

Our courts of justice have gone far in receding from the ancient doctrine of "let the buyer beware." They give substantial effect to a doctrine that there must be complete honesty in whatever the seller does in the course of offering his product for sale. Our highest tribunal has said: "There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious." (*Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 116.)

The seller has no right to mislead or deceive the buyer even for his own good, and it is no excuse or defense to a charge of deception to say that the article furnished was as good or better than what the buyer thought he was getting, or that it saved him money because the article delivered was lower in price.

To use again the words of the Supreme Court: "Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a conception of business standards so corrupting in its tendency. The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else." (*Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 78.)

In the *Standard Education* case mentioned above, the Supreme Court also stated: "The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of *caveat emptor* [Let the Buyer Beware] should not be relied upon to reward fraud and deception."

The march toward the better day, however, has not yet reached the end of its journey of usefulness. There remains in our vast marketing structure areas in which much room for improvement exists, although the advance achieved in the past 70 years has been substantial.

Informative labeling laws leave many

products untouched. As our industrial production becomes more scientific and technological, as discoveries of new materials and new uses and combinations of old materials are made, it becomes more pressing than ever that information essential to intelligent buying be made available to purchasers.

Progress on the basis of enlightened thought must continue if our sales policy is to maintain its upward trend toward the wholesome ultimate in which the buyer with full confidence and trust can make all his purchases on an informed basis of honest information and completely fair and above-board dealing. (*Henry Miller.*)

A Fraud by Any Other Name

"Fraud" and "deceit" are short and hard words even though we try to soften them to "sharp practice" or "irregular conduct." Somebody takes unfair advantage of somebody else, and intends to do it—perhaps as part of a calculated pattern of doing business. The victim suffers a loss, sometimes small, sometimes ruinous.

The marketing of farm goods may be a fertile field for sharp trading—witness the fact that the statutes of all of the States and the United States are liberally studded with provisions to discourage irregular marketing practices and to punish the malefactor by the imposition of fines, imprisonment, or even economic death in the form of revocation of license. In California, for instance, you can get a year in jail and a criminal fine of a thousand dollars for handling farm products as a commission merchant, dealer, buyer, broker, processor, or agent, without

first obtaining a license and posting a bond.

One who holds a valid license as commission merchant, dealer, broker, processor, or agent can lose it or have it suspended for such offenses as non-payment within the time set forth in the contract between the parties or for failure promptly to make proper and true accounting. Other offenses, upon proof of which a license is placed in jeopardy, are making false statements as to the condition and quality of farm produce received or in storage and intentionally making false statements as to marketing conditions.

A licensee may be called to account for such acts as making fraudulent charges or returns for the handling, sale, or storage of farm products, fictitious sales, or being guilty of collusion to defraud the producer. A commission merchant may not make a reconsignment and charge more than one commission for making the sale without the written consent of the consignor. A licensee may be disciplined for refusing to file a schedule of his charges for services in connection with produce handled on account of the shipper, or, in fact, for indulging in any unfair practice.

One of the most powerful provisions of the code regulating the marketing activities of wholesale handlers provides that a license may be revoked because the licensee has rejected, without reasonable cause, or has failed and refused to accept, without reasonable cause, any farm products bought or contracted to be bought from a producer. He must not fail to furnish or provide boxes or other containers, or hauling, harvesting, or any other service contracted to be done in connection with the handling of farm products bought or handled or contracted to be bought or handled. He must not use any other devices to avoid acceptance, or unreasonably to defer acceptance of farm products bought or handled, or contracted to be bought or handled. One provision states that the licensee may lose his license if he is

found to be guilty of fraud, deceit, or willful negligence in any form. He may not fail to carry out any lawful contract with a producer, without reasonable cause.

The acts or omissions thus briefly stated from the pages of the California Agricultural Code illustrate the wide range of irregularities sought to be controlled or discouraged by special statutes in the several States.

The Committee of the National Association of Marketing Officials on Laws to Prevent Misrepresentation, at the Association's convention in 1952, recorded their findings and recommendations as follows:

"The NAMO recognizes the fact that there is no program more vital to agriculture as a whole than to maintain an alert, continuing, and effective crusade against misrepresentation in the marketing of agricultural products. Misrepresentation, generally speaking, costs producers and consumers untold millions yearly, not only from direct losses traceable to fraud and chicanery in their various forms, but in the necessary maintenance of Federal, State and local agencies whose duties are to discover, prevent and punish deceit, and to enforce laws conceived and enacted to discourage and eliminate unfair practices destructive to our economy.

"Misrepresentation is a vice appearing in many phases. A product or package is mislabeled as to the grade, size, weight, condition or even the contents, to the disgust and dismay of the consumer. Producers themselves will deliver 'stacked loads' to processors. Receivers in terminal markets misrepresent to the shipper the condition of a shipment on arrival, in the hopes of securing an unwarranted price adjustment. Buyers misrepresent the condition of the market, or the status of current price schedules. Packers place low-grade or even cull products in cans or other containers, and label or advertise these products as top-grade. Unscrupulous commission merchants make false returns. Un-

scrupulous weighmasters make false certificates of weight and measure."

The process of marketing is surrounded also with rigid requirements touching fruit, vegetables, and nuts, honey, livestock, and eggs, meat, and poultry products. Producers and consumers alike are protected by agencies engaged in testing the accuracy of weighing and measuring devices, and in discouraging such frauds as deceptive packing. Still other agencies inspect milk, meat, poultry, and canned or frozen foods and require them to be produced, processed, and delivered under sanitary conditions. The evasions made by some to avoid the sanitary and packing requirements have been characterized by the courts as fraud.

THE VARIOUS FRAUDS and deceptions used by the fast traders are legion. Not all are practiced by the handler or receiver against the grower or shipper. The grower is not above reproach. In the unsavory lexicon of chicanery, the following instances are characteristic.

Grapefruit grown in the Coachella Valley in California bear the mark "Coachella" stamped on each fruit. The boxes bear a like legend. Inferior grapefruit produced in other parts of the State nevertheless have been stamped "Coachella." Inspectors followed the loads and noted their origin and destination. Court action and heavy fines put a stop to it.

In packing asparagus, growers have been known to pack large stalks on the outside because they make a better looking package and so bring more money. When these deceptive packs are intercepted, fines follow.

During the Second World War dealers bought oranges at 5.5 cents a pound on the trees. They found they could not make commission charges. Accordingly they packed 150 oranges in a box, but used the 176 size; the latter has a diameter of 2.84 inches, while the 150 size calls for a 3-inch diameter. All boxes were properly marked as to count, but the fruit did

not average up to the required diameter. More than 17,000 boxes were rejected at one packinghouse.

The "stovepipe" method of packing, an old practice, is to put the smallest and defective potatoes in the center of the sack and the largest and best on the outside and top. Inspection by cutting the sack on one side or opening the top usually does not reveal the defective or undesirable potatoes.

Growers and packers of strawberries have persisted in placing the larger and better strawberries on the top or in the face of the basket and the little ones in the bottom. One grower, appearing in court for such a violation, pleaded that the big strawberries on the top did not hurt the little ones in the bottom!

A few years ago some growers and handlers of sweetpotatoes began to dye them to attain deeper color, to get higher prices, and also to cover some defects. Some of the dyes would dissolve in the water during preparation for the table. In a test case, the court sustained the law against deceptive dyeing and ordered the destruction of a large quantity of sweetpotatoes. Dye also has been applied to pale-colored red varieties of Irish potatoes to increase the red color, and in a few instances, but with little success, to white Irish potatoes to make them appear red.

Black varieties of juice grapes of lesser value than the Zinfandel variety have been labeled Zinfandel grapes and shipped to eastern markets. Prosecution of violators has discouraged the practice. In some eastern markets shipments of juice grapes in containers not labeled as to variety have been similarly mislabeled. In some instances proper variety markings have been obliterated upon arrival in eastern markets, and misstatements of variety placed upon the containers in order to enhance their value.

In the official inspection of canning tomatoes in California, where representative samples are taken from a load for the purpose of determining

compliance with the law, it has been necessary to vary the positions from which the sample containers are taken from the load in order to discover the loads that have been stacked. Stacking a load is arranging the containers so that inspectors will take for their sample containers of tomatoes of better quality than those in the rest of the load. The same situation exists in reference to deliveries of many kinds of fruits and vegetables that stop for inspection at highway inspection stations.

In a prosecution for the sale of apples packed and wrapped in containers with misstatement as to count of the number of fruits, it was found that the dealer or his agent, upon filling an order for certain sizes of apples, merely removed the previous count markings, which apparently had been correct, and applied the count on the containers as specified in the order.

A shipment of eggs to a Government agency was found to contain a substantial percentage of inedible eggs. The shipment had been inspected before delivery and had been found to be satisfactory. It was proved that after inspection the eggs had been removed from the cases; the defective eggs had been substituted and delivered to the agency.

Many attempts have been made to avoid inspection in order to ship frozen oranges to markets. Because freezing damage is not visible from the outside appearance, some handlers have sold frozen oranges to dealers. At one packinghouse lookouts were posted to give a signal when an enforcement officer approached, whereupon the packed frozen oranges on hand were hidden quickly. Another time officers followed a load of frozen oranges that were delivered to a packinghouse, which apparently was closed. They discovered that supplemental packing equipment had been installed on the second floor of the building, and that frozen oranges were being packed there behind blackout curtains.

Another type of fast dealing was the false delivery of canning tomatoes to

a cannery. Truckloads of tomatoes were received and inspected and presumably delivered to the cannery; a weight receipt, inspection certificate, and delivery receipt were filed in the cannery records. With the knowledge or instruction of an employee, the tomatoes were taken to the unloading platform but, instead of unloading, were taken away from the plant. After an interval, to let it seem like another load, the same tomatoes were again presented for inspection, weighing, and acceptance by the cannery.

AN INSTANCE of sharp practice: A trucker is hauling baled hay from a grower's barn for delivery to a dairyman. The grower is not at home when the trucker loads the hay, but the instructions are for the trucker to have the hay weighed by a licensed public weighmaster. The trucker goes to the grower's barn and loads the truck with 110 bales of hay. The public weighmaster has already determined the tare weight of the truck, and when the trucker returns to the scale with his loaded truck, the public weighmaster determines the gross weight. The trucker tells the weighmaster that he has 100 bales on the load and that a note to that effect should be made on the weighmaster's certificate. The weighmaster makes the notation, subtracts the tare from the gross, and notes that the net weight is 13,750 pounds. On the way to the dairyman, the trucker stops at his home place and removes the top 10 bales. He continues to the dairyman, delivers the 100 bales, and presents the weighmaster's certificate, complete with license number, gross, tare, and net, properly signed—a certified count of 100 bales with a net weight of 13,750 pounds. The buyer counts 100 bales of hay after they have been stacked. He mails his check to the grower for 6.75 tons of hay.

The dairyman who bought the hay might wonder why his 6.75 tons did not last as long as he had planned, but it is possible that the trucker has been delivering hay to him for many years

and the dairyman has become one of the trucker's regular customers for short-weight deliveries.

Another phase of sharp practice involves dealings between the buyer, or commission merchant, and the grower. The handler may take advantage of the fact that complete information generally is lacking regarding production and harvesting costs, particularly for perishable crops.

Until the crop has been harvested and the total amount obtained from the sale considered in relation to expenses of production and harvesting, one cannot determine the price per unit to be obtained in order to assure a profit on the season's operation. Therefore the producer tries to get the highest price offered for his produce, hoping to place himself in a favorable position in relation to his cost. He thereby becomes a target for the operator whose method is to offer more than the market justifies and who thus is often successful in securing the produce in competition with legitimate buyers. It is not until settlement time arrives that the producer realizes his mistake in seeking to obtain unrealistic prices.

The operator's method is to withhold a part of the purchase price, create a controversy with the producer over grade, quality, or size, and wear the producer down to accepting less than the amount due, in order to avoid a long delay or possible litigation. The deliberate adoption by the buyer of such a method is unethical, but his actions are not illegal in themselves. He thus gets farm products at reduced prices, and the producer has been placed in the position of finally accepting less than he might have received from a buyer who offered a legitimate price.

Another practice is that a buyer pays promptly for the first few loads of produce he receives but does not return to pay for the last load. There is the buyer whose checks are worthless and who makes them good only when he is caught. There are the buyers who, al-

though unknown to the producer, can fast-talk the farmer out of a load of produce with nothing but promises to return and make payment.

Consider also the promoter who promises more than top prices to the producer if he will send his produce on consignment. The prices do not materialize, but substantial handling charges do, and the grower at the end ruefully regards an account of sales that shows only red ink as the reward for a season's work.

Safeguards against traders' attempts to profit from lack of knowledge on the part of the grower or shipper and against false claims for adjustments based on the alleged failure of the commodity to meet contract specifications are provided in the reports of prevailing prices, market conditions, demand, supply, carlot movements, track holdings, cold-storage holdings, and other related information collected and sent out by Federal and State market news and crop reporting services. Help also is given by shipping-point inspection service, which, at the request of the shipper, examines fruit and vegetables as they are being graded, packed, and loaded for shipment. It issues certificates describing in detail the quality, condition, grade, size, and pack. Its certificates are used largely as the basis of sales f. o. b. at shipping point, and are admissible as evidence in the courts.

Deceptive packaging is a fraud practiced against the consumer. In a carton that can hold 10 ounces of a food are placed only 8 ounces. Dried beef often is packed in glass jars. Usually they are properly filled; but it has been known to happen that a label, carefully placed to go completely around the jar, hides the contents so that the unscrupulous packer can avoid filling the jars entirely. The buyer could see the "slack fill" if he turns the jar upside down and strikes the bottom sharply with the palm of the hand. But that simple way to determine whether the jar is completely filled is not ordinarily practiced by the cus-

tomers. Thousands of cases of a certain brand of dried beef were sold in California before the practice was discovered.

DESPITE FREQUENT WARNINGS, frauds are practiced with materials that are misrepresented as fertilizers. A case in point is the salesman who filled with sand secondhand sacks bearing the label of a well-known fertilizer manufacturer. He went from door to door in the best residential districts, selling the sand at a high price as a product of the reputable manufacturer. In the end he went to jail.

A group of peddlers selling peat as fertilizer once operated throughout the country. Peat helps improve the physical condition of poor soil, but it has comparatively little fertilizing value. It is mined from natural deposits and, where it occurs, is relatively cheap. The peddlers located various deposits. To gullible householders they sold it at the high price of 75 cents a basket, applied to a lawn. A purchaser who agreed to buy enough to cover his lawn got a bill for several hundred dollars, the peddlers insisting that more than a thousand baskets had been applied. Anyone could see that the truck could not have held that much peat, but the purchaser was threatened until he paid. Some of the purchasers consulted regulatory officials before paying, however. When warrants were issued for the peddlers, the racket was stopped.

Sometimes growers seem to insist on having the right to be cheated. A promoter developed a radio device which he said would kill pests at a distance, if a picture of the field to be treated was inserted in the device. When the farmers were warned that there was no evidence that such a device was of any value, they took up a collection and gave it to the promoter to help him continue his research. Later, when his tests did not succeed, they went to the district attorney and wanted their money back. The promoter by then had left the State.

A popular type of wholesale thievery

is known as the pack-out method of handling fruit or vegetables. The buyer writes a tight contract, setting up extremely high grades, with small tolerances. He agrees to pay the grower on the basis of the weights of the finished product. The grower may deliver 600 pounds of cauliflower, in a regular field cart or container, to the freezing processor, and may be told later that his net pack-out was about 200 pounds or less of the specified grade. He has no way to trace this fraud—his cauliflower is weighed as it is received and before processing.

A confidence game is operated by the man who approaches a grower with a proposition to grow lily bulbs, for instance. After a glowing talk, the farmer can hardly wait to affix his signature to a contract whereby the supplier will furnish the planting stock at a suspiciously low price. The farmer, in consideration, will grow commercial bulbs from the stock thus furnished. The sales of the finished product will be handled by the supplier or promoter. The farmer is assured that from the proceeds he will pay for the stock he bought from the operator and have a tidy profit.

The farmer has failed to read a fine-print clause that gives the supplier a chattel mortgage on the stock of bulbs he supplies. At the end of the growing season he learns to his sorrow that he has not raised enough merchantable bulbs to pay off the amount due for those purchased at the start. He faces foreclosure and must pay, unless he can point out the fraud; even then he cannot recover the use of his land or the months of hard work. The fraud? The bulbs sold to the farmer were culls, worthless for commercial plantings. Substitute Shasta Daisies, ivy, or another plant for bulbs, but the answer is essentially the same: An inexperienced farmer is lured into a trap, where he finds himself in debt for the worthless commodity used as bait.

It has happened that the farmer has come back for more. He is told that "something must have gone wrong

with the first venture, and that nothing can prevent the success of another crop." So he signs a new contract embracing the indebtedness of the old one and goes further into debt. He again plants his good acres with useless stock and does all the irrigating, cultivating, and harvesting. The crooked operator then handles whatever crop the grower may get, questionable as it may be, and retains all the proceeds of the sale for himself, because there is not enough to liquidate the purchase price of the bulbs, seeds, or plants with which the operator started. The balance still due on the contract gives the promoter the whip hand over the grower.

To this sorry record of fraud and deception there is no ready answer. But education may avert disaster: The intelligent grower, alerted to the tricks that may be played upon him, and aware of the aid provided by regulatory statutes, may evade the deadfalls and ambushes waiting for him on the dangerous trail leading from farm to market. (*C. J. Carey.*)

Some Rules for the Produce Business

The services of the commission merchant, broker, and dealer make it possible for a producer to concentrate on production.

Some problems have attended the increase in utilization of agents' services. They have had to do with the determination of an agent's reliability and responsibilities; setting up standard trade terms; provision for impartial determination of quality; verification and evaluation of an agent's accountings and actions; and providing for handling contracts and disputes.

At first, some undesirable individuals were attracted to the produce business because large amounts of credit could be obtained and profits could be made quickly. The buyer, seller, and agent were usually far apart, and the absence of regulations made it hard to check the statements of a dishonest operator. If a dispute arose regarding the quality of merchandise, the shipper had difficulty in proving that the goods met contract specifications. If legal action became necessary, the shipper would have to sue in the receiver's State. Early State laws pertained mostly to movement of goods within States but did not regulate commodities in interstate commerce.

At the turn of the century, commission merchants, dealers, brokers, and producers were greatly concerned over the loose manner in which the business was being conducted. Honest dealers found it difficult to carry on their business in competition with the minority of dishonest operators. One result was the formation of trade associations, which served to identify and evaluate the operation of members.

Shortly before the First World War, interest developed in the possibility of Federal legislation to regulate the marketing of fresh fruit and vegetables. Preliminary studies to that end were conducted by the Department of Agriculture and representatives of growers, shippers, and receivers. A report was issued in 1917 by a joint council of trade associations concerning bills before the Congress designed to make certain practices unlawful and to authorize the Secretary of Agriculture to take steps to facilitate distribution, to license handlers, and to prescribe regulations governing the conduct of the business.

In the First World War, the United States Food Administration formulated regulations requiring the licensing of all handlers of fresh fruit, vegetables, and certain other products and prescribing rules to be followed. The regulations became effective November 1, 1917.