

**25542. Adulteration of canned salmon. U. S. v. Henry J. Emard, trading as Emard Packing Co. Plea of guilty. Fine \$200 with costs. (F. & D. no. 32907. Sample nos. 54878-A, 54888-A.)**

A decomposed substance was a part of this product.

On October 24, 1934, the United States attorney for the District of Alaska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Henry J. Emard, trading as Emard Packing Co., Anchorage, Alaska, alleging shipment in violation of the Food and Drugs Act as amended, on or about July 24, 1933, from Anchorage, Alaska, to Seattle, Wash., of quantities of canned salmon that was adulterated. The product was unlabeled, but the cases bore certain code markings, to wit, "Talls HH K-47" on some, and "Talls HH 46" and other markings on others.

Adulteration of the article was charged under the allegation that it consisted in part of a decomposed animal substance.

On December 23, 1935, a plea of guilty having been entered, the defendant was fined \$200 with costs.

W. R. GREGG, *Acting Secretary of Agriculture.*

**25543. Adulteration of butter. U. S. v. Newman Grove Cooperative Creamery Co., Inc. Plea of guilty. Fine, \$10 and costs. (F. & D. no. 33777. Sample no. 67377-A.)**

This product was represented to be butter, but it contained less than 80 percent by weight of milk fat.

On October 19, 1934, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Newman Grove Cooperative Creamery Co., Inc., a corporation, Newman Grove, Nebr., alleging shipment in violation of the Food and Drugs Act as amended, on or about March 8, 1934, from Omaha, Nebr., to New York, N. Y., of a number of tubs containing an article of food, billed as butter, that was adulterated. The article was labeled in part: (Tub) "3648 New York 4 4%."

Adulteration of the product was charged under the allegations that it purported to be butter; that the product contained less than 80 percent by weight of milk fat; and that a product that contained less than said percentage of milk fat had been substituted for what the article purported to be, namely, butter.

The defendant pleaded not guilty in an "answer" in which it alleged (a) that it had acted "without any fault, negligence, criminal intent, or wrongful intent of any kind whatsoever" and (b) that it "had been placed in jeopardy." The answer was without a statement of facts as a basis for the second of these allegations. However, it otherwise appears that in a precedent libel a number of the tubs of butter in the shipment which was the basis for the charge preferred in the information had been seized, and subsequently reconditioned pursuant to a provision in a judgment of condemnation and forfeiture, at an expense to the defendant of \$160.12. The Government demurred to the answer. The court sustained the demurrer in a memorandum opinion, as follows:

DONOHUE, District Judge: There has been submitted to the Court the demurrer of the United States of America to the answer of the defendant. This demurrer searches the entire record. The defendant contends that the information is not sufficient to charge an offense under the provisions of the act known as "Foods and Drugs Act", while the Government contends that the information is sufficient, and the matter set forth in the answer does not constitute a defense.

The charging part of the information is that the defendant did within the jurisdiction of this court unlawfully ship and deliver for shipment, a consignment of tubs containing an article of food billed as butter, then follows the charge that the articles of food so billed did not meet the requirement of the act defining butter within the terms thereof.

The provisions of the Food and Drug Act, Title 21 U. S. C. A. paragraph 2, in so far as it applies to this case, prohibits the introduction into any state or territory, from any other state or territory, any article of food which is adulterated or misbranded, and provides that any person who shall ship or deliver for shipment from any state or territory to any other state or territory, or who shall receive in any state or territory, and having so received shall deliver, etc. In this case, we think the information sufficiently charges the delivery of this article of food for shipment within the jurisdiction of this Court. The receiving and delivery of the shipment would constitute a separate offense within the New York jurisdiction.

The information does not charge the offense of misbranding and consequently we hold that the information is sufficient to charge the offense of delivery for shipment in interstate commerce.

The allegations of the answer in effect allege lack of knowledge or intent on the part of the shipper. The Food and Drug Acts is regulatory, and the offenses created thereby are misdemeanors. They are not offenses in which moral turpitude is an ingredient, and consequently lack of knowledge or intent on the part of the shipper in this case would not constitute a defense. *U. S. v. Spragg, et al.*, 208 Fed. 419; *U. S. v. 13 Crates of Frozen Eggs*, 215 Fed. 584.

The demurrer of the plaintiff to the answer will therefore be sustained.

On March 17, 1936, a plea of guilty having been entered, a fine of \$10 and costs was imposed.

W. R. GREGG, *Acting Secretary of Agriculture.*

**25544. Adulteration and misbranding of bran. U. S. v. The Fairchild Milling Co., a corporation. Plea of nolo contendere. Fine, \$100 and costs. (F. & D. no. 33799. Sample nos. 14134-A, 14148-A, 68551-A.)**

This product contained screenings and scourings but was represented to be made from cleaned wheat.

On November 26, 1934, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Fairchild Milling Co., a corporation, Cleveland, Ohio, alleging shipment in violation of the Food and Drugs Act as amended, on or about August 29, 1933, August 30, 1933, and October 25, 1933, from Cleveland, Ohio, to several places in Maryland, and to York, Pa., of quantities of Atlantic States bran that was adulterated and misbranded. The article was labeled in part: (Bag tag) "Atlantic States Bran Made From Cleaned Wheat \* \* \* Manufactured For Eastern Grain Growers Hagerstown, Md."

Adulteration of the article was charged under the allegation that a substance, to wit, screenings and scourings, had been substituted in part for the article.

Misbranding of the article was charged (a) under the allegations that the tags attached to the bags bore the statement, "Bran Made from Cleaned Wheat", that the article consisted in part of screenings and scourings, that the said statement was false and misleading in that it represented that the article consisted solely of bran made from cleaned wheat; (b) under the allegation that the said statement was borne on the tags so as to deceive and mislead the purchaser of the article; (c) under the allegation that the article was offered for sale under the distinctive name of another article, namely, bran.

On March 21, 1936, a plea of nolo contendere having been entered, a fine of \$100 and costs was imposed.

W. R. GREGG, *Acting Secretary of Agriculture.*

**25545. Alleged misbranding of salad oil. U. S. v. Agash Refining Corporation and Chester A. Gash and Mack S. Lehman. Tried to the court. Judgment dismissing information. (F. & D. no. 33871. Sample nos. 52133-A, 52134-A, 52143-A, 52147-A, 67402-A.)**

On January 22, 1935, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Agash Refining Corporation, Brooklyn, N. Y., and Chester A. Gash and Mack S. Lehman, officers of the corporation, alleging shipment by said defendants in violation of the Food and Drugs Act on or about November 28, December 8, December 16, 1933, and January 12, 1934, from the State of New York into the State of New Jersey, of quantities of salad oil that was misbranded. The article was labeled in part: "San Gennaro Brand \* \* \* Agash Refining Corp. Brooklyn, N. Y."

Misbranding of the article was charged under the allegations that the statements, "Extra Fine Oil", "Olio Extra Fino", and "Olive Oil \* \* \* The Olive Oil contained in this can is pressed from fresh picked fruit—it is specially adapted for medicinal and table use and guaranteed to be absolutely pure", together with a design of a shield surmounted by a crown and accompanied by designs of medals and olive branches, borne on the can labels, were false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the said statements and the designs represented that the article consisted wholly of pure imported olive oil; whereas it did not consist wholly of pure imported olive oil but was domestic cottonseed oil containing little olive oil, if any, and containing an artificial flavoring substance in imitation of olive oil. Misbranding was charged under the further