

Bros. & Co., a corporation, Huntington, W. Va., alleging shipment by said company in violation of the food and drugs act, on or about September 4, and 12, 1930, from the State of West Virginia into the State of Kentucky of quantities of wheat and rye middlings and screenings that were misbranded. The article was labeled in part: "Fancy White Wheat & Rye Middlings and Screenings Made by Gwinn Bros. & Co., Huntington, W. Va. Guaranteed Analysis Protein 15.00 Per Cent Fat 4.00 \* \* \* Made From Wheat Middlings, Rye Middlings, Ground Wheat Screenings 2%."

It was alleged in the information that the article was misbranded in that the statement, "Guaranteed Analysis Per Cent Protein 15.00 \* \* \* Made from: Wheat Middlings, Rye Middlings, Ground Wheat Screenings 2%," with respect to both lots of the article, and the statement "Fat 4.00," with respect to one lot, were false and misleading; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the said statements represented that the article contained not less than 15 per cent of protein and not less than 4 per cent of fat and that it was made exclusively from wheat middlings, rye middlings, and ground wheat screenings (2 per cent); whereas the article contained less than 15 per cent of protein, it was made in part from added undeclared corn products, and one lot of the article contained less than 4 per cent of fat.

On March 8, 1932, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$200.

ARTHUR M. HYDE, *Secretary of Agriculture.*

**19570. Adulteration of tomato puree and adulteration and misbranding of canned tomatoes. U. S. v. Benjamin Joseph Fettig (Fettig Canning Co.). Plea of guilty. Fine, \$75. (F. & D. No. 26686. I. S. Nos. 13506, 15663, 15675.)**

This action was based on interstate shipments of tomato puree and alleged canned tomatoes, both of which upon examination were found to contain excessive mold, and the latter was not made of sound whole ripe tomatoes as represented.

On or about October 30, 1931, the United States attorney for the Southern District of Indiana, 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 Benjamin Joseph Fettig, trading as the Fettig Canning Co., Elwood, Ind., alleging shipment by said defendant in violation of the food and drugs act, on or about September 12, 1930, from the State of Indiana into the State of Ohio, of a quantity of tomato puree that was adulterated, and on or about September 15, 1930, from the State of Indiana into the State of Pennsylvania, of a quantity of canned tomatoes that were adulterated and misbranded. The puree was labeled in part: "Retloc [or "Dandy Line"] Brand Tomato Puree." The canned tomatoes were labeled in part: "Mary's Choice Brand [design of whole ripe tomato] Tomatoes Extra Standard Puree \* \* \* Packed by Daleville Canning Co., Daleville, Ind." The word "Puree" on the label of the said canned tomatoes was indistinct.

The information alleged that both articles were adulterated in that they consisted in whole and in part of a filthy, decomposed, and putrid vegetable substance.

The information further alleged that the canned tomatoes were misbranded in that the statement "Extra Standard Tomatoes," together with the design of a whole ripe tomato, not corrected by the inconspicuous statement "Puree," borne on the label, were false and misleading, since they represented that the article was made of whole, ripe, sound tomatoes; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was a product prepared from whole, ripe, sound tomatoes, whereas it was prepared from partially decomposed tomatoes.

On March 29, 1932, motions to quash the information having been overruled by the court, the defendant entered a plea of guilty and the court imposed a fine of \$25 on each count of the information, a total fine of \$75 without costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

**19571. Misbranding of canned tomatoes. U. S. v. 1,075 Cases of Canned Tomatoes. Consent decree of condemnation. Product released under bond. (F. & D. No. 27596. I. S. No. 44452. S. No. 5626.)**

Examination of the canned tomatoes in the shipment involved in this action showed that the article fell below the standard promulgated by this department for canned tomatoes, in that it contained some decayed material, and excessive

peel, and blemishes, and that it was not labeled to show that it was sub-standard.

On December 23, 1931, the United States attorney for the Western District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 1,075 cases of canned tomatoes, remaining in the original unbroken packages at Fort Smith, Ark., alleging that the article had been shipped in interstate commerce by the Westville Canning Co., Westville, Okla., on or about August 12, 1931, and charging misbranding in violation of the food and drugs act as amended.

It was alleged in the libel that the article was misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it contained decayed material and an excessive amount of peel and blemishes, and the labels did not bear a plain and conspicuous statement prescribed by the said Secretary, indicating that it fell below such a standard.

On February 24, 1932, the Griffin Grocery Co., Fort Smith, Ark., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment was entered ordering the product condemned. It was further ordered by the court that the said product be released to the claimant for relabeling and disposition in accordance with the Federal food and drugs act, under the supervision of this department, upon the filing of a bond in the sum of \$1,500.

ARTHUR M. HYDE, *Secretary of Agriculture.*

**19572. Adulteration of butter. U. S. v. 19 Boxes, et al., of Butter. Decree of condemnation and forfeiture. Product released under bond.** (F. & D. No. 27833. I. S. No. 42942. S. No. 5840.)

Samples of butter taken from the interstate shipment involved in this action were found to contain less than 80 per cent by weight of milk fat, the standard prescribed by Congress.

On February 10, 1932, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 37 boxes of butter, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped in interstate commerce by Red 73 Creamery (Inc.), Union City, Ind., on or about February 3, 1932, to Philadelphia, Pa., and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that a product containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent of milk fat.

On February 15, 1932, A. F. Bickley & Son, Philadelphia, Pa., having appeared as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of costs and the execution of a bond in the sum of \$800, conditioned in part that it should not be sold or otherwise disposed of contrary to the Federal food and drugs act, or the laws of any State, Territory, District, or insular possession.

ARTHUR M. HYDE, *Secretary of Agriculture.*

**19573. Adulteration of celery. U. S. v. 103 Crates, et al., of Celery. Product adjudged adulterated and ordered released under bond to be salvaged.** (F. & D. Nos. 27757, 27758. I. S. Nos. 47501, 47502. S. Nos. 5837, 5838.)

Arsenic having been found on celery taken from both shipments involved in these actions, the Secretary of Agriculture reported the matter to the appropriate United States attorneys.

On February 16, 1932, the United States attorney for the District of Nebraska filed in the United States District Court a libel praying seizure and condemnation of 103 crates of the said celery at Omaha, Nebr., and on or about February 18, 1932, the United States attorney for the Western District of Missouri filed a libel against 80 half-crates of the same product at St. Joseph, Mo. It was alleged in the libels that the article had been shipped in interstate commerce by the Peppers Fruit Co., from Compton, Calif., the former on or about January 8, 1932, to Omaha, Nebr., and the latter on or about