

21065. Misbranding of canned cherries. U. S. v. 19 Cases of Canned Cherries. Default decree of condemnation and forfeiture. Product delivered to charitable institutions. (F. & D. no. 29790. Sample no. 28102-A.)

This case involved an interstate shipment of canned cherries found to consist of water-packed cherries which were not labeled as such. The packages failed to bear a plain and conspicuous statement of the quantity of the contents.

On February 13, 1933, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 19 cases of canned cherries at Walsenburg, Colo., consigned by Otoe Food Products Co., alleging that the article had been shipped in interstate commerce on or about January 7, 1933, from Nebraska City, Nebr., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: (Can) "Shepard Brand. Net contents 6 lbs. 8 ozs. [indistinctly stamped over "1 Lb. 4 Oz."] pitted Red Cherries. Packed by Otoe Food Products Company, Nebraska City, Nebraska."

It was alleged in the libel that the article was misbranded in that it fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, because it was water-packed cherries, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary, indicating that it fell below such standard. Misbranding was alleged for the further reason that the article was in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement on the label, "1 Lb. 4 Oz." was incorrect, and the statement "Net Contents 6 lbs. 8 Oz." was illegible.

On June 5, 1933, 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 delivered to a charitable institution.

M. L. WILSON, *Acting Secretary of Agriculture.*

21066. Adulteration and misbranding of candies (pineapple jellies). U. S. v. Joseph G. Dubin & Sons, Inc. Plea of guilty. Fine, \$100. (F. & D. no. 28153. I. S. no. 34379.)

This case was based on an interstate shipment of so-called "Pineapple Jellies", consisting of candies with a jellylike center, chocolate covered. The centers were artificially flavored, containing no pineapple fruit or juice.

On February 9, 1933, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Joseph G. Dubin & Sons, Inc., Brooklyn, N. Y., alleging shipment by said company in violation of the Food and Drugs Act, on or about April 23, 1931, from the State of New York into the State of New Jersey, of a quantity of the said pineapple jellies which were adulterated and misbranded. The article was labeled in part: (Box) "Jos. G. Dubin & Sons Manufacturing Confectioners 72 Dec. Pineapple Jellies 1c ea. Brooklyn, New York"; (display card inside box) "Pine Jellies Covered with Pure Milk Chocolate."

It was alleged in the information that the article was adulterated in that a chocolate-covered jellylike substance, artificially flavored with undeclared artificial flavor and containing neither pineapple fruit nor pineapple juice, had been substituted for chocolate-covered pineapple jelly, which the article purported to be.

Misbranding was alleged for the reason that the statements, "Pineapple Jellies" and "Pine Jellies Covered with Pure Milk Chocolate", borne on the labeling, 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 was pineapple jelly covered with pure milk chocolate; whereas it was not, but was a product with jellylike centers, artificially flavored containing neither pineapple fruit nor pineapple juice. Misbranding was alleged for the further reason that the article was an imitation of another article, namely, chocolate-covered pineapple jelly, and was offered for sale under the distinctive name of another article, "Pineapple Jellies,"

On June 20, 1933, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$100.

M. L. WILSON, *Acting Secretary of Agriculture.*