

21675. Adulteration of bluefins. U. S. v. 3 Boxes of Fish. Default decree of destruction. (F. & D. no. 31303. Sample no 42539-A.)

This case involved a shipment of bluefins that were found to be infested with worms.

On October 19, 1933, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of three 100-pound boxes of fish at Covington, Ky., alleging that the article had been shipped in interstate commerce, on or about October 17, 1933, by the Hogstad Fish Co., from Duluth, Minn., 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, or putrid animal substance, and in that it consisted of portions of animals unfit for food.

On October 19, 1933, the court having found that the fish were spoiled and unfit for human consumption, judgment was entered ordering that they be destroyed by the United States marshal.

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

21676. Adulteration and misbranding of apple cider vinegar. U. S. v. Speas Manufacturing Co. Plea of nolo contendere. Fine and costs, \$25. (F. & D. no. 30215. Sample nos. 16627-A, 17009-A, 32719-A to 32724-A, incl.)

This case was based on several interstate shipments of a product represented to be apple cider vinegar. Examination of samples showed that one of the lots consisted of evaporated apple products, vinegar and distilled vinegar, and that the remaining lots consisted of apple cider vinegar containing added water, and in certain instances, also distilled vinegar.

On August 30, 1933, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Speas Manufacturing Co., a corporation, trading at Memphis, Tenn., alleging shipment by said company in violation of the Food and Drugs Act, on or about April 4, 1932, from the State of Tennessee into the State of Florida, on or about April 6 and 7, 1932, from the State of Tennessee into the State of Georgia, and on or about August 7, 1932, from the State of Tennessee into the State of Kentucky, of quantities of vinegar that was adulterated and misbranded. A portion of the article was labeled in part: "Old Time Pure Apple Cider Vinegar Mfg. by Speas Mfg. Co. Memphis, Tenn." The remainder was labeled in part: "Old Time Apple Cider Vinegar Speas Mfg. Co. Kansas City and Branches."

It was alleged in the information that a portion of the article was adulterated in that a mixture of evaporated apple products, vinegar and distilled vinegar, had been substituted for pure apple cider vinegar, which the article purported to be. Adulteration was alleged with respect to the remainder for the reason that substances, added water in certain of the lots, and added water and diluted acid (distilled vinegar) in certain other lots, had been mixed and packed with the article so as to reduce and lower and injuriously affect its quality and strength, and had been substituted for apple cider vinegar, which the article purported to be.

Misbranding was alleged for the reason that the statements, "Pure Apple Cider Vinegar", with respect to a portion of the article, and the statement, "Apple Cider Vinegar", with respect to the remainder, were false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser. Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article, apple cider vinegar.

On October 21, 1933, a plea of nolo contendere was entered on behalf of the defendant company, and the court imposed a penalty of \$25 in lieu of fine and costs.

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

21677. Misbranding of cottonseed screenings. U. S. v. National Cottonseed Products Corporation. Plea of guilty. Fine, \$25. (F. & D. no. 30210. Sample nos. 19803-A, 19805-A.)

This case was based on the interstate shipment of quantities of cottonseed screenings that contained less than 43 percent of protein, the amount declared on the labels.

On July 24, 1933, the United States attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the National Cottonseed Products Corporation, trading at Morrilton, Ark., alleging shipment by said company on or about June 12, 1932, in the name of the Morrilton Cotton Oil Co., and on or about June 22, 1932, in the name of the Morrilton Cotton Oil Mill, from the State of Arkansas into the State of Kansas, of quantities of cottonseed screenings that were misbranded. The article was labeled in part: (Tag) "Guaranteed Analysis Protein, not less than 43% * * * Products of cottonseed only. Manufactured For Kansas City Cake & Meal Co. * * * Kansas City, Mo."

It was alleged in the information that the article was misbranded in that the statement, "Guaranteed Analysis Protein, not less than 43%", borne on the tags attached to the sacks containing the article, was false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the article contained less than 43 percent of protein.

On October 4, 1933, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$25.

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

21678. Adulteration of apple scrap. U. S. v. Washington Dehydrated Food Co. Tried to a jury. Verdict of guilty. Fine, \$50 and costs. (F. & D. no. 30208. I.S. no. 53935.)

This case was based on a shipment of apple scrap that was found to contain lead and arsenic in amounts that might have rendered it injurious to health.

On July 3, 1933, the United States attorney for the Eastern District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Washington Dehydrated Food Co., Yakima, Wash., alleging shipment by said company in violation of the Food and Drugs Act, on or about September 17, 1931, from the State of Washington into the State of Missouri, of a quantity of apple scrap that was adulterated.

It was alleged in the information that the article was adulterated in that it contained added poisonous and deleterious ingredients, arsenic and lead, in an amount which might have rendered the article injurious to health.

On October 5, 1933, a plea of not guilty having been entered on behalf of the defendant company, the case came on for trial before a jury. On October 6, 1933, the trial was concluded, and the court submitted the case to the jury with the following instructions (Webster, *D.J.*):

"Gentlemen of the jury: Now that you have heard all of the evidence in this case, both that in behalf of the Government and that in behalf of the defendant, and have with commendable patience listened to it all, and to the arguments by counsel for the respective sides, it becomes the duty of the court to explain to you the essential elements of the charge set forth in the information in this case and to instruct you upon the applicable rules and principles of law by which you are to be guided in your deliberations, and it is your duty to accept these instructions as correct and, so far as the law in the case is concerned, to be guided by it.

"In this case the Government, the United States of America, has filed an information against the Washington Dehydrated Food Co., a corporation, wherein it seeks to recover a penalty against that company for an alleged violation of the National Pure Food and Drug law. The defendant company has filed an answer, which I will refer to later, and which will clearly cut the issue that you are to determine by your verdict in this case.

"This case is a criminal case in its characteristics, that is to say, the same presumptions attach as attach to a case where an individual is accused of violation of the law, and the same competent evidence is required in order to sustain as is required in the case of a criminal prosecution.

"The defendant in this case by its answer has put in issue the essential allegations of this charge set forth in the indictment, and the defendant is entitled to the same presumption of innocence that attaches to all persons accused of crime, and that presumption is one of the substantial and important rights of the defendant not to be ignored or lightly considered either by the court or by the jury, and is one of the safeguards that the law places upon