

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 269, FOOD AND DRUGS ACT.

MISBRANDING OF HONEY.

On or about October 7, 1907, Henry Boeckmann, of Brooklyn, N. Y., shipped from the State of New York into the State of New Jersey a quantity of a food product labeled: "Compound pure comb and strained honey and corn syrup, A. Boeckmann, Brooklyn, N. Y." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded Henry Boeckmann and the dealer from whom the samples were purchased opportunities for hearings. As it appeared after hearings held that the said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence on which to base a prosecution.

In due course the evidence was presented by the United States Attorney for the Eastern District of New York to the grand jury, who presented an indictment against the said Henry Boeckmann charging the above shipment and that the product was misbranded, in that it was labeled "Compound pure comb and strained honey and corn syrup," which statement was false and misleading, in that it represented the principal ingredient of said product to be pure comb honey, whereas, in fact, the principal ingredient was glucose and starch sugar. To this indictment a demurrer was filed by the defendant, and on January 15, 1910, the case came on for hearing on the demurrer and the court rendered its opinion in substance and form as follows:

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA	}	Jany. 15, 1910.
vs.		
HENRY BOECKMANN.		

WILLIAM J. YOUNGS, *U. S. Attorney*; WILLIAM P. ALLEN, *Asst. U. S. Attorney*,
of Counsel.

OTTO F. STRUSE, for defendant.

CHATFIELD, J.

A demurrer has been interposed to an indictment charging the defendant with having shipped from the State of New York to the State of New Jersey, a certain

article of food for man, labeled: "Compound: Pure Comb and Strained Honey and Corn Syrup;" that the label was false and misleading, and the contents of the jar misbranded, in that "the said label represented the principal ingredient of the said contents of said glass jar to be pure comb honey" when in fact the contents were "almost wholly glucose and starch sugar, and the said contents of the said glass jar, in truth and in fact, consisted of a very small percentage of pure comb honey."

It has been called to the attention of the Court that under the authority of the Statute of June 30, 1906, 34 Stat. at Large, 768, certain regulations for the guidance of the public, and for carrying out the provisions of the law, have been made by the Secretary of Agriculture, and certain rulings or decisions by the Secretary of Agriculture have construed the language of the Statute. For instance, Food Inspection Decision No. 75 provides that, "When both maple and cane sugars are used in the production of syrup, the label should be varied according to the relative proportion of the ingredients, the name of the sugar present in excess of fifty per cent of the total sugar content, should be given the greater prominence on the label; that is, it should be given first." Also, Food Inspection Decision No. 87 provides that, "Viscous syrup obtained by the incomplete hydrolysis of the starch of sugar" should be labeled "corn syrup with cane flavor," if a small percentage of the product of the cane is added thereto.

There is no charge of any violation of regulations, or refusal to comply with the rulings of the Commissioner of Agriculture, but the case presents an entirely distinct question depending upon the provisions of the Statute itself.

In the present indictment we have an allegation, that the defendant has put upon the market, for interstate commerce, an article which is misbranded in that the label is misleading, solely because the principal ingredient is alleged to be held out to the public as "pure comb honey," when in reality "glucose and starch sugar" made up almost wholly the actual "principal ingredient."

Under the decision of *In re Wilson*, 168 Fed. 566, such a label as is recited would not be contrary to fact, and this Court agrees in the opinion that it is impossible to say what portion of the label as printed would signify greater percentage of the product.

The demurrer will be sustained.

The United States entered an appeal from this decision.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

Decisions of the United States District Courts and of United States Circuit Courts of Appeal adverse to the Government will not be accepted as final until acquiescence shall have been published.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *April 5, 1910.*