

LABEL, IN PART: "Val Vita Brand California Mackerel * * * Packed by California Sea Food Co., Long Beach, California."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance; and, Section 402 (b) (2), another variety of fish, commonly called horse mackerel, had been substituted for mackerel, which the product was represented to be.

Misbranding, Section 403 (a), the label statement, "California Mackerel," was false and misleading as applied to a product consisting in part of a variety of fish other than mackerel.

DISPOSITION: April 9, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

8914. Adulteration and misbranding of canned mackerel. U. S. v. 49 Cases of Canned Mackerel. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 15742. Sample No. 29821-H.)

LABEL FILED: March 28, 1945, Southern District of Florida.

ALLEGED SHIPMENT: On or about March 1, 1945, by the A. M. Beebe Co., Inc., from Oakland, Calif.

PRODUCT: 49 cases, each containing 48 15-ounce cans, of mackerel at Tampa, Fla.

LABEL, IN PART: "Val Vita Brand California Mackerel * * * packed by California Sea Food Co., Long Beach, California."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), another variety of fish, commonly called horse mackerel, had been substituted for mackerel, which the article was represented to be.

Misbranding, Section 403 (a), the label statement, "California Mackerel," was false and misleading as applied to an article consisting in part of a variety of fish other than mackerel.

DISPOSITION: June 15, 1945. The Lakeland Grocery Co., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond for relabeling under the supervision of the Food and Drug Administration.

8915. Adulteration of canned sardines. U. S. v. 12 Cases of Sardines. Default decree of condemnation and destruction. (F. D. C. No. 15625. Sample No. 27429-H.)

LABEL FILED: March 14, 1945, District of Oregon.

ALLEGED SHIPMENT: On or about September 25, 1944, by the F. E. Booth Co., from Pittsburg, Calif.

PRODUCT: 12 cases, each containing 48 15-ounce cans, of sardines at Portland, Oreg.

LABEL, IN PART: "Booths' Crescent Brand Broiled California Sardines in Tomato Sauce."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: June 11, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

8916. Misbranding of tuna fish. U. S. v. Irving Dickman (I. Dickman & Sons). Plea of guilty. Fine, \$25. (F. D. C. No. 6497. Sample Nos. 74614-E to 74616-E, incl.)

INFORMATION FILED: July 21, 1942, Eastern District of New York, against Irving Dickman, trading as I. Dickman & Sons, Brooklyn, N. Y.; charging that the defendant relabeled a quantity of bonita as "Light Meat Tuna" while the product was being held for sale after shipment in interstate commerce.

ALLEGED SHIPMENT: On or about August 18, 1941, from Wilmington, Calif., to Brooklyn, N. Y.

LABEL, IN PART: (When shipped) "Treasure Bonita"; (as relabeled) "Light Meat Tuna * * * Golden King Brand."

NATURE OF CHARGE: Misbranding, Section 403 (a), the label statement, "Light Meat Tuna," was false and misleading since the article did not consist of light meat tuna but consisted of bonita; Section 403 (b), it was offered for

sale under the name of another food; and, Section 403 (i) (1), its label failed to bear the common or usual name of the article, i. e., "Bonita."

DISPOSITION: August 10, 1942. A plea of guilty having been entered by the defendant, the court imposed a fine of \$25.

8917. Alleged adulteration of canned herring roe. U. S. v. 667 Cases of Canned Herring Roe. Tried to the court. Verdict for claimant. Product ordered released. (F. D. C. No. 7637. Sample No. 1085-E.)

LIBEL FILED: June 11, 1942, District of Maryland.

ALLEGED SHIPMENT: On or about May 7, 1942, by the Reedville Oil and Guano Co., from Reedville, Va.

PRODUCT: 667 cases, each containing 48 8-ounce cans, of herring roe at Baltimore, Md.

LABEL, IN PART: "Premier Herring Roe * * * Francis H. Leggett & Co. Distributors New York, N. Y."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance.

DISPOSITION: November 2, 1942. The Reedville Oil and Guano Co., claimant, having filed an answer denying that the product was adulterated, trial was had before the court. After hearing the testimony and arguments of counsel and considering the evidence, the court delivered the following oral opinion:

CHESNUT, *District Judge*: "Gentlemen, I would have very much preferred to have submitted this case to a jury because they represent a cross-section of the public in determination of the facts. And I think a decision is much more satisfactory if made by a jury in such cases than if made by a single judge. However, when neither side wants a jury trial, the Judge has to solve the problem of determining the facts. Now, it is also my duty under Rule 52 of the Federal Rules of Civil Procedure to make a finding of facts and conclusion of law in these non-jury cases.

"I understand this is not a criminal prosecution but a condemnation proceeding by libel of alleged improper food products and the precise issue is whether the food product which is involved in an interstate shipment was adulterated because it contained filthy matter, which is specified in the bill of particulars to have been in cans of herring roe, some part of the viscera and stomach and intestines and other digested matter in some of the herring, under U. S. Code, Title 21, Section 342.

"I think to get the full force of the meaning of the Act of Congress, you must bear in mind, of course, that it is part of the Food, Drug and Cosmetics Act of 1938, and we should look at the context in which the particular sentence or phrase is included. The heading of Section 342 is 'Adulterated food'. The provision is: 'A food shall be deemed to be adulterated—'. Then there is a heading 'Poisonous, insanitary, etc., ingredients', and the Section continues:

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 346; or (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

"Now, it is perfectly obvious to the reader of that section that the whole gist of the matter looks to the health of the consuming public and, therefore, while the word 'filthy' is rather a vague term to the extent of its whole meaning, yet in the context in which we find it, it seems to me that it was intended to be used in the sense of its effect on human beings as a food or with relation to food. I do not feel that I could limit it absolutely and sharply by saying that nothing would be filthy in the sense of this statute unless it is definitely unhealthy, but where you have a situation in which it is admitted that the alleged filthy substance is in no way harmful to health but merely such that when contained in a food product, the latter is made unattractive in appearance to the consumer, I doubt very much whether the meaning of 'filthy' as contained in this section is gratified by that latter condition.