3089. Misbranding of canned cherries. U. S. v. 37 Cases of Canned Cherries. Default decree of condemnation. Product ordered released under bond for relabeling. (F. D. C. No. 6342. Sample No. 81401-E.)

This product was substandard because of the presence of excessive pits.

On December 3, 1941, the United States attorney for the District of Nebraska filed a libel against 37 cases of canned cherries at North Platte, Nebr., alleging that the article had been shipped in interstate commerce on or about September 9, 1941, by Loveland Canning Co. from Loveland, Colo.; and charging that it was misbranded. It was labeled in part: "Loveland Brand Water Pack Red Tart Pitted Cherries."

The article was alleged to be misbranded in that it purported to be a food for which a standard of quality had been prescribed by regulations as provided by law but its quality fell below such standard since more than 1 pit was present in each 20 ounces of cherries, namely, an average of 2.16 pits per 20 ounces; and its label did not bear in such manner and form as specified by the regulations a statement that it fell below such standard.

On January 27, 1942, Loveland Canning Co., claimant, having failed to answer the allegations of the libel but having applied for redelivery of the product, and the court having found that the allegations of the libel were true and that the product should be condemned, it was ordered released under bond for relabeling in compliance with the law.

3090. Misbranding of candied cherries. U. S. v. 39 Cases of Canned Cherries. Consent decree of condemnation. Product released under bond for relabeling. (F. D. C. No. 6351. Sample No. 81403-E.)

Examination showed that this product was substandard because of an excess of cherry pits.

On December 18, 1941, the United States attorney for the District of Wyoming filed a libel against 39 cases of canned cherries at Cheyenne, Wyo., alleging that the article had been shipped in interstate commerce on or about September 16, 1941, by Producers' Canning Co. from Ft. Collins, Colo.; and charging that it was misbranded. The article was labeled in part: "Contents 1 Lb. 3 Ozs. Highland Brand in Water Red, Tart, Pitted Cherries."

The article was alleged to be misbranded in that it was represented to be pitted cherries; whereas it contained more than 1 pit to each 20 ounces of cherries, namely, an average of 2.28 pits per 20 ounces, which was below the standard of quality prescribed by regulations provided by law.

On February 11, 1942, Producers' Canning Co., 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 under the supervision of the Food and Drug Administration.

3091. Misbranding of canned cherries. U. S. v. 449 Cases and 489 Cases of Canned Cherries. Consent decree ordering the product released under bond to be relabeled. (F. D. C. No. 5109. Sample Nos. 42427-E, 42428-E.)

Examination showed that this product was substandard because more than 1 pit was present in each 20 ounces of canned cherries, namely, an average of 1.98 in one lot and 1.82 in the other. Furthermore, the vignette on the label of a portion of the product was misleading since the cherries portrayed in the dish did not appear to be pitted and were not the color of water pack cherries.

On July 10, 1941, the United States attorney for the Western District of Pennsylvania filed a libel against 938 cases, each containing 24 No. 2 cans, of cherries at McKeesport, Pa., alleging that the article had been shipped on or about February 16, 1941, by Westfield Planters Cooperative Fruit Products, Inc., from Westfield, N. Y.; and charging that it was misbranded. It was labeled in part: (Cans) "Sunny Boy [or "Tastymaid"] Brand * * * Red Sour Pitted Cherries."

The article was alleged to be misbranded: (Both lots) In that it purported to be a food for which a standard of quality had been prescribed by regulations as provided by law, but its quality fell below such standard and its label did not bear in such manner and form as the regulations specify, a statement that it fell below such standard; (Tastymaid brand only) In that its labeling was misleading since the vignette was deceptive in that cherries pictured therein did not have the appearance of pitted cherries and were not the color of water pack cherries.

On August 18, 1941, Westfield Planters Cooperative Fruit Products, Inc., claimant, having admitted the allegations of the libel, judgment was entered ordering the product released under bond to be relabeled in compliance with the law.