

MISCELLANEOUS FRUIT PRODUCTS*

15187. Adulteration of imitation raspberry-flavored apple filling. U. S. v. 9 Cans * * * (and 2 other seizure actions). (F. D. C. Nos. 27348 to 27350, incl. Sample Nos. 5240-K, 62349-K, 62350-K.)

LIBELS FILED: On or about June 24 and 29, 1949, Districts of Maine and Rhode Island.

ALLEGED SHIPMENT: On or about May 13 and 19, 1949, by the Carew-Powers Co., from Boston, Mass.

PRODUCT: Imitation raspberry-flavored apple filling. 9 40-pound cans at Lewiston, Maine, and 18 40-pound cans at Central Falls, R. I.

LABEL, IN PART: "Princess Brand Imitation Raspberry Flavored Apple Filling."

NATURE OF CHARGE: Adulteration, Section 402 (b) (4), artificial color and raspberry seeds had been added to the product and mixed and packed with it so as to make it appear better or of greater value than it was.

DISPOSITION: July 27 and September 15, 1949. Default decrees of condemnation. The court ordered that the product be delivered to charitable institutions.

15188. Adulteration of apple sauce and apricot nectar. U. S. v. 100 Cases, etc. (F. D. C. No. 25950. Sample Nos. 31779-K, 31780-K.)

LIBEL FILED: November 18, 1948, Southern District of California.

ALLEGED SHIPMENT: On or about August 24, 1948, by the Pure Foods Corp., from Los Angeles, Calif., to Wilmington, Calif., for shipment to Puerto Rico.

PRODUCT: 100 cases, each containing 24 1-pound, 4-ounce cans, of apple sauce, and 148 cases, each containing 48 12-ounce cans, of apricot nectar, at Wilmington, Calif.

LABEL, IN PART: "Golden Flow Brand Apple Sauce [or "Apricot Nectar"]."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the articles consisted in whole or in part of filthy substances by reason of the presence of insects and insect fragments (in the apple sauce), maggots, fly eggs, and insect parts (in the apricot nectar).

DISPOSITION: November 29, 1949. Decree of condemnation and destruction.

15189. Adulteration and misbranding of peach preserves and grape jelly. U. S. v. 74 Cases, etc. (F. D. C. No. 27346. Sample Nos. 1228-K, 1229-K.)

LIBEL FILED: June 28, 1949, Eastern District of South Carolina.

ALLEGED SHIPMENT: On or about November 1, 1948, and February 28, 1949, by Webb's, Inc., from St. Petersburg, Fla.

PRODUCT: 74 cases, each containing 24 10-ounce jars, of peach preserves, and 92 cases, each containing 24 10-ounce jars, of grape jelly, at Charleston, S. C.

LABEL, IN PART: (Jar) "Treat Pure Peach Preserves [or "Grape Jelly"]."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), products deficient in fruit, in the case of the preserves, and grape juice, in the case of the jelly, and both containing added phosphoric acid or phosphate, had been substituted for peach preserves and grape jelly, respectively.

Misbranding, Section 403 (g) (1), the products failed to conform to the definitions and standards of identity for peach preserves and grape jelly since

*See also Nos. 15151-15153.

they were made from mixtures composed of less than 45 parts by weight of the fruit, or fruit juice, ingredient to each 55 parts by weight of one of the saccharine ingredients, and since they contained added phosphoric acid or phosphate, which are not permitted as ingredients of peach preserves or grape jelly.

DISPOSITION: August 15, 1949. Default decree of condemnation. The court ordered that the products be delivered to a charitable institution.

CANNED VEGETABLES

15190. Alleged adulteration of canned asparagus. U. S. v. 298 Cases * * *. Tried to the court. Judgment for the claimant. (F. D. C. No. 25681. Sample No. 36541-K.)

LIBEL FILED: October 25, 1948, District of Oregon; amended libel filed March 17, 1949.

ALLEGED SHIPMENT: On or about June 4 and July 7, 1948, by the Top-Side Canning Co., from Grandview, Wash.

PRODUCT: 298 cases, each containing 24 1-pound, 3-ounce cans, of asparagus at Salem, Oreg.

LABEL, IN PART: "Ski-Slide Brand Center Cuts Tips Removed All Green Asparagus."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article was unfit for food by reason of the presence of hard and woody pieces of asparagus.

Misbranding, Section 403 (g) (1), the article failed to conform to the definition and standard of identity for asparagus cuts, tips removed. The definition and standard provides that asparagus cuts, tips removed, are the edible, succulent portion of sprouts of the asparagus plant from which the tip has been removed, cut in pieces, whereas the article consisted of hard and woody pieces of asparagus stalks.

DISPOSITION: The Top-Side Canning Co., claimant, having filed an answer denying that the product was adulterated and misbranded, the case came on for trial before the court without a jury on May 6, 1949. After the trial had been concluded, the court handed down the following opinion on May 9, 1949:

McCOLLOCH, *District Judge*: "Defendant is an asparagus packer. One of his products is the center cut of the asparagus. This retails for 20¢ per can (1 lb. 3 oz.) containing 95 to 100 cuts, as compared with 40 to 45 cents per can for the choicer tips.

"The Government contends that defendant's center cuts are fibrous and woody beyond the permissible limits set up by the Federal Food, Drug, and Cosmetic Administration. Three witnesses for the Government said that they had each eaten a can (or attempted to) of defendant's cuts. The composite of their testimony was that 25% or more of the cuts were inedible, and the Government's witnesses condemned them as a food product.

"On the other hand, the Director of Mary Cullen's Cottage found only 5 or 6 pieces out of 100 that she had to lay aside. Confronted with this conflict in testimony, I obtained counsels' consent to eat a can. This I have done, although I confess had I understood all the difficulties of the undertaking, I might not have been so bold.

"To eat a can of asparagus, hand-running, as the saying is, is quite a chore. I took three days to eat the can. That, I can now state, is as much as an old protein user should attempt on his first venture into herbalism. I suspect the Government witnesses tried to eat their cans all at one time, and that may explain the severity of their judgment about defendant's asparagus. I can see where after 50 or 60 cuts, eaten without spelling oneself, one might become very particular.