

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

DISPOSITION: January 12, 1953. Default decree of condemnation and destruction.

20034. Action for declaratory judgment. L. C. Mays Co., Inc., and Lamar C. Mays v. Federal Security Agency, Food and Drug Administration, and E. C. Boudreaux. Complaint dismissed. Appeal taken to Court of Appeals for Fifth Circuit. Appeal dismissed.

COMPLAINT FILED: On or about December 13, 1951, L. C. Mays Co., Inc., New Orleans, La., and Lamar C. Mays, president of the corporation, filed a complaint against the Federal Security Agency, the Food and Drug Administration, and E. C. Boudreaux, Chief of the New Orleans District of the Food and Drug Administration.

NATURE OF CHARGE: The complaint alleged that L. C. Mays Co., Inc., and Lamar C. Mays, plaintiffs in the case, bought, sold, stored, and distributed canned oysters and canned shrimp in interstate commerce; that on or about October 16, 1951, Food and Drug Administration inspectors, pursuant to Section 704 of the Federal Food, Drug, and Cosmetic Act, requested of a certain storage company permission to enter its warehouse and inspect canned shrimp which had been shipped in interstate commerce and stored in the warehouse to the account of the plaintiffs; and that the plaintiffs did not object to the entry of the inspectors into the warehouse, but that they did instruct the warehouseman to refuse the inspectors permission to withdraw samples of shrimp for laboratory examination.

The complaint further alleged that the refusal was justified because Section 704 of the Act did not authorize inspectors to obtain samples of foodstuffs for analyses, but that, nevertheless, the plaintiffs were served on or about December 6, 1951, with a "Notice of Hearing" and "Charge Sheet," under Section 305 of the Act, informing the plaintiffs that investigations by the Food and Drug Administration indicated that a violation of Section 301 (f) of the Act, relating to refusal to permit inspection as authorized by Section 704, had occurred for which the plaintiffs were responsible. In the alternative, it was alleged that if sample collection was authorized by law, the statute was unconstitutional, contravening the Fourth Amendment because it permitted unlawful search and seizure, and the Fifth Amendment because it violated the privilege against self-incrimination and was a taking of private property without due process of law.

PRAYER FOR RELIEF: That judgment be entered declaring (1) that Section 704 of the Act did not authorize Food and Drug inspectors to obtain for analyses samples of packaged foods during inspection of a warehouse and (2) that the refusal to grant permission for the withdrawal of samples was not a violation of Section 301 (f); and enjoining further administrative action.

DISPOSITION: The Government filed a motion for dismissal of the complaint, on the ground that such complaint failed to state a claim on which relief could be granted. On April 16, 1952, the matter came on for argument before the court, at the conclusion of which the court granted the Government's motion for dismissal. The decision was appealed to the United States Court of Appeals for the Fifth Circuit, and on February 13, 1953, the appeal was dismissed by that court, on the ground that the case had become moot as a result of the

United States Supreme Court's decision in the case of *United States v. Cardiff*, 344 U. S. 174 (notice of judgment on food, No. 19380).

20035. Misbranding of oysters. U. S. v. 340 Cans * * *. (F. D. C. No. 34249. Sample No. 39283-L.)

LIBEL FILED: November 24, 1952, Middle District of Pennsylvania.

ALLEGED SHIPMENT: On or about November 20, 1952, by V. L. Evans & Co., from Crisfield, Md.

PRODUCT: 2 barrels containing a total of 340 cans of oysters at Scranton, Pa. Examination showed that the product was 4.3 percent short volume.

LABEL, IN PART: (Can) "Oysters Standards Content One Pint Evans Oysters."

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 since the label statement "Content One Pint" was inaccurate.

DISPOSITION: January 12, 1953. Default decree of condemnation and destruction.

20036. Adulteration of canned shrimp. U. S. v. 33 Cases * * *. (F. D. C. No. 34384. Sample No. 45014-L.)

LIBEL FILED: November 28, 1952, District of Massachusetts.

ALLEGED SHIPMENT: On or about August 20, 1952, by the Barre Seafood Co., from Houma, La.

PRODUCT: 33 cases, each containing 24 5-ounce cans, of shrimp at Lawrence, Mass.

LABEL, IN PART: (Can) "Sea Fare Brand Shrimp."

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

DISPOSITION: January 5, 1953. Default decree of condemnation and destruction.

FRUITS AND VEGETABLES

CANNED FRUIT

20037. Misbranding of canned cherries. U. S. v. 670 Cases * * *. (F. D. C. No. 34272. Sample No. 41028-L.)

LIBEL FILED: December 9, 1952, Eastern District of Washington.

ALLEGED SHIPMENT: On or about August 21, 1952, by the Varney Canning Co., from Roy, Utah.

PRODUCT: 670 cases, each containing 24 1-pound, 3-ounce cans, of cherries at Spokane, Wash.

LABEL, IN PART: (Can) "Sonny Boy Brand Red Sour Pitted Cherries."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the product fell below the standard of quality for pitted canned cherries since it contained an excessive number of pits and the label failed to bear a statement that the product fell below the standard.

DISPOSITION: January 16, 1953. The shipper, 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 relabeled under the supervision of the Federal Security Agency.