

district court a libel praying seizure and condemnation of five cartons of candy at Hammond, Ind., alleging that the article had been shipped in interstate commerce—having been shipped by the Queen Anne Candy Co., of Hammond, Ind., to Hartford, Conn., and having been returned by the consignee to Queen Anne Candy Co., at Hammond, Ind., on or about December 28, 1937; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy and decomposed vegetable substance.

On March 11, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

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

28785. Misbranding of apples. U. S. v. 600, 500, 900, 110, and 30 Baskets of Apples. Decree of condemnation. Product released under bond for re-labeling. (F. & D. Nos. 40943 to 40946, incl. Sample Nos. 66421-C to 66424-C, incl.)

This product fell below the grades declared on the baskets because of excessive defects.

On or about November 30, 1937, the United States attorney for the Northern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 2,140 baskets of apples at Tabler, W. Va., alleging that the article had been shipped in interstate commerce between September 1, 1937, and October 25, 1937, from Winchester and Alban, Va., by L. B. Resseque, and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Baskets) "U. S. No. 1 [or "U. S. Utility"] * * * Grown & Packed by L. B. Resseque Winchester, Va."

It was alleged to be misbranded in that the apples fell below the respective grades indicated on the baskets.

On December 31, 1937, no claim or answer having been filed, judgment of condemnation and destruction was entered. L. B. Resseque having subsequently moved for leave to intervene as claimant, the motion was granted and on January 12, 1938, the product was ordered released under bond conditioned that it be disposed of only in compliance with the law and under the supervision of this Department.

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

28786. Adulteration and misbranding of butter. U. S. v. 49 Cubes of Butter. Consent decree of condemnation. Product released under bond. (F. & D. No. 42093. Sample No. 3130-D.)

This product contained less than 80 percent of milk fat.

On February 16, 1938, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 49 cubes of butter at San Francisco, Calif., alleging that the article had been shipped in interstate commerce on or about May 1, 1937, from Hutchinson, Kans., by Salt City Creamery, of Hutchinson, Kans., and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat, as provided by the act of March 4, 1923.

Misbranding was alleged in that the article was labeled "butter," which was false and misleading and deceived the purchaser, since it contained less than 80 percent of milk fat.

On March 31, 1938, Bennett & Layton, Inc., having appeared as claimant, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be brought up to the legal standard under the supervision of this Department.

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

28787. Misbranding of canned peas. U. S. v. 126 Cases of Canned Peas. Default decrees of condemnation. Property ordered delivered to charitable institution. (F. & D. No. 41198. Sample No. 48451-C.)

This product was substandard because the peas were not immature, and it was not labeled to indicate that it was substandard.

On December 21, 1937, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the district court

a libel praying seizure and condemnation of 126 cases of canned peas at Washington, D. C., alleging that the article had been shipped in interstate commerce on or about October 6, 1937, by Frederick City Packing Co. from Thurmont, Md., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Lyric Brand Early June Peas * * * M. E. Horton, Inc., Distributors, Washington, D. C."

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 peas were not immature, and the package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture to the effect that such canned food fell below such standard.

On March 18, 1938, default decree of condemnation was entered, and it was ordered that the property be delivered to certain charitable organizations for their use and not for sale.

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

28788. Adulteration of tomato paste. U. S. v. 99 Cases of Tomato Paste. Default decree of condemnation and destruction. (F. & D. No. 41319. Sample No. 45409-C.)

This product was worm- and insect-infested.

On January 4, 1938, the United States attorney for the Southern District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 99 cases of tomato paste at Mobile, Ala., alleging that the article had been shipped in interstate commerce on or about December 7, 1937, by Howard Terminal from Oakland, Calif., and charging adulteration in violation of the Food and Drugs Act. The article was labeled: "Madonna Brand Fancy Pure Tomato Paste * * * Packed by Riverbank Canning Company, Riverbank, California."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy vegetable substance.

On February 26, 1938, no claimant having appeared, judgment of condemnation and forfeiture, with order of destruction, was entered.

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

28789. Adulteration of codfish. U. S. v. 9 Boxes of Codfish. Default decree of condemnation and forfeiture. Order of destruction. (F. & D. No. 41325. Sample Nos. 39065-C, 45439-C.)

This article was moldy salted codfish.

On January 4, 1938, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of nine boxes of codfish at Seattle, Wash., alleging that the article had been shipped in interstate commerce on or about December 20, 1937, by Wm. G. Goldberg from San Francisco, Calif., and charging adulteration in violation of the Food and Drugs Act.

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

On March 26, 1938, no claimant having appeared, judgment of condemnation and forfeiture, with order of destruction, was entered.

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

28790. Adulteration and misbranding of canned cherries. U. S. v. 44½ and 28 Cases of Canned Cherries (and 1 other seizure action against the same product). Portion of product released under bond for relabeling; remainder condemned and destroyed. (F. & D. Nos. 40302, 40303. Sample Nos. 50791-C, 50792-C.)

This product was contained in No. 10 and No. 2 cans. Both sizes were sub-standard, the former because of excessive packing medium and the latter because of excessive pits, and they were not labeled to indicate that they were sub-standard. The product in the No. 10 cans contained worms.

On September 21, 1937, the United States attorney for the District of Montana, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 114½ cases containing No. 2 cans and 113 cases containing No. 10 cans of cherries at Butte, Mont., alleging that the article had been shipped in interstate commerce on or about July 26 and August 19, 1937, from Post Falls, Idaho, by Seiter's, Inc., and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Coeur D'Alene Brand Red Sour Pitted Cherries * * * Seiter's, Inc. Coeur D'Alene, Idaho,"