

21731. Misbranding of canned tomatoes. U. S. v. 996 Cases of Canned Tomatoes. Decree of condemnation and forfeiture. Product released under bond to be relabeled. (F. & D. no. 31553. Sample nos. 50128-A, 55400-A.)

This case involved an interstate shipment of canned tomatoes in which the cans were not filled to the standard promulgated by this Department, and which were not labeled to indicate that they were slack filled.

On November 8, 1933, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 996 cases of canned tomatoes at Philadelphia, Pa., alleging that the article had been shipped in interstate commerce on or about September 7, 1933, by W. L. Wheatly, from Clayton, Del., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Tropic Brand Tomatoes."

It was alleged in the libel that the article was misbranded in that it was canned food and fell below the standard of fill of container promulgated by the Secretary of Agriculture for such canned food, because the cans were slack filled, and the label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On November 13, 1933, W. L. Wheatly, Clayton, Del., 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 \$2,000, conditioned in part that it be relabeled under the supervision of this Department.

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

21732. Misbranding of Mrs. Tucker's shortening. U. S. v. 95 Cartons of Mrs. Tucker's Shortening. Product released under bond. (F. & D. no. 31214. Sample no. 46400-A.)

Sample packages of shortening taken from the shipment involved in this case were found to contain less than 1 pound, the labeled weight.

On October 11, 1933, the United States attorney for the Western District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 95 cartons, each containing 30 packages of Mrs. Tucker's shortening, at Texarkana, Ark., alleging that the article had been shipped in interstate commerce in various lots on or about August 25, September 7, September 13, and September 25, 1933, by the Interstate Cotton Oil Refining Co., from Sherman, Tex., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Mrs. Tucker's Shortening 1 lb. net."

It was alleged in the libel that the article was misbranded in that the statement on the label, "1 lb. net", was false and misleading and deceived and misled the purchaser, and 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 package, since the statement made was incorrect.

On November 15, 1933, the Interstate Cotton Oil Refining Co. having appeared as claimant for the property and having executed a bond in the sum of \$250, conditioned that the claimant pay costs of the proceedings and that the article should not be sold or otherwise disposed of contrary to the Federal Food and Drugs Act and all other laws, it was ordered by the court that the product be delivered to the claimant.

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

21733. Adulteration of apples. U. S. v. 51 Bushels of Apples. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 31589. Sample nos. 59563-A, 59567-A.)

This case involved the interstate shipment of a quantity of apples, examination of which showed the presence of arsenic and lead in amounts that might have rendered them injurious to health.

On October 27, 1933, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the

district court a libel praying seizure and condemnation of 51 bushels of apples at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about October 19, 1933, by O. L. Ensfield, from South Haven, Mich., 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 contained added poisonous and deleterious ingredients, arsenic and lead, in amounts which might have rendered it injurious to health.

On December 22, 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.*

21734. Adulteration of canned frozen eggs. U. S. v. Swift & Co. Plea of guilty. Fine, \$100 and costs. (F. & D. no. 29339. I.S. no. 39524.)

This case was based on an interstate shipment of frozen eggs that were found to be in part decomposed.

On November 3, 1933, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Swift & Co., a corporation, trading at Baltimore, Md., alleging shipment by said company in violation of the Food and Drugs Act, on or about October 21, 1931, from the State of Maryland into the District of Columbia, of a quantity of canned frozen eggs that were adulterated. The article was labeled in part: "American Albumen Corporation Frozen Eggs. Mixed Eggs * * * New York-Dallas."

It was alleged in the information that the article was adulterated in that it consisted in part of a decomposed and putrid animal substance.

On December 27, 1933, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$100 and costs.

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

21735. Adulteration and misbranding of grated cheese. U. S. v. Ehrat Food Corporation. Plea of guilty. Fine, \$100. (F. & D. no. 28171. I.S. nos. 20765, 24848.)

This case was based on interstate shipments of a product which was represented to be grated American cheese but which was found to consist of cheese containing skimmed milk solids or a product high in lactose.

On December 13, 1932, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Ehrat Food Corporation, Chicago, Ill., alleging shipment by said company in violation of the Food and Drugs Act as amended, on or about April 29, 1931, from the State of Illinois into the State of Ohio and on or about May 13, 1931, from the State of Illinois into the State of Missouri, of quantities of grated cheese that was adulterated and misbranded. A portion of the article was labeled: "Riviera Finest Grated American Cheese Net weight 1½ Oz. When Packed." The remainder was labeled: "Ehrat's Grated American Cheese Made From Finest American Cheese Net Weight 1½ Oz. when packed."

It was alleged in the information that the article was adulterated in that a substance, skimmed milk solids containing lactose, had been mixed and packed with the article so as to reduce and lower and injuriously affect its quality and strength, for the further reason that a product composed of whole American cheese and skimmed milk solids containing lactose had been substituted for grated American cheese, which the article purported to be, for the further reason that a substance other than the article and containing lactose, had been mixed and packed with it so as to reduce and lower and injuriously affect its quality and strength, and for the further reason that whole American cheese containing an added product high in lactose had been substituted for grated American cheese, which the article purported to be.

Misbranding was alleged for the reason that the statements, "Finest Grated American Cheese", "Grated American Cheese", "Net Weight 1½ Oz.", borne on the label, were false and misleading and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the article did not consist wholly of grated American cheese, and the packages contained less than 1½ ounces. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not