

27777. Misbranding of olive oil. U. S. v. 14 Cases and 56 Cases of Olive Oil. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. Nos. 39966, 39967. Sample Nos. 49017-C, 49018-C.)

This product was misbranded because it was short in volume; and its label conveyed the impression that it was Italian olive oil, whereas it was a domestic product.

On July 20, 1937, 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 70 cases of olive oil at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about April 26, 1937, by the Dyson Shipping Co. from San Francisco, Calif., and charging misbranding in violation of the Food and Drugs Act as amended. It was labeled in part: (Cans) "Gold Deer Brand Pure Olive Oil Manufactured and Packed by Lucca Olive Oil Co. Lucca, Cal. Contents ½ Gallon [or "1 Gallon"]."

The article was alleged to be misbranded in that the statements "Contents ½ Gallon" and "1 gallon," borne on the labels, were false and misleading and tended to deceive and mislead the purchaser when applied to an article that was short in volume; and in that the prominent statements "From Lucca" and "Lucca Olive Oil Co." were false and misleading and tended to deceive and mislead the purchaser, since they implied that the article came from Lucca, Italy, the well-known olive-oil-producing area, and these prominent statements were not corrected by the less conspicuous reference to Lucca, Calif. It was alleged to be misbranded further 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 statement made was incorrect.

On September 3, 1937, Frank Bennati, Chicago, Ill., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation was entered providing for release of the product under bond conditioned that it be relabeled.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

27778. Misbranding of canned sardines. U. S. v. 998 Cases of Sardines. Consent decree of condemnation. Product released under bond for relabeling. (F. & D. No. 39972. Sample No. 39332-C.)

This product was short of the declared weight.

On July 24, 1937, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 998 cases of sardines at Portland, Oreg., alleging that the article had been shipped in interstate commerce on or about June 29, 1937, by the Sea Pride Packing Co. from San Francisco, Calif., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "North Star Filets of Sardines * * * Net Contents 9 Ounces or 255 Grams Distributed by North Star Company Seattle."

It was alleged to be misbranded in that the statement, "Net Contents 9 Ounces or 255 Grams," was false and misleading and tended to deceive and mislead the purchaser since the article 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 August 4, 1937, the North Star Co., Seattle, Wash., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled to comply with the law.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

27779. Misbranding of canned tomatoes. U. S. v. 916 Cases of Tomatoes. Consent decree of condemnation. Product released under bond for relabeling. (F. & D. Nos. 39973 to 39975, incl. Sample Nos. 50644-C, 50645-C, 50701-C.)

This product fell below the standard for canned tomatoes established by this Department because it did not consist of whole or large pieces, was not normally colored, and it was not labeled to indicate that it was substandard.

On July 16, 1937, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 916 cases of tomatoes at New Orleans, La., alleging that the article had been shipped in interstate commerce on or about June 28, 1937, by the Craddock Canning Co. from Raymondville, Tex., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Cans) "Lee's Own Brand Tomatoes * * *

Packed By Riona Products Company McAllen, Texas"; "Palm Valley Tomatoes * * * Packed by Palm Valley Canning Co. Combes, Tex."

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 since it did not consist of whole or large pieces, was not normally colored, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary indicating that it fell below such standard.

On August 6, 1937, Edgar A. Craddock, Newbern, Tenn., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released to claimant under bond, conditioned that it be relabeled to comply with all the requirements of the Food and Drugs Act.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

27780. Alleged misbranding of butter. U. S. v. Great Atlantic & Pacific Tea Co. Tried to the court and a jury. Verdict of guilty on counts 2 and 3. Appealed to Circuit Court of Appeals. Judgment reversed. (F. & D. Nos. 39726, 39727, 39728. Sample No. 22-C.)

On March 12, 1935, the United States attorney for the District of Vermont, filed in the district court three informations against the Great Atlantic & Pacific Tea Co., a New Jersey corporation having places of business at St. Albans, Bristol, and Fair Haven, Vt. The informations alleged that on or about May 4 and May 23, 1934, the defendant received at Fair Haven and Bristol, Vt., certain shipments of print butter from the State of Massachusetts; that on or about January 24, 1935, the defendant received at St. Albans, Vt., certain shipments of print butter from the State of Maine; that having so received said butter, the defendant delivered it in the original unbroken packages for pay and offered to deliver it to any person willing to pay; and that it was misbranded in violation of the Food and Drugs Act.

The informations alleged that the article was misbranded in that it was labeled, "Silverbrook Pasteurized Creamery Butter Net Wgt. 1 Lb."; whereas of the 246 prints covered by the five shipments all but 22 prints contained less than 1 pound.

On October 22, 1935, the defendant having entered a plea of not guilty, the case came on for trial before a jury and, after some evidence had been introduced, was continued. On November 8, 1935, an information incorporating all charges in the three informations was filed. The informations filed October 22, 1935, were later dismissed. On July 23, 1936, the defendant having entered a plea of not guilty to the new information, the case came on for trial and on July 24, 1936, the jury returned a verdict of guilty on counts 2 and 3, covering 66 prints received from Maine on January 24, 1935, and 30 prints received from Massachusetts on May 23, 1934. Nolle prosequi was entered as to counts 1, 4, and 5. On February 13, 1937, the defendant was sentenced to pay a fine of \$200.

On November 13, 1937, on appeal to the Circuit Court of Appeals for the Second Circuit, the judgment of the district court was reversed with the following opinion:

SWAN, *Circuit Judge:* This is an appeal from a conviction upon two counts of an information, each of which charged that the defendant received an interstate shipment of "prints" of butter, misbranded in respect to their weight, and offered them for sale at one of its stores in Vermont in violation of section 2 of the Food and Drugs Act (21 USCA sec. 2). The butter was shipped from the defendant's warehouses outside the state of Vermont in cardboard shipping boxes, each containing 50 blocks, or "prints," of butter. Each print was wrapped in a paper covering which bore a printed statement that it contained creamery butter of the net weight of one pound. The shipping boxes had no marks indicating their weight or contents. After receipt at the defendant's store the prints were removed from their shipping box and placed in a show case for sale to prospective customers. When tested by a state food inspector, fifty-nine out of sixty-six prints in the show case at the St. Albans store were found to be underweight. At the Bristol store twenty-six out of thirty prints in the show case were found short weight. There was testimony that the butter had been in the respective stores about one week at the time the inspector weighed it.

Section 2 of the Food and Drugs Act prohibits the introduction into any state from any other state of any article of food which is adulterated or misbranded as defined in other sections of the Act, and declares guilty of a misdemeanor.

* * * any person who shall ship or deliver for shipment from any State * * * to any other State * * * or who shall receive in any State * * * from any