

Beans * * *," which statements were false and misled and deceived the purchaser in that they represented that the said article was red kidney beans, whereas, in truth and in fact, the said cases and cans contained another article, to wit, red cranberry beans or speckled long cranberry beans, as the case might be. Misbranding was alleged for the further reason that the article was an imitation of, and was sold under the distinctive name of, another article, to wit, red kidney beans.

On August 11, 1921, the Marshall Canning Co., Marshalltown, Iowa, claimant, having admitted all the material allegations of the libel and having consented to a decree, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be released to said claimant upon payment of the costs of the proceedings and the execution of good and sufficient bonds, in conformity with section 10 of the act, conditioned in part that the product be relabeled, under the supervision of this department, as "Naga Uzura Kidney Beans."

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

9794. Adulteration and misbranding of canned red kidney beans. U. S. * * * v. 100 Cases * * * of Canned Red Kidney Beans. Tried to the court and a jury. Verdict for the Government. Motion for a new trial. Order entered granting new trial and setting aside verdict. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 12091. I. S. No. 7386-r. S. No. C-1732.)

On February 16, 1920, the United States attorney for the Western 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 100 cases, more or less, each containing two dozen cans, of red kidney beans, remaining unsold in the original unbroken packages at Louisville, Ky., consigned by the Marshall Canning Co., Marshalltown, Iowa, November 15, 1919, alleging that the article had been shipped from Marshalltown, Iowa, and transported from the State of Iowa into the State of Kentucky, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part, (can) "Uncle William Brand Red Kidney Beans * * * Packed by Marshall Canning Co. * * *" (cut of dish containing red beans).

Adulteration of the article was alleged in the libel for the reason that long cranberry beans had been mixed and packed with, and substituted wholly or in part for, the said article.

Misbranding was alleged in substance for the reason that the statement, "Red Kidney Beans," and the design of a dish containing red beans, appearing on the label of the cans containing the article, were false and misleading and deceived and misled the purchaser when applied to a product consisting of long cranberry beans, and for the further reason that the said article was an imitation of, and was sold under the distinctive name of, another article.

On November 8, 1920, the Marshall Canning Co., Marshalltown, Iowa, having entered an appearance as claimant for the property, the case came on for trial before the court and a jury. After the submission of evidence and arguments by counsel the court delivered the following charge to the jury (Evans, *D. J.*):

"Gentlemen of the jury: This is a suit by the United States in the form of what lawyers call a libel for a judgment against certain packages of beans which you have heard described many times to-day. The pleadings of the United States on which these packages are seized are of such a character as to permit an inquiry which will be left to the jury and the only thing is this: Was the label on these cans and on the packages that contained these cans

misleading in that the statement was that they were red beans and the design on the can contained red beans; whether that was false and misleading and tended to deceive and mislead the purchaser when applied to this product consisting of what the label says and charged were long cranberry beans. The pleadings of the United States are of such a character as to exclude from your consideration, in my judgment, any other feature in the case, and this alone is the claim on which the United States bases its prayer for a judgment of condemnation of this property in this suit, that is, that the statement 'Red Kidney Beans' and the design containing red beans are false and misleading and deceived and misled the purchasers when applied to this product. That is a very simple statement—that they are misleading and deceived and misled the purchasers when applied to this product. The defendants have denied all of those charges and put them in direct issue, and it is for you, gentlemen, to say from all the evidence as to whether that was the purpose of these cans and of the packages that contained them, that is, that the purchasers were misled and deceived.

"You are the sole judge of the weight and credibility of this testimony. It is for you to say what the evidence leads you to conclude about the facts.

"This is not a criminal case. This is a case at law where the preponderance of the evidence is submitted to you to pass conclusion upon. You have heard it all, and as there is a great deal of it, it will probably be a little hard to remember it in all of its details, but you must do the best you can.

"The statute upon which this prosecution is based is called the Pure Food and Drugs Act. The Congress thought it was necessary to protect food, but Congress did not have in mind, I have no idea, certainly it did not say so, that you should prevent people from getting cheaper food. I believe it is a pretty good idea these days if you can get something cheaper. I doubt if Congress intended by this act anything like upholding high prices of food. They are very much reduced here from the testimony here. That may or may not be important in your consideration of this case, but certainly vast quantities of beans have been sold, according to the testimony, many millions of cans of these beans. In this case they were beans that came into this country in a dry state and when they got here they were treated by the packers and canner in the way the testimony has shown; and the question for you to determine is whether they put this brand upon them to deceive or mislead the purchaser into buying, and it is for you to say whether there was any testimony to warrant you in believing that. Upon the facts, there is a plain statement that these are red kidney beans. They are kidney beans, though sometimes called by one name and sometimes by another. My bean experience as a farmer did not lead me to think that there could be the number of beans that I have heard testified to here. But at all events these were beans that were brought into this country and only used for a food product, and the question for you to determine is whether these beans were colored in such a way when cooked as to deceive the purchaser. It is said the boiling brought out the color, but it is for you to say whether that did make the beans red. They were beans in great quantities and they were sold, and the question is, Was it the purpose of the defendant to mislead the public or was it to give the public a good bean at a cheap price? If it was to deceive the public, they brought themselves within the law. Otherwise I cannot say they did under the testimony.

"It is a very simple thing. There are only two alternatives; one is to find for the United States, that is the plaintiff, and to do that you must believe from the preponderance of the evidence that this branding on the can and package was made for the purpose of deceiving the public and in that event you should

say 'We the jury find for the United States.' That is all. If on the contrary you do not believe that and cannot find that this branding was done in this way for the purpose of deceiving—and it might be very strong testimony—it would have been a very strong suggestion but no evidence is here to prove by any purchasers that anybody was deceived. But whether that is so or not, that is not the thing in the case. It might be a circumstance for you to consider. But if you should find from a preponderance of the testimony in this case that this branding was for the purpose of deceiving the purchasers, you should find for the United States; but if upon the other hand you should find that the contrary is the fact, you should say 'We the jury find for the claimant.'

"Take the papers and retire to the jury room, gentlemen, and see if you can reach a verdict."

The jury then retired and after due deliberation returned a verdict for the Government. On November 9, 1920, a motion was made on behalf of the claimant for a new trial, and on December 7, 1920, an order of the court was entered granting a new trial and setting aside the verdict. On May 12, 1921, a stipulation was filed wherein it was admitted by the claimant, "The beans seized in this case are beans which were packed from what is known as Naga Uzura, speckled cranberry, or long cranberry beans," and on the same date judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$300, in conformity with section 10 of the act, conditioned in part that the claimant rebrand and correctly label the product so as to show its true nature and character.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

9795. Misbranding of cottonseed cake. U. S. * * * v. Home Oil & Mfg. Co., a Corporation. Plea of guilty. Fine, \$50 and costs. (F. & D. No. 13085. I. S. No. 5942-r.)

On December 7, 1920, the United States attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Home Oil & Mfg. Co., a corporation, Augusta, Ark., alleging shipment by said company, on or about January 29, 1919, in violation of the Food and Drugs Act, as amended, from the State of Arkansas into the State of Kansas, of a quantity of cottonseed cake which was misbranded.

Examination of 20 sacks from the consignment, by the Bureau of Chemistry of this department, showed an average weight of 98.51 pounds per sack.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "100 Lbs.," borne on the tags attached to the sacks containing the article, regarding the article, was false and misleading in that it represented that each of the said sacks contained 100 pounds of the said article, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that each of the said sacks contained 100 pounds of the article, whereas, in truth and in fact, each of the said sacks did not contain 100 pounds of the said article, but did contain a less amount. Misbranding was alleged for the further reason that the article was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On March 15, 1921, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$50 and costs.

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