

13089. Adulteration and misbranding of wheat grey shorts. U. S. v. 500 Sacks of Grey Shorts. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 19392. I. S. No. 18766-v. S. No. C-4570.)

On December 17, 1924, the United States attorney for the Eastern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 500 sacks of grey shorts, remaining in the original unbroken packages at East St. Louis, Ill., consigned by the Domestic Milling Co., Kansas City, Mo., alleging that the article had been shipped from Kansas City, Mo., on or about November 29, 1924, and transported from the State of Missouri into the State of Illinois, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: (Tag) "Wheat Grey Shorts & Screenings Not Exceeding 8% Screenings * * * Licensed and registered by The Kansas Flour Mills Company Kansas City, U. S. A."

It was alleged in the libel that the article was adulterated in violation of section 7 of said act, paragraph second under food, in that it consisted wholly or in part of reground bran, contained excess fiber, and was not grey shorts.

Misbranding was alleged for the reason that the designation "Wheat Grey Shorts" was false and misleading and deceived and misled the purchaser, and for the further reason that it was sold under the distinctive name of another article.

On January 21, 1925, the Dixie Mills Co., East St. Louis, Ill., having appeared as claimant for the property, a decree was entered, finding the product liable to condemnation and forfeiture, and it was ordered by the court that the said product be released to the claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,600, in conformity with section 10 of the act.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13090. Adulteration and misbranding of wheat grey shorts. U. S. v. 500 Sacks of Grey Shorts. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 19391. I. S. No. 22797-v. S. No. C-4571.)

On December 17, 1924, the United States attorney for the Eastern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 500 sacks of grey shorts, remaining in the original unbroken packages at East St. Louis, Ill., consigned by the Hoyland Flour Mills, from Kansas City, Mo., alleging that the article had been shipped on or about November 22, 1924, and transported from the State of Missouri into the State of Illinois, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: (Tag) "Wheat Grey Shorts & Screenings Not Exceeding 8% Screenings * * * Licensed and registered by The Kansas Flour Mills Company Kansas City, U. S. A."

It was alleged in the libel that the article was adulterated in violation of section 7 of said act, paragraph second under food, in that it consisted wholly or in part of reground bran, contained excess fiber, and was not grey shorts.

Misbranding was alleged for the reason that the designation "Wheat Grey Shorts" was false and misleading and deceived and misled the purchaser, and for the further reason that it was sold under the distinctive name of another article.

On January 21, 1925, the Dixie Mills Co., East St. Louis, Ill., having appeared as claimant for the property, a decree was entered, finding the product liable to condemnation and forfeiture, and it was ordered by the court that the said product be released to the claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,600, in conformity with section 10 of the act.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13091. Misbranding of mixed feed. U. S. v. Roy M. Houston and Paul F. Eve (Nashville Grain & Feed Co.). Plea of guilty. Fine, \$100. (F. & D. No. 13888. I. S. No. 277-r.)

On December 23, 1920, the United States attorney for the Middle District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Roy M. Houston and Paul F. Eve, copartners, trading as the Nashville Grain

& Feed Co., Nashville, Tenn., alleging shipment by said defendants, in violation of the food and drugs act, on or about November 21, 1919, from the State of Tennessee into the State of North Carolina, of a quantity of mixed feed which was misbranded. The article was labeled in part: "100 Lbs. No. 1 Mixed Feed Manufactured by Nashville Grain And Feed Co., Nashville, Tenn. Protein 18.00 Fat 4.00."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained 15.9 per cent of protein and 3.4 per cent of fat.

Misbranding of the article was alleged in the information for the reason that the statements, to wit, "Protein 18.00, Fat 4.00," borne on the tags attached to the sacks containing the article, were false and misleading, in that the said statements represented that the article contained not less than 18 per cent of protein and not less than 4 per cent of fat, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 18 per cent of protein and not less than 4 per cent of fat, whereas, in truth and in fact, it did contain less than 18 per cent of protein and less than 4 per cent of fat.

On April 17, 1924, the defendants entered pleas of guilty to the information, and the court imposed a fine of \$100.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13092. Alleged adulteration and misbranding of olive oil. U. S. v. Demetrius Marmarelli, Nicholas Katramados, and Peter Marmarelli (Marmarelli Bros. & Katramados). Information abated by death as to Peter Marmarelli. Tried to the court and a jury. Misbranding charge dismissed by court. Verdict of not guilty on adulteration charge. (F. & D. No. 18469. I. S. No. 10601-v.)

On May 5, 1924, 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 Demetrius Marmarelli, Nicholas Katramados, and Peter Marmarelli, copartners, trading as Marmarelli Bros. & Katramados, New York, N. Y., alleging shipment by said defendants, in violation of the food and drugs act, on or about September 12, 1922, from the State of New York into the State of Massachusetts, of a quantity of olive oil which was alleged to be adulterated and misbranded. The article was labeled in part: (Tag) "Marmarelli Bros. & Katramados" (design showing two barrels with statement "M B & K Pure Olive Oil" on heads) "New York."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was olive oil mixed with approximately 40 per cent of cottonseed oil.

It was alleged in the information that the article was adulterated, in that a substance, cottonseed oil, had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and strength and had been substituted for olive oil, which the article purported to be.

It was further alleged that the article was misbranded, in that the statement, to wit, "Pure Olive Oil," borne on the tag attached to the barrel containing the article, was false and misleading, in that the said statement represented that the article consisted wholly of pure 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 it consisted wholly of pure olive oil, whereas it did not so consist but did consist in part of cottonseed oil. Misbranding was alleged for the further reason that the article was an imitation of and offered for sale under the distinctive name of another article.

On June 13, 1924, the information having been abated by death as to Peter Marmarelli, the case against the remaining defendants came on for trial before the court and a jury. On motion of counsel for the defense, the second count of the information, involving the alleged misbranding of the product, was ordered dismissed by the court. After the submission of evidence and arguments by counsel, the court delivered the following charge to the jury (Clayton, D. J.):

"Gentlemen of the Jury: I call your attention to elementary and familiar rules, which will govern you in your consideration of this case.

"Every man is presumed when charged with a crime to be innocent, and that presumption of innocence goes with him and protects him until, or unless, it is overcome by evidence which convinces the jury beyond a reasonable doubt—