

**19540. Alleged misbranding of candy. U. S. v. Startup Candy Co. Tried to a jury. Directed verdict of not guilty. (F. & D. No. 26625. I. S. Nos. 12296, 12297.)**

Sample packages of candy from the shipment herein described having been found to contain less than the desired weight, the Secretary of Agriculture reported the matter to the United States attorney for the District of Utah.

On August 29, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid an information against the Startup Candy Co., a corporation, Provo, Utah, alleging shipment by said company, on or about March 16, 1931, in violation of the food and drugs act as amended, from the State of Utah into the State of Idaho, of a quantity of candy that was misbranded. The article was labeled in part: (Case) "From Provo, Utah, Startup Candy Co.;" (retail packages) "8 Oz." or "6 Oz."

It was alleged in the information that the article was misbranded in that the statement "8 Oz." with respect to a portion of the article, and the statement "6 Oz." with respect to the remainder, borne on the labels, were false and misleading; and for the further reason that the article was so labeled as to deceive and mislead the purchaser; since practically all of the packages contained less than labeled. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since they contained less than the quantity stated.

On January 7, 1932, the case came on for trial before the court and a jury. After hearing evidence introduced on behalf of the Government and the defendant, the jury, under instructions of the court, returned a verdict of not guilty.

ARTHUR M. HYDE, *Secretary of Agriculture.*

**19541. Adulteration and misbranding of butter. U. S. v. Midwest Dairies (Inc.). Plea of guilty. Fine, \$300. (F. & D. No. 26665. I. S. Nos. 1664, 1670, 1671.)**

This action was based on the interstate shipments of three lots of butter in which certain packages in all lots were found to be short of the declared weight. Samples taken from two lots of the article were also found to be deficient in milk fat, since they contained less than 80 per cent of milk fat, the standard provided by act of Congress.

On October 17, 1931, the United States attorney for the District of New Mexico, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the Midwest Dairies (Inc.), a corporation, trading under the name of the Desert Gold Dairies (Inc.), at Portales, N. Mex., alleging shipment by said company, in part on or about September 28, 1930, and in part on or about October 4, 1930, in violation of the food and drugs act as amended, from the State of New Mexico into the State of Texas, of quantities of butter that was adulterated and misbranded. A portion of the article was labeled in part: "1 Pound Net Desert Gold Creamery Butter \* \* \* Desert Gold Dairies, Inc." The remainder of the article was labeled in part: "Gold Seal Butter \* \* \* One Pound Net."

It was alleged in the information that a portion of the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat, as prescribed by the act of March 4, 1923.

Misbranding was alleged for the reason that the statement, "Butter," with respect to the product in two shipments of the article, and the statements, "1 Pound Net," or "One Pound Net," with respect to the product in all three shipments, borne on the packages, were false and misleading; and for the further reason that the article was so labeled as to deceive and mislead the purchaser, since they represented that the article was butter, a product which should contain not less than 80 per cent by weight of milk fat, and that the packages each contained 1 pound net of the article; whereas the product in two of the said shipments contained less than 80 per cent by weight of milk fat, and the packages in all shipments contained less than 1 pound net. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was incorrect.