

would be an acceptable substitute for a temporary injunction, pending trial on the merits.

On March 31, 1949, the defendants having filed answers denying the allegations of the complaint, but having stipulated and agreed that a preliminary injunction issue, without testimony being produced at the time or further findings of fact being made beyond those recited in the decree, the court ordered and decreed that the defendants and all their agents, servants, employees, and all persons in active concert or participation with them, be preliminarily enjoined from directly or indirectly introducing, or causing the introduction into interstate commerce, of oysters which were adulterated or misbranded as charged in the complaint.

**17540. Action to enjoin and restrain the interstate shipment of adulterated and misbranded oysters. U. S. v. Tom's Cove Oyster Co., H. Allen Smith, Theron Hamilton, and Forrest Daisey. Decree for permanent injunction entered. (Inj. No. 207.)**

**COMPLAINT FILED:** January 28, 1949, Eastern District of Virginia, against Tom's Cove Oyster Co., a partnership, Chincoteague, Va., and H. Allen Smith, Theron Hamilton, and Forrest Daisey, copartners.

**NATURE OF CHARGE:** The complaint alleged that the defendants had been and were at the time of filing the complaint introducing and delivering for introduction into interstate commerce, fresh shucked oysters which were adulterated under Section 402 (b) (2), in that excess water had been substituted in part for oysters, and which were misbranded under Section 403 (g) (1), in that they failed to conform to the definitions and standards of identity for oysters established by the regulations; that various investigations had been made during the year 1948, which disclosed the adulteration and misbranding of oysters as aforesaid; and that the defendants had been warned to correct their methods and desist from shipping adulterated and misbranded oysters in interstate commerce, but that they had failed to correct their methods and were continuing to violate the law.

The complaint alleged further, on information and belief, that the defendants would continue to ship oysters in violation of the law unless restrained from so doing, and prayed for the entry of an injunctive decree to restrain and enjoin such violative practices.

**DISPOSITION:** On February 8, 1949, the defendants having consented thereto, a permanent injunction was entered enjoining and restraining the defendants and all persons acting upon their behalf from directly or indirectly introducing, or causing the introduction, into interstate commerce of oysters adulterated or misbranded as charged in the complaint.

## FRUITS AND VEGETABLES

### CANNED FRUIT

**17541. Misbranding of canned apricots. U. S. v. 383 Cases \* \* \*. (F. D. C. No. 23990. Sample No. 18005-K.)**

**LABEL FILED:** On or about November 26, 1947, Southern District of Indiana.

**ALLEGED SHIPMENT:** On or about August 27 and 31 and September 5, 1947, by Inter Mountain Food Co., Inc., from Grand Junction, Colo.

**PRODUCT:** 383 cases, each containing 24 1-pound, 14-ounce cans, of apricots at Indianapolis, Ind.

**LABEL, IN PART:** "Irresistible Brand Unpeeled Whole Apricots in Heavy Syrup \* \* \* Packed by Colorado Mountain Food Co., Grand Junction, Colorado."

**NATURE OF CHARGE:** Misbranding, Section 403 (h) (2), the product purported to be and was represented as canned apricots, and it failed to comply with the standard of fill of container since there was not present in the container the maximum quantity of optional apricot ingredient which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient; and the label failed to bear, as specified by the regulations, a statement that the product fell below such standard.

**DISPOSITION:** December 2, 1947. The Regal Stores, Inc., Indianapolis, Ind., having appeared as claimant, judgment was entered ordering that the product be released under bond for relabeling under the supervision of the Food and Drug Administration.

#### DRIED FRUIT

**17542. Adulteration of dates. U. S. v. 14 Boxes \* \* \*. (F. D. C. No. 19555. Sample No. 58265-H.)**

**LIBEL FILED:** On or about April 6, 1946, District of Montana.

**ALLEGED SHIPMENT:** On or about December 9, 1945, by Ritter & Co., from Los Angeles, Calif.

**PRODUCT:** 14 boxes, each containing 24 packages, of dates at Billings, Mont.

**LABEL, IN PART:** "Golden Ripe Brand Dates Indio, California."

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of larvae, beetles, and insect parts.

**DISPOSITION:** May 15, 1946. Default decree of condemnation and destruction.

#### FROZEN FRUIT

**17543. Alleged adulteration of frozen strawberries, raspberries, loganberries, and boysenberries, and misbranding of frozen rhubarb. U. S. v. Midfield Packers and Herbert H. Huber. Pleas of not guilty; motion to dismiss. Counts dismissed charging partnership and Herbert H. Huber with shipping adulterated frozen berries. Count charging partnership with shipping misbranded frozen rhubarb tried on plea of not guilty; judgment of guilty; fine, \$250. (F. D. C. No. 22018. Sample Nos. 32151-H, 38587-H, 57145-H, 58345-H, 58352-H, 58353-H.)**

**INFORMATION FILED:** On or about June 30, 1947, Western District of Washington, against the Midfield Packers, a partnership, Olympia, Wash., and Herbert H. Huber, partner and manager.

The Midfield Packers and Herbert H. Huber were charged with the shipment of frozen strawberries, raspberries, loganberries, and boysenberries. The Midfield Packers alone was charged with the shipment of frozen rhubarb.

**ALLEGED SHIPMENT:** On or about March 15, June 12, and July 15 and 25, 1946, from the State of Washington into the States of California, Illinois, New York, and Massachusetts.

**LABEL, IN PART:** "Moon Winks Whole Strawberries [or "Red Raspberries," "Loganberries," "Boysenberries," or "Rhubarb"]."

**NATURE OF CHARGE:** Frozen strawberries, raspberries, loganberries, and boysenberries. Adulteration, Section 402 (b) (1), valuable constituents, whole strawberries, raspberries, loganberries, and boysenberries, had been in part