

The information does not charge the offense of misbranding and consequently we hold that the information is sufficient to charge the offense of delivery for shipment in interstate commerce.

The allegations of the answer in effect allege lack of knowledge or intent on the part of the shipper. The Food and Drug Acts is regulatory, and the offenses created thereby are misdemeanors. They are not offenses in which moral turpitude is an ingredient, and consequently lack of knowledge or intent on the part of the shipper in this case would not constitute a defense. *U. S. v. Spragg, et al.*, 208 Fed. 419; *U. S. v. 13 Crates of Frozen Eggs*, 215 Fed. 584.

The demurrer of the plaintiff to the answer will therefore be sustained.

On March 17, 1936, a plea of guilty having been entered, a fine of \$10 and costs was imposed.

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

**25544. Adulteration and misbranding of bran. U. S. v. The Fairchild Milling Co., a corporation. Plea of nolo contendere. Fine, \$100 and costs. (F. & D. no. 33799. Sample nos. 14134-A, 14148-A, 68551-A.)**

This product contained screenings and scourings but was represented to be made from cleaned wheat.

On November 26, 1934, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Fairchild Milling Co., a corporation, Cleveland, Ohio, alleging shipment in violation of the Food and Drugs Act as amended, on or about August 29, 1933, August 30, 1933, and October 25, 1933, from Cleveland, Ohio, to several places in Maryland, and to York, Pa., of quantities of Atlantic States bran that was adulterated and misbranded. The article was labeled in part: (Bag tag) "Atlantic States Bran Made From Cleaned Wheat \* \* \* Manufactured For Eastern Grain Growers Hagerstown, Md."

Adulteration of the article was charged under the allegation that a substance, to wit, screenings and scourings, had been substituted in part for the article.

Misbranding of the article was charged (a) under the allegations that the tags attached to the bags bore the statement, "Bran Made from Cleaned Wheat", that the article consisted in part of screenings and scourings, that the said statement was false and misleading in that it represented that the article consisted solely of bran made from cleaned wheat; (b) under the allegation that the said statement was borne on the tags so as to deceive and mislead the purchaser of the article; (c) under the allegation that the article was offered for sale under the distinctive name of another article, namely, bran.

On March 21, 1936, a plea of nolo contendere having been entered, a fine of \$100 and costs was imposed.

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

**25545. Alleged misbranding of salad oil. U. S. v. Agash Refining Corporation and Chester A. Gash and Mack S. Lehman. Tried to the court. Judgment dismissing information. (F. & D. no. 33871. Sample nos. 52133-A, 52134-A, 52143-A, 52147-A, 67402-A.)**

On January 22, 1935, 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 Agash Refining Corporation, Brooklyn, N. Y., and Chester A. Gash and Mack S. Lehman, officers of the corporation, alleging shipment by said defendants in violation of the Food and Drugs Act on or about November 28, December 8, December 16, 1933, and January 12, 1934, from the State of New York into the State of New Jersey, of quantities of salad oil that was misbranded. The article was labeled in part: "San Gennaro Brand \* \* \* Agash Refining Corp. Brooklyn, N. Y."

Misbranding of the article was charged under the allegations that the statements, "Extra Fine Oil", "Olio Extra Fino", and "Olive Oil \* \* \* The Olive Oil contained in this can is pressed from fresh picked fruit—it is specially adapted for medicinal and table use and guaranteed to be absolutely pure", together with a design of a shield surmounted by a crown and accompanied by designs of medals and olive branches, borne on the can labels, were false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the said statements and the designs represented that the article consisted wholly of pure imported olive oil; whereas it did not consist wholly of pure imported olive oil but was domestic cottonseed oil containing little olive oil, if any, and containing an artificial flavoring substance in imitation of olive oil. Misbranding was charged under the further

allegation that the article was an imitation of another article and was offered for sale under the distinctive name of another article, namely, olive oil.

On April 18, 1935, a jury having been waived, the case was tried to the court and the information was dismissed on the ground that there was no misbranding beyond a reasonable doubt.

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

**25546. Misbranding of cottonseed meal and cottonseed cake. U. S. v. Southland Cotton Oil Co. Plea of guilty. Fine \$625. (F. & D. no. 33950. Sample nos. 8168-B, 8174-B, 8175-B, 27415-B, 27420-B.)**

This case was based on interstate shipments of cottonseed products which contained less protein than declared on the label.

On July 9, 1935, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Southland Cotton Oil Co., a corporation, Waxahachie, Tex., alleging shipment by said company in violation of the Food and Drugs Act on or about August 7, August 29, October 26, December 6, and December 29, 1934, from the State of Texas into the State of Kansas of quantities of cottonseed meal and cottonseed cake which were misbranded. A portion of the article was labeled, variously, in part: "'Army' Brand Prime Cotton Seed Cake and Meal \* \* \* Guaranteed Analysis Protein, not less than 43.00% \* \* \* Louls Tobian & Co."; "Guaranteed Analysis Protein not less than 43% \* \* \* Manufactured for Kansas City Cake and Meal Co. \* \* \* Kansas City, Mo."; "43% Protein Cottonseed Cake or Meal Prime Quality Manufactured by Southland Cotton Oil Co. Waxahachie, Texas Guaranteed Analysis: Crude Protein (not less than) 43%."

The article was alleged to be misbranded in that the statements, "Guaranteed Analysis Protein not less than 43%", "43% Protein", and "Guaranteed Analysis: Crude Protein (not less than) 43%", borne on the tags attached to the sacks containing the article, were false and misleading and for the further reason that it was labeled so as to deceive and mislead the purchaser since it contained less than 43 percent of protein.

On February 18, 1936, a plea of guilty was entered on behalf of the defendant company and the court imposed a fine of \$625.

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

**25547. Adulteration of tomato puree and tomato pulp. U. S. v. Angelo Glorioso. Plea of guilty. Fine, \$50. (F. & D. no. 34010. Sample nos. 62040-A, 66358-A, 66359-A, 66361-A, 66362-A.)**

This case was based on interstate shipments of tomato puree and tomato pulp which contained excessive mold. Samples of the tomato pulp also were found to contain larvae.

On June 5, 1935, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Angelo Glorioso, trading at New Orleans, La., and Miami, Fla., alleging shipment by said defendant in violation of the Food and Drugs Act on or about December 23, 1933, February 24, and March 10, 1934, from the State of Louisiana into the State of Alabama of quantities of tomato puree and on or about March 31, 1934, from the State of Florida into the State of Louisiana of a quantity of tomato pulp, which products were adulterated. The tomato puree was labeled in part: "Eagle Brand Packed by A. Glorioso, New Orleans, La. Tomato Puree." The tomato pulp was unlabeled.

The tomato puree was alleged to be adulterated in that it consisted in part of decomposed vegetable substance. The tomato pulp was alleged to be adulterated in that it consisted in part of a decomposed vegetable substance and some filthy animal substance, namely, larvae and parts of larvae.

On February 19, 1936, the defendant entered a plea of guilty and the court imposed a fine of \$50.

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

**25548. Adulteration and misbranding of alcoholic candy. U. S. v. Lewis Cooper (The Berkshire Co.). Plea of guilty. Fine, \$10. (F. & D. no. 34017. Sample nos. 19086-A, 19087-A, 50572-A, 56516-A, 56517-A, 56518-A, 61561-A, 61566-A, 65032-A.)**

This case was based on several interstate shipments of confectionery which contained alcohol. The packages failed to bear a statement of the quantity of the contents and the labels of several of the lots bore the false and misleading statement that the product was not a confection.