

**12653. Misbranding of butter. U. S. v. The Midland Creamery Co., a Corporation. Plea of guilty. Fine, \$20. (F. & D. No. 17819. I. S. No. 8750-v.)**

On January 22, 1924, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The Midland Creamery Co., a corporation, Colorado Springs, Colo., alleging shipment by said company in violation of the food and drugs act as amended, on or about February 12, 1923, from the State of Colorado into the State of Texas, of a quantity of butter which was misbranded. The article was labeled in part: "Midland Gold Band Butter 1 lb. Net Midland Creamery Co. Colorado Springs."

Examination by the Bureau of Chemistry of this department of 60 packages of the article showed that the said packages averaged 15.45 ounces net of butter each.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "1 lb. Net," borne on the packages containing the article, was false and misleading in that the said statement represented that the said packages contained 1 pound net of butter, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that each of the said packages contained 1 pound net of butter, whereas, in truth and in fact, each of said packages did not contain 1 pound net of butter but did contain a less amount. 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.

On May 6, 1924, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$20.

HOWARD M. GORE, *Secretary of Agriculture.*

**12654. Misbranding of coffee. U. S. v. The Independence Coffee & Spice Co., a Corporation. Plea of guilty. Fine, \$40. (F. & D. No. 18731. I. S. Nos. 20606-v, 20607-v, 20608-v, 20642-v.)**

At the May, 1924, term of the United States District Court within and for the District of Colorado, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in the District Court aforesaid an information against the Independence Coffee & Spice Co., a corporation, Denver, Colo., alleging shipment by said company, in violation of the food and drugs act as amended, in various consignments, namely, on or about November 28, 1923, and January 23, 1924, respectively, from the State of Colorado into the State of Wyoming, and on or about January 24, 1924, from the State of Colorado into the State of Nebraska, of quantities of coffee which was misbranded. The article was labeled in part: (Case) "16-3 Lb. Tins" (or "16-2 Lb. Tins" or "60-1 Lb. Cans") "Breakfast Call Coffee The Independence Coffee & Spice Co. Denver, Colo.;" (can) "Steel Cut Three Pounds" (or "Two Pounds" or "One Pound") "Breakfast Call Coffee The Independence Coffee And Spice Co. Denver, Colo."

Examination by the Bureau of Chemistry of this department of 16 of the alleged 3-pound cans showed that the average net weight of the cans examined was 2 pounds 15.13 ounces; examination of 16 cans from each of the two consignments of the alleged 2-pound cans showed that the average net weight of the said cans was 1 pound 15.17 ounces and 1 pound 14.98 ounces, respectively; and examination of 5 of the alleged 1-pound cans showed that the average net weight of the cans examined was 15.33 ounces.

Misbranding of the article was alleged in the information for the reason that the statements "16-3 Lb. Tins" and "Three Pounds," borne on the cases and cans, respectively, containing a portion of the article, the statements, "16-2 Lb. Tins," and "Two Pounds," borne on the cases and cans, respectively, containing a portion of the article, and the statements "60-1 Lb. Cans" and "One Pound," borne on the cases and cans, respectively, containing the remainder thereof, were false and misleading in that the said statements represented that the cans contained 3 pounds, 2 pounds, or 1 pound, as the case might be, of the said article, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that the said cans contained 3 pounds, 2 pounds, or 1 pound, as the case might be, of the said article, whereas, in truth and in fact, the cans did not contain the amounts declared on the respective labels but did contain less amounts. 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.

On August 25, 1924, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$40.

HOWARD M. GORE, *Secretary of Agriculture.*

**12655. Alleged adulteration of butter. U. S. v. South Peacham Co-Operative Creamery Co., a Corporation. Directed verdict for the defendant.** (F. & D. No. 14762. I. S. No. 349-r.)

On June 28, 1921, the United States attorney for the District of Vermont, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the South Peacham Co-Operative Creamery Co., a corporation, South Peacham, Vt., alleging shipment by said company, in violation of the food and drugs act, on or about May 4, 1920, from the State of Vermont into the State of New Hampshire, of a quantity of butter which was alleged to be misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained 17.12 per cent of moisture and 79.03 per cent of fat.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed with the said article so as to lower and reduce and injuriously affect its quality and for the further reason that a substance, to wit, added water, had been substituted in part for butter, which the article purported to be.

On September 13, 1923, the case having come on for a trial before the court and a jury, the court directed that a verdict of not guilty be returned, on the ground of insufficient evidence.

HOWARD M. GORE, *Secretary of Agriculture.*

**12656. Adulteration of canned sardines. U. S. v. 500 Cases, et al., of Sardines. Tried to the court and a jury. Verdict for the Government. Product ordered destroyed.** (F. & D. Nos. 17955, 17956, 17957, 17958, 17959. I. S. No. 15017-v. S. No. E-1552.)

On November 7, 1923, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 1,000 cases of sardines, remaining unsold in the original packages at Richmond, Va., alleging that the article had been shipped by the Seacoast Canning Co., from Lubec, Me., on or about September 20, 1923, and transported from the State of Maine into the State of Virginia, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Sea Lion Brand Maine Sardines \* \* \* Packed By Seacoast Canning Co. Eastport, Me."

Adulteration of the article was alleged in the libels for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid [animal] substance.

On April 11, 1924, the case came on for trial before the court and a jury. After the submission of evidence and arguments by counsel, the court delivered the following charge to the jury (Groner, D. J.):

"Gentlemen of the Jury, this is a libel *in rem*, that is to say, against the thing sought to be condemned by the United States under the familiar food and drugs act, the purpose of which is to condemn any article of food containing filthy, decomposed, or putrid animal or vegetable substance. The Government some years ago as, of course, you gentlemen all know, in a very commendable effort to prevent the adulteration of food and misbranding of foods and shipment of putrid or decomposed food, passed what is known as the pure food and drugs act. One of the provisions of the act is that it shall be unlawful to ship in interstate commerce any article which is adulterated, and it is adulterated if it consists, so the statute says, in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, whether manufactured or not. The whole question in this case is whether the shipment in question contains an article of food which is either putrid or decomposed or filthy. The Government to maintain its view of the case has introduced the evidence of a number of witnesses whom you gentlemen have heard testify and whose conclusion is that these sardines, or a considerable portion of the sardines, are adulterated within the meaning of the act in that, according to their opinion, they are decomposed and putrid. That question is a question which is the issue in