

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

On June 8, 1939, a jury having been waived and the case having been submitted to the court on stipulation and briefs, the following memorandum of conclusions and minute order were entered:

HOLLZER, *Judge*. "It appearing, from the stipulation of facts, that defendant caused to be shipped in interstate commerce certain canned food intended to be used as an article of food which was clearly adulterated within the meaning of the Food and Drugs Act, in that it consisted in large part of highly decomposed animal substance; and

"It further appearing that the only inspection given to said food prior to shipment thereof in interstate commerce was one similar to the method of inspection which the defendant had been following for a number of years and which method in the year 1935 resulted in the prosecution and in the year 1936 in the conviction of defendant on the charge of shipping in interstate commerce canned tuna in violation of said act; and

"It further appearing that said food prior to the shipment thereof was not subjected to the method of inspection which in the latter part of 1936 said defendant had instructed its employees to make prior to shipping food packed in its plants, and that had said food been subjected to the latter method of inspection discovery would have been made readily that said food was clearly adulterated within the meaning of said act, in that it consisted in large part of highly decomposed animal substance;

"The court concludes that all of the material allegations of the information filed herein have been proved beyond all reasonable doubt, and that the defendant is guilty of each and all of the offenses charged in said information. (See *Union Dairy v. U. S.* 250 F. 231; *Philadelphia Pickling Co. v. U. S.* 202 F. 150; *Armour & Co. v. U. S.* 215 F. 585.)

#### Minute Order

"For the reasons set forth in the memorandum of conclusions this day filed, it is ordered that the defendant appear before this court on June 16, 1939, at 10 a. m., which time is fixed for the pronouncement of judgment herein."

On June 16, 1939, a fine of \$800 was imposed, i. e., \$200 on each of the four counts of the information.

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

**30873. Adulteration of butter. U. S. v. Tekamah Cooperative Creamery Co. Plea of guilty. Fine, \$50 and costs.** (F. & D. No. 42752. Sample Nos. 60245-D, 60678-D, 60679-D.)

This product contained less than 80 percent by weight of milk fat.

On September 2, 1939, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Tekamah Cooperative Creamery Co., a corporation, Tekamah, Nebr., alleging shipment by said defendant in violation of the Food and Drugs Act on or about April 26 and May 2, 1939, from the State of Nebraska into the State of New York of quantities of butter that was adulterated.

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by the act of Congress of March 4, 1923.

On September 15, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of \$50 and costs.

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

**30874. Adulteration and misbranding of feeds. U. S. v. 110 Sacks of Feeding Oat Meal (and 4 other seizure actions against similar products). Tried to the court; judgment for the Government. Decrees of condemnation and destruction.** (F. & D. Nos. 41293, 41294, 41462, 41463, 41774. Sample Nos. 902-C, 903-C, 4921-D to 4924-D, inclusive.)

These products were represented to be feeding oatmeal, pulverized oats, or ground oats, but contained in addition thereto other ingredients such as rice hulls, rice fragments, rice bran, barley, barley hulls, and cassava meal.

On December 30, 1937, and January 18 and February 18, 1938, the United States attorney for the District of Massachusetts, acting upon reports by the

Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 1,589 sacks of feeds, hereinafter described, in various lots at Southbridge, Fitchburg, Worcester, and Taunton, Mass.; alleging that the articles had been shipped in interstate commerce within the period from on or about August 26, 1937, to on or about December 27, 1937, by P. Fred'k Obrecht & Son from Baltimore, Md.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part, variously: "Pulverized Oats \* \* \* Hood Mills Company \* \* \* Baltimore, Md.;" "Fine Ground Feeding Oat Meal [or "Ground Oats" or "Pulverized Oats"] Farmers Service Bureau Baltimore, Md."

The pulverized oats (two lots) were alleged to be adulterated in that a mixture of finely ground oats, a ground wheat product, and a starchy material closely resembling cassava starch, in the case of one lot, and a mixture of ground oats and finely ground rice bran, in the case of the other lot, had been substituted in whole or in part for pulverized oats. The feeding oat meal (two lots) was alleged to be adulterated in that a mixture of ground oats, finely ground rice bran, rice hulls, broken rice fragments, and a cereal starch, in the case of one lot, and a mixture of oat products, broken rice, rice hulls, rice bran, and cassava meal, in the case of the other lot, had been substituted in whole or in part for "Fine Ground Feeding Oat Meal." The ground oats were alleged to be adulterated in that a mixture of finely ground oats, ground rice bran, fragments of barley and barley hulls and starchy material closely resembling cassava starch had been substituted in whole or in part for ground oats.

Misbranding was alleged in that the statements on the labels, "Pulverized Oats," "Fine Ground Feeding Oat Meal," and "Ground Oats," were false and misleading and tended to deceive and mislead the purchaser when applied to articles of the composition described in the preceding paragraph. Misbranding was alleged for the further reason that the articles were offered for sale under the distinctive names of other articles.

P. Fred'k Obrecht & Son having entered an appearance as claimant, the cases were consolidated and on May 19, 1939, were tried to the court. Decision was reserved. On June 12, 1939, the following memorandum opinion sustaining the charges in the libels was handed down:

SWEENEY, Judge. "There are involved in this decision five libels for condemnation of grain, marked as either 'pulverized oats,' 'ground oats,' or 'feeding oat meal,' intended for consumption by animals. The claimant in each case is the same person, and the five libels will be treated as one. The cases are similar, except as to the percentage of protein, fat, and fiber found. The libels were brought for violation of section 8 of the Food and Drugs Act, (21 USCA § 8) and for misbranding under section 9 of the same act.

"In four of the five cases, analyses by a State chemist showed that the products sought to be condemned contained less of either fat or protein than the tag on the article guaranteed, or indicated an excess over the guaranteed maximum amount of fiber disclosed on the tag. In the fifth case there was no chemical analysis, and, unless this particular seizure can be condemned because of a violation of section 8, the libel must fail.

"As to the other four, it is clear that the article offered for sale was not properly branded. The tags on the various sacks informed the public of the minimum of protein and fat contained in the mixture, and the maximum of fiber contained therein. While the deficiencies were slight, nevertheless, there was no disagreement that the deficiencies existed. One who places a tag on his product informing the public that it contains a minimum or a maximum of an ingredient is bound to live up to his claim. Any shortage of a minimum ingredient or any excess of a maximum ingredient cannot be excused on the ground that the product approximated the information given to the public, nor is it any excuse that the deficiencies exist without conscious fraud on the part of the owner. See *United States v. Johnson*, 221 U. S. 488, 497, and *United States v. Thirty-six Bottles of London Dry Gin, et al.*, 210 F. 271. The articles libeled were misbranded within the meaning of section 9 of the Food and Drugs Act, 21 USCA.

"In all of the cases, including the one referred to above in which there was no chemical analysis, a qualitative analysis by the United States Government showed that each of the libeled articles, although purporting to be 'feeding oat meal,' 'pulverized oats,' or 'ground oats,' contained in addition thereto, other ingredients, such as rice hulls, rice fragments, rice bran, barley, barley hulls.

and cassava meal. There was nothing on the tags or on the sacks in which the articles were shipped which informed the public of the presence of this foreign matter. It was not a natural contaminant of the article offered for sale, but was a substituted article within the meaning of section 8 of the act referring to adulterated articles. Adulteration means to corrupt, debase, or make impure by a mixture of a foreign or baser substance. *United States v. St. Louis Coffee & Spice Mills*, 189 F. 191. The claimant claims that the presence of such foreign matter was without his knowledge, and that it was permissible under the Grain Standards Act of 1916, 7 USCA. The claimant's contention that he had no knowledge of the presence of the foreign matter is of no avail in this proceeding. This is a libel filed against the offending article, and it is no part of the Government's burden to show substitution by the owner or shipper, or even knowledge of it. It is sufficient if any article, other than that purported to be sold, has been substituted either wholly or in part for the article that the tag represents the article to be. See *United States v. Five Boxes of Asafoetida*, 181 F. 561. The contention that the Grain Standards Act of 1916 permits the substitution of rice hulls, rice fragments, cassava meal, barley, barley hulls, or rice bran for others is without merit. It did not purport to repeal, alter, or modify the Food and Drugs Act of 1906. See *United States v. 154 Sacks of Oats*, 283 F. 985. While I am satisfied that the claimant is a reputable business man, and that he had no knowledge or notice that the foreign substances were contained in the articles, nevertheless, the articles themselves were not only misbranded, but a foreign substance had been substituted in part for the article which it purported to be.

"In each of the five cases an order of forfeiture may be submitted."

On June 19, 1939, judgments of condemnation were entered and the products were ordered destroyed.

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

**30875. Adulteration of pickles. U. S. v. George Edward Thies (Thies Pickle Co.). Plea of guilty. Defendant sentenced to 9 months in the House of Correction. Imposition of sentence suspended and defendant placed on probation for 2 years. (F. & D. No. 42685. Sample Nos. 37336-D, 37338-D, 37339-D, 37342-D.)**

Samples of this article were found to be filthy in that they contained rodent hairs, flies, insect parts, and shells of pupae.

On April 11, 1939, the United States attorney for the Western District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the district court an information against George Edward Thies, trading as Thies Pickle Co., Pepin, Wis., alleging shipment by said defendant in violation of the Food and Drugs Act within the period from on or about September 30 to on or about November 4, 1938, from the State of Wisconsin into the State of Missouri of quantities of pickles that were adulterated.

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

On September 7, 1939, the defendant having entered a plea of guilty, was sentenced to 9 months in the House of Correction. Imposition of sentence was suspended and the defendant was placed on probation for 2 years.

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