

29674. Adulteration and misbranding of fruit butter. U. S. v. 10 Cases of Pineapple and Orange Butter, and 8 Cases of Fig and Orange Butter. Default decree of condemnation and destruction. (F. & D. Nos. 43885, 43886. Sample Nos. 20083-D, 20084-D.)

This product having been shipped in interstate commerce and remaining unsold and in the original packages, was at the time of examination found to show evidence of fermentation in some of the jars. The net weight was not plainly and conspicuously declared.

On September 15, 1938, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 18 cases of fruit butters at New York, N. Y.; alleging that the articles had been shipped in interstate commerce on or about August 10, 1938, by Pure Foods Corporation from Los Angeles, Calif.; and charging adulteration and misbranding in violation of the Food and Drugs Act as amended. The articles were labeled in part: "Golden Flow Brand Pure Pineapple & Orange [or "Fig & Orange"] Butter * * * Net Contents 5 Oz." The figure 5 had been written in ink over the printed figure 6, and in many instances the 5 was not recognizable and the 6 was plainly visible.

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

They were alleged to be misbranded in that they were food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages.

On October 4, 1938, no claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

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

29675. Adulteration of pears. U. S. v. 14 Bushels of Pears. Default decree of condemnation and destruction. (F. & D. No. 43943. Sample No. 32795-D.)

This product was contaminated with arsenic and lead.

On August 30, 1938, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 14 bushels of pears at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about August 25, 1938, by P. Furchtsam & Son from South Haven, Mich.; and charging adulteration in violation of the Food and Drugs Act.

Adulteration was alleged in that the article contained added poisonous or deleterious ingredients, arsenic and lead, which might have rendered it harmful to health.

On October 18, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

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

29676. Alleged adulteration and misbranding of Kololiva and Olivaromol. U. S. v. 1 Can of Kololiva (and one similar seizure action). Tried to the court without a jury. Judgment dismissing libels. (F. & D. Nos. 36547, 36613. Sample Nos. 43459-B, 43471-B.)

On October 31 and November 12, 1935, the United States attorney for the District of Massachusetts, acting upon reports by the Secretary of Agriculture, filed in the district court two libels praying seizure and condemnation of one can of Kololiva and one container of Olivaromol at Boston, Mass.; alleging that the articles had been shipped in interstate commerce on or about September 14 and October 4, 1935, from Brooklyn, N. Y., by David Kleckner & Son, Inc.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The charges appear in the opinion.

On November 18, 1935, David Kleckner & Son, Inc., appeared as claimant and filed answers denying the allegations of the libels. On May 5, 1938, the cases having been consolidated and trial of the issues by jury having been waived, the consolidated case came on for trial before the court, whereupon evidence was adduced, arguments were heard, and the case was submitted to the court upon libellant's and claimant's respective motions for judgment and costs. Decision was reserved.

On June 21, 1938, the court handed down the following opinion, denying libellant's and granting claimant's motion for judgment, but denying claimant's motion for costs:

(McCLELLAN, *Judge*) "These libels, one for the condemnation of a can of Kololiva and the other for the condemnation of a container of Olivaromol, were