

15436. Adulteration of green split peas. U. S. v. 155 Bags * * *. (F. D. C. No. 28230. Sample No. 13422-K.)

LIBEL FILED: October 20, 1949, Eastern District of Pennsylvania.

ALLEGED SHIPMENT: On or about August 27, 1948, from Moscow, Idaho.

PRODUCT: 155 100-pound bags of green split peas at Philadelphia, Pa., in possession of Jacob Kauffman.

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 insects and rodent urine; and, Section 402 (a) (4), it had been held under insanitary conditions whereby it may have become contaminated with filth. The article was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: November 7, 1949. Jacob Kauffman, claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for denaturing and sale for nonhuman consumption, under the supervision of the Food and Drug Administration.

15437. Misbranding of canned peas. U. S. v. 351 Cases * * *. Tried to the court. Decree providing for release of portion of product and for condemnation and release under bond of remainder of product. (F. D. C. No. 21752. Sample No. 48831-H.)

LIBEL FILED: November 22, 1946, Eastern District of Texas.

ALLEGED SHIPMENT: On or about August 16, 1946, by Libby, McNeill & Libby, from Janesville, Wis.

PRODUCT: 351 cases, each containing 24 1-pound, 4-ounce cans, of peas at Beaumont, Tex.

LABEL, IN PART: "Happyvale Early June Peas * * * Emery Food Co., Chicago, Illinois, Distributors."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the article was below standard in quality because of alcohol-insoluble solids in excess of 23.5 percent, the maximum permitted by the standard, and not labeled to indicate that it was substandard.

DISPOSITION: The Emery Food Co. having appeared as claimant and denied that the product was misbranded, the case came on for trial before the court on November 8, 1948, and was concluded on November 9, 1948. Judgment was entered condemning certain codes and ordering their release under bond for relabeling, and ordering the remaining codes released without bond. The decree contained the following findings by the court:

BRYANT, District Judge: "It appearing from the pleadings and evidence introduced that the shipment of 351 cases, more or less, of peas, each case containing 24 cans, and each can bearing a code number, such code number having been embossed on each can by the canner, such code numbers being 3P28C TFPN, 4P28C TFPN, 5P27C TFPN, 7P27C TFPN, and 8P27C TFPN, and the Court being of the opinion that those cans bearing the respective numbers set out herein, constitute separate articles of food, the Court finds that such shipment of 351 cases, more or less, of peas, is composed of five separate articles of food, each article of food being designated by the code number embossed on the respective cans;

"And it further appearing that the claimant has offered no evidence as to the quality of the peas contained in those cans bearing code number 5P27C TFPN, but that from the pleadings and evidence introduced by the libelant, a per-

centage of the cans bearing such code number contains peas of substandard quality; and

"It appearing to the court and the court having found that the different code marks herein enumerated as embossed on the particular cans indicate that, according to the code mark, that the can was packed during a particular three hour period and on a certain day;

"And the court having determined and found that with rare exceptions, cans of only one code mark were and are found in a single case in said 351 cases of peas;

"It appearing from the pleadings and evidence introduced that those cans bearing code numbers 3P28C TFPN and 4P28C TFPN, contain peas of substandard quality, it is by the court ORDERED, ADJUDGED and DECREED that those cans of peas bearing code numbers 5P27C TFPN, 3P28C TFPN, and 4P28C TFPN, be, and the same are hereby condemned and forfeited to the libellant;

"The Court further finds from the pleadings and evidence introduced that the peas in those cans bearing code numbers 7P27C TFPN and 8P27C TFPN, are of standard quality and that the claimant is entitled to have those cans bearing code numbers 7P27C TFPN and 8P27C TFPN, released to it, without bond, for sale;

"It is therefore ORDERED, ADJUDGED and DECREED that upon payment of all costs of this proceeding by the claimant, the libellant release to the claimant or its authorized representative, without bond, those cans contained in said 351 cases, more or less, of peas, bearing code numbers 7P27C TFPN and 8P27C TFPN.

"It is further ORDERED, ADJUDGED and DECREED that upon payment of all costs of this proceeding by the claimant, and upon the claimant's filing a good and sufficient bond, within ----- days, in the penal sum of ----- Dollars, payable to the United States, conditioned that those cans of peas bearing code numbers 5P27C TFPN, 3P28C TFPN, and 4P28C TFPN, will not be sold or otherwise disposed of contrary to the provisions of this judgment, or any laws of the United States, State, District, Territory or Insular Possession of the United States, such cans of peas shall be delivered to the claimant for the purpose of relabeling such cans of peas under the supervision of the Federal Security Agency, Food and Drug Administration, and upon performance of all such conditions, the bond shall be deemed satisfied, otherwise to remain in full force and effect."

Following the entry of the above decree, a motion was filed on behalf of the Government, seeking the entry of a new judgment or, in the alternative, the granting of a new trial. This motion was denied on or about February 1, 1949.

15438. Alleged adulteration and misbranding of potatoes. U. S. v. Abe Kasviner.
Plea of not guilty. Tried to the jury. Verdict of not guilty. (F. D. C.
No. 23566. Sample Nos. 44379-H, 71509-H.)

INFORMATION FILED: On or about September 18, 1947, District of Nevada, against Abe Kasviner, Reno, Nev.

ALLEGED SHIPMENT: On or about February 14 and April 5, 1947, from the State of Nevada into the State of California.

LABEL, IN PART: (One shipment) "U. S. No. 1 Famous K Brand Russets."
 The other shipment was unlabeled.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product in one shipment consisted in part of a filthy substance by reason of the presence of nematodes.

Misbranding, Section 403 (a), the statement "U. S. No. 1" displayed upon the label of the remaining shipment was false and misleading. The statement represented and created the impression that the article was U. S. No. 1 grade, whereas it was not U. S. No. 1 grade since the article had been damaged by nematodes.