

and while in interstate commerce. *United States v. Two Bags of Poppy Seeds*, 6 Cir., 147 F. 2d 123. The samples previously obtained should be sufficient to enable the Government to meet its burden as to that issue in the present proceeding.

"The motion is denied.

III

"Claimant moves to vacate the notice by the Government to take his deposition, contending that provision therefor does not appear in the Federal Food, Drug, and Cosmetic Act. Section 334 (b) of Title 21 U. S. C. provides that the procedure in condemnation cases '* * * shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury * * *'. The Court of Appeals for this Circuit has construed this language as follows: 'It now appears well established that the Rules of Civil Procedure apply to condemnation proceedings.' *United States v. 5 Cases, Figlia Mia*, 179 F. 2d 519, 522,³ citing with approval *United States v. 88 Cases of Bireley's Orange Beverage*, 5 F. R. D. 503, which held that the Federal Rules of Civil Procedure apply to the taking of depositions in a condemnation proceeding. See also *United States v. 20 Cases of Jello*, 77 F. Supp. 231.

"The motion is denied.

"Settle order on notice."

On September 13, 1951, the Government filed a notice of motion (1) for an order striking the claimant's answer because of the claimant's failure to appear for an oral examination, and (2) for a final decree of condemnation and destruction. The claimant having failed to appear for the hearing on the motion, the court, on September 20, 1951, granted the Government's motion and entered a decree of condemnation, with the provision that costs be taxed against the claimant.

On October 29, 1951, upon motion of the claimant and after a hearing thereon, the court revised the decree to eliminate the provision providing for the taxing of costs against the claimant. On November 9, 1951, an order was entered directing that the product be destroyed.

OLEOMARGARINE

19892. Action to enjoin and restrain the sale and offering for sale of colored oleomargarine or colored margarine without clear identification as required by law. *U. S. v. Sol Abramson*. Consent decree of injunction. (Inj. No. 241.)

COMPLAINT FILED: January 29, 1952, Southern District of New York, against Sol Abramson, residing at Irvington, N. J., and doing business at Bronx, N. Y.

NATURE OF CHARGE: The complaint alleged that the defendant was engaged in the sale and offering for sale, from the premises of the Temp-Tee Butter & Egg Co., Bronx, N. Y., of an article consisting of colored oleomargarine or colored margarine which was invoiced as butter, and that such sale and offering for sale was prohibited by Section 301 (m) in that the article was not labeled as required by Section 407 (b) (3) with (A) the word "oleomargarine" or "margarine" in type or lettering at least as large as any other type of lettering on the label, and (B) a full and accurate statement of all the ingredients contained in such oleomargarine or margarine.

The complaint further alleged that the defendant, by agreement, had access at all times to the premises of the Temp-Tee Butter & Egg Co. and to the re-

³The Ninth Circuit is in accord. *Alberty Food Products v. United States*, 185 F. 2d 821.

frigerators and to the machines for mixing and whipping from bulk such products as butter and oleomargarine; that in August and September 1951, the defendant purchased 4,400 empty, specially made, butter cartons which were delivered to the premises of the Temp-Tee Butter & Egg Co.; that in September 1951, the defendant sold 146 cartons, each containing 66 pounds, of colored oleomargarine or colored margarine which were invoiced by the defendant as "bulk butter"; that 146 of the above-mentioned 4,400 empty cartons were used in such transaction; that the product contained in the 146 cartons was found, upon analysis, to contain a mixture of butter and oleomargarine; that the defendant also sold, in September 1951, 188 cartons, each containing 66 pounds, of colored oleomargarine or colored margarine invoiced by the defendant as "bulk butter"; and that 188 of the above-mentioned 4,400 empty cartons were used for such transaction, and that the product contained in the 188 cartons consisted of a mixture of butter and oleomargarine.

DISPOSITION: January 31, 1952. The defendant having consented to the entry of a decree, the court entered a decree perpetually enjoining and restraining the defendant from directly, or indirectly, selling or offering for sale colored oleomargarine or colored margarine without clear identification as such, or which was otherwise in violation of Section 301 (m).

POULTRY

19893. Adulteration of dressed poultry. U. S. v. Cavalier Poultry Corp. Plea of guilty. Fine of \$100 on each of first 4 counts of information; defendant placed on probation for 1 year on count 5. Probation subsequently revoked and defendant fined \$1,000 on count 5. (F. D. C. No. 32821. Sample Nos. 24330-L, 24331-L, 38296-L, 49491-L, 49492-L.)

INFORMATION FILED: September 30, 1952, Western District of Virginia, against the Cavalier Poultry Corp., Harrisonburg, Va.

ALLEGED SHIPMENT: Between the approximate dates of May 14, 1951, and April 24, 1952, from the State of Virginia into the State of New York.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a filthy substance by reason of the presence of fecal and crop material on the flesh of the poultry, and of a decomposed substance by reason of the presence of rotten poultry; and, Section 402 (a) (5), the article was in part the product of a diseased animal since the poultry was affected with peritonitis, ascites, arthritis, tumors, ulcers, salpingitis, dermatitis, emaciation, vent gleet, bruises, and blackhead.

DISPOSITION: October 20, 1952. A plea of guilty having been entered the court fined the defendant \$100 on each of the first 4 counts of the information, a total of \$400, and placed it on probation for 1 year on count 5.

Evidence subsequently was obtained that the defendant made an interstate shipment of filthy and diseased poultry on November 18, 1952, and, accordingly, proceedings were initiated to revoke the probation. On March 9, 1953, following the defendant's plea of guilty to the charge of violating the terms of probation, the court ordered that the probation be revoked and imposed a fine of \$1,000 against the defendant on count 5 of the original information.