F. & D. No. 2174.
I. S. Nos. 14094-b and 2726-c. Issued July 26, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2471.

Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. D. B. Scully Syrup Co. Tried to a jury. Verdict of not guilty by direction of court.

ALLEGED MISBRANDING OF SORGHUM.

On July 27, 1913, the United States Attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Daniel B. Scully and Maurice H. Scully, copartners, doing business as the D. B. Scully Syrup Co., Chicago, Ill., alleging the sale by said defendants on April 1, 1910, under a written guaranty given before the time of said sale and delivery, of a quantity of a product known as Loverin's Sorghum, which was alleged to have been misbranded in violation of the Food and Drugs Act. The guaranty aforesaid was in words and figures as follows, to wit:

Food Guaranty

The undersigned D. B. Scully Syrup Company of Chicago, state of Illinois, United States of America, does hereby warrant and guarantee unto Loverin & Browne Co., a corporation, having office at Chicago, Illinois, that any and all articles of food or drugs, as defined by the Act of Congress approved June 30, 1906, entitled "An Act for preventing the manufacture, sale or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines and liquors, and for regulating traffic therein, and for other purposes," which the undersigned has sold since October 1st, 1906, or shall at any time hereafter prepare, manufacture for, sell or deliver to said Loverin & Browne Co., will comply with all the provisions of said act of Congress and are not and shall not be in any manner adulterated or misbranded within the meaning of said Act.

It is expressly understood that this shall be a continuing guaranty until notice of revocation be given in writing and notice of acceptance of the guaranty is hereby waived.

Dated at Chicago this 31st day of December, 1906.

D B Scully Syrup Co. Seal
M. H. Scully Seal

The information alleged that said guaranty had not been revoked at the time of said sale and delivery, but was then in full force and effect.

On April 2, 1910, and July 19, 1910, without having changed the product in any particular, save repacking, the purchaser thereof shipped quantities of the same from the State of Illinois into the Territory of New Mexico in violation of the Food and Drugs Act. The product was labeled: "1 Gal. Loverin's Sorghum Loverin & Browne Co., Chicago, Ill."

Analysis of samples of the product by the Bureau of Chemistry of this Department showed the following results:

	Sample No. 1.	Sample No. 2.
Solids (per cent)	73.3	77.7
Nonsugar solids (per cent)	10.1	6.9
Sucrose, Clerget (per cent)	38.7	40.1
Reducing sugars as invert (per cent)	24.5	30.7
Ash (per cent)	2.6	3.57
Measure (gallon)	.845	.914
Measure of second sample (gallon)		.874
Shortage (per cent)	15.5	8.6

Misbranding of the product was alleged in the information for the reason that it was labeled as set forth above, and the statement in the label was false and misleading, in that it purported to state the contents of each of the cans in terms of measure, to wit, that each of the cans contained one gallon of Loverin's sorghum, whereas, in truth and in fact, each of the cans did not contain one gallon of the product, but a much less amount, to wit, 0.845 of a gallon thereof.

On February 18, 1913, the case having come on for trial before the court and a jury, after the submission of evidence the following charge directing a verdict of not guilty was delivered to the jury by the court (A. B. Anderson, *J.*):

I might explain to you gentlemen here that this is an Act of Congress, and Congress has no right to legislate on this pure food question except so far as it affects interstate commerce. We all understand that. And, now, there isn't any showing here at all, passing by some other questions, that the Scully Syrup Company, defendant, had anything whatever to do with the shipment. The evidence showed that the Scully Syrup Company made this for Loverin & Browne Company and that Loverin & Browne Company shipped it, so that they have got the wrong defendant here. The government undertakes to claim that by reason of the statute which provides that the dealer shall be immune when the manufacturer guarantees to him that the article is not misbranded—that in that case the dealer is out, Loverin & Browne Company, and that the other people are in. That does not relieve the government of the responsibility of proving some connection with the shipment by the Scully Syrup Company. And in the next place, the guarantee set forth is no guarantee at all. The guarantee is no guarantee at all under the statute. It isn't anything in the world but a promise that in the future—made six years ago—they will not violate the law. Let the record show a verdict of not guilty.

B. T. GALLOWAY,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *April 12, 1913.*

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