

**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 weevils, larvae, and insect fragments.

**DISPOSITION:** September 12, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

**10156. Adulteration of black raspberry puree. U. S. v. 1,322 Cans of Black Raspberry Puree. Consent decree of condemnation. Product ordered released under bond. Motion by claimant for order requiring Government to supervise reprocessing, and motion by Government to set aside portion of decree; motions denied. (F. D. C. No. 18933. Sample No. 14464-H.)**

**LIBEL FILED:** February 4, 1946, Northern District of Ohio.

**ALLEGED SHIPMENT:** On or about September 8, 1945, by Arthur C. Marquart & Co., Benton Harbor, Mich.

**PRODUCT:** 1,322 cans of black raspberry puree at Cleveland, Ohio.

**LABEL, IN PART:** "Black Raspberry Puree 30 Pounds Net The Telling Belle Vernon Co. Cleveland, Ohio."

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

**DISPOSITION:** March 12, 1946. The Telling-Belle Vernon Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond, conditioned that it be distilled for use in making cordials or brandies, or that it be reprocessed for the purpose of making jellies, under the supervision of the Food and Drug Administration. On July 15, 1946, a motion was filed by the claimant to require the Food and Drug Administration to supervise the reprocessing of the product into jelly. Thereafter, a motion was filed on behalf of the Government to set aside the portion of the consent decree permitting the reprocessing of the product for use as jelly. On or about November 8, 1946, after consideration of the briefs of the parties, the court handed down the following decision:

JONES, *District Judge*: "This case was disposed of by a consent decree approved by attorneys for the claimant and the United States Attorney representing the Government. The decree provides for the condemnation of the black raspberry puree because it was adulterated and upon bond allows the reconditioning by distillation or reprocessing for making cordials, brandies or jellies but subject to the approval of the Food and Drug Administration of the Federal Security Agency.

"The claimant wants to reprocess the puree by filtration and make jelly of it. The Food and Drug Administration objects to this method and refuses to supervise a reconditioning process of the filtration type because, as it says, such a process would not produce a product which it would approve for human consumption.

"The claimant has filed a motion for an order of the court to require the Food and Drug Administration to supervise such a reprocessing. The plaintiff has moved to set aside that portion of the decree which allows the reprocessing by the pressing or filtration method. Voluminous briefs and affidavits have been filed by both parties.

"There is some doubt as to the authority of the court to alter a consent decree. However, it seems unnecessary to change the decree of the court. Without a trial it is not possible to determine whether the reprocessing method proposed by the claimant complies with the provisions of the Pure Food and Drug law. That was not an issue in this case nor should it be determined on the motion of the claimant supported by affidavits and the briefs filed. That would be the issue in a new case if the claimant were allowed to reprocess the puree as it proposes and if the puree were subsequently condemned by the Food and Drug Administration.

"The purpose of vesting discretion and supervisory powers in the Food and Drug Administration as to reprocessing was to avoid such a succession of suits. After a product has been condemned its reprocess is a permissive matter within the discretion of the court as indicated by the use of the word 'may' in the statute. The statute also provides that the reconditioned puree must be brought into compliance with the provisions of the Pure Food and Drug law under the supervision of the Administration. Where several methods of reprocessing are enumerated, as in this decree, the question of who shall deter-

mine the one to be used and which, when used, will bring the reconditioned puree into compliance with the statute seems to be the only question for decision, i. e., does the claimant who does the reprocessing or the Food and Drug Administration under whose supervision the work is to be done have the right to determine the method which would bring the reprocessed product into compliance with the law?

"The Food and Drug Administration has determined that distillation is the only process which would recondition this puree for human consumption and which it would approve. I see no abuse of discretion in making this determination nor can the court interfere with that determination. To interfere would be substituting the judgment of the court for that of the Food and Drug Administration upon a matter which it is better able to decide and upon an issue which I think is not properly joined in this case.

"The fact that the claimant will suffer financial loss is not of great materiality. Its product was found to be unfit for human consumption and the reconditioning is not a matter of right but of permission by the Court.

"The motion of the claimant will be denied.

"The motion of the Government insofar as it seeks to alter the decree will likewise be denied.

"An entry may be presented in accordance with this ruling."

**10157. Adulteration and misbranding of vinegar. U. S. v. 65 Cases of Vinegar. Default decree of condemnation and destruction. (F. D. C. No. 17293. Sample Nos. 7789-H to 7791-H, incl.)**

**LABEL FILED:** August 23, 1945, District of New Jersey.

**ALLEGED SHIPMENT:** On or about May 29, 1945, by the Randall Wine Vinegar Co., from New York, N. Y.

**PRODUCT:** 26 cases, each containing 24 1-pint bottles, 17 cases, each containing 12 1-quart bottles, and 22 cases, each containing 4 1-gallon bottles, of vinegar at Hoboken, N. J.

**LABEL, IN PART:** "Eldeen Brand Pure Wine Vinegar \* \* \* We guarantee this product to be made from pure wine."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (2), a mixture of wine vinegar and distilled vinegar or acetic acid had been substituted in whole or in part for pure wine vinegar, which the article was represented to be; and, Section 402 (b) (4), distilled vinegar or acetic acid had been added to the article and mixed and packed with it so as to reduce its quality or strength.

Misbranding, Section 403 (a), the label statements, "Pure Wine Vinegar \* \* \* We guarantee this product to be made from pure wine," were false and misleading.

**DISPOSITION:** December 17, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

**10158. Adulteration of wine vinegar. U. S. v. 50 Cases of Wine Vinegar (and 2 other seizure actions against wine vinegar). Default decrees of condemnation and destruction. (F. D. C. Nos. 17573, 17574, 17888. Sample Nos. 4620-H, 7714-H, 7915-H, 7916-H.)**

**LABELS FILED:** September 18 and on or about September 19 and October 9, 1945, Districts of New Jersey and Connecticut and Middle District of Pennsylvania.

**ALLEGED SHIPMENT:** On or about July 20, 21, and 27, by the Randall Wine Vinegar Co., from New York, N. Y.

**PRODUCT:** 11 cases, each containing 24 1-pint bottles, and 34 cases, each containing 12 1-quart bottles, of wine vinegar at Newark, N. J.; and 50 cases, each containing 6 ½-gallon jugs, and 8 cases, each containing 12 1-quart bottles, of wine vinegar at New Haven, Conn., and Hazleton, Pa., respectively.

**LABEL, IN PART:** "Eldeen Brand Packed by Eldeen Spice Co. New York Pure Wine Vinegar."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (2), a mixture of wine vinegar and distilled vinegar or acetic acid had been substituted in whole or in part for pure wine vinegar, which the article was represented to be; and, Section 402 (b) (4), distilled vinegar or acetic acid had been added to the article or mixed and packed with it so as to reduce its quality or strength.