

for oysters, and which were misbranded under Section 403 (g) (1), in that they failed to conform to the definition and standard of identity for oysters since they were not thoroughly drained as required by the standard.

The complaint alleged further that the defendants had been warned to correct their methods of operation and not to introduce, or cause the introduction or delivery for introduction, into interstate commerce of food which was adulterated and misbranded in the manner specified above; but that they had failed to correct their methods of operation and were continuously shucking, preparing, packing, and shipping adulterated and misbranded oysters in interstate commerce.

The complaint alleged further, on information and belief, that the defendants would continue to ship oysters in violation of the law unless enjoined, and prayed that they be perpetually enjoined from the commission of such acts and that a preliminary injunction be granted during the pendency of the action.

**DISPOSITION:** On April 7, 1949, the defendants having defaulted and failed to appear and the Government having moved the entry of a preliminary injunction, the court entered such preliminary injunction, enjoining and restraining the defendants and all persons acting on their behalf from introducing or causing the introduction, or delivering or causing to be delivered for introduction, into interstate commerce, oysters which were adulterated and misbranded as alleged in the complaint.

**17539. Action to enjoin and restrain the interstate shipment of adulterated and misbranded oysters. U. S. v. Charles A. Neubert, Jr., and Milton B. Delcher, Jr. (W. H. McGee & Co.). Preliminary injunction granted. (Inj. No. 210.)**

**COMPLAINT FILED:** February 16, 1949, District of Maryland, against Charles A. Neubert, Jr., and Milton B. Delcher, Jr., trading as W. H. McGee & Co., Baltimore, Md.

**NATURE OF CHARGE:** That the defendants had been and were at the time of filing the complaint engaged in the business of shucking, preparing, and packing fresh oysters; that during that time the defendants had been shipping in interstate commerce oysters which were adulterated within the meaning of Section 402 (b) (2), in that excess water had been substituted in part for oysters, and which were misbranded within the meaning of Section 403 (g) (1), in that they failed to conform to the definition and standard of identity for oysters selects and oysters standards since they were not thoroughly drained as required by the regulations; that despite warnings in December 1948 and January 1949, the defendants had failed to correct their methods of operation and were continuously shucking, preparing, and shipping adulterated and misbranded oysters in interstate commerce.

The complaint alleged further, on information and belief, that the defendants would continue to ship oysters in interstate commerce in violation of the law unless restrained from so doing, and prayed that they be perpetually enjoined from commission of such acts and that a preliminary injunction be granted during the pendency of the action.

**DISPOSITION:** On March 2, 1949, the defendants filed a motion for a more definite statement or bill of particulars and a petition for an extension of time to plead. The motion and petition were denied by the court. On March 21, 1949, the Government's motion for a temporary injunction came on for hearing. After hearing testimony and argument of counsel for both parties, it was agreed between the parties in open court that the entry of a restraining order

would be an acceptable substitute for a temporary injunction, pending trial on the merits.

On March 31, 1949, the defendants having filed answers denying the allegations of the complaint, but having stipulated and agreed that a preliminary injunction issue, without testimony being produced at the time or further findings of fact being made beyond those recited in the decree, the court ordered and decreed that the defendants and all their agents, servants, employees, and all persons in active concert or participation with them, be preliminarily enjoined from directly or indirectly introducing, or causing the introduction into interstate commerce, of oysters which were adulterated or misbranded as charged in the complaint.

**17540. Action to enjoin and restrain the interstate shipment of adulterated and misbranded oysters. U. S. v. Tom's Cove Oyster Co., H. Allen Smith, Theron Hamilton, and Forrest Daisey. Decree for permanent injunction entered. (Inj. No. 207.)**

**COMPLAINT FILED:** January 28, 1949, Eastern District of Virginia, against Tom's Cove Oyster Co., a partnership, Chincoteague, Va., and H. Allen Smith, Theron Hamilton, and Forrest Daisey, copartners.

**NATURE OF CHARGE:** The complaint alleged that the defendants had been and were at the time of filing the complaint introducing and delivering for introduction into interstate commerce, fresh shucked oysters which were adulterated under Section 402 (b) (2), in that excess water had been substituted in part for oysters, and which were misbranded under Section 403 (g) (1), in that they failed to conform to the definitions and standards of identity for oysters established by the regulations; that various investigations had been made during the year 1948, which disclosed the adulteration and misbranding of oysters as aforesaid; and that the defendants had been warned to correct their methods and desist from shipping adulterated and misbranded oysters in interstate commerce, but that they had failed to correct their methods and were continuing to violate the law.

The complaint alleged further, on information and belief, that the defendants would continue to ship oysters in violation of the law unless restrained from so doing, and prayed for the entry of an injunctive decree to restrain and enjoin such violative practices.

**DISPOSITION:** On February 8, 1949, the defendants having consented thereto, a permanent injunction was entered enjoining and restraining the defendants and all persons acting upon their behalf from directly or indirectly introducing, or causing the introduction, into interstate commerce of oysters adulterated or misbranded as charged in the complaint.

## FRUITS AND VEGETABLES

### CANNED FRUIT

**17541. Misbranding of canned apricots. U. S. v. 383 Cases \* \* \*. (F. D. C. No. 23990. Sample No. 18005-K.)**

**LABEL FILED:** On or about November 26, 1947, Southern District of Indiana.

**ALLEGED SHIPMENT:** On or about August 27 and 31 and September 5, 1947, by Inter Mountain Food Co., Inc., from Grand Junction, Colo.

**PRODUCT:** 383 cases, each containing 24 1-pound, 14-ounce cans, of apricots at Indianapolis, Ind.