

On December 28, 1932, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States a libel praying seizure and condemnation of 100 cases of canned lima beans at New Iberia, La. On or about January 17 and January 18, 1933, the United States attorney for the Western District of Louisiana filed libels against 150 cases of the same product in various lots at Church Point, Lafayette, Opelousas, and Abbeville, La., respectively. It was alleged in the libels that the article had been shipped in interstate commerce into the State of Louisiana, on or about October 13, 1932, by the Phillips Packing Co., Inc., from Baltimore, Md., and that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: (Can) "Phillips Delicious Lima Beans Specially Prepared from Selected Ripe Dried Lima Beans * * * Packed By Phillips Packing Co., Inc., Cambridge, Md."

It was alleged in the libels filed in the Western District of Louisiana that the article was misbranded in that the prominent statement "Lima Beans" was false and misleading and deceived and misled the purchaser, when applied to a product consisting of canned mature, soaked, dry lima beans, instead of canned, fresh lima beans, and the false impression was not corrected by the inconspicuous statement "Ripe Dried Lima Beans." A similar charge was made in the libel filed in the Eastern District of Louisiana. Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article.

The Phillips Packing Co., Inc., Baltimore, Md., filed claims in all cases, admitting the allegations of the libels. On February 11 and February 14, 1933, judgments of condemnation were entered and it was ordered by the court that the product be released to the claimant, upon payment of costs and the execution of bonds totaling \$1,500, conditioned that it be relabeled under the supervision of this Department.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20809. Adulteration and misbranding of cheese. U. S. v. 71 Boxes of Cheese. Decree of condemnation and forfeiture. Product released under bond. (F. & D. no. 28387. Sample nos. 2602-A, 2603-A.)

This case involved an interstate shipment of cheese, samples of which were found to contain excessive moisture. Samples taken from a portion of the article also were found to be deficient in fat.

On June 9, 1932, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States a libel praying seizure and condemnation of 71 boxes of cheese, remaining in the original unbroken packages at Green Bay, Wis., alleging that the article had been shipped in interstate commerce on or about May 13, 1932, by M. Fitzgerald & Son, from Chicago, Ill., to Green Bay, Wis., and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Cheddar Cheese."

It was alleged in the libel that the article was adulterated in that a substance containing excessive moisture, and in the case of a portion, deficient in fat, had been substituted in whole or in part for cheese, which the article purported to be.

Misbranding was alleged for the reason that the article was offered for sale under the distinctive name of another article.

On June 23, 1932, M. Fitzgerald & Son, Watertown, Wis., 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 claimant upon payment of costs and the execution of a bond in the sum of \$500, conditioned that it should not be sold or disposed of contrary to the provisions of the Federal Food and Drugs Act and all other laws.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20810. Adulteration of tullibeas. U. S. v. 288 Boxes, 186 Boxes, and 116 Boxes of Tullibeas. Tried to the court, sitting as a jury of one. Directed verdict for the Government. Product condemned and destroyed. (F. & D. nos. 26871, 26877. I. S. nos. 29036, 29037. S. nos. 5062, 5071.)

These cases involved certain lots of tullibeas imported from Manitoba, Canada. Examination showed that a large proportion of the fish were infested with worms imbedded in the flesh, enclosed in a cyst.

On August 13 and August 14, 1931, the United States attorney for the Southern District of New York, acting upon reports by the Secretary of Agriculture,

filed in the District Court of the United States libels praying seizure and condemnation of 590 boxes of tullibeas at New York, N.Y., alleging that the article had been shipped in two consignments, on or about July 31 and August 3, 1931, respectively, by the Manitoba Cold Storage Co., from Winnipeg, Manitoba, into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

The libels alleged that the article was adulterated in that it consisted wholly or partly of a filthy, decomposed, or putrid animal substance, and in that it consisted of portions of animals unfit for food.

On November 28, 1931, Sigurd V. Sigurdson, New York, N.Y., appeared as claimant for the property and filed answers denying the adulteration charge. On January 12, 1933, the two cases were consolidated and the evidence on behalf of the Government and claimant was submitted to the court, sitting as a jury of one. At the conclusion of the testimony and the arguments of counsel, both the Government and claimant moved for a directed verdict. The case was adjourned for submission of briefs in support of the motions and having come on for hearing on February 21, 1933, the Government's motion was granted in the following memorandum opinion (F. J. Coleman, J.):

"Without repeating the statement of specific facts made by the court at the close of the trial, the question presented is whether under the Food and Drugs Act of June 30, 1906 (21 U.S.C., secs. 1 to 15), raw fish infested with parasitic worms should be condemned and forfeited in the absence of proof that the parasites would be injurious to the consumer or would impair the taste of the fish, but where it appears that an ordinary person would have a strong revulsion against eating such fish if aware of the presence of the worms, and where it further appears that only an experienced person would discover them. The worms themselves are threadlike structures difficult to identify, but they are surrounded by a quantity of thick, greenish yellow fluid unpleasantly suggestive of pus, which consists of broken-down fish tissue and to some extent the excreta of the worms. This fluid would readily be observable by anyone eating the fish; but unless he knew its origin, it would probably be unobjectionable.

"The Food and Drugs Act (title 21, U.S.C.) bans adulterated foods in foreign and interstate commerce and section 8, subdivision 6, provides that food shall be deemed adulterated 'if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance or any portion of an animal unfit for food whether manufactured or not, if it is the product of a diseased animal or one that has died otherwise than by slaughter.'

"It seems to me that the fish in question come within the scope of that subdivision and are not excluded by the absence of proof that their condition would impair the health of the consumer or the flavor of the fish. The subdivision does not expressly prescribe such requisite and the courts have held that it does not imply one (*Knapp v. Callaway*, 52 Fed. (2d) 476; *A. O. Anderson & Co. v. U.S.*, 284 Fed. 542). While the statute is primarily concerned with the health of the consumers, it might well ban 'filthy' or 'decomposed' animal matter or the 'product of a diseased animal' without direct or scientific proof of danger to health. The aesthetic guide frequently precedes the scientific one and the Government might wisely ban food which runs counter to it in the categories mentioned.

"The fact that most consumers would not discover the worms and would, therefore, not have their feelings affronted is of no consequence because were it otherwise, the statute would not be needed. The statute is largely intended to protect those consumers who would not be in a position to observe the defect in the food.

"Verdict is directed for the Government. Settle order on notice."

On March 1, 1933, judgment was entered condemning the product and ordering that it be destroyed by the United States marshal.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20811. Adulteration of tomato catsup. U. S. v. 106 Cases of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 27910. I. S. no. 47512. S. no. 5927.)

This case involved a quantity of tomato catsup that contained excessive mold.

On March 11, 1932, the United States attorney for the District of Nebraska, 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