

district court an information against the Sea Pride Packing Corporation, Ltd., a corporation, Terminal Island, Calif., alleging that on or about October 3, 1934, the defendant had shipped from the State of California into the State of Florida a number of cases of mackerel, and that the article was adulterated in violation of the Food and Drugs Act. The article was labeled in part: "Sea Pride Brand [design of a mackerel] Mackerel * * *. Extra Quality from California Packed by Sea Pride Packing Corp., Ltd., San Francisco—Monterey Wilmington Terminal Island, California, U. S. A."

The article was alleged to be adulterated in that it consisted in part of a decomposed animal substance.

On June 15, 1936, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of \$200 against the corporation.

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

25876. Adulteration of fava beans. U. S. v. Adolf Ingoglia and Anthony Bonfiglio (Sunny Italy Produce Co.). Pleas of guilty. Fine, \$10 each. (F. & D. no. 35937. Sample no. 17534-B.)

This case involved an interstate shipment of fava beans that consisted in part of an excessive quantity of wormy beans.

On September 4, 1935, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Adolf Ingoglia and Anthony Bonfiglio, trading as the Sunny Italy Produce Co. at San Francisco, Calif., alleging that on or about July 19, 1934, the defendants shipped from the State of California into the State of New York a quantity of fava beans, and that the article was adulterated in violation of the Food and Drugs Act. The article was labeled in part: "California Fava (Horse Beans) Sunny Italy Brand Grown & Packed by Sunny Italy Produce Company, San Francisco, California."

The article was alleged to be adulterated in that it consisted in part of a filthy vegetable substance.

On October 25, 1935, pleas of guilty were entered on behalf of the defendants and the court imposed a fine of \$10 against each defendant.

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

25877. Adulteration and misbranding of alleged honey, and honey and malt. U. S. v. Silver Label Products Co., a corporation, and Philip Tuber, Albert Tuber, Leonard L. Tuber, and Jacob Tuber. Pleas of guilty. Fines, \$14 against the company, \$590 against each individual defendant, total \$2,374. (F. & D. no. 36005. Sample nos. 24200-B, 42775-B to 42780-B, incl., 42787-B to 42792-B, incl.)

This case involved shipments of alleged honey which was found to consist in part of commercial invert sugar, a part of which was short in weight, and a product that consisted of a mixture of sugar, water, and cocoa slightly flavored with honey and malt, which was represented to be a chocolate-flavored mixture of honey and malt and that was short in weight.

On March 31, 1936, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Silver Label Products Co., a corporation, and Philip Tuber, Albert Tuber, Leonard L. Tuber, and Jacob Tuber, officers of said corporation, Brooklyn, N. Y., alleging that between the dates of March 25 and September 14, 1935, the defendants made various shipments from Brooklyn, N. Y., into the States of New Jersey and Pennsylvania of a number of jars of alleged honey and honey malt chocolate flavor, and that the articles were adulterated and misbranded in violation of the Food and Drugs Act. The honey was variously labeled in part: "Quality Pack Relco Brand Pure Honey Net Weight 8 ozs. Packed Exclusively for Reliable Grocery Co., Inc., Philadelphia, Pa."; "The Better Grade Uco Pure Honey Contents 32 Oz. [or "16 ozs.", "14 ozs.", "8 ozs.", or "5 ozs.]" Distributed by Uco Food Corp., Newark, N. J.; [design of honey bee] Pure Honey Silver Label Prod. Co. Bklyn, N. Y. Net Wt., 1 Lb."; "[design of honey bee] Honey Malt Chocolate Flavor * * * Silver Label Prod. Co. Bklyn, N. Y. Net Wt. 1 Lb."

The "pure honey" was alleged to be adulterated in that a substance, commercial invert sugar, had been substituted in part for pure honey, which said article purported to be.

The "pure honey" was alleged to be misbranded in that the statement "Pure Honey * * * Quality Pack", with respect to a portion of the article, and the statements, "Pure Honey", "Net Wt. 1 lb", "Contents 8 Ozs", "Contents 14 Ozs.", "Contents 16 Ozs.", and "Contents 32 Ozs.", with respect to the remainder

thereof, were false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since it did not consist of pure honey, but was a product consisting in part of commercial invert sugar, and in certain shipments of the article, the jars contained less than the amount declared thereon. Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article, namely, pure honey.

The honey malt chocolate flavor was alleged to be adulterated in that a mixture of sugar, water, and cocoa slightly flavored with honey and malt, had been substituted for a chocolate-flavored mixture of honey and malt, which the article purported to be.

The honey malt chocolate flavor was alleged to be misbranded in that the statements, "Honey Malt Chocolate Flavor" and "Net Wt. 1 Lb.", were false and misleading since said statements represented, respectively, that said article was honey malt chocolate flavor and that the quantity of contents was 1 pound net; whereas it was not but was, in fact, another product, a mixture of sugar, water, and cocoa slightly flavored with honey and malt and the quantity of the contents was less than 1 pound net; in that said statements were borne on the jars so as to deceive and mislead the purchaser into the belief that said article was honey malt chocolate flavor; and in that said article was offered for sale under the distinctive name of another article, namely, honey malt chocolate flavor, which it purported to be.

On April 15, 1936, pleas of guilty were entered on behalf of the defendants and the court imposed a fine of \$14 against the company and a fine of \$590 against each defendant or a total fine against the defendants of \$2,374.

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

25878. Misbranding of cottonseed pebble-sized cake and cottonseed meal. U. S. v. Feeders Supply & Manufacturing Co., a corporation. Tried to a jury. Verdict of guilty. Fine, \$100 and costs. (F. & D. no. 36016. Sample nos. 33016-B, 33017-B.)

This case involved a shipment of cottonseed pebble-sized cake and cottonseed meal that contained a smaller amount of protein than declared on the label.

On October 21, 1935, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Feeders Supply & Manufacturing Co., a corporation, Kansas City, Mo., alleging that on or about June 8, 1935, the defendant company shipped from Kansas City, Mo., into the State of Kansas a quantity of cottonseed pebble-sized cake and cottonseed meal, and that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Equity Brand Cottonseed Cake and Meal 100 Pounds Net Guaranteed Analysis Protein not less than 43% * * * Manufactured For Feeders Supply and Mfg. Co. * * * Kansas City, Mo."

Misbranding was alleged for the reason that the statement "Protein Not Less than 43%", labeled on the sack tags, was false and misleading and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the article did not contain 43 percent of protein, but in fact contained less than 43 percent of protein.

On April 7, 1936, the case came on for trial before a jury when a verdict of guilty was returned. The court imposed a fine of \$400 and costs. On May 9, 1936, the court overruled the defendant's motion for a new trial with the following opinion:

OTIS, *Judge:* The motion for a new trial in this case was taken under advisement only that consideration might be given to one of the several grounds stated in the motion—alleged error in a part of the court's charge to the jury in a connection presently to be stated.

The information was in two counts but it is necessary to refer only to one. Count I of the information charged the defendant with transporting in interstate commerce sacks of animal food (cottonseed pebble-size cake) each branded as follows: "100 pounds net—guaranteed analysis—protein not less than 43%, etc." It was further charged that the articles of food thus branded were misbranded in that their protein content was not more than 38.56 percent.

The evidence supported the charge. Possibly there was some evidence which would have supported a finding of fact that the protein content of the food articles referred to was as much as 42 percent (without a transcript of the testimony I cannot be definite as to that.)

In the charge to the jury, after setting out the several elements of the charge, it was said: "This offense is committed if all of the other elements as