

DISPOSITION: March 18, 1952. The Central Carolina Farmers Exchange, Inc., of Durham, N. C., 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 for reconditioning under the supervision of the Federal Security Agency. The product was inspected and cleaned, and 54 birds were rejected and destroyed as unsuitable for salvage.

18642. Misbranding of chicken. U. S. v. 69 Cartons * * *. (F. D. C. No. 32325. Sample No. 27668-L.)

LIBEL FILED: December 27, 1951, District of Nevada.

ALLEGED SHIPMENT: On or about November 1, 1951, by Chil-Chick, from Hayward, Calif.

PRODUCT: 69 1-pound, 14-ounce cartons of chicken at Reno, Nev. Examination showed that the product was not pheasant as labeled.

LABEL, IN PART: "Pheasant-Chicken."

NATURE OF CHARGE: Misbranding, Section 403 (a), the label designation "Pheasant-Chicken" was false and misleading as applied to birds which were not pheasants.

DISPOSITION: January 28, 1952. Default decree of condemnation. The court ordered that the product be delivered to a State institution.

18643. Misbranding of chicken. U. S. v. 31 Cartons * * *. (F. D. C. No. 32324. Sample Nos. 27665-L, 27666-L.)

LIBEL FILED: December 27, 1951, District of Nevada.

ALLEGED SHIPMENT: On or about November 20 and December 7 and 11, 1951, by the Meat Department, Safeway Stores, from San Francisco, Calif.

PRODUCT: 31 2-pound, 1-ounce cartons of chicken at Reno, Nev. Examination showed that the product was not pheasant as labeled.

NATURE OF CHARGE: Misbranding, Section 403 (a), the label designation "Pheasant-Chicken" was false and misleading as applied to birds which were not pheasants.

DISPOSITION: January 28, 1952. Default decree of condemnation. The court ordered that the product be delivered to a charitable institution.

SPICES, FLAVORS, AND SEASONING MATERIALS

18644. Adulteration and misbranding of horseradish. U. S. v. 57 Cases * * * (and 2 other seizure actions). Tried to the court. Judgment for the Government. Decree of condemnation and destruction. (F. D. C. Nos. 28541, 30130, 30137. Sample Nos. 63214-K, 69437-K, 84772-K.)

LIBELS FILED: January 23, 1950, and November 14 and 16, 1950, District of Massachusetts, Western District of Pennsylvania, and Southern District of Ohio.

ALLEGED SHIPMENT: On or about November 17, 1949, and October 19, 1950, by the Bronx Home Food Products, from New York, N. Y.

PRODUCT: 106 cases, each containing 12 6-ounce jars, of horseradish at Boston, Mass., Pittsburgh, Pa., and Cincinnati, Ohio. Examination showed that the product consisted of grated parsnip roots artificially flavored to simulate horseradish.

LABEL, IN PART: (Jar) "Premier Horse Radish."

NATURE OF CHARGE: The article was alleged to be adulterated and misbranded as indicated in the findings of fact set forth below.

DISPOSITION: The libel proceedings having been consolidated on December 14, 1950, pursuant to an order by the United States District Court for the District of Massachusetts, and the Bronx Home Food Products, claimant, having filed an answer denying that the product was adulterated or misbranded, the case came on for trial before the court without a jury on November 29, 1951. The trial was concluded on November 30, 1951, at the close of the Government's testimony, when it was announced that there would be no testimony offered by the claimant.

On December 19, 1951, the court handed down the following findings of fact and conclusions of law:

FORD, District Judge: "The above entitled cases were consolidated for trial by order of this Court and were presented to the undersigned Judge of this Court at the Federal Courts Building, Boston, Massachusetts, on November 29 and 30, 1951, upon a trial on the Merits.

"The United States of America was represented by George F. Garrity, United States Attorney for the District of Massachusetts, by Alfred G. Malagodi, Assistant United States Attorney for the District of Massachusetts, and Joseph L. Maguire, Attorney, Federal Security Agency, Washington, D. C.

"The claimant, Bronx Home Food Products, was represented by Michael F. Fahey.

"On the files, records, exhibits, evidence, the testimony of witnesses for the United States of America, libelant, cross-examination thereof by claimant's counsel, the claimant having declined to present testimony in its own behalf, the Court does hereby make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

"These proceedings were brought under the provisions of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 301 et. seq.).

II

"The goods libeled in the first above case had been shipped in interstate commerce, as alleged in the libel, from New York, New York, to Boston, Massachusetts, where they were seized pursuant to 21 U. S. C. 334; the goods libeled in the second above case had been shipped in interstate commerce, as alleged in the libel, from New York, New York, to Pittsburgh, Pennsylvania, where they were seized pursuant to 21 U. S. C. 334; the goods libeled in the third above case had been shipped in interstate commerce, as alleged in the libel, from New York, New York, to Cincinnati, Ohio, where they were seized pursuant to 21 U. S. C. 334. In each case the libel alleged the article to be adulterated within the meaning of 21 U. S. C. 342 (b) (2) and (4), and misbranded within the meaning of 21 U. S. C. 343 (a).

III

"Bronx Home Food Products, New York, New York, intervened in each of the proceedings as claimant and owner, and filed an Answer denying the charges of adulteration and misbranding, that is, whether the goods seized were adulterated when introduced into and while in interstate commerce, within the meaning of 21 U. S. C. 342 (b) (2) in that grated parsnip roots, artificially flavored to simulate horseradish, had been substituted wholly or in part for horseradish and 342 (b) (4) in that artificial flavor had been added thereto and mixed and packed therewith so as to make it appear better or of greater value than it is; and misbranded within the meaning of 21 U. S. C. 343 (a) in that the labeled statement 'Horse Radish Made from selected Horseradish Roots' is false and misleading as applied to an article consisting of grated parsnip roots, artificially flavored to simulate horseradish.

IV

"The anatomical structure of plants vary. A microscopist acquainted with the structure of plant cells can differentiate between the structure of horseradish cells and parsnip cells by the use of a microscope.

V

"The anatomical structure of horseradish root differs from that of parsnip root in that the individual cork cells of horseradish are smaller than those of parsnip and are arranged in a different pattern; stone cells are present in the tissue immediately below the cork of horseradish, whereas, stone cells are absent in parsnip; the contour of the starch grains of horseradish are ovoid, spherical and smooth whereas those of parsnip are angular; when treated with a clarifying agent and a staining material, oil droplets are readily observable in the tissue adjacent to parsnip vessels whereas such are lacking in horseradish; the tracheids, or conducting vessels, of horseradish and parsnip, differ in the ratio of the length to the width in each.

VI

"Microscopic examination of samples taken from each of the three shipments involved herein disclosed the presence of grated parsnip root and horseradish root.

VII

"Allyl isothiocyanate is a synthetic material which has the taste and smell of horseradish and is commonly used to flavor horseradish products and was present in each of said articles.

VIII

"Spectrophotometry is the science of identifying matter by means of a device called a spectrophotometer. Determinations are made based on the measurement of the absorption of light of the material under investigation. There are different types of spectrophotometers, one of which employs the infra-red region of the spectrum, a portion invisible to the human eye. When a substance is thus examined by infra-red rays, the calculations are made by the device which automatically records the measurements on a graph. Every substance when so measured has its own characteristic curve. Different substances do not register the same curve.

IX

"Infra-red spectrophotometry employing such a device has been in use for about ten years and is accepted as a scientific means appropriate for the accurate detection or identification of substances. As each substance has its own characteristic curve and may be identified thereby, it is sometimes called the fingerprint method of identification. Its application is akin to the identification of humans by means of their fingerprints.

X

"Spectrophotometric measurements in the infra-red region of the spectrum were made of the oil distilled from authentic horseradish root, from authentic parsnip root and of allyl isothiocyanate and of the oil distilled from samples taken from each of the three shipments involved.

XI

"The curves for the oil from the horseradish root, from the parsnip root and for the allyl isothiocyanate were characteristic of each and significantly varied one from the others. The curves for the oils from each of the three samples were practically identical and significantly characteristic of the curve of the oil from parsnip. The spectrophotometric examination thus showed that the articles under seizure were composed in large part of grated parsnip root, as much as 90% in one of the articles.

CONCLUSIONS OF LAW

I

"This Court has jurisdiction of the subject matter and the parties herein, pursuant to 21 U. S. C. 301 et. seq.

II

"The jars labeled in part 'Premier Horseradish,' involved in the three above styled cases, are articles of food within the meaning of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 301 et. seq.).

III

"The articles of food, involved herein, were shipped in interstate commerce by Bronx Home Food Products as alleged in each of the libels.

IV

"The article of food in the first styled case was seized at Boston, Massachusetts; in the second, at Pittsburgh, Pennsylvania; in the third, at Cincinnati, Ohio.

V

"The article of food involved in each of the above styled cases was adulterated when introduced into and while in interstate commerce within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. as follows:

- 342 (b) (2) in that grated parsnip roots, artificially flavored to simulate horseradish, has been substituted wholly or in part for horseradish; and
- 342 (b) (4) in that artificial flavor has been added thereto and mixed and packed therewith so as to make it appear better or of greater value than it is.

VI

"The article of food involved in each of the above styled cases was misbranded when introduced into and while in interstate commerce within the meaning of said act, 21 U. S. C. 343 (a) in that the label statement 'Horse Radish Made from Selected Horseradish Roots' is false and misleading as applied to an article consisting of grated parsnip roots, artificially flavored to simulate horseradish.

VII

"The prayer in each libel for condemnation of the article seized is sustained and a decree of condemnation may be entered against the seized articles, with costs, fees and other proper expenses taxed against the claimant and awarded to the libelant.

"Libelant may prepare a proposed decree in accordance with the foregoing."

On December 19, 1951, a decree of condemnation was entered and the court ordered that the product be destroyed.

18645. Adulteration of spices. U. S. v. 1 Bag, etc. (F. D. C. No. 32673. Sample Nos. 21171-L, 21172-L, 21248-L to 21250-L, incl.)

LIBEL FILED: February 18, 1952, Western District of Texas.

ALLEGED SHIPMENT: During January, March, May, and June 1951, from Gloster, Miss., and New York and Brooklyn, N. Y.

PRODUCT: 1 100-pound bag of chili peppers, 6 200-pound bags of whole nutmegs, 2 70-pound bags of ginger root, 2 100-pound bags of spice and seed mixture, and 5 75-pound bags of dried red peppers at San Antonio, Tex.

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