

Therefore, the subject matter of the libel and of this action is no longer in existence.

"The continued existence of the mushrooms is essential to our right to proceed against the things themselves. The action is an action in rem. In such a proceeding, there is no party defendant. The goods stand to answer. They are the offenders. *Day v. Micou*, 85 U. S. 156, 162, 21 L. Ed. 860; *National Bond & Investment Co. v. Gibson*, 6 F. 2d 288, 290.

"The decree of the District Court goes against the mushrooms. The decree having been entered and executed, the proceeding is *functus officio*.

"Counsel for the Government readily admits the matter is moot here and counsel for the claimant reluctantly admits it is moot, but both parties ask us to decide the issue between them. This we decline to do. If we were to affirm the judgment, the District Court could not destroy the mushrooms. They have already been destroyed. If we reversed the judgment, there would be no mushrooms to restore to the claimant. The cause is clearly moot. We are not authorized to decide arguments but only 'cases and controversies.' 14 Am. Jur., Courts, § 49.

"In a cause where the facts were identical with those in this cause, except that they arose under the Tariff Act instead of the Federal Food, Drug and Cosmetic Act, the appeal was dismissed. See *Eureka Productions, Inc. v. Mulligan*, 108 F. 2d 760. From an early date it has been held that in forfeiture proceedings such as this, the continued existence of the articles is essential. *United States v. Ninety-two Barrels of Rectified Spirits*, Fed. Cases 15,892, 8 Blatchford 480 (1871).

"The appeal is DISMISSED."

12562. Adulteration of canned strained peas. U. S. v. 933 Cases * * *. (F. D. C. No. 23790. Sample Nos. 18403-K, 18424-K.)

LIBEL FILED: October 8, 1947, Southern District of Ohio.

ALLEGED SHIPMENT: On or about August 22 and September 17, 24, and 25, 1947, by the Beechnut Packing Co., from Rochester, N. Y.

PRODUCT: 933 cases, each containing 36 4¾-ounce jars, of canned strained peas at Cincinnati, Ohio.

LABEL, IN PART: "Beechnut Strained Peas."

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 larvae.

DISPOSITION: November 10, 1947. Default decree of condemnation and destruction.

Nos. 12563 and 12564 report actions involving canned peas that purported to be a food for which a standard of quality has been prescribed by law, but the quality was charged to fall below the standard because of higher alcohol-insoluble solids than the maximum permitted by the standard, and the labels failed to bear, in the manner and form that the regulations specify, a statement that the product was below the standard.

12563. Misbranding of canned peas. U. S. v. 700 Cases * * *. (F. D. C. No. 23800. Sample No. 22170-K.)

LIBEL FILED: October 13, 1947, Northern District of Texas.

ALLEGED SHIPMENT: On or about June 19, 1947, by the Griffin Canning Co., from Muskogee, Okla.

PRODUCT: 700 cases, each containing 24 1-pound, 4-ounce cans, of peas at Dallas, Tex.

LABEL, IN PART: "Raider Early June Peas."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the article was below standard.

DISPOSITION: October 17, 1947. The Griffin Grocery Co., Dallas, Tex., claimant, having admitted the allegations of the libel, judgment was entered ordering that the product be released under bond for relabeling, under the supervision of the Food and Drug Administration.

12564. Misbranding of canned peas. U. S. v. 90 Cases * * *. (F. D. C. No. 21734. Sample No. 40115-H.)

LIBEL FILED: November 27, 1946, Western District of Tennessee.