

"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.

ALLEGED SHIPMENT: On or about October 9 and November 27, 1948, by Kolstad Canneries, Inc., from Silverton, Oreg.

PRODUCT: Canned green beans. 509 cases, each containing 24 1-pound, 3-ounce cans, and 1,354 cases, each containing 6 6-pound, 5-ounce cans, at Spokane, Wash.

LABEL, IN PART: (Can) "Valley Brand Blue Lake Variety Cut Green Beans" or "Silco Brand Blue Lake Ends and Cut Pieces Green Beans."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the product fell below the standard of quality for canned cut green beans since there were present an excessive number of tough strings and its label did not bear the sub-standard legend.

DISPOSITION: April 18, 1949. Kolstad Canneries, Inc., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be relabeled under the supervision of the Food and Drug Administration.

14786. Misbranding of canned green beans. U. S. v. 612 Cases * * *. (F. D. C. No. 26422. Sample No. 46205-K.)

LIBEL FILED: January 20, 1949, Eastern District of Missouri.

ALLEGED SHIPMENT: On or about November 15, 1948, by Kolstad Canneries, Inc., from Silverton, Oreg.

PRODUCT: 612 cases, each containing 6 No. 10 cans, of green beans at St. Louis, Mo. The product was invoiced as "short cut green beans." No labeling agreement existed between the dealer and the shipper.

NATURE OF CHARGE: Misbranding, Sections 403 (e) (1) and (2), the product was in package form and it failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor, and an accurate statement of the quantity of the contents; Section 403 (g) (2), the product was canned green beans, a food for which a definition and standard of identity has been prescribed by regulations, and its label failed to bear the name of the food specified in the regulations; and, Section 403 (h) (1), the product fell below the standard of quality for canned green beans since it contained an excessive amount of fibrous material and tough strings, and its label failed to bear a statement that it fell below the standard.

DISPOSITION: February 25, 1949. Kolstad Canneries, Inc., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration. The product was relabeled.

14787. Adulteration of dried lima beans. U. S. v. 114 Bags * * *. (F. D. C. No. 26135. Sample No. 56082-K.)

LIBEL FILED: December 20, 1948, Southern District of New York.

ALLEGED SHIPMENT: On or about January 21, 1948, from Sacramento, Calif.

PRODUCT: 114 100-pound bags of dried lima beans at New York, N. Y.

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