

On May 3 and 17, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

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

30598. Adulteration of flour. U. S. v. 35 Bags of Flour (and 2 similar seizure actions). Default decrees of condemnation and destruction. (F. & D. Nos. 43604, 43605, 43606. Sample Nos. 37969-D, 37970-D, 37971-D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On October 20, 1938, the United States attorney for the Southern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court three libels praying seizure and condemnation of 483 bags of flour at Hattiesburg, Miss.; alleging that the article had been shipped on or about July 6, 1938, from Chattanooga, Tenn., by Mountain City Mill Co.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Gold Medal Best Patent Flour."

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

On April 11, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

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

30599. Adulteration of crab meat. U. S. v. Clarence Taylor Slaughter. Plea of guilty. Fine, \$50. (F. & D. No. 38640. Sample Nos. 39922-B, 39925-B, 7931-C, 7933-C, 7934-C.)

This product contained evidence of the presence of filth.

On August 19, 1937, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Clarence Taylor Slaughter, Morattico, Va., alleging shipment by said defendant in violation of the Food and Drugs Act, within the period from on or about July 19 to on or about August 8, 1936, from the State of Virginia into the State of Maryland of quantities of crab meat which was adulterated.

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

On April 21, 1939, the defendant entered a plea of guilty and the court imposed a fine of \$50.

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

30600. Adulteration of apple butter. U. S. v. California Preserving Co. Plea of not guilty. Tried to the court. Judgment of guilty. Fine, \$100. (F. & D. No. 38687. Sample No. 21831-C.)

Samples of this product were found to contain insect and worm fragments, also excessive mold.

On May 4, 1937, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the California Preserving Co., a corporation, Los Angeles, Calif.; alleging shipment by said defendant in violation of the Food and Drugs Act on or about May 16, 1936, from the State of California into the State of Oregon, of a quantity of apple butter which was adulterated. The article was labeled in part: "Catalina Brand Pure Apple Butter."

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

On June 1, 1937, a plea of not guilty was entered on behalf of the defendant; and the case, after a series of continuances, came on for trial before the court without a jury on March 28, 1939. On March 29, 1939, the court adjudged the defendant guilty and handed down the following oral opinion:

JENNEY, *Judge*: "The court finds itself unable to follow the distinguished judge in the District Court of Washington, Judge Cushman. I feel in the particular cases which he had before him, that there were circumstances which led him to make emphasis on the question of unfitness for human food.

"He says here in the case of *United States v. 2,995 Cases of Canned Salmon*: "This case defines an adulterated article of food as follows: "* * * that is, an article of food is adulterated when it consists in whole or in part of filthy, decomposed, or putrid animal substance, making it unfit for human food; * * *."

"I can't follow the distinguished jurist under that definition under the expressed provision of the act. I read this act differently, and I am only sorry it has not been interpreted by the circuit court as expressly in these matters.

"The act, section 8 of title 21, subdivision 6, says this, as I have previously indicated:

"* * * if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance—' now, there is a comma—

"* * * if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food * * *'

"The 'unfit for food' is contained within the clause set off by commas, which says: '* * * or any portion of an animal unfit for food * * *,' going on then to discuss whether that animal were a diseased animal, or whether it had died otherwise than by slaughter.

"As indicated in cases which we have before us, this act has a two-fold purpose at least: One, to prevent harmful substances from being sold, and the other, to compel manufacturers and dealers to sell and deliver to the public what they purport to sell and deliver on the outside of their package.

"In the *United States v. 200 Cases* in the Texas case, cited in 1923 in 29 Federal 157, the court said there that in order for an article to be considered adulterated within the meaning of this section, it is not essential that it be unfit for food or deleterious in eating. It is sufficient if the Government establishes that the article sought to be condemned was composed in whole or in part of decomposed, filthy, or putrid animal substance.

"It happens that the act says animal or vegetable substance, but the question there was, as it was in the Washington case, entirely animal matter.

"We have this in 52 Federal 476, which was a New York District Court case cited in 1931:

"The 'test to determine whether imported food is adulterated' is fixed by statute and 'is not whether a food is unwholesome or injurious to health.'

"In the case of *United States v. 10 Cases More or Less* in Iowa, in 1931, 49 Federal 87, we find:

"To prove adulteration, it must be shown that food was damaged or an inferior food product because one or more of its constituents was damaged or inferior, and that it was mixed so that inferiority was concealed.'

"There are quite a number of cases. This case that we talked so much about is 133 Cases of Tomato Paste—and in that case, there are a number of significant statements:

"A food may be subject to confiscation on the grounds it consists in whole or in part of a "filthy" animal or vegetable substance, although the food is not injurious to health.

"The apparent presence of worms and their excreta in food designed for human food renders it "filthy" within this section.

"This section was designed to protect the aesthetic tastes and sensibilities of the consuming public.

"A food which consists in whole or in part of a "filthy" animal or vegetable substance is subject to confiscation, although the filth is imperceptible to the consumer.

"A tomato paste which contained about 85 fragments of corn-ear worm in each 200 cubic centimeters was subject to confiscation on the ground that it was "adulterated" within the meaning of provisions of the Food and Drugs Act, which authorized confiscation of a food consisting in whole or in part of a "filthy" animal or vegetable substance, notwithstanding that the tomato paste was not injurious to the consumer's health or that the worm fragments could not be detected by the consumer either by sight or taste.'

"I needn't go on with the various cases that have been cited. And there is the case by the Ninth Circuit in 284 Federal 552. There the court was discussing this question of decomposition.

"Decomposition begins where life ends, but that is not the sort of decomposition meant by the statute. The moment life commences, in a sense it begins to fade, and the moment that life ceases, in a sense decomposition begins, and increases by degrees to rottenness, decomposition, and decay.'

"And the court there, discussing the question of the failure of the statute to set any standard, says:

"In any event no such standard has been fixed, in the absence of which each case must be determined on its own facts, and when it appears, as in this case, that the product is so far decomposed as to be unfit for food, it comes within the letter and spirit of the law."

"Now, to determine in an individual case what is good and what is not is rather a difficult question. It is a great deal like the porter on the Pullman during prohibition days who was given a bottle of whisky by one of his customers; and the next morning the customer said to him:

"George, how did you like that bottle of whisky?"

"Oh, boss, that was just right."

"What do you mean, just right?"

"Well, if it had been any better, you wouldn't have given it to me, and if it had been any worse, I couldn't have drunk it."

"Well, we are between those two situations here. I think I didn't make myself entirely clear to the Government. We have a product here sold in interstate commerce which, according to the testimony, contained a perceptible quantity of animal substances: Whole worms and mites, pieces of other insects, because the indictment in this case—or the information, rather, as it is an information, was specific in saying that an adulteration consisted in whole or in part of a filthy and a decomposed vegetable substance.

"The court is inclined to consider the animal substance as being at variance from the charge in the information, and the defense of which the defendant might not be prepared to present evidence, but the testimony shows that the excreta of these various small animals and the natural result of the decomposition of their bodies or pieces of bodies had, and would naturally affect and decompose a certain portion of the vegetable substance itself, so that there were two elements of proof here to which the court will give consideration. That, and also the question of the mold in larger quantities than seems reasonable under the circumstances.

"I can't help but feel that Congress had a definite purpose in passing this statute and that it cannot be ignored by the court and should be very carefully respected by those who are engaged in the manufacture of food products. I can't help but feel that in the instance of this particular job lot of manufactured product, that the defendant has not exercised the care for the public that it might have, and that the public had a right to expect. Some of us may like to eat snails, but we don't like to eat snails, thinking that they are some other delicacy with which we are very familiar; neither do we like to eat a lot of decomposed matter, even though it isn't actually harmful, when we think we are buying apple butter.

"The fact that no standard is set by the law is possibly unfortunate. That may be corrected, but I believe testimony of these experts indicates what the possibility is.

"I feel that the evidence shows that the defendant is guilty under the act, as I must interpret it. I am not disposed in this particular case to—being, as I understand it, a first offense—is that not true?"

Mr. NEUKOM. "That is correct, your Honor."

The COURT. "I do not propose to be severe. I feel that this defendant has probably been sufficiently warned now, and there is evidence that this defendant has and can deliver a very good product free from any type of adulteration as that term is defined in the act.

"It may be that the Government officers have done this defendant a very great service in calling the attention of its officers to the fact that they must live up to a proper standard, and this proceeding may be a lesson in disguise.

"As I understand the provisions of the act, on the first offense the maximum fine is \$200. Is that correct?"

Mr. NEUKOM. "That is correct."

The COURT. "And there is no provision for any other penalty?"

Mr. NEUKOM. "No; there is no other provision."

The COURT. "There is no requirement under the law of charging costs against the defendant in a proceeding like this?"

Mr. NEUKOM. "There is no requirement. In many instances, it is, but I have discussed that with Mr. Harvey in the event your Honor has arrived at a conclusion, which you have, and he has stated that he would not insist on that, or at least would not necessarily require it."

The COURT. "Well, I feel that this defendant should suffer some penalty and should be very careful in the future. The Government has had to go to a very

considerable expense in this matter, but I think that the expense is probably justified, and the incurring of that expense is necessary under the interpretation of the act as a whole.

"I shall fine the defendant \$100 and if it is not convenient for them to pay it at once, I might be able to give them a little time."

Mr. DOCKWEILER. "That can be paid at once, your Honor."

The COURT. "Very well. I am disposed to be lenient, but I feel that the defendant should be very careful. I think that this is just exactly the type of thing that this act was intended to cover, and it doesn't have to be something that seems to be indicated in that opinion of the Northern District that it is unfit for food. I believe the act is intended to be much broader than that.

"It will be so ordered."

On May 29, 1939, the court imposed a fine of \$100.

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