

**28797. Misbranding of canned tomatoes. U. S. v. 445 Cases of Canned Tomatoes. Consent decree ordering product released under bond for relabeling. (F. & D. No. 41668. Sample No. 11401-D.)**

This product consisted of tomatoes with puree from trimmings but was not labeled to indicate that fact.

On February 9, 1938, 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 445 cases of canned tomatoes at St. Louis, Mo., alleging that the article had been shipped in interstate commerce on or about September 21, 1937, from Marysville, Ind., by Marysville Packing Co., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Cooke's Own Brand \* \* \* Tomatoes \* \* \* Packed by Marysville Packing Co., Marysville, Indiana."

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 it consisted of tomatoes with puree from trimmings, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On March 28, 1938, Frank Cooke, trading as Marysville Packing Co., claimant, having admitted the allegations of the libel, the product was ordered released under bond conditioned that it be relabeled.

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

**28798. Adulteration of fresh spinach. U. S. v. 12,972 Pounds of Spinach. Default decree of condemnation and destruction. (F. & D. No. 42091. Sample Nos. 17071-D, 17072-D.)**

This product was heavily infested with aphids.

On March 30, 1938, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 12,972 pounds of spinach at Baltimore, Md., alleging that the article had been shipped in interstate commerce on or about March 29, 1938, from Remlik, Va., by Lord-Mott Co., 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 vegetable substance.

On March 30, 1938, the claimant having consented thereto, judgment of condemnation was entered, and the product was ordered destroyed immediately because of its perishable nature.

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

**28799. Misbranding of dairy ration. U. S. v. Northern Oats Co. Plea of guilty. Fine, \$25. (F. & D. No. 39811. Sample No. 2605-C.)**

This product contained less protein and fat and more fiber than represented.

On March 1, 1938, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Northern Oats Co., a corporation, having a place of business in Minneapolis, Minn., alleging that on or about April 12, 1937, the defendant had shipped from the State of Minnesota into the State of Wisconsin a quantity of dairy ration which was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "16% Dairy Ration Manufactured by Lapp Laboratories Minneapolis, Minn."

It was alleged to be misbranded in that the statements "16% Dairy Ration \* \* \* Analysis: Protein 16% Fat 3% Fiber 12%," borne on the tag attached to the sacks containing it, were false and misleading and were borne on the tag so as to deceive and mislead the purchaser, since it contained not more than 12.88 percent of protein, not more than 2.27 percent of fat, and not less than 22.97 percent of fiber.

On March 1, 1938, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of \$25.

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

**28800. Misbranding of canned peas. U. S. v. 119 Cases and 83 Cartons of Canned Peas. Default decrees entered. Product ordered delivered to charitable organizations. (F. & D. Nos. 41435, 41908. Sample Nos. 7461-D, 12022-D.)**

This product fell below the standard established by this Department because the peas were not immature, and it was not labeled to indicate that it was substandard.

On January 17 and March 9, 1938, the United States attorneys for the District of New Jersey and the Southern District of New York, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 119 cases of canned peas at Hoboken, N. J., and 83 cartons of canned peas at New York, N. Y., alleging that the article had been shipped in interstate commerce on or about September 22, 1937, and January 26, 1938, by D. E. Foote & Co., Inc., from Baltimore, Md., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "New Boy Early June Peas \* \* \* American Grocery Company Distributors Hoboken, N. J.;" or "Foote's Best Brand Early June Peas \* \* \* Packed by D. E. Foote & Co. Incorporated Baltimore, Md."

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 indicating that it fell below such standard.

On March 28 and April 13, 1938, no claimant having appeared, default was entered and the product was ordered delivered to certain charitable organizations, provided that the labels were first removed by such organizations.

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

**28801. Misbranding of canned peas. U. S. v. 1,286 Cases of Peas. Decree of condemnation. Product released under bond to be relabeled. (F. & D. No. 41803. Sample No. 1318-D.)**

This product fell below the standard established by this Department because the peas were not immature, and it was not labeled to indicate that it was substandard.

On February 19, 1938, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 1,286 cases of canned peas at Baltimore, Md., alleging that the article had been shipped in interstate commerce on or about July 14, 1937, by H. M. Ruff & Son from Woodbine, Pa., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Mar-Lo Brand \* \* \* Early June Peas \* \* \* H. M. Ruff & Son Distributors Woodbine, Pa."

The article 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 its package or label did not bear a plain and conspicuous statement prescribed by the Secretary indicating that it fell below such standard.

On March 25, 1938, H. Weldon Ruff having appeared as claimant, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled.

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

**28802. Misbranding of canned cherries. U. S. v. 129 Cases of Canned Cherries. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. No. 41810. Sample No. 15106-D.)**

This product fell below the standard established by this Department because of the presence of more than 1 cherry pit per 20 ounces of net contents, and it was not labeled to indicate that it was substandard.

On February 24, 1938, 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 129 cases of canned cherries at Ontario, Oreg., alleging that the article had been shipped in interstate commerce on or about August 3 and September 21, 1937, by the Rogers Co. from Seattle, Wash., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Heep Full Brand Red Sour Pitted Cherries \* \* \* Packed by Valley Fruit Canning Co. Puyallup, Wash."

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, in that there was present more than one cherry pit per 20 ounces of net contents, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary indicating that it fell below such standard.

On March 16, 1938, the Valley Fruit Canning Co., claimant, 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.

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