25732. Misbranding of canned tomatoes. U. S. v. 800 Cases of Canned Tomatoes. Consent decree of condemnation. Product released under bond for relabeling. (F. & D. no. 37228. Sample no. 59161-B.)

This case involved an interstate shipment of canned tomatoes that fell below the standard established by the Department of Agriculture because the product was not normally colored and flavored, the flavor being that of unripe tomatoes rather than the normal flavor of mature tomatoes, and they were not labeled to indicate that they were substandard.

On or about February 24, 1936, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 800 cases of canned tomatoes at Oklahoma City, Okla., alleging that the article had been shipped in interstate commerce on or about December 5 and 12, 1935, and January 20, 1936, by the Austin-Snow Co., from Springfield, Mo., and that it was misbranded in violation of the Food and Drugs Act. The article was labeled: "New Deal Brand Hand Packed Tomatoes. Contents 1 Lb. 3 Oz. Distributed by Austin-Snow Company, Springfield, Missouri."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, in that the canned tomatoes were not normally colored and normally flavored, since the flavor was that of unripe tomatoes rather than the normal flavor of mature tomatoes, and the package or label did not bear a plain and conspicuous statement, as prescribed by the Secretary of Agriculture, indicating that the article fell below such standard.

On March 20, 1936, the Austin-Snow Co. and the Wolfe Brokerage Co., claimants, having admitted the allegations of the libel and consented to a decree, judgment of condemnation was entered and it was ordered that the product be released under bond, conditioned that it be relabeled under the supervision of the Department of Agriculture.

W. R. GREGG, *Acting Secretary of Agriculture.*

25733. Misbranding of canned peas. U. S. v. 1,000 Cases of Canned Peas. Consent decree of condemnation. Product released under bond for relabeling. (F. & D. no. 37229. Sample no. 65819-B.)

This case involved an interstate shipment of canned peas represented on the label as "Tender Sweet Peas", but which were Alaska peas of poor quality.

On February 24, 1936, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 1,000 cases of canned peas at Worcester, Mass., alleging that the article had been shipped in interstate commerce on or about January 13, 1936, by the Melrose Canning Co., from Greenmount, Md., and that it was misbranded in violation of the Food and Drugs Act. The article was labeled: "Royal Worcester Brand Tender Sweet Peas Contents 1 Lb. 4 Oz. New England Grocer Supply Co., Worcester, Mass. Distributors."

The article was alleged to be misbranded in that the statement on the label, "Tender Sweet Peas", was false and misleading and tended to deceive and mislead the purchaser when applied to peas that were not tender sweet peas.

On April 1, 1936, Philip D. Gradman and Isadore J. Gradman, doing business as the Melrose Canning Co., Melrose, Md., having appeared as claimants and admitted the allegations of the libel and having consented to a decree, judgment of condemnation was entered and it was ordered that the product be released under bond, conditioned that it be relabeled under the supervision of the Department of Agriculture.

W. R. GREGG, *Acting Secretary of Agriculture.*

25734. Adulteration and misbranding of olive oil. U. S. v. 25½ Cases of Olive Oil, and 3 other actions. Default decree of condemnation and destruction. (F. & D. nos. 37292, 37302, 37343, 37416. Sample nos. 29919-B, 52161-B, 52162-B, 56350-B, 62313-B.)

These cases involved interstate shipments of so-called olive oil which contained tea-seed oil, and the bottles of which were short in volume.

On March 4, 1936, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 25½ cases, containing 51 dozen bottles of so-called olive oil, at Butler, Pa.; on March 5, 1936, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying

seizure and condemnation of 18 bottles of so-called olive oil at Louisville, Ky.; on March 12, 1936, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 367 bottles of so-called olive oil at Houston, Tex.; and on March 24, 1936, the United States attorney for the Northern District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 190 bottles of so-called olive oil at Birmingham, Ala. The libels alleged that the articles had been shipped in interstate commerce on or about August 28 and October 4, 1935, and January 27 and 28 and February 14, 1936, by the De Luca Olive Oil Co., from New York, N. Y., and that they were adulterated and misbranded in violation of the Food and Drugs Act. The bottles containing the article seized at Butler, Pa., were labeled in part: "Clover Farm Brand Pure Imported Olive Oil Net Conts. 6 Ozs. [or "Net Conts. 2 Ozs."] Clover Farm Stores Distributors National Headquarters Cleveland, Ohio." The article seized at Louisville, Ky., and at Birmingham, Ala., was labeled in part: (Bottle) "Olio D'Oliva Marca De Luca Brand 6 Fl. Oz."; (bottle cap) "Pure Olive Oil Tested Approved * * * Good Housekeeping Magazine Bureau of Foods De Luca & Co. New York & Genoa." The article seized at Houston, Tex., was labeled in part: (2-ounce bottles) "Pure Olive Oil Net Cont. 2 Fl. Oz. De Luca Brand De Luca Olive Oil Co. Inc. New York, N. Y."; (3-ounce bottles) "Olio D'Oliva Marca De Luca Brand 3 Fl. Oz."; (bottle caps) "Pure Olive Oil Tested Approved * * * Good Housekeeping Magazine Bureau of Foods De Luca & Co. New York & Genoa."

The articles in all four of the cases were alleged to be adulterated in that tea-seed oil had been mixed and packed with the article so as to reduce or lower its quality or strength, and in that tea-seed oil had been substituted in whole or in part for olive oil, which the product purported to be.

The article seized at Butler, Pa., contained in 6-ounce bottles and 2-ounce bottles, was alleged to be misbranded in that the statement "Pure Imported Olive Oil", appearing on the bottles, was false and misleading and tended to deceive and mislead the purchaser when applied to a product containing tea-seed oil; and the portion of said article contained in the 6-ounce bottles was alleged to be misbranded further in that the statement "Net Conts. 6 Ozs.", appearing on the bottles, was false and misleading and tended to deceive and mislead the purchaser, when applied to a product the bottles of which were short in volume.

The article seized at Louisville was alleged to be misbranded in that the statements, "Olio D'Oliva * * * De Luca Brand 6 Fl. Oz.", and "Pure Olive Oil", appearing on the bottles, were false and misleading and tended to deceive and mislead the purchaser when applied to a product containing tea-seed oil.

The article seized at Houston and contained in 3-ounce bottles and 2-ounce bottles, was alleged to be misbranded in that the statement, "Olio D'Oliva * * * De Luca", appearing on the 3-ounce bottles, and the statement, "Pure Olive Oil * * * De Luca", appearing on the 2-ounce bottles, and the statement "Pure Olive Oil", appearing on the bottle [caps] of both sizes, were false and misleading and tended to deceive and mislead the purchaser when applied to a product containing tea-seed oil; and the portion of said article in the 3-ounce bottles was alleged to be misbranded further in that the statement "3 Fl. Oz.", appearing on the bottles, was false and misleading and tended to deceive and mislead the purchaser when applied to a product in bottles that contained less than 3 fluid ounces.

The article seized at Birmingham was alleged to be misbranded in that the statements, "Olio D'Oliva * * * De Luca 6 Fl. Oz.", appearing on the bottles, and the statement "Pure Olive Oil", appearing on the bottle caps, were false and misleading and tended to deceive and mislead the purchaser when applied to a product containing tea-seed oil and the bottles of which were short in volume.

The articles in all four of the cases were alleged to be misbranded in that they were offered for sale under the name of another article, namely, olive oil.

The articles at Louisville and Birmingham, the portion of the article at Houston that was contained in 3-ounce bottles, and the portion of the article at Butler, Pa., that was contained in 6-ounce bottles, were alleged to be misbranded 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 March 26, April 22 and 29, and May 21, 1936, no claimant having appeared, judgments of condemnation were entered and it was ordered that the products be destroyed.

W. R. GREGG, *Acting Secretary of Agriculture.*

25735. Misbranding of apples. U. S. v. Otto W. Borden. Plea of nolo contendere. Fine, $10. (F. & D. no. 35879. Sample nos. 10555-B, 17847-B, 17849-B.)

This case involved an interstate shipment of apples that were below the grade declared on the label.

On September 4, 1935, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Otto W. Borden, trading at Front Royal, Va., alleging shipments by the defendant in violation of the Food and Drugs Act as amended, between the dates of September 26 and October 2, 1934, from the State of Virginia into the State of Pennsylvania, of a quantity of apples that were misbranded. The article was labeled in part: "Stayman Winesap Packed By O. W. Borden, Front Royal, Va. U. S. No. 1 2½ Min."

The article was alleged to be misbranded in that the statement "U. S. No. 1", borne on the baskets containing the article, was false and misleading; and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since each of a large number of baskets examined contained apples of a lower grade than declared on the label. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since the statement made was incorrect.

On October 28, 1935, defendant entered a plea of nolo contendere and the court imposed a fine of $10.

W. R. GREGG, *Acting Secretary of Agriculture.*

25736. Adulteration of canned salmon. U. S. v. Alaska Icepak Corporation. Plea of guilty. Fine, $10 and costs. (F. & D. no. 36966. Sample nos. 37948-B, 27962-B, 37963-B, 37965-B, 37966-B, 37969-B, 37970-B, 37983-B, 37984-B, 37991-B, 38018-B, 38019-B, 38020-B, 38022-B, 40412-B, 40417-B, 40418-B.)

This case involved shipments of cans of salmon that was in part decomposed.

On April 15, 1936, the United States attorney for the third division of the District of Alaska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Alaska Icepak Corporation, Cordova, Alaska, alleging that on or about June 8, June 17, and July 6, 1935, the defendant had shipped from Alaska into the State of Washington a number of unlabeled cans of salmon, and that the article was adulterated in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted in part of decomposed and putrid animal substance.

On June 23, 1936, a plea of guilty was entered on behalf of the defendant company and the court imposed a fine of $10 and costs.

W. R. GREGG, *Acting Secretary of Agriculture.*

25737. Adulteration of chili powder and chili pods. U. S. v. 9 Barrels of Chili Powder, and other actions. Default decrees of condemnation and destruction. (F. & D. nos. 36884, 37143, 37156, 37160, 37161, 37168, 37184, 37337. Sample nos. 9428-B, 32463-B, 34560-B, 34769-B, 34770-B, 56026-B, 56171-B, 68176-B.)

These cases involved chili powder and chili pods that contained excessive arsenic and, in one instance, excessive chlorine.

On December 28, 1935, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of nine barrels of chili powder at Chicago, Ill.

On February 1, 4, 5, 8, 10, and March 7, 1936, libels were filed against 198 pounds of chili powder at Cincinnati, Ohio; 2 barrels of chili powder at Louisville, Ky; 75 barrels of chili powder and 40 bales of chili pods at East San Pedro, Calif., 7 barrels of chili powder at Memphis, Tenn.; and 3 barrels of chili powder at Nashville, Tenn. The libels alleged that the articles had been shipped in interstate commerce between the dates of December 2 and December 21, 1935,