

"The flour was shipped from Galveston, Tex., to Jennings, La., on May 17, 1933, and reached the latter place on May 20. On May 26 it was inspected by an agent of the Department of Agriculture, who weighed some of the sacks and found that they were short not to exceed 5 ounces to the bag. They were all reweighed after this proceeding was instituted in compliance with the terms of the order permitting the bonding, and showed an average shortage of 4.62 ounces per sack of 22 pounds. Out of the total of 462 bags, 41, or less than 10 percent, contained 24 pounds or more, and only 5 came up to the 24 pounds and 3 ounces, adopted as standard in the reweighing.

"On the day the inspector weighed the sample sacks, prior to seizure, to-wit, May 26, the report of the weather bureau for Jennings showed a rainfall there of 2.77 inches. This was only 9 days after the shipment from Galveston on May 17, and the distance between those points is comparatively short. While it is not specifically shown in the proof, we take it, in view of the quantity, the shipment must have been made in a box car which went to destination without further handling except the unloading. It is a fact that the weight of flour is influenced by climatic conditions, particularly moisture and the extent to which it is handled. However, in this case, it was promptly inspected; that is within 6 days after its arrival at destination and on a day when there was a heavy rain at Jennings. It does not seem reasonable that there could have been a loss of approximately 5 ounces to the sack, had they been up to the requirement when shipped. It is significant that more than 90 percent of the bags were below weight where less than 10 percent came up to standard. Counsel contends that the weather was hot and dry during the months of May, June, and July, 1933. From the 20th to the end of May, it averaged about 90° and rained 5 out of 11 days, a total of 4.24 inches. During June the weather averaged a little warmer and the precipitation was 3.63 inches, it having rained as follows: On the 10th, 1.72 inches; the 11th, 0.34 inches; the 12th, 0.73 inches; the 21st, 0.04 inches; the 26th, 0.08 inches; and the 28th, 0.72 inches; there was no more rain until July 9, when 0.10 inch fell, yet the average weight of the entire lot of flour on the 10th of that month was short approximately the same amount per sack as those weighed by the inspector on May 26. It is true that an officer of the company testified as to the method of weighing, testing the sacks, etc., but I do not believe this sufficient to overcome the other facts which I have mentioned. The rules of the Kansas City Board of Trade were introduced in evidence, showing a permissible 'variation' in the trade of 2 percent; whereas in this instance the average shortage was 1.017 percent. However, the trouble here is that there was very little 'variation' and more than 90 percent was short. The officers of the claimant were asked by the attorney for the Government why some allowance was not made for climatic conditions and for loss from handling, and the point appears to have been evaded by the consistent answer that it was impossible to tell how much weight would be lost from those causes, because of the drying out of moisture, handling, etc. Not once did they state that any allowance was made for these factors, although they were well recognized in the trade. It seems to have been the view of the claimant that it should place only the exact amount of 24 pounds in the bags when packing for shipment, although the Government regulations permitted a moisture content of 15 percent and the consumer would be left to absorb whatever shortage there might be if it dried out or was lost from ordinary handling. In this instance, however, I do not think it reasonable, under the circumstances, that the flour could have lost so consistently the amount which was shown.

"There will be judgment for the plaintiff condemning the claimant to pay costs with the right of the Government to proceed against the release bond if not paid.

"Proper decree should be presented."

On May 28, 1934, judgment for costs was entered against the claimant.

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

22205. Misbranding of flour. U. S. v. 200 Bags and 160 Bags of Flour.
Product released under bond to be repacked or relabeled. (F.
& D. no. 30612. Sample nos. 46496-A, 46500-A.)

Sample sacks of flour taken from the shipment involved in this case were found to contain less than the weight declared on the label.

On June 15, 1933, the United States attorney for the Western District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 360 bags of flour at

Lake Charles, La., alleging that the article had been shipped in interstate commerce, on or about June 2, 1933, by the American Maid Flour Mills from Houston, Tex., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "American Maid Flour American Maid Flour Mills, Houston, Texas, 24 Lbs. Net, Bleached Flour"; or "Majesty Flour American Maid Flour Mills, Houston, Texas, 6 lbs. net Bleached."

It was alleged in the libel that the article was misbranded in that the statements, "24 Lbs. Net" and "6 Lbs. Net", borne on the labels, were false and misleading and deceived and misled the purchaser, since the bags contained less than the declared weights. 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 package, since the statement made was incorrect.

On July 11, 1933, the American Maid Flour Mills having appeared as claimant for the property, a decree was entered permitting the claimant to take the product down under a bond in the sum of \$250, the conditions of which required that costs be paid and that the flour be repacked or relabeled under the supervision of this Department.

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

22206. Adulteration of canned shrimp. U. S. v. 100 Cases and 30 Cases of Canned Shrimp. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 30782. Sample no. 41607-A.)

This case involved a shipment of canned shrimp which was in part decomposed.

On July 29, 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 a libel praying seizure and condemnation of 130 cases of canned shrimp at Memphis, Tenn., alleging that the article had been shipped in interstate commerce on or about June 10, 1933, by the Aughinbaugh Canning Co., from Biloxi, Miss., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Nigger Bead Brand Shrimp Distributed by Aughinbaugh Canning Co., Baltimore, Md."

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

On March 31, 1934, 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.*

22207. Adulteration and misbranding of Old English Punch Maker. U. S. v. 664 Packages of Old English Punch Maker. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 31022. Sample nos. 37097-A, 54822-A.)

This case involved a product labeled to convey the impression that when used as a beverage base it would give the distinctive flavor of strawberry or raspberry. Examination showed that the articles contained undeclared artificial color and that when used as directed did not possess the flavors of the said fruits. Examination also showed that the statement of the quantity of the contents was not clear and distinct.

On or about March 8, 1934, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 664 packages of Old English Punch Maker at Portland, Oreg., alleging that the article had been shipped in interstate commerce by the Western Sales Corporation from Seattle, Wash., in various shipments, on or about June 1, July 20, and August 10, 1933, and charging adulteration and misbranding in violation of the Food and Drugs Act as amended. The articles were labeled: "Old English Punch Maker Raspberry [or "Strawberry"]."

It was alleged in the libel that the article was adulterated in that artificially colored mixtures of sugar and acid containing no fruit flavor, or a negligible amount of fruit flavor, had been substituted for a beverage base containing fruit flavors, and for the further reason that the article had been mixed and colored in a manner whereby inferiority was concealed.

Misbranding was alleged for the reason that the statements on the carton and in the circular, "Punchmaker Strawberry [or "Raspberry"] Flavor", were false and misleading and deceived and misled the purchaser. Misbranding