

PRODUCT: Chow chow. 184 cases at Atlanta, 15 cases at Griffin, and 26 cases at Brunswick, Ga. Each case contained 4 1-gallon jars. The 4 shipments of this product contained about 0.08, 0.11, 0.1, and 0.08 percent, respectively, of saccharin. These quantities of saccharin are the equivalent of 25 to 30 percent of sugar.

LABEL, IN PART: "Smoky Mountain Sweet Chow Chow."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), a product containing saccharin, which has no food value, had been substituted in whole or in part for sweet chow chow.

Misbranding, Section 403 (a), the label designation "Sweet Chow Chow" was false and misleading. Sweet chow chow should contain, according to trade and consumer understanding, approximately 25 percent of sugar as its sweetening ingredient. The product, however, contained saccharin as its added sweetening ingredient, which has no food value and which is not a normal or expected ingredient of sweet chow chow.

DISPOSITION: November 9, 1945, and February 18 and June 27, 1946. No claimant having appeared, judgments of condemnation were entered. The Brunswick lot was ordered delivered to a charitable institution, and the 3 remaining lots were ordered destroyed.

10340. Adulteration and misbranding of pure vanilla extract. U. S. v. 720 Bottles of Pure Vanilla Extract (and 8 other seizure actions against vanilla extract). Tried to the court. Verdict for the Government. Decree of condemnation. Product ordered delivered to public institutions. (F. D. C. Nos. 3945, 4256, 4302, 4353, 4476, 4477, 4736, 4777, 4787. Sample Nos. 21711-E, 21837-E, 31698-E to 31700-E, incl., 32978-E, 56876-E, 57336-E, 57337-E, 62303-E.)

LIBELS FILED: Between March 8 and May 22, 1941, Northern and Southern Districts of California, Eastern District of New York, Eastern District of Arkansas, and Northern District of Illinois.

ALLEGED SHIPMENT: Between the approximate dates of December 18, 1940, and April 17, 1941, by the Plantation Extract Corp., from New York, N. Y. One of the shipments was delivered to Brooklyn, N. Y., under a bill of lading marked "For Export Marked For: QMSO Puerto Rican Genl. Depot Fort Buchanan, San Juan, P. R. P. O. # 10689."

PRODUCT: 213 cartons and 502½ dozen bottles of pure vanilla extract at San Francisco and Los Angeles, Calif., Little Rock, Ark., Brooklyn, N. Y., and Chicago, Ill. The bottles were in ¾-ounce, 2-ounce, 8-ounce, and 1-gallon sizes. The cartons each contained 24 bottles.

LABEL, IN PART: "Pure Extract Vanilla," "Plantation Pure Vanilla Extract for Flavoring," or "Banner's Super-fine Pure Vanilla Extract."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), an imitation vanilla extract containing resinous substances not found in genuine vanilla extract had been substituted in whole or in part for pure vanilla extract; Section 402 (b) (3), inferiority had been concealed through the addition of foreign resins; and, Section 402 (b) (4), foreign resins had been added or mixed or packed with the article so as to make it appear better or of greater value than it was.

Misbranding, Section 403 (a), the label statements, "Pure Vanilla Extract," "Pure Extract Vanilla," and "Guaranteed to comply with all Pure Food Laws in every respect," were false and misleading; Section 403 (b), the article was offered for sale under the name of another food; Section 403 (c), it was an imitation of another food, and its label did not bear in type of uniform size and prominence the word "imitation" and, immediately thereafter, the name of the food imitated; and, Section 403 (d), the containers of a portion of the Chicago lot were so made, formed, or filled as to be misleading.

DISPOSITION: The Plantation Extract Corporation, claimant, having filed a motion for the consolidation of the cases, and the Government having consented, an order was entered on October 25, 1941, ordering that the California, Arkansas, and Illinois cases be removed to, and consolidated for trial with the case in, the Eastern District of New York. On May 13, 1944, the court handed down the following opinion:

BYERS, *District Judge*: "Motion by the United States of America, as libellant, to vacate a notice of the taking of the oral deposition of employees of the Federal Security Agency, Food and Drug Administration, and for the production of books and records by them.

"This is a proceeding under the Federal Food, Drug and Cosmetic Act of June 25, 1938, 21 U. S. C. A. Sec. 301 et seq., seizure having been made under Section 334 because the subject-matter, namely, vanilla extract, is alleged to have been adulterated and misbranded.

"The motion is made upon the theory that the proceeding, being deemed to be in Admiralty, is not governed by the Federal Rules and Civil Procedure, pursuant to which the notice of the taking of the depositions was given.

"The statute says (Section 334 (b)) in part: 'The article shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury.'

"Since the discovery sought by the claimant is a matter of procedure, it becomes apparent that the first and most important question is whether the Federal Rules of Civil Procedure govern a proceeding under this statute. Rule 81 applies, and paragraph (2) makes it clear that the Federal Rules govern appeals only, 'except to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in actions at law or suits in equity: * * * forfeiture of property for violation of a statute of the United States.'

"The note appended by the Committee touching this subdivision is as follows: 'For examples of statutes which are preserved by paragraph (2) see: * * * Title 21, Sec. 14 (Pure Food and Drug Act—Condemnation of Adulterated or Misbranded Food; Procedure).'

"The foregoing is understood to mean that, in the opinion of the Committee, the Federal Rules of Civil Procedure were not thought to apply to proceedings under the Pure Food and Drug Act; while that opinion is not to be extended beyond its proper scope, it constitutes a comment on the part of the best informed body, on the subject of the scope of the Federal Rules—namely, the Committee which formulated them—and, as such, cannot be treated otherwise than with great respect.

"There is no present difficulty in disposing of this motion on the theory that discovery as sanctioned by the Federal Rules of Civil Procedure would not be appropriate to this case, because that which is sought to be elicited from the government witnesses doubtless consists of expert testimony on the part of chemists who have made analyses of samples of the commodity which has been seized, and it does not seem that such analyses and the conclusions based thereon constitute the kind of evidence that one party should be required to disclose to his adversary in ordinary litigation.

"It is quite true that in most civil causes the Federal Rules intend one litigant shall be able to secure the help of his adversary in developing his own side of the case, but that customarily has to do with the facts as observed by witnesses to a given occurrence or transaction; it does not apply to matters of expert testimony such as scientific data prepared by engineers. See *Lewis v. U. S. Airlines, etc.*, 32 Fed. Supp. 21.

"It is true that the latter case dealt with relief which was sought under Rule 30 (b), while the pending motion is upon the theory that no discovery whatever under the Federal Rules is proper in this proceeding.

"The decision of the motion is that, since the framers of the Rules were of the opinion that they did not apply to such proceedings, this Court should adopt that view, in the absence of compelling reason to the contrary.

"One reason for believing that there is none such, is that, even if the foregoing view is mistaken, the government would still be in a position to urge that the expert testimony of its chemists should not be available to the claimant, under the guise of discovery.

"*443 Cans, etc.*, v. U. S., 226 U. S. 172, is not thought to point to a contrary result.

"Motion granted. Settle order."

On December 11, 1944, the matter came on for trial before a jury, and on December 14, 1944, the jury returned a verdict in favor of the Government. On February 19, 1945, judgment of condemnation was entered, and on May 8, 1946, the product was ordered delivered to public institutions.

MISCELLANEOUS FOODS

10341. Adulteration and misbranding of food colors. U. S. v. Alpha Aromatic Laboratories, a partnership, and Milton Ainbinder and Joseph Sirowitz. Pleas of guilty. Partnership fined \$170; individual defendants each fined \$850. (F. D. C. No. 17784. Sample Nos. 78372-F, 83152-F to 83154-F, incl., 88701-F, 93903-F.)

INFORMATION FILED: February 27, 1946, Eastern District of New York, against the Alpha Aromatic Laboratories, a partnership, Brooklyn, N. Y., and Milton Ainbinder and Joseph Sirowitz, partners.

ALLEGED VIOLATIONS: The defendants falsely represented and without proper authority used on the labels of products designated as "Bright Yellow Shade," "Raspberry Red Shade," "Brilliant Green Shade," "Yolk Yellow Shade," and "Brilliant Rose Shade," respectively, marks and identification devices authorized and required by the regulations. The said colors bore the marks and identification devices, "Lot A6567," "Lot B1624," "Lot B1764," and "Lot A8428," which had been assigned to persons other than the defendants for use on certain batches of certified coal-tar colors. The colors so labeled by the defendants were not from batches to which the identification devices had been assigned, but were uncertified coal-tar colors of different compositions. The colors so marked and a lot of "Royal Blue Shade" were shipped by the defendants between the approximate dates of March 3, 1944, and October 26, 1944, from the State of New York into the States of New Jersey, Pennsylvania, Massachusetts, and Connecticut.

NATURE OF CHARGE: Adulteration, Section 402 (c), the products, with the exception of the royal blue shade, contained coal-tar colors which were others than ones from batches that had been certified in accordance with the regulations; and, Section 402 (b) (4), (royal blue only) water had been added to the product so as to reduce its quality.

Misbranding, Section 403 (a), the statements, (bright yellow) "Contains 51% Color * * * Lot A6567," (raspberry red) "Contains 4.3% Color Lot B1624," (brilliant green) "Contains 3.5% Color Lot B1764," (yolk yellow) "Contains 51% Color Lot A6567," (brilliant rose) "Contains 4.2% Color Lot A8428," and (royal blue) "Contains 6.6% Color," borne on the respective labels, were false and misleading since the articles contained less than the labeled percentage of color; and those colors identified by the various lot numbers did not consist of coal-tar colors from batches than had been certified pursuant to the regulations and that had been assigned the various lot numbers as implied in the statements.

Further misbranding, Section 403 (i) (2), (all colors) they were fabricated from 2 or more ingredients, and their labels failed to bear the common or usual name of each ingredient; and, Section 403 (k), (raspberry red, brilliant green, brilliant rose, and royal blue shades) the products contained a chemical preservative, salts of benzoic acid, and failed to bear labeling stating that fact.

DISPOSITION: March 26, 1946. Pleas of guilty having been entered, the partnership was fined \$170, and each of the individual partners was fined \$850.

10342. Adulteration and misbranding of food colors. U. S. v. Fred C. Mattia (Premier Color Works). Plea of guilty. Fine, \$400. Defendant placed on 2 years' probation. (F. D. C. No. 16540. Sample Nos. 75951-F, 79100-F, 82764-F, 88279-F.)

INFORMATION FILED: March 8, 1946, Southern District of New York, against Fred C. Mattia, trading as the Premier Color Works, New York, N. Y.

ALLEGED SHIPMENT: Between the approximate dates of June 1 and July 17, 1944, from the State of New York into the States of Pennsylvania, Michigan, New Jersey, and Massachusetts.

LABEL, IN PART: "Verd-Oro A * * * For Technical Use," "Green Color DS * * * For Technical Use," "Special Olive Oil Preparation," or "Grassolio Special."