

28533. Misbranding of canned tomatoes. U. S. v. 374 Cases and 209 Cases of Tomatoes. Decree of condemnation. Product released under bond to be relabeled. (F. & D. Nos. 41027, 41028. Sample Nos. 47287-C, 47288-C.)

This product was substandard because the tomatoes were not normally colored, and it was not labeled to indicate that it was substandard.

On December 6, 1937, 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 583 cases of tomatoes at Middlesboro, Ky., consigned on or about August 20 and September 17, 1937, alleging that the article had been shipped in interstate commerce by R. O. Giles from Tazewell, Tenn., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Fairfax Hall Brand * * * Tomatoes Packed For Wholesale Grocers Exchange, Inc. Richmond, Va."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the tomatoes were not normally colored and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary indicating that such canned food fell below such standard.

On January 10, 1938, R. O. Giles having appeared as claimant, judgment of condemnation was entered, and the product was ordered released to claimant under bond conditioned that it be relabeled under the supervision of this Department.

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

28534. Misbranding of canned pears. U. S. v. 218 Cases of Canned Diced Bartlett Pears. Consent decree of condemnation. Product released under bond for relabeling. (F. & D. No. 41014. Sample No. 64573-C.)

This product fell below the standard established by this Department because the units were not of uniform size, and it was not labeled to indicate that it was substandard.

On or about December 9, 1937, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 218 cases of canned pears at St. Louis, Mo., alleging that the article had been shipped in interstate commerce on or about October 20, 1937, by Van Nouhuys & Co., from Campbell, Calif., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Diced Tast-Good Brand Bartlett Pears Packed For Empire Distributing Company, St. Louis, Mo."

It was alleged to be misbranded in that it fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food since the units were not of uniform size, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On February 15, 1938, Van Nouhuys & Co. having appeared as claimant and having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled.

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

28535. Misbranding of canned tomatoes. U. S. v. 157 Cases and 540 Cases of Tomatoes. Portion of product condemned and destroyed; one lot ordered destroyed; remainder released under bond to be relabeled. (F. & D. Nos. 41175, 41176. Sample Nos. 64574-C, 65018-C.)

This product fell below the standard established by this Department because it consisted of tomatoes with puree from trimmings, and it was not labeled to indicate that it was substandard.

On December 17, 1937, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 157 cases of canned tomatoes at St. Louis, Mo., and 540 cases of canned tomatoes at Malden, Mo., alleging that the article had been shipped in interstate commerce on or about July 13 and September 24, 1937, by the Dupont Canning Co., in part from Dupont, Ind., and in part from Kingston, Ind., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Cans) "Dupont Brand Tomatoes * * * Standard Quality Packed by Dupont Canning Co. Dupont, Ind."