

The articles were alleged to be adulterated in that they consisted in whole or in part of filthy, decomposed, and putrid vegetable substances.

A portion of the tomato catsup was alleged to be misbranded in that it contained benzoate of soda and the label failed to bear a statement of the quantity and proportion of benzoate of soda contained therein.

On February 11, 1936, a plea of guilty was entered on behalf of the defendant company and the court imposed a fine of \$50.

W. R. GREGG, *Acting Secretary of Agriculture.*

25530. Alleged misbranding of pancake flour. U. S. v. Doud Milling Co., a corporation. Information dismissed on demurrer. (F. & D. no. 30292. Sample no. 3012-A.)

This article was alleged to be mislabeled as a whole-wheat product.

On July 28, 1934, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Doud Milling Co., a corporation, Denison, Iowa, alleging shipment by it in violation of the Food and Drugs Act as amended, on or about August 8, 1932, from Denison, Iowa, to Sioux Falls, S. Dak., of quantities of pancake flour, and charging misbranding. The article was labeled: (Case) "12 3½ Lb. Pkgs. * * * Whole Wheat Self-Rising Pancake Flour"; (package) " * * * A compound of specially prepared whole wheat flour, corn flour, sugar, salt, phosphate, soda, and powdered buttermilk."

Misbranding of the product was charged (a) under the allegations that there was borne on the cases and on the package the statement, to wit, "Whole Wheat Self-Rising Pancake Flour", and on the packages the statement, to wit, "Whole Wheat Pancake Flour"; that the product was not whole-wheat self-rising pancake flour; that the said statements were false and misleading; (b) under the allegation that the said statements were borne on the cases and packages so as to deceive and mislead the purchaser.

A demurrer to the information having been filed by the defendant, an order sustaining the demurrer and dismissing the information was entered on May 22, 1935.

W. R. GREGG, *Acting Secretary of Agriculture.*

25531. Alleged adulteration of canned sardines. U. S. v. 350 Cartons of Canned Sardines. Judgment of condemnation entered in the District Court for the Western District of Pennsylvania on the verdict of the jury, reversed by the Circuit Court of Appeals for the Third Circuit. Libel dismissed. (F. & D. no. 30752. Sample no. 40180-A.)

The libel in this case alleged that the canned sardines consisted in part of a decomposed animal substance.

On July 20, 1933, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 350 cartons of canned sardines at Pittsburgh, Pa., alleging that the article had been shipped in interstate commerce on or about May 14, 1933, by the Van Camp Sea Food Co., Inc., Terminal Island, Calif., from that place to Pittsburgh, Pa., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (Carton) "Van Camps Sardines in Tomato Sauce * * * Van Camp Sea Food Co. Inc. Terminal Island, Calif."

Adulteration of the article was charged under the allegation that it consisted in part of decomposed animal substance.

The Van Camp Sea Food Co., Inc., appeared as claimant for the seized property and answered on September 29, 1933, denying all the material allegations of the libel.

On May 17, 1934, the case having been tried to a jury, a verdict in favor of the United States was returned. Judgment of condemnation of the article was entered on the verdict on January 23, 1935. Appeal to the Circuit Court of Appeals for the Third Circuit was noted on February 16, 1935. That court, on February 11, 1936, reversed the judgment of the district court and remanded the case with instructions to dismiss the libel, pursuant to an opinion, as follows:

BUFFINGTON, *Judge*: This case, a libel by the Government to forfeit, is one of grave concern in that it not alone involves the destruction of a very large quantity of food, but, what is of more importance, it involves also the future of the appellant's extensive business and is a condemnation of the fish inspection of the State of California. Where the drastic remedy of forfeiture by the Government of the citizen's property was sought, the late Judge McPherson, then