

District of Kansas. On March 12, 1953, the defendants having entered pleas of nolo contendere, the court fined each defendant \$30, plus costs.

19823. Adulteration and misbranding of cattle fattener. U. S. v. Schreiber Mills, Inc. Plea of guilty. Fine, \$125 and costs. (F. D. C. No. 33730. Sample No. 145-L.)

INFORMATION FILED: November 4, 1952, Western District of Missouri, against Schreiber Mills, Inc., St. Joseph, Mo.

ALLEGED SHIPMENT: On or about August 22, 1951, from the State of Missouri into the State of Kansas.

LABEL, IN PART: "Lassy 22% Cattle Fattener."

NATURE OF CHARGE: Adulteration, Section 402 (b) (1), valuable constituents, protein and urea, had been in part omitted from the article.

Misbranding, Section 403 (a), the label statements "22% Cattle Fattener Guaranteed Analysis Total Crude Protein and equivalent, not less than 22.00% * * * 3% Urea Equivalent Crude Protein from nonprotein nitrogen 7.86%" were false and misleading since the total crude protein and protein equivalent contained in the article was less than 22 percent; the article contained urea in an amount less than 3 percent; and it contained equivalent crude protein from nonprotein nitrogen in an amount less than 7.86 percent.

DISPOSITION: November 25, 1952. A plea of guilty having been entered, the court fined the defendant \$125 and costs.

FISH AND SHELLFISH

19824. Adulteration of frozen sauger fillets and frozen blue fillets. U. S. v. 184 Cases, etc. (and two other seizure actions). Tried to the court. Verdict for the Government. Decrees of condemnation. (F. D. C. Nos. 33412, 33413. Sample Nos. 33792-L to 33796-L, incl.)

LIBELS FILED: June 23, 1952, Eastern District of Michigan.

ALLEGED SHIPMENT: On or about September 22 and 25, October 11, and November 29, 1951, by Admiral Fisheries, from Wheatley, Ontario, Canada.

PRODUCT: 184 cases, each containing 6 5-pound packages, and 53 cases, each containing 10 5-pound packages, of frozen sauger fillets, and 4 cases, each containing 10 5-pound packages, of frozen blue fillets, at Detroit, Mich.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the articles consisted in whole or in part of decomposed substances by reason of the presence of decomposed fish.

DISPOSITION: Admiral Fisheries appeared as claimant and filed answers in each of the three libel actions, denying that the products were adulterated. Thereafter the Government served a set of written interrogatories upon the claimant. The interrogatories were answered, and the three libel actions then were consolidated for purposes of trial. The trial began on April 14, 1953, and at its conclusion on April 15, 1953, the court announced its findings of fact and conclusions of law as follows:

THORNTON, District Judge: "These three matters had been consolidated for the purpose of this hearing, and in Case No. 11839, Case No. 11840 and Case No. 11841 the issues were identical and I believe the pleadings corroborate that fact; and, the issue under consideration for determination is whether or not the 'examination shows the article contains decomposed fish,'—and this is in relation to all three cases—and '4. That the aforesaid article was adulterated when introduced into and while in interstate commerce within the meaning of 21

U. S. C. 342 [402] (a) (3), in that it consists wholly or in part of a decomposed substance by reason of presence therein of decomposed fish.'

"I find as a fact, from the testimony adduced at this hearing, that the Government has established by a preponderance of the evidence that the article of fish contained in each of the three separate actions was and did contain decomposed fish, and I further find as a fact in relation to each separate action that the article involved in each action, the fish, was adulterated when introduced and while in interstate commerce within the meaning of 21 U. S. C. 342 [402] (a) (3), in that it consisted, in part, of a decomposed substance by reason of presence therein of decomposed fish.

"I further find as a fact that the samples withdrawn by the Government Agents were extensive, to the degree that they were representative of the entire shipment in each matter.

"I further find as a fact that the Government Agents, at least Mr. Coulter and Mr. Shelton, have a scientific background, in that they are both graduate bacteriologists with a long period of experience in examining fish. And, I find further as a fact that Mr. Finsilver and Mr. Samson also have a background in the fish business of many years and are also experienced, in an unscientific degree, in the examination of fish.

"I find as a fact that the Government Agents or officials who conducted the examination for the United States of America, the moving party in this action, were unbiased in their opinion and took the subject matter as they found it; one conducted an examination in Chicago and another in Washington, of the fish that was submitted to them; and that their testimony was, to say the least, completely, unbiased.

"I did not question and do not question, the integrity of either Mr. Samson or Mr. Finsilver. However, I can't escape the fact that Mr. Finsilver has a monetary interest in the outcome of this action and it would be only natural for him, to some degree at least, to be controlled in his examination of the fish by this monetary interest that he has. And, that is no reflection on him; that is a natural impulse.

"However, in relation to the examination made by Mr. Finsilver and by Mr. Samson, I find as a fact that there was at least a degree of corroboration of the fact that at least a portion of the fish was decomposed, because that is their testimony.

"I find as a fact that the exhibit submitted by the Robison Laboratories is not entitled to any consideration or to be given any weight by the Court for two reasons:

"First, the testimony in relation to the analysis made by that laboratory indicated that the fish, before it was thawed out, was sawed and a small portion of the fish was used in an analysis of the fish. So that, unlike the examination made by both the Government and by Mr. Finsilver and his customer, Mr. Samson, the Robison Laboratories did not make a complete examination of the fish that was submitted to them.

"I further find as a fact that the exhibit submitted by the Robison Laboratories is not entitled to any consideration by the Court or to be given any weight, because the examination was directed towards an investigation of whether or not the fish was fit for human consumption, and that is an element that is foreign to the pleadings.

"So, from all the testimony, I feel that I am entitled to, and should, accept the examination and the conclusions drawn by the Agents for the Government in relation to the fact that their testimony adduced the fact that the fish drawn from all three shipments were decomposed, and I do so find.

"And, I therefore conclude, as a matter of law, that a decree of condemnation should be entered."

In accordance with such findings and conclusions, the court, on May 12, 1953, entered a decree of condemnation in each of the three libel actions and ordered that the products be delivered to a Federal institution, for use as fertilizer.

19825. Adulteration and misbranding of canned tuna. U. S. v. 237 Cases * * *
(F. D. C. No. 33610. Sample No. 49001-L.)

LABEL FILED: August 1, 1952, District of Minnesota.