

Cir. 1952) and *Drown v. United States*, 198 F. 2d 999. (9th Cir. 1952). These two cases support the proposition that a vendor in one State who sells to a purchaser an adulterated article with the knowledge that the purchaser will forthwith transport it to another State, is liable to prosecution under § 331 (a); and to this effect they are relevant with respect at least to Shocket, the defendants' vendor; but they do not in any way tend to exculpate the defendants who themselves actually transported the adulterated product interstate.

"Finally, it should be said that § 333(c) (1) here relied on is an *exception* to the general scheme of the Food and Drug Act which for the protection of the public against impure foods, drugs and cosmetics, was mainly designed to prohibit interstate transportation of adulterated food or related products. It is a well-known rule of construction that even in a criminal case where what is only an exception is relied on as a defense, it must be clearly established to be allowable. The defendants argue that the evidence as a whole was insufficient to establish the fact that the applesauce was moldy when bought in Baltimore by the defendants; but I think it sufficient to say that I found there was evidence legally sufficient to go to the jury to establish the fact.

"For these reasons I have concluded that the motion for a directed judgment of acquittal or in the alternative for a new trial must be and is hereby *overruled* this 20th day of May 1960. The discussion of the motion has been largely related to the proper construction of the provisions of the statute as a matter of law. On the alternative motion for a new trial I do not find any sufficient grounds to allow that as a matter of discretion."

On 6-23-60, the court imposed a fine of \$250 against Rivolanne, Inc., and a fine of \$250 against Frank LoCastro, plus costs.

27801. Canned apricots. (F.D.C. No. 46635. S. No. 42-797 T.)

QUANTITY: 650 cases, 24 1-lb. 13-oz. cans each, at King of Prussia, Pa.

SHIPPED: 7-28-61 and 8-2-61, from San Jose, Calif., by U.S. Products Co.

LABEL IN PART: (Can) "Valley Forge Whole Unpeeled Apricots In Light Syrup * * * Distributed by Thriftway Foods, Inc. King of Prussia, Pa."

LIBELED: 11-14-61, E. Dist. Pa.

CHARGE: 403(g) (2)—when shipped, the article purported to be and was represented as canned apricots, a food for which a definition and standard of identity has been prescribed by regulations, and its label failed to bear, as required by regulations, the name of the optional packing medium present in such food, since its label bore the statement "In Light Syrup" whereas the article was packed in a medium designated as "slightly sweetened water" in such definition and standard.

DISPOSITION: 2-21-62. Consent—delivered to charitable institutions.

DRIED FRUIT

27802. Dried prunes. (F.D.C. No. 46812. S. Nos. 52-881/2 T.)

QUANTITY: 43 cases, each containing 12 2-lb. bags of breakfast prunes, and 46 cases, each containing 12 2-lb. bags of large prunes at Seattle, Wash.

SHIPPED: 10-13-61 and 10-27-61, from Hamilton City, Calif., by James Mills Orchards Co.

LABEL IN PART: (Bag) "Mt. Lassen Brand Breakfast [or "Large"] Prunes * * * Grown and Packed by James Mills Orchards Co., Hamilton City, Calif."

LIBELED: On or about 12-26-61, W. Dist. Wash.

CHARGE: 402(a) (3)—contained (43-case lot) insects and rodent hairs, and (46-case lot) *Drosophila* flies and *Drosophila* fly eggs; and 402(a) (4)—prepared and packed under insanitary conditions.

DISPOSITION: 1-29-62. Default—destruction.

FRESH FRUIT

27803. Fresh oranges. (F.D.C. No. 47018. S. No. 38-213 T.)

QUANTITY: 654 boxes, each box containing 80, 100 or 125 oranges, at New Orleans, La.

SHIPPED: 1-29-61, from Edinburg, Tex., by Wallace Fruit & Vegetable Co.

LABEL IN PART: (Box) "Tex-Glo Brand Texas Citrus Packed and Shipped by Wallace Fruit and Vegetable Co. Edinburg, Texas Valencias, Lot No. 9 Texas Special * * * Count 80 [or "100" or "125"]."

RESULTS OF INVESTIGATION: Examination showed the presence of freeze-damaged oranges.

LIBELED: 2-9-62, E. Dist. La.

CHARGE: 402(a) (3)—when shipped, the article was unfit for food due to freeze damage.

DISPOSITION: 2-15-62. Default—destruction.

FROZEN FRUIT

27804. Frozen strawberries. (F.D.C. No. 47177. S. Nos. 14-402/3 T.)

QUANTITY: 335 unlabeled wooden crates, at Chicago, Ill.

SHIPPED: 5-24-60 and 6-1-60, from Humboldt, Tenn.

LIBELED: 2-28-62, N. Dist. Ill.

CHARGE: 402(a) (3)—contained moldy strawberries while held for sale.

DISPOSITION: 4-16-62. Default—destruction.

MISCELLANEOUS FRUIT PRODUCTS

27805. Frozen concentrated orange juice. (F.D.C. No. 46584. S. Nos. 39-696/7 T.)

QUANTITY: 4,618 cases, 48 6-oz. cans each, and 901 cases, 24 12-oz. cans each, at Mount Kisco, N.Y.

SHIPPED: Between 10-10-61 and 10-18-61, from Davenport, Fla., by Ridge Citrus Concentrate, Inc., and from Winter Garden, Fla., by Winter Garden Citrus Co-op.

LABEL IN PART: (Can) "Freshpak Brand * * * Quick Frozen Concentrated Orange Juice * * * Contents of this can are equivalent to the juice of 12 [or "24"] oranges. Distributed by The Grand Union Co., East Paterson, N.J."

RESULTS OF INVESTIGATION: Examination showed the article to be an orange-colored and orange-flavored viscous liquid.

LIBELED: 10-25-61, S. Dist. N.Y.

CHARGE: 403(a)—when shipped, the label statement "Equivalent to the juice of 12 [or "24"] oranges" was false and misleading since it was contrary to fact.

DISPOSITION: 2-13-62. Consent—claimed by Grand Union Co., East Paterson, N.J., and released under bond for relabeling.