

4083. Adulteration and alleged misbranding of whisky. U. S. v. Benjamin J. Epstein et al. (Benjamin J. Epstein & Co.). Plea of guilty to charge of adulteration. Fine, \$40. Counts of information alleging misbranding nolle prossed. (F. & D. No. 5811. I. S. Nos. 4411-h, 4412-h.)

On February 4, 1915, the United States attorney for the Eastern 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 in 8 counts against Benjamin J. Epstein and Samuel Goldberg, copartners, trading under the firm name of Benjamin J. Epstein & Co., Danville, Ill., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about August 12, 1913, from the State of Illinois into the State of Indiana, of quantities of whisky to different consignees, which was adulterated and alleged to have been misbranded. The product was labeled: "Old Princeton High Grade 100 Proof Whiskey, bottled by B. J. Epstein & Co., Wholesale Liquors, Danville, Ill." (Label on neck of bottle) "100 Proof Aged in Wood 100 Proof Guaranteed Straight Whiskey Guaranteed to comply with the National Pure Food Law 100 Proof Guaranteed Straight Whiskey 100 Proof Full Measure."

Analyses of samples of the product by the Bureau of Chemistry of this department showed the following results, expressed as parts per 100,000—100 proof alcohol, unless otherwise stated:

| | No. 1. | No. 2. |
|--|--------|--------|
| Proof (degrees)..... | 97.2 | 99.0 |
| Solids..... | 139.7 | 126.5 |
| Total acids, as acetic..... | 18.5 | 15.8 |
| Esters, as ethyl acetate..... | 5.4 | 0.0 |
| Aldehydes, as acetaldehyde..... | 2.1 | 2.0 |
| Furfural..... | 0.6 | 0.6 |
| Fusel oil..... | 10.9 | 6.3 |
| Color (degrees, Lovibond, $\frac{1}{2}$ -inch cell)..... | 16.5 | 14.0 |
| Color (per cent insoluble in amyl alcohol)..... | 66.0 | |
| Paraldehyde test: Positive. | | |

Caramel (qualitative Marsh test): Present.

The products are neutral spirits or rectified whisky, reduced to proof with water, and artificially colored, probably with caramel.

Adulteration of the whisky was alleged in the first and fifth counts of the information for the reason that a substance, to wit, neutral spirits, artificially colored, had been substituted, in whole or in part, for high-grade 100-proof straight whisky aged in wood, which the article purported to be.

It was alleged in counts two and six that the article was misbranded, in that the statements, to wit, "High Grade, 100 Proof Whiskey," and "Aged in Wood, Guaranteed Straight Whiskey," borne on the labels thereof, were false and misleading in that they purported and represented that the article was a straight whisky aged in wood, whereas, in truth and in fact, it was not a straight whisky aged in wood, but was neutral spirits whisky colored to simulate the appearance of straight whisky aged in wood. Misbranding was alleged in the third and seventh counts for the reason that the article was an imitation of, and offered for sale and sold under the distinctive name of, another article, to wit, "Straight Whiskey Aged in Wood," whereas, in truth and in fact, it was not straight whisky aged in wood, but was neutral spirits whisky colored to simulate the appearance of straight whisky aged in wood. Misbranding was alleged in the fourth and eighth counts for the reason that the article was labeled, "High Grade 100 Proof Whiskey," and "Aged in Wood, Guaranteed Straight Whiskey," which statements, together with a design and device on the neck of the bottle containing the article, simulating the appearance of the neck label used in bottled-in-bond whisky, and a device simulating a revenue stamp on the label

attached to the bottle containing said article, all and singular, were calculated to mislead and deceive the purchaser into the belief that said article was a straight bottled-in-bond whisky which had been stored in wood under Government supervision, whereas, in truth and in fact, said article was not a straight bottled-in-bond whisky aged in wood, and was not kept under Government supervision, but was a neutral spirits whisky colored to simulate the appearance of straight whisky aged in wood.

On June 22, 1915, the defendants entered pleas of guilty to the first and fifth counts of the information, and the court imposed a fine of \$40. The second, third, fourth, sixth, seventh, and eighth counts of the information, charging misbranding of the article, were nolle prossed.

O. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 1, 1915.*