

15179. Adulteration of butter. U. S. v. 25 Kegs, etc. (F. D. C. No. 25528. Sample Nos. 37088-K, 37089-K.)

LIBEL FILED: On or about August 3, 1948, Western District of Washington.

ALLEGED SHIPMENT: On or about July 11, 1948, by the Commercial Creamery Co., Spokane, Wash.

PRODUCT: 35 80-pound kegs of butter at St. Paul Island and St. George Island, Alaska.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy animal substance. (Examination showed the presence of rodent hairs and wood splinters.)

Further adulteration, Section 402 (b) (2), a product containing less than 80 percent by weight of milk fat had been substituted for butter.

DISPOSITION: August 30, 1949. Default decree of condemnation and destruction.

#### MISCELLANEOUS DAIRY PRODUCTS\*

15180. Misbranding of creamed cottage cheese. U. S. v. Paramount Ice Cream Co. Plea of guilty. Fine, \$100. (F. D. C. No. 26747. Sample Nos. 29891-K, 29894-K, 49187-K, 49188-K, 49193-K.)

INFORMATION FILED: October 24, 1949, District of Utah, against the Paramount Ice Cream Co. a partnership, Ogden, Utah.

ALLEGED SHIPMENT: On or about March 15 and 18 and May 2, 6, and 27, 1949, from the State of Utah into the State of Idaho.

LABEL, IN PART: "Paramount Creamed Cottage Cheese 16 Oz. Net Weight."

NATURE OF CHARGE: Misbranding, Section 403 (g) (1), the product failed to conform to the definition and standard of identity for creamed cottage cheese since it contained less than 4 percent by weight of milk fat, the minimum milk fat content provided by the standard; and 2 of the 5 shipments further failed to conform in that they contained artificial coloring, which is not permitted as an ingredient of creamed cottage cheese.

DISPOSITION: November 17, 1949. A plea of guilty having been entered, the defendant was fined \$100.

15181. Adulteration and misbranding of oleomargarine. U. S. v. 27 Cases \* \* \*. (F. D. C. No. 27134. Sample No. 25695-K.)

LIBEL FILED: May 10, 1949, Southern District of Iowa.

ALLEGED SHIPMENT: On or about April 9, 1949, by the Cudahy Packing Co., from Omaha, Nebr.

PRODUCT: 27 cases, each containing 24 1-pound packages, of oleomargarine at Des Moines, Iowa.

LABEL, IN PART: (Package) "Cudahy's Delrich E-Z Color Pak Vegetable Oleomargarine."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), a product containing less than 80 percent fat had been substituted for oleomargarine.

Misbranding, Section 403 (g) (1), the article failed to conform to the definition and standard of identity for oleomargarine since it contained less than 80 percent fat.

\*See also No. 15178.

DISPOSITION: June 27, 1949. Default decree of forfeiture. The court ordered that the product be delivered to a charitable institution.

## FISH AND SHELLFISH

15182. Alleged adulteration of frozen hake fillets. U. S. Morris Fisheries, Inc., George W. Schulman, and the East Tennessee Packing Co. Pleas of not guilty by defendant firms and plea of nolo contendere by individual. Tried to the court and jury. Verdict of not guilty for defendant firms; case dismissed with respect to individual. (F. D. C. No. 20477. Sample No. 16164-H.)

INFORMATION FILED: August 30, 1946, Eastern District of Tennessee, against Morris Fisheries, Inc., Chicago, Ill., and George W. Schulman, sales manager, and the East Tennessee Packing Co., a corporation, Knoxville, Tenn.

ALLEGED SHIPMENT: On or about November 20, 1945, from the State of Tennessee into the State of Illinois.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a decomposed substance by reason of the presence of putrid fillets.

DISPOSITION: A motion for a Bill of Particulars was filed on behalf of the defendants on December 2, 1946, and on December 4, 1946, pleas of not guilty were entered. A Bill of Particulars was thereafter filed by the Government, following which the defendants moved that the information be dismissed on the grounds (1) that the information did not state sufficient facts to constitute an offense and (2) that the information, together with the Bill of Particulars filed by the Government, did not charge a violation of any law of the United States or an offense against the United States. A motion to inspect, copy, or photograph certain papers and documents also was filed by the defendant. On September 17, 1948, the court handed down the following decision in regard to the above motions:

DARE, *District Judge*: "The defendants have a motion to dismiss the information, which includes the Bill of Particulars.

"The contentions made by the defendants will be commented upon and conclusions announced in the order presented.

"(a) The information does not charge Criminal Intent, say the defendants, and therefore is not sufficient.

"Quite obviously the information is based upon the law announced at 21 U. S. C. Sec. 331 (a), the punishment for which is fixed in Section 333 (a).

"There is ample authority to the effect that this law may be violated regardless of intent or lack of knowledge of adulteration. *Triangle Candy Co. v. U. S. C. C. A. Cal* (1944), 144 F. 2d 195, 155 A. L. R. 903; *U. S. v. 2 Bags Poppy Seeds*, 147 F. 2d 123 (1945); *U. S. v. Thirteen Crates Frozen Eggs*, 215 F. 584, (C. C. A.-2).

"To substantiate the decisions of these courts, there is a different punishment for a violation of Section 331, 'with intent to defraud or mislead.' 21 U. S. C. Sec. 333 (b). By this provision the violation of Section 331, with intent is a felony. Of course, the case at bar is a misdemeanor.

"(b) The contention is made by the defendants that the information is insufficient because it does not charge that the foods described therein, are 'Articles used for food or drink for men or animals.' The Federal Food, Drug, and Cosmetic Act defines the word 'Food' as contained in the Act, 21 U. S. C. Sec. 331 (f) in the manner above quoted.

"The information uses the word 'Food' and is in the language of the statute and is therefore sufficient. When the word 'Food' is charged in the information it necessarily means food as defined by the law.

"It is to be noted that the definition of the word 'Food' does not carry with it the idea that the particular food introduced into commerce was to be actually used by men or animals. The definition is simply descriptive.