

**26214. Corn flour.** (F.D.C. No. 43615. S. Nos. 64-252 P, 64-254 P.)

**QUANTITY:** 93 100-lb. bags and 40 25-lb. bags of corn flour, at Brockton, Mass.

**SHIPPED:** Between 7-30-59 and 8-31-59, from Lemoyne and Shiremanstown, Pa.

**LIBELED:** 10-26-59, Dist. Mass.

**CHARGE:** 402(a)(3)—contained insects and insect larvae while held for sale.

**DISPOSITION:** 12-7-59. Default—delivered to a public institution for use as animal feed.

#### MISCELLANEOUS CEREALS AND CEREAL PRODUCTS\*

**26215. Donut mix, waffle mix, biscuit mix, meat loaf mix, batter mix, cranberry beans, and lima beans.** (F.D.C. No. 43092. S. Nos. 16-731/2 P, 16-734/8 P.)

**INFORMATION FILED:** 7-9-59, E. Dist. Tenn., against H. T. Hackney Co., a corporation, Knoxville, Tenn., and Myron J. Marks, vice president and general manager of the corporation.

**ALLEGED VIOLATION:** Between 7-15-57 and 10-16-58, while quantities of donut mix, waffle mix, biscuit mix, meat loaf mix, batter mix, cranberry beans, and lima beans were being held for sale after shipment in interstate commerce, the defendants caused the articles to be held in a building that was accessible to rodents and insects and to be exposed to contamination by rodents and insects, which acts resulted in the articles being adulterated.

**CHARGE:** 402(a)(3)—the waffle mix, biscuit mix, meat loaf mix, cranberry beans, and lima beans contained insects; and 402(a)(4)—all articles held under insanitary conditions.

**PLEA:** Nolo contendere.

**DISPOSITION:** 11-20-59. Corporation—\$350 fine; individual—\$350 fine.

**26216. Prepared mixes and flour.** (F.D.C. No. 43633. S. Nos. 68-186/9 P, 68-191/200 P, 68-281/5 P.)

**QUANTITY:** 920 100-lb. bags of flour, and 24 50-lb. bags and 288 100-lb. bags of mix, at Philadelphia, Pa., in possession of Merchants Warehouse.

**SHIPPED:** Between October 1958 and September 1959, from Springfield, Delaware, Decatur, and Paris, Ill.; Minneapolis, Minn.; Buffalo, N.Y.; and Washington, D.C.

**LIBELED:** 11-9-59, E. Dist. Pa.

**CHARGE:** 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

**DISPOSITION:** 12-1-59. Default—destruction.

**26217. Dinner roll mix, pancake mix, enriched farina, buckwheat mix, bran muffin mix, pearled barley, rolled whole wheat, rolled oats, and flour.** (F.D.C. No. 43085. S. Nos. 16-743/4 P, 16-746/51 P, 16-753 P, 16-755 P.)

**INDICTMENT RETURNED:** 9-14-59, E. Dist. Ky., against Justin M. Schneider, t/a Central Sales, Covington, Ky.

\*See also Nos. 26207, 26210.

**ALLEGED VIOLATION:** On 10-28-58, the defendant caused quantities of the above-mentioned products, while held for sale after shipment in interstate commerce, to be held in a building that was accessible to insects, rodents, and birds, and to be exposed to contamination by insects, rodents, and birds, which act resulted in the products being adulterated.

**CHARGE:** 402(a)(3)—some of the products, namely, the dinner roll mix, enriched farina, buckwheat mix, bran muffin mix, and pearled barley contained one or more of the following: saw-tooth grain beetles, saw-tooth grain beetle larvae, tribolium beetles, tribolium beetle larvae, tribolium beetle pupae, and cadelle beetle larvae; and 402(a)(4)—all of the above-mentioned products were held under insanitary conditions.

**PLEA:** Not guilty.

**DISPOSITION:** On 12-15-59, the defendant filed a motion for dismissal of the indictment on the grounds (1) that each count of the indictment stated the same identical offense; (2) that the court had no jurisdiction because the acts alleged were committed in regard to foods which were not in or affecting interstate commerce; and (3) that the indictment did not state facts sufficient to constitute an offense against the United States. Such motion was overruled by the court.

On 12-16-59, the case came on for trial before the court and jury. The trial was concluded on 12-21-59, with the return of a verdict of guilty on counts 2, 7, 8, and 9 involving the holding of pancake mix, rolled whole wheat, rolled oats, and flour under insanitary conditions, and a verdict of not guilty with respect to counts 1, 3, 4, 5, and 6 involving the other products described above.

On 12-21-59, the court imposed a fine of \$750 on each of counts 2, 7, 8, and 9 for a total of \$3,000, plus costs. The defendant then filed a motion in arrest of judgment on the ground that only one offense had been committed and that sentence on 3 of the 4 counts should be vacated. On 12-31-59, the court handed down the following decision on the motion:

**SWINFORD, Judge:** "The motion of the defendant to correct the sentences given in this case should be overruled. Each count on which the defendant was convicted was the separate offense of holding for sale a certain unit of food which was adulterated within the meaning of the statute. It would be difficult to construe the language of the statute as having any other meaning. It contemplates each *article* and not food generally held for sale. It may, of course, be said that all of the food that the defendant held for sale was adulterated by being kept in a place that was filthy and insanitary within the meaning of the law, but that is not this case. The indictment charged that he held different types of food and expressly described and named the food referred to as being unfit for human consumption. 21 USCA 331(k).

"The adulteration of four different articles of food constituted four separate, distinct violations of the Act for which separate penalties might be imposed. U.S. v. Direct Sales Co., 252 F. 882.

"It must be borne in mind that the purposes of this legislation are for the protection of a public that is helpless to ascertain the contents of food which is held out by sellers for human consumption. Transactions for the purchase of food under conditions contemplated by the facts in this case are the antithesis of the doctrine of caveat emptor. The emphasis of the statute is not upon punishment by way of criminal prosecution or damages as in cases of mala in se but upon the achievement of some social betterment. U.S. v. Balint, 258 U.S. 250.

"To adopt the reasoning of the defendant on this motion would be to sacrifice the whole purpose of the law. In the case of Eleazar Smith v. The People

of the State of California, not yet reported but decided by the Supreme Court on December 14, 1959, we find the following pertinent language:

"The usual rationale for such statutes is that the public interest in the purity of its food is so great as to warrant the imposition of the highest standard of care on distributors—in fact an absolute standard which will not hear the distributor's plea as to the amount of care he has used. Cf. *United States v. Balint*, 258 U.S. 250, 252-253, 254. His ignorance of the character of the food is irrelevant. There is no specific constitutional inhibition against making the distributors of food the strictest censors of their merchandise . . ."

An order in conformity with this memorandum is this day entered.

**26218. Rice.** (F.D.C. No. 43966. S. No. 69-732 P.)

QUANTITY: 7 100-lb. bags at Camden, N.J.

SHIPPED: 10-22-59, from Huntingdon Valley, Pa.

LIBELED: 12-15-59, Dist. N.J.

CHARGE: 402(a) (3)—contained rodent urine while held for sale.

DISPOSITION: 1-20-60. Default—delivered to a public institution for use as animal feed.

**26219. Rice.** (F.D.C. No. 44136. S. No. 60-039 P.)

QUANTITY: 49 bales, 20 3-lb. bags each, at Raleigh, N.C.

SHIPPED: 6-29-59, from Stuttgart, Ark.

LIBELED: 12-28-59, E. Dist. N.C.

CHARGE: 402(a) (3)—contained live insects while held for sale.

DISPOSITION: 2-11-60. Default—destruction.

**26220. Wheat.** (F.D.C. No. 43447. S. No. 76-612 P.)

QUANTITY: 124,800 lbs. at Spokane, Wash.

SHIPPED: 9-2-59, from Dutton, Mont., by Dutton Farmers Elevator Co.

LIBELED: 9-18-59, E. Dist. Wash.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 10-7-59. Consent—claimed by Atwood Larson Co., Inc., Spokane, Wash. Segregated; 20,680 lbs. converted into animal feed.

**26221. Wheat.** (F.D.C. No. 43789. S. No. 52-710 P.)

QUANTITY: 45,600 lbs. at Minneapolis, Minn.

SHIPPED: 10-20-59, from Wessington Springs, S. Dak., by Jensen Grain Co.

LIBELED: 11-3-59, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 11-5-59. Consent—claimed by Jensen Grain Co. and converted into animal feed.

## CHOCOLATE PRODUCTS, CONFECTIONERY, HONEY AND SIRUP

### CHOCOLATE PRODUCTS

**26222. Cocoa beans.** (F.D.C. No. 43597. S. Nos. 73-495/6 P.)

QUANTITY: 130 140-lb. bags at Brooklyn, N.Y.

SHIPPED: 12-19-55 and 1-8-59, from outside the United States.