

On May 29, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

**30582. Adulteration of Limburger cheese. U. S. v. 45 Cases of Limburger Cheese. Tried to the court. Judgment for the Government. Decree of condemnation and destruction. (F. & D. No. 44369. Sample No. 21558-D.)**

This product contained insect fragments.

On November 17, 1938, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 45 cases of Limburger cheese at Detroit, Mich.; alleging that the article had been shipped on or about August 8, 1938, by Miller-Richardson Co. from Rome, N. Y.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Mohawk Valley Brand Whole Milk Naturally Ripened Genuine New York State Limburger."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On April 7, 1939, the Kraft-Phenix Cheese Corporation, Detroit, Mich., claimant, filed a motion for an order directing discovery of documents showing the results of tests and inspection of samples, which motion was granted by the court. On April 18, 1939, a jury having been waived, the case was tried in the court and the following decision was handed down:

O'BRIEN, *District Judge*: "I think the Government has established its right to an order for the condemnation and confiscation of the cheese seized. I want to remark, of course, that the Kraft-Phenix Cheese Co. didn't make this cheese. They were the unfortunate holders of it when it got up to Detroit. It was made by some corporation down in New York, but in the judgment of the court the Government has established by substantial evidence that the cheese in question was in such a condition as to be in violation of the code involved in this libel. Beyond any question the rind or the skin of the cheese was impregnated with animal matter, flies, hair, and other substances of animal origin. In some instances of the analysis, the interior of the cheese was so impregnated, but I do not think that it would interfere with a judgment in this case if the interior had not been affected, although there is proof that it is, because a food product such as this at least should have such reasonable care and sanitary precaution in its manufacturing and in its marketing as to make it free from such noisome articles and objects and substances as appear to be in this cheese. The consumer has a right to expect that. Whether such cheese would be injurious to health or not is not of moment, or the court doesn't know, but at least the ultimate consumer in the homes and in the hotels and restaurants has a right to assume that the product that he eats or orders is free from such conditions. Otherwise, besides the annoyance that might ordinarily accompany the consumption of Limburger cheese, they would also have to provide themselves with microscopes or magnifying glasses. In fact, in the future the restaurants might advertise 'With music and magnifying glasses.' So, under the conditions of this testimony, I have no alternative but to grant to the Government the order it seeks for confiscation and condemnation."

On April 25, 1939, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

**30583. Adulteration and misbranding of wheat gray shorts and screenings. U. S. v. Canadian Mill & Elevator Co. Plea of guilty. Fine, \$50 and costs. (F. & D. No. 42710. Sample No. 3917-D.)**

Wheat brown shorts and screenings had been substituted in whole or in part for this product. It also contained more crude fiber than was declared on the tag.

On May 15, 1939, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Canadian Mill & Elevator Co., El Reno, Okla., alleging shipment by said defendant in violation of the Food and Drugs Act on or about November 26, 1938, from the State of Oklahoma into the State of Texas of a quantity of wheat gray shorts and screenings that were adulterated and misbranded.

The article was alleged to be adulterated in that wheat brown shorts and screenings had been substituted in whole or in part for wheat gray shorts and screenings, which it purported to be.

It was alleged to be misbranded in that the statements, "Wheat Gray Shorts and Screenings" and "Crude Fiber (not more than) 6.00%," borne on the tags, were false and misleading, and were borne on the tags so as to deceive and mislead the purchaser, since it consisted of wheat brown shorts and screenings, and contained more than 6.00 percent, to wit, not less than 7.34 percent of crude fiber.

On May 25, 1939, the defendant entered a plea of guilty and the court imposed a fine of \$50 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

**30584. Adulteration and misbranding of self-rising buckwheat, wheat, and corn flour. U. S. v. 28 Cartons of ASCO Brand Self Rising Buckwheat, Wheat, & Corn Flour. Default decree of condemnation and destruction. (F. & D. No. 45105. Sample No. 34453-D.)**

This product contained sand, and it was also short of the declared weight.

On March 28, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 28 cartons of buckwheat, wheat, and corn flour at Baltimore, Md.; alleging that the article had been shipped in interstate commerce on or about January 26, 1939, by France Milling Co. from Cobleskill, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Distributed by American Stores Co. Philadelphia, Pa."

It was alleged to be adulterated in that buckwheat flour containing sand had been mixed and packed with it so as to reduce or lower its quality, and had been substituted in whole or in part for the article.

It was alleged to be misbranded in that the statement "Net Weight 1 lb. 4 Oz.," borne on the package, was false and misleading and tended to deceive and mislead the purchaser when applied to an article that was short weight; and in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the quantity stated was not correct.

On April 19, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

**30585. Misbranding of butter. U. S. v. Western Produce Co., Inc. (Lubbock Poultry & Egg Co.). Plea of guilty. Fine, \$100 and costs. (F. & D. No. 42700. Sample Nos. 27276-D, 30629-D, 30631-D, 30640-D.)**

This product was short of the declared weight.

On April 20, 1939, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Western Produce Co., Inc., trading as the Lubbock Poultry & Egg Co., Lubbock, Tex., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, within the period from on or about July 30 to on or about September 8, 1938, from the State of Texas into the State of New Mexico, of quantities of butter which was misbranded. It was labeled in part: "Finest Creamery Butter \* \* \* Put up for Safeway Stores, Incorporated"; or "Clear Brook Creamery Butter Distributed by Wilson & Co."

The article was alleged to be misbranded in that the statement borne on the cartons, "Net Weight One Pound" or "Net Weight 1 Pound," was false and misleading and tended to deceive and mislead the purchaser since the cartons contained less than the amount stated. Misbranding was alleged further in that it was food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the packages.

On May 15, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of \$100 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*