

**21357. Adulteration of blueberries. U. S. v. 11 Crates of Blueberries. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 30970. Sample no. 47076-A.)**

This case involved an interstate shipment of blueberries which were found to contain maggots.

On August 7, 1933, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 11 crates of blueberries at Boston, Mass., consigned August 6, 1933, alleging that the article had been shipped in interstate commerce by Elmer Starr, Sr., from Rockville, Maine, and charging adulteration in violation of the Food and Drugs Act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On August 18, 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 destroyed by the United States marshal.

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

**21358. Adulteration of blueberries. U. S. v. 22 Crates of Blueberries. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 30978. Sample no. 47093-A.)**

This case involved an interstate shipment of blueberries which were found to contain maggots.

On August 11, 1933, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 22 crates of blueberries at Boston, Mass., consigned August 10, 1933, alleging that the article had been shipped in interstate commerce by Arthur Duplisea, from Gray, Maine, and charging adulteration in violation of the Food and Drugs Act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On August 23, 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 destroyed by the United States marshal.

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

**21359. Adulteration of blueberries. U. S. v. 6 Crates of Blueberries. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 30930. Sample no. 39821-A.)**

This case involved an interstate shipment of blueberries which were found to contain maggots.

On August 2, 1933, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of six crates of blueberries at Boston, Mass., consigned August 2, 1933, alleging that the article had been shipped in interstate commerce by F. P. Richardson, from South Lyndeboro, N.H., and charging adulteration in violation of the Food and Drugs Act.

It was alleged in the libel that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On August 23, 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 destroyed by the United States marshal.

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

**21360. Adulteration of pecans. U. S. v. Hendrick L. Cromartie. Plea of nolo contendere. Fine, \$25 on each of five counts. Execution of sentence suspended on counts 2 to 5, inclusive, and defendant placed on probation for one year. (F. & D. no. 29529. I.S. nos. 47734, 50649, 50650, 53876, 53936.)**

This case involved various shipments of pecans which contained an excessive proportion of inedible nuts, consisting of wormy, rotten or moldy, rancid or decomposed, and shriveled or empty nuts.

On August 7, 1933, the United States attorney for the Middle District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Hendrick L. Cromartie, Albany, Ga., alleging shipment by said defendant in violation of the Food and Drugs Act, in various consignments between March 3 and March 11, 1932, from the State of Georgia into the State of Missouri, of quantities of pecan nuts which were adulterated.

It was alleged in the information that the article was adulterated in that it consisted in whole and in part of a filthy, decomposed, and putrid vegetable substance.

On September 29, 1933, the defendant entered a plea of nolo contendere to the information, and on October 3, 1933, the court imposed a fine of \$25 on each of the five counts. Execution of sentence was suspended on counts 2 to 5, inclusive, and defendant was placed on probation for one year as to the violations covered by said counts.

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

**21361. Misbranding of corn meal. U. S. v. Shreveport Grain & Elevator Co. Motion to quash and demurrer to indictment filed. Motion and demurrer sustained by District Court. Appeal to Supreme Court. Judgment of District Court reversed. Plea of nolo contendere. Fine, \$100. (F. & D. no. 23765. I.S. nos. 0930, 0931, 0932, 0933.)**

This indictment was based on various shipments of corn meal made by the defendant company, which had been weighed by a representative of this Department and found to be short of the declared net weight.

On November 4, 1931, the grand jurors of the United States for the Western District of Louisiana, acting upon a report by the Secretary of Agriculture, presented an indictment against the Shreveport Grain & Elevator Co., a corporation, Shreveport, La., charging shipment by the defendant company on or about April 3, 4, and 5, 1929, from the State of Louisiana into the State of Mississippi, of quantities of corn meal which was misbranded. The article was labeled: (Sacks) "Red Head Fresh Ground Meal Shreveport Grain & Ele. Co. Shreveport, La. Fresh Ground Meal Net 96 [or "24" or "98"] Lbs."

It was charged in the indictment that the article was misbranded in that the statements of weight borne on the labels, to wit, "96 Lbs. Net", "24 Lbs. Net" and "98 Lbs. Net", were false and misleading; for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the sacks contained less than so labeled, the alleged 96-pound sacks containing not more than 94 pounds 12 ounces net, the alleged 24-pound sacks containing not more than 23 pounds net, and the alleged 98-pound sacks containing not more than 97 pounds net. 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 November 9, 1931, the defendant filed a demurrer and motion to quash the indictment, which were submitted to the court on briefs on November 24, 1931, and were sustained by the court in the following opinion handed down February 8, 1932 (Dawkins, J.):

"For the reasons given in memorandum opinion handed down in a similar prosecution by the Government against this defendant some months ago (U.S. v. Shreveport Grain & Elevator Co., no. 5542) (Notice of Judgment No. 18300) I think the demurrer and motion to quash should be sustained. Proper decree should be presented."

The Government filed a bill of exceptions and a petition for an order of appeal direct to the Supreme Court of the United States, which petition was granted on March 7, 1932. On November 7, 1932, the Supreme Court handed down the following opinion reversing the judgment of the district court:

"The defendant (appellee) was charged by indictment, returned in the court below, with misbranding certain sacks, containing corn meal, an article of food by labeling each of the sacks as containing a greater quantity by weight than in fact was contained therein, contrary to the provisions of the Food and Drugs Act of June 30, 1906, c. 3915, 34 Stat. 768, U.S.C., Title 21, § 2, which make it unlawful to ship in interstate or foreign commerce any article of food or drugs which is adulterated or misbranded, within the meaning of the act. The penalty prescribed is a fine of \$200 for the first offense, and for each subsequent offense, not exceeding \$300, or imprisonment not exceeding one year, or both, in the discretion of the court. Section 8, as amended by the act of March 3, 1913, c. 117, 37 Stat. 732, provides that an article of food shall be deemed to be misbranded—

"Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count; provided, however, That reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section three of this act.