

Dry Peas.' To those who pay attention to labels a statement of this nature would clearly indicate that the product was not that of immature, succulent peas, which the Secretary assumed to fix as the standard of excellence for all canned peas. Clearly this or some suitable equivalent would adequately protect the public, so far as any label can, against unwarrantable substitution of this product for that of immature peas.

"Concluding as we do that the regulation complained of, as applied to appellees' product, is unreasonable and unauthorized by the statute, we agree with the District Court, which reached the same conclusion, that there is no need to consider the question of constitutionality of the amendment. We refer with approval to Judge Baltzell's opinion in the District Court, 3 Fed. Sup. 143, particularly to his citation and discussion of authorities and his consideration of some other propositions whereon we have not commented.

"The decree is affirmed."

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

24352. Joseph S. Morgan, et al., v. Arthur M. Hyde (Henry A. Wallace). Suit to enjoin the Secretary of Agriculture from enforcing against canned peas prepared from soaked dry peas, the provisions of the regulations of the Secretary of Agriculture prescribing standards for canned peas and labeling of canned peas which fail to conform to such standard. Permanent injunction granted.

On December 23, 1932, Joseph S. Morgan and Ivan C. Morgan, copartners, trading as the Morgan Packing Co., Austin, Ind., filed a bill of complaint in the Supreme Court of the District of Columbia against Arthur M. Hyde, Secretary of Agriculture, praying that the defendant be restrained from enforcing against canned peas packed from mature dry peas, the provisions of the regulations prescribing standards for canned peas. The complaint sets forth substantially the same allegations as those contained in the complaint filed by plaintiffs in the Southern District of Indiana against George R. Jeffrey, United States attorney, and Arthur M. Hyde, which was dismissed as to the latter for lack of jurisdiction (notice of judgment no. 24351) and prayed, as in the former complaint, that a preliminary hearing be granted on the question of a temporary injunction, that a temporary restraining order be issued, and that upon final hearing the defendant be permanently enjoined from enforcing the said regulations. A motion for a temporary restraining order was denied.

On January 18, 1933, a motion for a preliminary injunction was argued to the court and was granted. Subsequently Henry A. Wallace, who had succeeded Arthur M. Hyde as Secretary of Agriculture, was substituted as defendant.

On January 16, 1935, final hearing having been held, a decree was entered permanently enjoining the Secretary of Agriculture and all subordinate officers and agents acting under his direction and authority, from enforcing against plaintiffs' product, consisting of canned peas prepared from matured dry peas, the provisions of the regulations requiring that they be labeled as substandard, the court holding that they were a separate class of canned food from canned peas canned in their tender immature state.

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

24353. Adulteration of tomato trimmings. U. S. v. Uddo-Taormina Corporation and Angelo Glorioso, trading as the Florida Canning Co. Pleas of nolo contendere. Fines, \$400. (F. & D. no. 30233. Sample no. 7122-A.)

This case was based on an interstate shipment of canned tomato trimmings which were found to be in part decomposed and to contain maggots.

On September 14, 1933, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Uddo-Taormina Corporation and Angelo Glorioso, of New Orleans, La., said corporation and individual trading as the Florida Canning Co., at Miami, Fla., alleging shipment by said defendants in violation of the Food and Drugs Act on or about May 17, 1932, from the State of Florida into the State of Louisiana, of a quantity of tomato trimmings which were adulterated. The article was billed as tomato pulp.

The article was alleged to be adulterated in that it consisted in part of a filthy and decomposed vegetable substance; and in that it consisted in part of a filthy animal substance, namely, maggots.

On January 10, 1935, the defendants entered pleas of nolo contendere to the information, and the court imposed fines in the total amount of \$400.

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