

PRODUCT: 17 cases, each containing 20 pounds, of macaroni at Aliquippa, Pa., and 36 cases, each containing 24 6-ounce packages, of macaroni products at Pittsburgh, Pa.

LABEL, IN PART: "Mezzani Extra Fancy No. 1 Alfonso Gioia Brand," or "Bravo Brand Pastina Macaroni Products Made From No. 1 Semolina & Egg Yolks."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the articles consisted in whole or in part of filthy substances by reason of the presence of rodent hairs, rodent hair fragments, and insect fragments; and, Section 402 (a) (4), they had been prepared under insanitary conditions whereby they may have become contaminated with filth.

DISPOSITION: September 21, 1945. No claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

10067. Adulteration of macaroni products. U. S. v. 24 Cases of Macaroni Products. Default decree of condemnation and destruction. (F. D. C. No. 16794. Sample Nos. 10541-H to 10544-H, incl.)

LIBEL FILED: July 10, 1945, Western District of Pennsylvania.

ALLEGED SHIPMENT: On or about May 28, 1945, by Alfonso Gioia, from Rochester, N. Y.

PRODUCT: 24 cases, each containing 20 pounds, of macaroni products at Pittsburgh, Pa.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the articles consisted in whole or in part of filthy substances by reason of the presence of rodent hairs; and, Section 402 (a) (4), they had been prepared under insanitary conditions whereby they may have become contaminated with filth.

DISPOSITION: September 21, 1945. No claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

10068. Adulteration of macaroni. U. S. v. 90 Cases and 43 Cases of Macaroni. Default decrees of condemnation and destruction. (F. D. C. Nos. 17458, 17666. Sample Nos. 13487-H, 16567-H.)

LIBELS FILED: September 20 and 27, 1945, Northern and Southern Districts of Indiana.

ALLEGED SHIPMENT: On or about August 8, 1945, by the Sunshine Macaroni Co., Chicago, Ill.

PRODUCT: 90 cases and 43 cases, each containing 20 pounds, of macaroni at Fort Wayne and Richmond, Ind., respectively.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of insect fragments, rodent hair fragments, and fragments resembling rodent hairs; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: November 5 and 22, 1945. No claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

10069. Adulteration and misbranding of chicken ravioli. U. S. v. 349 Cases of Chicken Ravioli. Default decree of condemnation and destruction. (F. D. C. No. 15263. Sample No. 17101-H.)

LIBEL FILED: February 21, 1945, Northern District of Illinois.

ALLEGED SHIPMENT: On or about December 15, 1944, by the Great Atlantic and Pacific Tea Co., from Scranton, Pa.

PRODUCT: 349 cases, each containing 24 1-pound jars, of chicken ravioli at Chicago, Ill. This product contained a small amount of chicken gizzards and no other chicken ingredient.

LABEL, IN PART: "Armada Italian Gusto Chicken Ravioli."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of rodent hairs and cat hairs; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

Misbranding, Section 402 (a), the name "chicken ravioli" and the statement "chicken" in the list of ingredients on the label were false and misleading as applied to an article containing chicken gizzards as the sole chicken ingredient. DISPOSITION: June 14, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS

10070. Action to restrain the enforcement of an order for the exportation or destruction of adulterated wheat. John T. Bowman, Master of SS James J. Hill, v. Allen T. Retzlaff, Chief, Baltimore Station of Food and Drug Administration, and George T. Cromwell, Collector of Customs, Port of Baltimore. Tried to the court. Complaint dismissed.

On or about January 24, 1946, a complaint was filed in the United States District Court for the District of Maryland on behalf of John T. Bowman, Master of the SS James J. Hill, seeking to restrain the enforcement of an order directing the exportation or destruction of some 40,000 bushels of adulterated wheat. The facts upon which the complaint was based are given in the court opinion.

An answer to the complaint was filed on behalf of the defendants on February 13, 1946, and thereafter the case came on for trial before the court. At the conclusion of the trial, the matter was taken under advisement by the court, and, on April 4, 1946, the court handed down the following opinion:

CHESNUT, *District Judge*: "In this case the master of the SS 'James J. Hill' seeks an injunction against the enforcement of an order of Gilbert A. Dailey, Collector of the Port of Baltimore, which required that 40,843 bushels of Canadian wheat theretofore provisionally entered for importation into the United States 'must be exported, or destroyed, under custom supervision.' The respondents are George T. Cromwell, Collector of Customs (successor to Gilbert A. Dailey) and Allen T. Retzlaff, Chief of the Baltimore Station Food and Drug Administration of Federal Security Agency. They have answered justifying the order under section 801 of the Federal Food Drug & Cosmetic Act of 1938 (21 USCA, s. 381), which deals with imports and exports.

"Section 381 (so far as here material) provides that the Secretary of the Treasury shall deliver to the Federal Security Administrator samples of food offered for import into the United States, giving notice thereof to the owner or the consignee 'who may appear before the Federal Security Administrator and have the right to introduce testimony.' If it is found that the article is 'adulterated' 'then such article shall be refused admission' and 'unless such article is exported by the consignee within three months, it must be destroyed.' By section 342 (a) 'food shall be deemed adulterated (3) if it consists in whole or in part of any filthy, putrid or *decomposed substance or if it is otherwise unfit for food.*' [Italics supplied.]

"The position of the respondents is that in due course they have administratively determined that the wheat was unfit for food. The complainant attacks this position on two grounds: (1) that there was no substantial evidence before the respondents that the wheat was unfit for food and that their action is therefore arbitrary and capricious; and (2) that the Federal Security Administrator did not afford the plaintiff a fair hearing. Extended testimony was heard in court upon these issues and the case taken under advisement. After consideration I have reached the conclusion that the injunction applied for must be denied and the complaint dismissed.

"I find the material facts to be as follows:

"1. Prior to September 13, 1945, about 40,000 bushels of Canadian wheat were shipped by rail from Canada to Baltimore and there transhipped to the SS 'James J. Hill,' a government owned vessel. The wheat was consigned to an agency of the French Government at Casablanca, Morocco. The 'Hill' sailed from Baltimore on September 13, 1945. The next morning it was discovered that there were ten feet of water in No. 1 hold, where the wheat was stowed, by reason, as it was later found, of an influx of water through a plumbing fixture which ought to have been blocked off when the vessel was not being used as a troop-carrier but which had been opened while the vessel was in port. The 'Hill' proceeded to Hampton Roads, Virginia, where it found sufficient port facilities unavailable and consequently returned to Baltimore,