Further misbranding, Section 403 (h) (1), (both lots of peach halves) the products fell below the standard of quality for canned peaches since the largest peach unit in the container was more than twice the size of the smallest, and all of the peach units were not untrimmed or so trimmed as to preserve their normal shape; and their labels failed to bear a statement that the products fell below the standard.

DISPOSITION: April 27, 1949. The D & D Foods Co., and the Food Distributors, claimants, having admitted that the products were misbranded and having consented to the entry of a decree, judgment of condemnation was entered and the products were ordered released under bond to be relabeled, under the supervision of the Food and Drug Administration.

14782. Adulteration of raisins. U. S. v. 100 Cartons * * *. (F. D. C. No. 26496. Sample No. 7913–K.)

LIBEL FILED: February 2, 1949, Western District of Pennsylvania.

ALLEGED SHIPMENT: On or about November 27, 1945, from San Francisco, Calif.

PRODUCT: 100 25-pound cartons of black raisins at Pittsburgh, Pa.

LABEL, IN PART: "Alicante Dried Black Grapes."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance by reason of the presence of mold. It was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: February 18, 1949. The Savarese Co., Pittsburgh, Pa., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond for segregation of the good portion from the bad, under the supervision of the Federal Security Agency. As the result of the segregation operations, 51 cartons were set aside and denatured for use as hog feed.

14783. Adulteration and misbranding of plum and grape jelly. U. S. v. 74 Cases, etc. Motion of claimant denied for permission to file cross complaint for damages on breach of warranty. Portion of products condemned and released under bond; remainder condemned and ordered destroyed or reprocessed for use as animal feed. (F. D. C. Nos. 22668 to 22670, incl. Sample Nos. 77201–H to 77203–H, incl., 77205–H to 77211–H, incl.)

LIBEL FILED: March 10, 1947, District of Minnesota; amended libel filed July 5, 1947.

ALLEGED SHIPMENT: On various dates including December 17 and 21, 1946, by the Seminole Fruit & Preserving Co., from Little River, Fla.

PRODUCT: 301 21/24 cases and 99 cases of plum jelly and 244 4/24 cases of grape jelly at Minneapolis, Minn. Each case contained 24 jars.

LABEL, IN PART: (Jars) "Cobbs Pure Tropical Fruit Delicacies Plum [or "Grape"] Jelly * * * Net Wt. 1 lb."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), products of less than 65 percent soluble-solids content had been substituted for plum and grape jelly.

Misbranding, Section 403 (g) (1), the products failed to conform to the definitions and standards of identity for plum jelly and grape jelly since the soluble-solids content of the articles was less than 65 percent, the minimum permitted by the standards.

DISPOSITION: On July 30, 1947, the Cobbs Fruit & Preserving Co. having filed a claim for 99 cases of the plum jelly, which claim was uncontested, and having consented to the entry of a decree, judgment of condemnation was entered against the 99 cases. These cases were ordered released under bond for reprocessing and relabeling under the supervision of the Federal Security Agency.

Opposing claims were filed with respect to the remainder of the jelly, by the Cobbs Fruit & Preserving Co. and Gamble-Skogmo, Inc., of Minneapolis, Minn.; in addition, a motion was filed by Gamble-Skogmo, Inc., for an order permitting it to file a cross claim against the Cobbs Fruit & Preserving Co. After a hearing on this motion, the court, on September 24, 1947, handed down the following opinion:

NORDBYE, *District Judge:* "The two claimants to the jelly seized in this proceeding are Cobbs Fruit & Preserving Company, hereinafter called the Cobbs Company, the manufacturer of the product, and Gamble-Skogmo, Inc., which contends that this property was sold to it and the title passed before the seizure. Answers have been filed by both of the claimants, and that issue of ownership is now before the Court on the pleadings filed. But Gamble-Skogmo, Inc., in the motion now presented, seeks an order whereby it will be permitted to file a cross-complaint against the Cobbs Company alleging damages for breach of warranty in the sale of the particular jelly which is the subject matter of this libel proceeding.

"This is a proceeding in rem. The procedure shall conform as nearly as may be to the admiralty rules. But cases arising in admiralty are not particularly helpful, as was recognized by the Supreme Court in 443 Cans of Egg Product v. United States, 226 U. S. 172, 183, when it made the following observations in a proceeding arising under the Pure Food Act:

> We do not think it was intended to liken the proceeding to those in admiralty beyond the seizure of the property by process *in rem*, then giving the case the character of a law action, with trial by jury if demanded and with the review already obtaining in actions at law.

The language in the present statute under the Pure Food and Drug Act with reference to the procedure to be followed is substantially the same as it was when the Supreme Court had the proceeding under the Pure Food Act in the 443 Cans of Egg Product case.

"At the outset, it must be kept in mind that the only question in the present libel proceeding is whether the merchandise was misbranded in violation of the statutes of the United States, and in determining that question the ownership of the jelly is properly before the Court. It is conceded by the Cobbs Company that the issue of ownership as between the two claimants is a matter that may be litigated in the present proceeding. But that issue is only incidental to the proceeding by the Government to condemn the property. However, as to that issue, the Cobbs Company is willing to admit that title passed to Gamble-Skogmo, Inc., if that company presses that contention in this proceeding. But, obviously, this Court cannot assume jurisdiction of a claim by Gamble-Skogmo, Inc., for breach of warranty against the Cobbs Company. That issue is not within the jurisdiction of this Court. It is a collateral common law proceeding in personam. This is strictly a matter in rem. The Cobbs Company is a resident of Florida. It does not do any business in this State; it has no agent in this State; it has no representative herein upon whom service can be made so as to vest this Court with jurisdiction in the contemplated proceeding embraced within this petition. If this Court did make the order prayed for, and permitted petitioner to file a cross-complaint setting up this claim for breach of warranty, the Cobbs Company could refuse to respond, and any proceedings therein with reference to any personal judgment against the Cobbs Company growing out of a claim for breach of warranty would be utterly void. The only jurisdiction this Court has over the Cobbs Company is with reference to the right of the Government to seize goods in which it claims it has an interest, and it has appeared in this proceeding for that limited purpose and none other.

"In so far as the admiralty procedure may be appropriate, there is no admiralty rule which will avail this petitioner. It refers to Rule 56 of the Admiralty Rules, but the attempt to ingraft on a so-called admiralty proceeding in rem a common law proceeding in personam is completely without the purview of that rule. See Eggleston v. Republic Steel Corp. (D. C. W. D. N. Y.) 47 F. Supp. 658. Nor will the fact that the Court has possession of the res permit it to determine any controversy other than the ownership of the property, the ultimate question of misbranding, and the rights of the owners of the property under the statutes if there is misbranding. The claim for damages for breach of warranty does not affect the property seized, nor is that issue one that should be determined in order for the Court in a rem proceeding to adjust all of the rights of the parties in a single suit. The common law claim for damages for breach of warranty growing out of the sale of the merchandise seized and the Cobbs Company's defense thereto are foreign to any issues which this Court should determine in adjusting all of the rights of the parties in the rem proceeding. The determination of the question submitted seems so elementary that to cite authorities in support of the foregoing should be unnecessary.

"Therefore, IT IS ORDERED: That the motion of Gamble-Skogmo, Inc., be, and the same hereby is, in all things denied. An exception is allowed."

On May 21, 1948, the Cobbs Fruit & Preserving Co. and Gamble-Skogmo, Inc., claimants, having admitted the substantial allegations of the libel, judgment was entered providing for condemnation of the jelly, other than the 99 cases mentioned above, and its release under bond to the claimants for segregation of the unfit portion, under the supervision of the Federal Security Agency. Thereafter, a motion for order of default and decree of disposition was filed by the United States attorney, upon the failure of the claimants to file bond and to repossess the product as provided by the decree on May 21, 1948.

A hearing was held on the motion of July 11, 1949, and on July 13, 1949, judgment was entered, holding that the claimants were in default and providing that the product condemned by the decree of May 21, 1948, be disposed of by delivery of the edible portion to charitable institutions and by destruction or reprocessing of the remainder, for use as animal feed.

14784. Misbranding of pineapple-cherry preserves. U. S. v. 12 Cases * * *. (F. D. C. No. 26451. Sample No. 10822–K.)

LIBEL FILED: February 8, 1949, Southern District of New York.

ALLEGED SHIPMENT: On or about March 11 and September 14, 1948, by the Goodman Brothers, Meriden, Conn.

PRODUCT: 12 cases, each containing 24 1-pound jars, of pineapple-cherry preserves at New York, N. Y.

LABEL, IN PART: (Jar) "Old Mill Pure Pineapple-Cherry Preserves."

NATURE OF CHARGE: Misbranding, Section 403 (g) (1), the product fell below the standard of identity for pineapple-cherry preserves since it contained sulfur dioxide and artificial color and flavor, which are not permitted as optional ingredients of pineapple-cherry preserves, and since the weight of the cherry ingredient was less than one-fifth of the weight of the pineapple ingredient.

DISPOSITION: April 14, 1949. Default decree of condemnation. The product was ordered delivered to a charitable institution.

VEGETABLES

14785. Misbranding of canned green beans. U. S. v. 1,400 Cases, etc. (F. D. C. No. 26628. Sample Nos. 37791–K to 37793–K, incl.)

LIBEL FILED: March 10, 1949, Eastern District of Washington.