

2871. Misbranding of cheese. U. S. v. Dell S. Crosby and Julius R. Meyers. Plea of nolo contendere. Fine, \$50 and costs. (F. & D. Nos. 4185, 4186. I. S. Nos. 13589-d, 14577-d.)

On June 27, 1913, the United States Attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Dell S. Crosby and Julius R. Meyers, copartners, trading under the firm name of Crosby & Meyers, Cincinnati, Ohio, alleging shipment by said defendants, in violation of the Food and Drugs Act—

(1) On October 26, 1911, from the State of Ohio into the State of West Virginia, of a quantity of cheese which was misbranded. The product was labeled: (On box) "Crosby & Meyers, Cincinnati, Ohio. K 715-139938." (In pencil) "22." (On lid) "Ruffner Bros. Charleston, W. Va."

Examination of the product by the Bureau of Chemistry of this Department showed the following results: Weight of cheese, 20 pounds 13 ounces; marked weight, 22 pounds; weight short, 1 pound 3 ounces, 5.4 per cent. Misbranding of the product was alleged in the information for the following reasons: First, that the package containing the product bore a statement, design, and device regarding it, which said statement, design, and device, to wit, the numerals "22," was false, misleading, and deceptive, in that it represented the article of food to weigh 22 pounds avoirdupois, whereas, in truth and in fact, it did not weigh 22 pounds, and weighed only 20 pounds and 13 ounces; second, that the product was marked and branded as aforesaid, so as to deceive and mislead the purchaser thereof, in that said mark and brand was calculated and intended to convey the impression, and create the belief, in the mind of such purchaser, that the article weighed 22 pounds avoirdupois, whereas, in truth and in fact, it did not weigh 22 pounds avoirdupois and weighed only 20 pounds and 13 ounces; third, that the package containing the product bore on the outside thereof a statement of the contents of such package in terms of weight, as follows, to wit, the numerals "22," meaning thereby 22 pounds, which said statement of the weight of the contents of the package was not correct, and in fact was untrue and false in that the article of food contained within the package did not weigh 22 pounds and did weigh only 20 pounds and 13 ounces.

(2) On February 14, 1912, from the State of Ohio into the State of Tennessee, of a quantity of cheese which was misbranded. This product was labeled: "Crosby & Meyers, Cincinnati, O. H. T. Hackney Co., Jellico, Tenn. 12866-21."

Examination of the product by said Bureau of Chemistry showed the following results: Weight of cheese, 19 pounds 6 ounces; marked weight, 21 pounds; weight short, 1 pound 10 ounces, or 7.7 per cent. Misbranding of the product was alleged in the information for the following reasons: First, that the package containing the product bore a statement, design, and device regarding it, which said statement, design, and device, to wit, the numerals "21," was false, misleading, and deceptive, in that it represented the article of food to weigh 21 pounds avoirdupois, whereas, in truth and in fact, it did not weigh 21 pounds, and weighed only 19 pounds and 6 ounces; second, that the product was marked and branded as aforesaid, so as to deceive and mislead the purchaser thereof, in that said mark and brand was calculated and intended to convey the impression, and create the belief, in the mind of such purchaser, that the article weighed 21 pounds avoirdupois, whereas, in truth and in fact, it did not weigh 21 pounds avoirdupois and weighed only 19 pounds and 6 ounces; third, that the package containing the product bore on the outside thereof a statement of the contents of such package in terms of weight, as follows, to wit, the numerals "21," meaning thereby 21 pounds, which said statement of the weight of the contents of the package was not correct, and in fact was untrue and false in that the article of food contained within the package did not weigh 21 pounds and did weigh only 19 pounds and 6 ounces.

On October 21, 1913, the defendants entered pleas of nolo contendere to the information and the court imposed a fine of \$50 and costs.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., February 18, 1914.