

7707. Adulteration and misbranding of canned corn. U. S. * * * v. 420 Cases * * * Cook's Favorite Brand Sugar Corn. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 10311. I. S. No. 7925-r. S. No. C-1228.)

On May 17, 1919, the United States attorney for the Eastern District of Kentucky, 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 420 cases, each containing 2 dozen cans of * * * Cook's Favorite Brand Sugar Corn, remaining unsold in the original unbroken packages at Lexington, Ky., consigned on or about October 8, 1918, by A. A. Linton, Clarksville, Ohio, and transported from the State of Ohio into the State of Kentucky, and charging adulteration and misbranding under the Food and Drugs Act. The article was labeled in part, "Cook's Favorite Brand Sugar Corn Packed by A. A. Linton Clarksville Ohio Main Office Wilmington, O."

Adulteration of the article was alleged in the libel for the reason that field corn had been substituted in whole or in part for sugar corn, which the article purported to be.

Misbranding of the article was alleged in substance in the libel for the reason that certain statements, designs, and devices, borne by the labels above quoted, were false and misleading and designed to deceive and mislead the purchaser in that they represented and made it appear that the article was sugar corn, whereas, in fact and in truth, said article was field corn.

On October 21, 1919, the case came on for trial, and the jury returned a verdict of guilty, whereupon a judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to W. T. Sistrunk & Co., Lexington, Ky., claimant, upon the payment of the costs of the proceedings and the execution of a bond in the sum of \$500, in conformity with section 10 of the act, conditioned in part that the product be relabeled, "Extra Early Adam's Corn Garden Variety."

E. D. BALL, *Acting Secretary of Agriculture.*

7708. Misbranding of olive oil. U. S. * * * v. Anthony Scaduto (Scaduto & Co.). Plea of not guilty. Tried to the court and jury. Verdict of guilty upon two counts of the information. Fine, \$50. Remaining counts of information dismissed. (F. & D. No. 10298. I. S. Nos. 14918-r, 15255-r, 15256-r, 15266-r.)

On October 27, 1919, 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 Anthony Scaduto (Scaduto & Co.), New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about September 27, 1918, October 9, 1918, and October 10, 1918, from the State of New York into the States of Pennsylvania and Maryland, of quantities of alleged olive oil which was misbranded. One brand of the product was labeled, "Fontanella Brand Olio Finissimo. Packed by Scaduto & Co. New York Trade Mark Registered Net Contents Half Gallon Quest Olio È Garentito Ottimo Per Insalata E Per Cucinore This Oil is Guaranteed To Be Excellent for Salad and Cooking," and (in very small type) "Cotton seed oil slightly flavored with pure olive oil." The other brand was labeled, "Finest Quality Table Oil Tipo Termini Imerese cottonseed oil slightly flavored with olive oil Sicilia—Italia ¼ Gallon Net Guaranteed Absolutely Pure."

Analyses of samples of the article by the Bureau of Chemistry of this department showed that it consisted almost entirely of cottonseed oil and that the cans were short volume.

Misbranding of the article was alleged in substance in the information with respect to the shipments made on September 27, 1918, and October 9, 1918, for the reason that the statements, to wit, "Olio Finissimo," not corrected by the statement in inconspicuous type, "Cottonseed oil slightly flavored with pure olive oil," and "Net Contents Half Gallon" or "One Quart," borne on the cans containing the article, regarding it and its ingredients, were false and misleading and it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that said article was olive oil, and that each of the cans contained $\frac{1}{2}$ gallon or 1 quart of the article, whereas, in truth and in fact, said article was not olive oil, but was a mixture composed in part of cottonseed oil, and each of said cans did not contain $\frac{1}{2}$ gallon or 1 quart of the article, but did contain a less amount. Misbranding of the shipment made on October 10, 1918, was alleged in the information for the reason that the statements "Finest Quality Table Oil Guaranteed Absolutely Pure," "Tipo Termini Imerese Sicilia-Italia," " $\frac{1}{4}$ Gallon Net," together with the designs and devices of natives gathering and packing olives, not corrected by the statement in inconspicuous type "Cottonseed oil slightly flavored with olive oil," were false and misleading and labeled so as to deceive and mislead the purchaser into the belief that said article was an olive oil produced in Italy, and that each of the cans contained $\frac{1}{4}$ gallon of the article, whereas, in truth and in fact, said article was not olive oil produced in Italy, but was a mixture composed in large part of cottonseed oil and a domestic product, and each of said cans did not contain $\frac{1}{4}$ gallon net of the article, but did contain a less amount.

On November 5, 1919, the defendant entered a plea of not guilty, and on January 16, 1920, the case came on for trial before the court and jury. Counts 1, 2, and 3 were dismissed on motion of the United States attorney and counts 4, 6, 7, and 9 were dismissed during the trial by the court. After the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court, (Hand, D. J.):

GENTLEMEN OF THE JURY: Only two counts are for your consideration. The portion of count 5 which alleges that there was a representation on the Fontanella can of an incorrect amount. The so-called Fontanella count says: "Net contents, $\frac{1}{2}$ -gallon," and the part of count 5 which you are to pass on which still stands is whether that was a true representation or not.

The other count which you are to pass on is count 8, which represents that the cans of Termini Imerese oil were falsely branded in respect to the representation as to what the oil was and in respect to the amount, which is $\frac{1}{4}$ gallon net on the outside of the can.

Now, the defendant in the case of both the Fontanella and the Termini Imerese brands insists that this amount represented on the can should be read in connection with the trade custom of $7\frac{1}{2}$ pounds of cottonseed oil to the gallon. He says that based on that trade custom of weight that this representation as to the half-gallon and quarter-gallon is true.

You are to determine whether in fact the statement on the Fontanella can that it contained a half-gallon, in view of all the evidence, was a true statement. It is not a question of the intention of the defendant, but it is a question of what, in view of all the facts shown to you, is the truth. He has no right, whether he is innocent of purpose or not, under this Pure Food Act to make an incorrect representation as to the contents of his can. So that in regard to count 5, the Fontanella can, the only question for you to determine is whether the Government has proved beyond a reasonable doubt whether the statement that the net contents of the can is a half-gallon is true or not.

The second question for you to pass on, for both of these misbrandings are alleged in count 8, is whether, as count 8 says the can was labeled so as to deceive and lead the purchaser into the belief that said article was olive oil and that said article was a foreign product, to wit, an olive oil produced in Sicily in the kingdom of Italy, and that each of said cans, etc.

The question for you to determine as business men, and it is a typical question for a jury of fact based on business experience and common sense, is what would

the person, the purchaser, a member of the public getting that kind of a can, upon such examination as they would be likely to give it, say about it? Would they think it was olive oil, or would they think it was cottonseed oil? The defendant says cottonseed oil slightly flavored with olive oil is the compound indicated there, and that it is clearly stated in these letters. The Government says those are the only small letters, except the quarter of gallon net, on the whole can; and that they do tend to mislead the public and are a false branding. The Government further says: "What could have been the object of putting this tree and the 'Termini Imerese' on?" There is no proof that any cottonseed oil ever came from that part of the world, in Sicily. What would it mean except that this was olive oil.

The question for you to determine on count 8, as in the case of the Fontanella oil in count 5, is, what is the effect of this? What did $\frac{1}{4}$ of a gallon net mean in view of all the evidence, and was it correct? Next, what is the effect of this description? Is it a misbranding? Is it something calculated to deceive the public or not? If you find on count 5 in respect to the Fontanella oil that the can did not contain a half-gallon, and are satisfied beyond a reasonable doubt of that fact, then you will find a verdict for the Government upon count 5.

If you find on count 8 that the Termini Imerese can either did not contain $\frac{1}{4}$ of a gallon net, or was misbranded in respect to the description of the contents, that is to say, the kind of oil and where it came from, in either of those events, if you find either fact beyond a reasonable doubt, you are to find a verdict for the Government; otherwise for the defendant, who, of course, is entitled, as in all criminal cases, to the presumption of innocence until he is proved guilty beyond a reasonable doubt.

Mr. STANTON (attorney for defendant). If the court please, might I request you to charge the jury that the character of this defendant should be taken into consideration in their deliberations?

The COURT. No; it is a question of what he did, not a question of intent; it is a question, Mr. Stanton, of whether this statement as to what the can contained is correct, and the picture and descriptive words on the other can indicating or not indicating, as the jury may think, origin, whether that is correct. If the defendant's concern put it out and traded in it, even though he did not know it, he has got to know it; it is not a question of a man's motive.

This Pure Food Law, of course, is a very important law. It is for the purpose of protecting people and seeing that the public get fair statements as to weights, origins and all that sort of thing. It should be administered also, of course, both by the courts and juries, in a rational and sensible way.

The jury thereupon retired, and after due deliberation returned a verdict in favor of the Government on the charge of short measure, and thereafter on January 19, 1920, in accordance with said verdict, the court imposed a fine of \$50 on the defendant.

E. D. BALL, *Acting Secretary of Agriculture.*

7709. Adulteration and misbranding of olive oil. U. S. * * * v. 200 Cases * * * of Alleged Olive Oil. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. Nos. 9390, 9391. I. S. Nos. 2208-r, 2209-r, S. No. W-248.)

On or about October 11, 1918, the United States attorney for the Southern District of California, 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 200 cases, each containing 2 5-gallon cans of alleged olive oil, remaining unsold in the original unbroken packages at San Pedro, Calif., alleging that the article had been shipped on or about May 11, 1918, by John T. Delany, New York, N. Y., and transported from the State of New York into the State of California, and charging adulteration and misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part, "5 Gal. Net."

Adulteration of the article was alleged in the libel for the reason that cottonseed oil had been mixed and packed with, and substituted wholly or in part for, olive oil, so as to reduce and lower and injuriously affect its quality and strength.