

DISPOSITION: May 28, 1953. Default decree of condemnation. The court ordered that the product be delivered to a charitable organization to be used as food for the recipients of its charity. The fish were washed, entirely eviscerated, and then washed several times more before they were used as food.

20734. Adulteration and misbranding of canned mackerel. U. S. v. 378 Cartons * * *. (F. D. C. No. 34620. Sample No. 18023-L.)

LIBEL FILED: January 22, 1953, District of New Jersey.

ALLEGED SHIPMENT: On or about December 15, 1952, by Safeway Stores, Inc., from San Francisco, Calif.

PRODUCT: 378 cartons, each containing 48 cans, of mackerel at Kearny, N. J.

LABEL, IN PART: (Can) "Propeller Brand California Pacific Mackerel * * * Net Weight 15 Oz. Distributed By Bridgeport Canfish Company Head Office San Francisco, California."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), jack mackerel had been substituted in whole or in part for Pacific mackerel, which the article was represented to be.

Misbranding, Section 403 (a), the label statement "Pacific Mackerel" was false and misleading as applied to the article, which was jack mackerel; and, Section 403 (i) (1), the label failed to bear the common or usual name of the article.

DISPOSITION: February 16, 1954. Safeway Stores, 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, conditioned that the portion of the product found to be in compliance with the law be delivered to the custody of the claimant for the purposes of its business and that the remainder of the article be delivered to the custody of the claimant for distribution to a charitable organization, under the supervision of the Department of Health, Education, and Welfare.

20735. Adulteration of frozen red snappers. U. S. v. 2,287 Pounds, etc. (F. D. C. No. 34375. Sample Nos. 23267-L, 23270-L.)

LIBEL FILED: On or about December 1, 1952, Southern District of New York.

ALLEGED SHIPMENT: On or about September 30, 1952, from Pensacola, Fla.

PRODUCT: 3,490 pounds of frozen red snappers in 12 boxes at New York, N. Y.

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

DISPOSITION: March 18, 1954. Default decree of condemnation and destruction.

20736. Adulteration and misbranding of oysters. U. S. v. 616 Cans, etc. Consent decree of condemnation. Product ordered released under bond. Government's motion granted for forfeiture of bond for failure to comply with conditions of the decree. (F. D. C. No. 32170. Sample Nos. 3203-L, 3205-L.)

LIBEL FILED: November 20, 1951, Southern District of Illinois.

ALLEGED SHIPMENT: On or about November 14, 1951, by W. E. Riggin & Co., from Crisfield, Md.

PRODUCT: 616 cans of oysters standards and 304 cans of oysters selects at Springfield, Ill.

LABEL, IN PART: (Can) "Oysters Standards [or "Selects"] One Pint Rigo Brand."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), water had been substituted in part for oysters; and, Section 402 (b) (4), water had been added to the oysters and mixed and packed with them so as to increase their bulk or weight and reduce their quality.

Misbranding, Section 403 (g) (1), the oysters failed to conform to the definitions and standards of identity for oysters standards and oysters selects since the oysters were not thoroughly drained, and, in their preparation, the total time of their contact with water or salt water, after leaving the shucker, was more than 30 minutes.

DISPOSITION: November 21, 1951. W. E. Riggin & Co., claimant, having agreed to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond, conditioned that the product be reworked, repacked, and resold under the supervision of the Food and Drug Administration. *

On or about April 13, 1953, the Government filed a motion for the entry of an order forfeiting the bond, on the ground that the claimant had failed to comply with the provisions of the decree. The claimant filed a cross motion for mitigation of the forfeiture in part. The matter came on to be heard before the court on December 3, 1953; and, on or about December 18, 1953, the court entered the following findings of fact, conclusions of law, and order:

BRIGGEE, *District Judge:*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

"On the 3rd day of December, 1953, this cause came on to be heard upon motion of libelant, United States of America, by John B. Stoddart, Jr., United States Attorney in and for the Southern District of Illinois, for an order forfeiting the bond herein filed by W. E. Riggin & Company, a corporation, of Crisfield, Maryland, the claimant herein, and on the cross motion of said claimant and its surety on said bond, M. R. Riley, of the city of Springfield, Illinois, for mitigation of the forfeiture in part; now on consideration of said motions, the affidavits and evidence submitted in support thereof, and the arguments of counsel, and the Court now being fully informed in the premises, doth adopt the following as its findings of fact, to wit:

"1. On November 20, 1951, the petitioner filed its Libel of Information for the seizure and condemnation of the above-described articles of food, according to the provisions of the Federal Food, Drug and Cosmetic Act (Sec. 334, Title 21, U. S. C.).

"2. That pursuant to said petition the said articles of food were seized by the United States Marshal for the said Southern District of Illinois, and thereafter on November 21, 1951, with the consent of the said claimant this Court entered a decree of condemnation and forfeiture herein holding that said articles of food were misbranded and adulterated within the meaning of said Act, and further ordering the destruction of said articles of food, subject, however, to the same being released to said claimant for re-working, re-packing, re-labeling and re-sale upon the filing by said claimant of good and sufficient security in the sum of \$500.00, conditioned that the said claimant would not sell or dispose of said articles of food or any part thereof, in violation of said Act or of the laws of the United States or any State or Territory, and that the claimant would re-work, re-pack, re-label and re-sell the said property under such conditions as to the label, and use of the same under the supervision and subject to the inspection and approval of the Food and Drug Administration, and that said claimant would pay the costs in this

cause, and all expense of said Food and Drug Administration, in connection with the compliance by said claimant with the conditions of said bond.

"3. That thereafter the said claimant duly filed herein its penal bond in the sum of \$500.00 with the said M. R. Riley as surety thereon, and said articles of food were thereupon turned over to said claimant by the United States Marshal pursuant to the provisions of said decree of condemnation; and that the total amount of said articles of food so released to said claimant was 110 gallons of oysters.

"4. That thereafter in due course said claimant accounted for the disposition made by it of 79 gallons of said oysters, but otherwise failed to disclose the disposition made of the 31 remaining gallons of said oysters, which were disposed of by said claimant and/or its agents in a manner undisclosed in and by the evidence heard herein, except that said claimant admits it has not disclosed the disposition made of said 31 gallons of oysters and asserts that it is uninformed as to the disposition made of said 31 gallons of oysters.

"5. That said claimant has failed to comply with the terms and provisions of said decree of condemnation, and has disposed of said 31 gallons of oysters without the supervision, inspection or approval of the Food and Drug Administration and has thereby breached the conditions of its said bond.

"6. That said claimant and surety admit, and the Court so finds, that said 110 gallons of oysters were placed by said claimant in the custody of 'Packers Ice and Cold Storage Co.' plant at Crisfield, Maryland, and that the records of said cold storage plant disclose the withdrawal by an agent of said claimant from time to time, of said 110 gallons of oysters, including the said 31 gallons of oysters, the disposition of which is unexplained by the evidence in this cause, and that other than the failure to account for the disposition of said 31 gallons of oysters as aforesaid, there is no evidence before the Court indicating that said claimant wilfully and intentionally violated the conditions of said bond.

"7. That the claimant herein has by its failure to account for said 31 gallons of oysters, breached the conditions of said bond.

"And the Court further adopts the following as its conclusions of law:

"1. There has been a breach of the bond posted by the claimant in this cause, of the nature such as to support a forfeiture of said bond and the entry of a judgment herein against said claimant and said surety for the full amount of said bond.

"2. That this bond was given under the provisions of Section 334, Title 21, U. S. C. and is a penal bond.

"3. That this Court lacks authority to remit a portion of the penalty of said bond.

"THEREFORE, the order of the Court is that the motion of the petitioner, United States of America, herein, be and the same is hereby allowed, and that the motion of the claimant and its surety herein for a remission of said forfeiture in part, is denied; that the said bond in the sum of \$500.00 be, and the same is hereby forfeited.

"IT IS FURTHER ORDERED BY THE COURT that the petitioner, United States of America, have judgment against said W. E. Riggin & Company, a corporation, and against said M. R. Riley, for the sum of \$500.00 and the costs of this proceeding, and the Clerk is directed to enter judgment of record in accordance with this order."

20737. Adulteration of canned crabmeat. U. S. v. 98 Cases * * *. (F. D. C. No. 34977. Sample No. 49914-L.)

LIBEL FILED: April 23, 1953, Southern District of New York.

ALLEGED SHIPMENT: Sometime during 1946, from New Orleans, La.

PRODUCT: 98 cases, each containing 24 6½-ounce cans, of crabmeat at New York, N. Y. Examination showed that the product had undergone chemical decomposition.