

**BEVERAGES AND BEVERAGE MATERIALS**

**19601. Adulteration of green coffee. U. S. v. 500 Bags \* \* \* (and 1 other seizure action). Tried to the court. Verdict for Government. Decree of condemnation. Decree affirmed upon appeal. Product ordered destroyed. (F. D. C. Nos. 27875, 27919. Sample Nos. 53940-K, 61583-K.)**

**LIBELS FILED:** September 23 and October 14, 1949, Eastern District of Missouri and Eastern District of Louisiana.

**ALLEGED SHIPMENT:** On or about July 11, 1949 (Louisiana lot), by A. Jabour e Cia, from Rio de Janeiro, Brazil, and on or about August 11, 1949 (Missouri lot), by Westfeldt Bros. Co., from New Orleans, La.

**PRODUCT:** 500 130-pound bags of green coffee at St. Louis, Mo., and 500 130-pound bags of the product at New Orleans, La. Examination showed that the product was insect-infested and contained insect excreta and moldy and insect-tunneled coffee beans.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy and decomposed substance.

**DISPOSITION:** The General Grocer Co., St. Louis, Mo., having appeared as claimant in each of the seizure actions and the Government and the claimant having agreed to the transfer of the St. Louis libel action to the United States District Court for the Eastern District of Louisiana for consolidation with the New Orleans libel action, an order was entered on November 22, 1949, providing for the transfer. Thereafter, Otis, McAllister & Co. acquired the interest of the General Grocer Co. in the product under seizure and assumed the position of claimant. An answer having been filed by the claimant denying that the product was adulterated, the case came on for trial before the court without a jury on January 15, 1951. Following the trial, the court, on January 25, 1951, handed down the following opinion:

**CONNALLY, District Judge:** "This is a proceeding under the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 301, et seq.), seeking condemnation of 1,000 bags of coffee beans, in their green state, introduced into this country from Rio de Janeiro, Brazil, through the port of New Orleans on or about July 11, 1949. Five hundred bags of the green coffee were stored and have remained at a warehouse in the City of New Orleans and within the Eastern District of Louisiana. The remaining 500 bags, on or about August 11, 1949, were shipped by rail to St. Louis, Missouri, where same have been located since such date.

"Action No. 642, upon the miscellaneous docket of the United States District Court for the Eastern District of Louisiana, was filed as libel of information seeking condemnation of the 500 bags located within that District, and Cause No. 6750, upon the docket of the Eastern District of Missouri, was filed as libel of information seeking condemnation of the 500 bags reposing in St. Louis. By agreement of all parties and appropriate order the actions were consolidated for trial, No. 6750 in the Eastern District of Missouri being transferred for trial with No. 642, Miscellaneous, in the Eastern District of Louisiana. The consolidated action was tried before me without a jury the 15th day of January, 1951.

"It appears conclusively that a substantial percentage of the coffee beans contain burrowings and holes made by insects, insect excreta, and bodies or portions of bodies of dead insects. A number of qualified analysts who have tested samples of the coffee have so testified. Likewise the insect infestation was manifest from an examination of samples offered and received in evidence. I find that the coffee was and is adulterated, within the meaning of Section 331, Title 21, U. S. Code. I do not think that the Claimant seriously contends to the contrary.

"Claimant contends very vigorously, however, that this coffee, by reason of the fact that it is in its green state and will be roasted and ground before offered for sale to the consuming public, was not a 'food' as that term is defined in Section 321 (f)<sup>1</sup>, citing *U. S. v. 443 Cans of Frozen Egg Product* (193 Fed. 589) ; *U. S. v. 1 Can of Kololiva* (24 Fed. Supp. 110) ; and the unreported opinion of the District Court for the Southern District of New York in No. AD-162-4, *U. S. v. 35 Bags of Coffee Sweepings*. It appears that in the last-mentioned case, the Trial Court made findings of fact as follows:

There is no evidence in the case in which I could base any finding that green coffee is a food or has been considered a food.

and a conclusion of law that the libel should be dismissed.

"Despite the fact that the last cited District Court opinion seems to be clearly in point, I cannot agree. The Claimant has offered testimony to show (and I think I might well take knowledge of the fact) that green coffee beans rarely, if ever, are sold at this time directly to the consuming public; that after coffee is roasted some quantities are sold directly to the consuming public, who may grind their own, but that a vast majority of all coffee sold to the consumer is ground and ready for use for making coffee.

"It is my opinion that the fact that the green coffee beans must undergo certain processing before being sold to the consuming public does not exclude them from the statutory definition. *U. S. v. 52 Drums Maple Syrup* (110 Fed. (2d) 914). At the trial it was suggested that the roasting process, during which the bean is heated to a high temperature, might destroy the objectionable matter contained in these beans, but there is not sufficient evidence upon which I could make such finding. Shortly prior to the trial, I permitted withdrawal of substantial samples of the beans to permit the Claimant and representatives of the Government to roast and process the coffee. Neither side has offered evidence of the result, but counsel for the Claimant has advised me informally that at least some of the objectionable matter was present after the roasting process. Claimant further contends that despite the fact that the coffee long since has passed from the control of customs officials and has been released and delivered to the consignee, it should be permitted to reexport the coffee back to the country of its origin, or elsewhere. While this would appear to me to be an intelligent solution of the problem, it seems to be precluded by *230 Boxes of Fish v. U. S.* (168 Fed (2d) 361).

"I think the United States is entitled to its decree of condemnation.

"Counsel for Libellant will prepare suggested Findings of Fact and Conclusions of Law and decree in conformity herewith, and present same within twenty (20) days."

In accordance with the foregoing opinion, a decree of condemnation was entered after which an appeal was taken by the claimant to the United States Court of Appeals for the Fifth Circuit. On February 12, 1952, the following opinion was handed down by that court:

PER CURIAM: "Appealing from a decree condemning, and forfeiting to the United States, 500 bags of green coffee, claimant is here assigning two grounds of error.

"One of these is that the court erred in finding and concluding that green coffee is an article of food within the meaning of 21 U. S. C., Sec. 321 (f).

"The other is that it erred in not affording claimant the right to proceed under Sec. 801 of the Act (21 U. S. C. 381) to have the coffee reexported.

"Unfortunately for claimant, whatever might have been said of them as original propositions, both of its claims of error have already been decided against it in well reasoned opinions.

"The first has been decided in principle in *U. S. v. 24 Cans \* \* \* Ladled Butter*, 148 F. (2) 365 (5th Cir.); *U. S. v. 52 Drums Maple Syrup*, 110 F. (2) 914 (2nd Cir.); *Union Dairy Co. v. U. S.*, 250 Fed. 231 (7th Cir.); and on the precise point, green coffee, in *United States v. Bayer & Co.*, 188 F. (2) 555 (2nd Cir.).

<sup>1</sup>Title 21, U. S. C., Sec. 321 (f): "The term 'food' means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article."

"The second has been decided against it in *230 Boxes of Fish v. United States*, 168 F (2) 361 (6th Cir.).

"In full accord with these decisions, we content ourselves with saying so, and, on their authority, order the decree affirmed."

On March 3 and 10, 1952, upon the joint motions of the Government and the claimant, orders were entered directing that each lot of the product be destroyed.

**19602. Misbranding of ground coffee. U. S. v. 3,772 Cans \* \* \*. (F. D. C. No. 34524. Sample No. 4580-L.)**

**LABEL FILED:** January 2, 1953, Southern District of West Virginia.

**ALLEGED SHIPMENT:** On or about August 22, 1952, by the Producers Warehouse, from Chicago, Ill., for J. Aron & Co., Inc., New York, N. Y.

**PRODUCT:** 3,772 cans of ground coffee at Beckley, W. Va.

**LABEL, IN PART:** "One pound Net Weight Pure Ground Coffee Vacuum Packed."

**NATURE OF CHARGE:** Misbranding, Section 403 (e) (2), the article failed to bear a label containing an accurate statement of the quantity of the contents (the article was short of the declared weight).

**DISPOSITION:** February 13, 1953. J. Aron & Co., Inc., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond to be brought into compliance with the law, under the supervision of the Federal Security Agency.

**19603. Adulteration of hops concentrate. U. S. v. 4 Cases, etc. (F. D. C. No. 34136. Sample No. 57249-L.)**

**LABEL FILED:** On or about November 14, 1952, District of Maryland.

**ALLEGED SHIPMENT:** On or about September 22, 1950, from Cincinnati, Ohio.

**PRODUCT:** 4 cases, each containing 8 10-pound cans, and 10 cases, each containing 8 9-pound cans, of hops concentrate at Baltimore, Md.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a decomposed substance. The article was adulterated while held for sale after shipment in interstate commerce.

**DISPOSITION:** December 5, 1952. Default decree of condemnation and destruction.

## CANDY, SIRUP, AND SUGAR

### CANDY

**19604. Adulteration of candy. U. S. v. 124 Cases \* \* \*. (F. D. C. No. 34214. Sample No. 41236-L.)**

**LABEL FILED:** November 12, 1952, District of Hawaii.

**ALLEGED SHIPMENT:** On or about October 21, 1952, by the Imperial Candy Co., from Seattle, Wash.

**PRODUCT:** 124 cases, each containing 6 12-ounce boxes, of candy at Honolulu, T. H.

**LABEL, IN PART:** (Box) "Victoria Creams Almond Crespa Bear Claws Societe."

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