

On March 21, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 311 cans of frozen eggs, remaining unsold in the original packages at Cincinnati, Ohio, consigned by Standard Brands (Inc.), from Chicago, Ill., about January 28, 1931, alleging that the article had been shipped in interstate commerce from Chicago, Ill., into the State of Ohio, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Frozen Fleishmann's Spring Laid Eggs Distributed by Standard Brands, Inc., New York City."

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

On March 26, 1931, Standard Brands (Inc.), Cincinnati, Ohio, 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 for salvaging under the supervision of this department, upon payment of costs and the execution of a bond in the sum of \$3,000, conditioned in part that it should not be sold or otherwise disposed of contrary to law.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18297. Adulteration of canned pimientos. U. S. v. 14½ Cases of Canned Pimientos. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 25628. I. S. No. 10856. S. No. 3918.)

Samples of canned pimientos 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 Illinois.

On January 5, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 14½ cases of canned pimientos at Decatur, Ill., alleging that the article had been shipped by the Stanton Brokerage Co., St. Louis, Mo., on or about September 10, 1930, and had been transported from the State of Missouri into the State of Illinois, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Golden Drip Brand * * * Pimientos Distributed by Empire Distributing Co., St. Louis, Mo."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of an under-processed and decomposed vegetable substance.

On April 4, 1931, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18298. Adulteration of canned prunes. U. S. v. 98 Cases of Canned Prunes. Default decree of destruction entered. (F. & D. No. 25985. I. S. No. 13756. S. No. 4256.)

Samples of canned prunes 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 Western District of Missouri.

On March 4, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 98 cases of canned prunes at Kansas City, Mo., alleging that the article had been shipped by the Ray-Maling Co., from Hillsboro, Oreg., on or about December 1, 1930, and had been transported from the State of Oregon into the State of Missouri, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Raybrook Brand Fresh Prunes * * * Packed by Ray-Maling Company, Inc. Kitchens, Hillsboro, Oregon."

It was alleged in the libel that the article was adulterated in that it consisted in part of decomposed vegetable matter.

On April 21, 1931, no claimant having appeared for the property, judgment was entered by the court finding the product adulterated and ordering that it be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18299. Adulteration of evaporated apples. U. S. v. 10 Boxes of Evaporated Apples. Default decree of destruction entered. (F. & D. No. 25989. I. S. No. 13757. S. No. 4259.)

Samples of evaporated apples from the shipment herein described having been found to contain excessive moisture and to show evidence of worm

infestation, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Missouri.

On March 4, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 10 boxes of evaporated apples at Kansas City, Mo., alleging that the article had been shipped by Claypool & Hazel from Springdale, Ark., on or about January 3 (31), 1931, and had been transported from the State of Arkansas into the State of Missouri, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Morning Glory Brand Evaporated Apples, Packed by Claypool and Hazel Springdale, Ark."

It was alleged in the libel that the article was adulterated in that insufficiently evaporated apples had been mixed and packed with and substituted in part for the said article. Adulteration was alleged for the further reason that the article consisted in part of a filthy and putrid vegetable substance and was worm infested.

On April 30, 1931, no claimant having appeared for the property, judgment of the court was entered finding the product adulterated and ordering that it be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18300. Alleged misbranding of corn bran. U. S. v. Shreveport Grain & Elevator Co. Demurrer and motion to quash filed by defendant. Demurrer sustained and case dismissed. (F. & D. No. 23742. I. S. Nos. 012352, 012353.)

The contents of certain sacks of corn bran from the shipment herein described having been weighed by a representative of this department and found to weigh less than the declared weight, namely, less than 100 pounds net, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Louisiana.

On July 23, 1929, the United States attorney filed in the United States District Court for the district aforesaid an information against the Shreveport Grain & Elevator Co., a corporation, Shreveport, La., charging shipment by said company, on or about January 5, 1929, in violation of the food and drugs act as amended, from the State of Louisiana into the State of Texas, of a quantity of corn bran which was alleged to be misbranded. The article was labeled in part: (Tag) "100 Lbs. (Net) Corn Bran Manufactured by The Shreveport Grain & Elevator Company, Shreveport, Louisiana."

The defendant filed a demurrer to the information and a motion to quash, attacking the section of the food and drugs act relied upon by the Government. On December 7, 1929, the United States attorney filed an amendment to the information.

Misbranding of the article was alleged in the information as amended for the reason that the statement, "100 Lbs. (Net)," borne on the tag attached to the sacks containing the article, was false and misleading in that the said statement represented that each of the said sacks contained 100 pounds net of the article, 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 sacks contained 100 pounds net of the article, whereas some of the said sacks contained less than 85 pounds of the article, and the average net weight of the contents of all the sacks was less than 96 pounds. 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.

On October 25, 1929, the demurrer and motion to quash were argued by counsel for the Government and defendant and were submitted to the court on briefs. On February 21, 1930, the court handed down a decision, without opinion, sustaining the defendant's demurrer, and holding unconstitutional the section of the food and drugs act involved. The Government immediately filed a motion for a rehearing, which motion was granted on May 9, 1930. On May 28, 1930, the case was reargued and resubmitted to the court on the record and additional briefs. On September 16, 1930, the court handed down the following opinion sustaining defendant's demurrer and dismissing the information (Dawkins, D. J.):

"This is a criminal information, charging the defendant with misbranding certain corn bran, in violation of the pure food and drugs act of June 30, 1906 (34 Stat. 768 (21 U. S. C. A. Sections 1-5, 7-15)) in that each sack of said product was branded as containing 100 lbs net, whereas in truth they con-