

CHARGE: 402 (a) (4)—prepared under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 4-25-55. Each defendant fined \$200.

FLOUR

22307. Tapioca flour. (F. D. C. No. 31675. S. No. 24-637 L.)

QUANTITY: 307 bags at Brooklyn, N. Y.

SHIPPED: 6-7-51 and 6-8-51, from Boston, Mass., by Norton-Lilly Co.

LABEL IN PART: (Bag) "KG Tapioca Flour N/W 100 Kgs. Produce of Siam"
or "Tapioca Flour Ceres Boemia Joe 100 Kg."

LIBELED: 9-11-51; amended libel filed 5-18-54, E. Dist. N. Y.

CHARGE: 402 (a) (3)—contained insects, insect fragments, and rodent hair fragments when shipped and while held for sale.

DISPOSITION: Benjamin Eskwith, t/a Fulton Trading & Commission Co., New York, N. Y., claimant, filed an answer denying that the article was a food and was adulterated as alleged. Thereafter, both parties served interrogatories upon each other. The claimant answered certain interrogatories and objected to the remainder. On 2-19-54, the court overruled the claimant's objections, ordering it to answer the interrogatories. Subsequently, the claimant answered the remaining interrogatories and the Government answered the claimant's interrogatories. On 5-5-54, the court granted the Government's motion to amend the libel. Thereafter, the court denied the Government's motion for a summary judgment, and the case came to trial before a jury on 1-3-55. The jury returned a verdict for the Government on 1-4-55, and on 5-18-55, a decree was entered condemning the article and ordering its destruction.

MACARONI AND NOODLE PRODUCTS

22308. Enriched macaroni products. (F. D. C. No. 37200. S. Nos. 50-438/9 L.)

INFORMATION FILED: 4-7-55, E. Dist. N. Y., against G. Santoro & Sons, Inc., Brooklyn, N. Y.

SHIPPED: 3-9-54, from New York to New Jersey.

LABEL IN PART: "Santoro Enriched Macaroni Specialties Made From No. 1 Durum Wheat Semolina Net Weight 1 Lb. * * * Manufactured By G. Santoro & Sons, Inc., Brooklyn, N. Y."

CHARGE: 403 (g) (1)—the article failed to conform to the definition and standard of identity for enriched macaroni since it contained in each pound less than 4 milligrams of thiamine, less than 1.7 milligrams of riboflavin, less than 27 milligrams of niacin or niacinamide, and less than 13 milligrams of iron.

PLEA: Guilty.

DISPOSITION: 4-25-55. \$200 fine.

22309. Elbow macaroni. (F. D. C. No. 37676. S. No. 12-885 M.)

QUANTITY: 422 20-lb. cartons at Trenton, N. J.

SHIPPED: 1-26-55, from Philadelphia, Pa., by Philadelphia Macaroni Co., Inc.

LIBELED: 2-23-55, Dist. N. J.

CHARGE: 402 (a) (3)—contained insect parts and rodent hairs; and, 402 (a) (4)—prepared under insanitary conditions.

DISPOSITION: 3-24-55. Default—destruction.

DAIRY PRODUCTS

BUTTER

22310. Butter. (F. D. C. No. 35096. S. Nos. 23-570 L, 24-547 L, 37-933 L.)

INFORMATION FILED: 7-2-53, S. Dist. N. Y., against H. Wool & Sons, Inc., New York, N. Y., and Herbert Wool, general manager.

ALLEGED VIOLATION: Between 8-7-52 and 9-11-52, the defendants caused a number of packages of butter labeled in part "1 Lb. Net" to be delivered for introduction into interstate commerce by delivery to vessels engaged solely in interstate and foreign commerce (counts 1 and 2); and, on 9-23-52, while a quantity of butter was being held for sale after shipment in interstate commerce, the defendants caused such butter to be repackaged into cartons labeled in part "One Pound Net Weight" (count 3).

RESULTS OF INVESTIGATION: An examination revealed that the packages and cartons referred to above were short weight.

CHARGE: 403 (e) (2)—the labels of the butter, delivered and held for sale as described above, failed to bear an accurate statement of the quantity of contents.

PLEA: Not guilty.

DISPOSITION: This case came to trial before a jury on 10-23-53. The jury returned, on 10-27-53, a verdict of not guilty as to counts 1 and 2 and guilty as to count 3. On 10-30-53, the corporation and the individual were each fined \$1,000 and the individual was sentenced to prison for 6 months. A notice of appeal was filed by the defendants, and on 7-27-54, the United States Court of Appeals for the Second Circuit handed down the following opinion, affirming the judgment of conviction:

HARLAN, *Circuit Judge*: "H. Wool & Sons, Inc., a wholesale seller of dairy products, and Herbert Wool, the Corporation's Secretary, who was one of its principal owners and active in the management of its affairs, have been found guilty by a jury of violating § 331 (k) of Title 21 of the United States Code, 21 U. S. C. A. § 331 (k),¹ which, among other things, prohibits the doing of any act with respect to an article of food held for sale after shipment in interstate commerce which results in misbranding, as defined in § 343 (e) (2).² Section 333 (a), 21 U. S. C. A. § 333 (a), makes violation of § 331 a misdemeanor.³

"The food involved was butter, alleged to have been received by Wool Inc., after it had been in interstate commerce. The act of the defendants asserted

¹ "§ 331. Prohibited acts

The following acts and the causing thereof are hereby prohibited:

* * * (k) The alteration * * * or the doing of any other act with respect to, a food * * * if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being * * * misbranded."

² "§ 343. Misbranded food

A food shall be deemed misbranded—

(a) If its labeling is false or misleading in any particular. * * * (e) If in package form unless it bears a label containing * * * (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary."

* * * § 333. Penalties * * *

(a) Any person who violates any of the provisions of section 331 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine * * *."