 1912, was labeled, "Two Pounds McFaddin's Rice Texas Greatest Mill Daily Capacity 2500 Barrels Packed by McFaddin-Wiess-Kyle Rice Milling Co., Incorporated, Beaumont, Texas." (In small type on back of bag) "* * * This rice is finished by a coating of glucose and talc, which is easily removed by washing * * *."

Analysis of a sample of this product by said Bureau of Chemistry showed the following results: Average net weight of 8 bags, 1.930 pounds; glucose, present; talc, present; superficial moisture, 9.24 per cent; superficial moisture determined by heating whole grains at 100° C. for three hours.

Misbranding of each product was alleged in the information for the reason that each was labeled as set forth above, and the word "rice" so printed in the label was false and misleading because it created the impression that the product was pure rice, when, as a matter of fact, it was not such, but was rice coated with glucose and talc, the statement, "This rice is finished by a coating of glucose and talc," which appeared inconspicuously in small type on the back of the bag, not being sufficient to correct the false impression created by the statement "rice" so printed in large letters on the front of the bag, and each product was found misbranded in that it was labeled and branded so as to deceive and mislead the purchaser, being labeled "rice," when, as a matter of fact, it was not pure rice, but was rice coated with glucose and talc, the statement, "This rice is finished by a coating of glucose and talc," which appeared inconspicuously in small type on the back of the bag, not being sufficient to correct the false impression created by the word "rice" so printed in large letters upon the front of the bag. Misbranding of each product was alleged for the further reason that the statement "Two Pounds" borne on the label was false and misleading, because it created the impression that the sacks contained two pounds of rice, when, in as a matter of fact, they did not contain two pounds, and were short in weight. Misbranding was alleged for the further reason that the product was labeled and branded so as to mislead the purchaser, being labeled "Two Pounds," when, as a matter of fact, the product did not contain two pounds, but was short in weight and was further misbranded in that it was in package form and the contents were stated in terms of weight, but were not plainly and correctly stated on the outside of the packages.

On April 8, 1913, the case having come on for trial before the court and a jury, a verdict of guilty was returned by the jury, and the court imposed a fine of \$100 and costs.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1914.*

2959. Alleged misbranding of macaroni. U. S. v. 175 Boxes of Macaroni. Tried to the court and a jury. Verdict for the claimant. Libel dismissed. (F. & D. No. 4736. S. No. 1557.)

On November 1, 1912, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 175 boxes of macaroni remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped by the Atlantic Macaroni Co., Long Island City, N. Y., and transported from the State of New York into the State of Massachusetts, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "Macaroni Mosca Brand Artificially colored Guaranteed by manufacturer serial number thirty eight hundred and eighty." The label also bore a bay scene with macaroni stand characteristic of Italian sections. The entire scenic design was suggestive of foreign origin. The first three words of the label were in large type, while the words "artificially colored" were in small type and arranged in an inconspicuous manner on the lower portion of the label.

Misbranding of the product was alleged in the libel for the reason that said food, upon the packages and labels thereof, bore a certain statement, design, and device regarding the ingredients and substances contained in said food, that is to say, the words "artificially colored" printed thereon in an inconspicuous manner, which said statement, design, and device was false and misleading in that by reason of said inconspicuous appearance of said words a purchaser would thereby be led to believe that said food did not contain artificial coloring matter, whereas it did, and further, in that said food upon said packages and labels thereof bore a certain statement, design, and device regarding the ingredients and substances contained in said food, that is to say, pictures and scenes portrayed upon each of said packages in similitude and likeness to pictures and scenery of a certain foreign country, to wit, Italy, which said statement, design, and device was false and misleading in that it would lead a purchaser to believe that said food was of foreign origin, whereas in truth and in fact it was not of foreign origin.

On December 11, 1912, the Atlantic Macaroni Co., claimant, filed its answer, denying the allegation of misbranding in the libel. On January 9, 1913, the case having come on for hearing, before the court and a jury, after the submission of evidence and argument by counsel, the following charge to the jury was delivered, with interrogatories, by the Court (Hale, J.):

Mr. Foreman and Gentlemen of the Jury: A statute of the United States, called the pure food law, provides "that it shall be unlawful for any person to manufacture within any Territory" of the United States "any article of food or drug which is adulterated or misbranded, within the meaning of" the act. It further provides "that the term 'misbranded,' as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading." And it further provides that, if the article "be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so," it shall be deemed to be misbranded.

The Government in this case seeks to condemn 175 boxes of macaroni, which they say "have been transported from Long Island City in the State of New York, that is to say, from the Atlantic Macaroni Co. at Long Island City, into the Commonwealth of Massachusetts, to wit, at Boston in said District of Massachusetts, and remain in original packages at said Boston in the possession of parties to your informant unknown; that the food contained in said boxes is misbranded within the meaning of" this act