

transported from the State of Maine into the State of Minnesota, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Commercial Brand [or "Casco Brand"] American Sardines * * * The Brawn Company, Portland, Maine."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

On December 1, 1930, claim and answer having been filed in the case, judgment of condemnation was entered and it was ordered by the court that the product be destroyed by the United States marshal, the decree providing, however, that the product might be released to the claimant upon payment of costs and the execution of a bond, conditioned in part that it be disposed of in a manner approved by this department and in accordance with the provisions of the Federal food and drugs act.

On February 25, 1931, the claimant having failed to comply with the terms of the decree, the court ordered that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18231. Adulteration and misbranding of jellies. U. S. v. Cedric R. Merrifield and the Pacific Manufacturing Co. (C. R. Merrifield & Co.). Pleas of guilty. Fine, \$100 and costs. (F. & D. No. 25039. I. S. No. 019247.)

Examination of samples of jellies from the shipment herein described showed that they were imitation fruit jellies, that artificial color was present in the raspberry and strawberry jellies, that the flavor of the raspberry jelly was artificial, and that the remaining jellies did not have the characteristic flavor of the fruit.

On March 18, 1931, the United States attorney for the Western District of Washington, 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 Cedric R. Merrifield, an individual, and the Pacific Manufacturing Co., a corporation, Seattle, Wash., alleging shipment by said defendants under the name of C. R. Merrifield & Co., in violation of the food and drugs act, on or about October 12, 1929, from the State of Washington into the State of Oregon, of quantities of jellies which were adulterated and misbranded. The articles were labeled in part: "Merrifield's * * * Raspberry [or "Strawberry" or "Loganberry" or "Blackberry"] Pectin Jelly acid added C. R. Merrifield & Co. Seattle, Wash."

It was alleged in the information that the articles were adulterated in that imitation raspberry jelly containing added and undeclared artificial color and flavor had been substituted for raspberry pectin jelly; imitation loganberry jelly had been substituted for loganberry pectin jelly; imitation strawberry jelly containing added and undeclared artificial color, had been substituted for strawberry pectin jelly; and imitation blackberry jelly had been substituted for blackberry pectin jelly.

Misbranding was alleged for the reason that the statements, "Raspberry Pectin Jelly," "Strawberry Pectin Jelly," "Loganberry Pectin Jelly," and "Blackberry Pectin Jelly," respectively, borne on the jars containing the articles, were false and misleading in that the said statements represented that the articles consisted solely of the jellies named; and for the further reason that they were labeled as aforesaid so as to deceive and mislead the purchaser into the belief that they consisted solely of the jellies named; whereas they did not so consist, in that they were imitation jellies, and the raspberry pectin jelly contained added and undeclared artificial flavor and color, and the strawberry pectin jelly contained added and undeclared artificial color. Misbranding was alleged for the further reason that the articles were imitations of and were offered for sale under the distinctive names of other articles.

On April 8, 1931, a plea of guilty was entered by the defendant, Cedric R. Merrifield, and also on behalf of the defendant, the Pacific Manufacturing Co., and the court imposed a single fine upon both defendants of \$100 and costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18232. Adulteration of canned pimientos. U. S. v. 307 Cases of Pimientos. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 25493. I. S. Nos. 8199, 8200. S. No. 3739.)

Samples of pimientos in jars from the shipment herein described having been found to be decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of Ohio.

On December 15, 1930, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 249 cases, each containing 24 jars, and 58 cases, each containing 48 jars of pimientos at Cincinnati, Ohio, consigned by the Pomona Products Co., Griffin, Ga., alleging that the article had been shipped on or about September 10, 1930, in interstate commerce from Griffin, Ga., into the State of Ohio, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: "Georgia Belle Pimientos * * * Grown & Packed by Pomona Products Co., Griffin, Ga." The remainder of the said article was labeled in part: "Sunshine Brand * * * Pimientos Pomona Products Co. Griffin, Ga."

It was alleged in the libel that the article was adulterated in that it consisted partly of a decomposed vegetable substance.

On February 24, 1931, the Pomona Products Co., Griffin, Ga., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant to be salvaged under the supervision of this department, upon payment of costs and the execution of a bond in the sum of \$750, conditioned in part that it should not be disposed of contrary to law.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18233. Alleged adulteration and misbranding of butter. U. S. v. South Peacham Creamery Co. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 25689. E. S. No. 027430.)

Samples of butter from the shipment herein described having been found to contain less than 80 per cent of milk fat, the standard prescribed by act of Congress, the Secretary of Agriculture reported the matter to the United States attorney for the District of Vermont.

On November 28, 1930, the United States attorney filed in the District Court aforesaid an information against the South Peacham Creamery Co., a corporation, South Peacham, Vt., alleging shipment by said company, in violation of the food and drugs act, on or about May 27, 1930, from the State of Vermont into the State of Massachusetts of a quantity of butter, which was charged to be adulterated and misbranded.

It was alleged in the information that the article was adulterated in that a substance containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which must contain not less than 80 per centum by weight of milk fat as defined and required by the act of Congress of March 4, 1923, which the article purported to be.

Misbranding was alleged for the reason that the statement "Butter," borne on the cartons containing the article, was false and misleading in that the said statement represented that the article was butter, a product which should contain not less than 80 per cent by weight of milk fat; and for the further reason that it was labeled butter, so as to deceive and mislead the purchaser into the belief that it contained not less than 80 per cent of milk fat; whereas the information alleged that the article contained less than 80 per cent of milk fat.

On May 18, 1931, the case came on for trial before the court and a jury, and evidence was introduced on behalf of the Government and the defendant. On May, 19, 1931, the taking of testimony was completed and arguments were made by counsel for the Government and defendant, upon the completion of which the court delivered the following charge to the jury (Howe, J.):

"Gentlemen of the jury: The first count in this information is the only one submitted to you. There are two charges in it for violations of the pure food and drug law, but there is only evidence as to one, that is the first count or charge. There is only one principal question of fact in the case for you to decide, that is, whether the South Peacham Creamery, on the 27th day of May, shipped butter into Massachusetts which contained less than 80 per cent of milk fat—on the 27th day of May. If the creamery company shipped into Massachusetts from Vermont a quantity of butter which contained less than 80 per cent of milk fat, if you are satisfied beyond a reasonable doubt that they did ship butter on the 27th day of May from Vermont into Massachusetts, and you are satisfied beyond a reasonable doubt that it contained less than 80 per cent milk fat, you will find the defendant guilty. Your verdict, Mr. Foreman, will be oral and will be guilty or not guilty.

"There has been no evidence in the case what the effect of time, if any, has on the percentages of milk fat. Of course, in order to find the defendant