

VEGETABLES AND VEGETABLE PRODUCTS

21782. Adulteration of frozen corn. U. S. v. 194 Cases * * *. (F. D. C. No. 37422. Sample No. 81235-L.)

LIBEL FILED: November 17, 1954, Northern District of California.

ALLEGED SHIPMENT: On or about September 28, 1954, by the Allied Produce Co., from Sunnyside, Wash.

PRODUCT: 194 cases, each containing 12 cartons, of frozen corn at San Francisco, Calif.

LABEL, IN PART: (Carton) "Zero-Kist Brand Frozen Fresh Cut Corn Net Wt. 2½ Lbs. Packed By Prosser Packers, Inc., Prosser, Washington."

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 insect parts and insect-damaged kernels.

DISPOSITION: December 1, 1954. Default decree of condemnation and destruction.

21783. Adulteration of olives. U. S. v. 18 Cases * * *. (F. D. C. No. 36348. Sample No. 82208-L.)

LIBEL FILED: March 10, 1954, Eastern District of Oklahoma.

ALLEGED SHIPMENT: On or about June 2 and August 13, 1953, by the Belle Products Co., from Houston, Tex.

PRODUCT: 18 cases, each containing 12 jars, of olives at McAlester, Okla.

LABEL, IN PART: (Jar) "Towie Net Contents 21 Ounces Avoir. * * * Salad Olives With Pimientos."

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 insect-infested and insect-damaged olives.

DISPOSITION: June 14, 1954. Default decree of condemnation and destruction.

21784. Misbranding of canned peas. U. S. v. 55 Cases * * *. (F. D. C. No. 34501. Sample No. 36483-L.)

LIBEL FILED: December 17, 1952, Southern District of Ohio.

ALLEGED SHIPMENT: On or about September 9, 1952, by Lord-Mott Co., Inc., from Baltimore, Md.

PRODUCT: 55 cases, each containing 6 1-pound, 4-ounce cans, of peas at Cincinnati, Ohio.

LABEL, IN PART: "Cottage Brand Early June Peas."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the quality of the article fell below the standard of quality for canned peas because of excessive alcohol-insoluble solids, and the label failed to bear a statement that the article fell below such standard.

DISPOSITION: On December 29, 1952, Lord-Mott Co., Inc., filed certain so-called answers and defenses to the libel. Thereafter, certain motions as hereinafter described were filed by the Government and by Lord-Mott Co., Inc.; and, on April 24, 1953, the court handed down the following findings of fact and conclusions of law:

DRUFFEL, District Judge: "This action, having come before the Court on March 9, 1953, upon libelant's application for default judgment, motion to strike, and motion for judgment on the pleadings, and upon the documents

filed by Lord-Mott Co., Inc., namely, the so-called answers and defenses, motion to strike, and application for judgment, and the Court having considered the entire record, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

"1. On December 17, 1952, the United States Attorney for this District filed a libel of information against the above-described article.

"2. The libel alleges that the article proceeded against is a food which was shipped in interstate commerce and is misbranded in violation of the Federal Food, Drug, and Cosmetic Act [21 U. S. C. 343 (h) (1)] in that it purports to be and is represented as canned peas, a food for which a standard of quality has been prescribed by regulations promulgated pursuant to 21 U. S. C. 341 [401] and its quality falls below such standard.

"3. Pursuant to monition issued by this Court the United States Marshal for this district seized said article on December 30, 1952.

"4. Lord-Mott Co., Inc., of Baltimore, Maryland, by letters from George S. Clark, its sales manager, interposed so-called answers and defenses against the seizure of said article.

"5. The letters interposed by Lord-Mott Co., Inc., did not deny any of the allegations of the libel.

"6. The defense set forth in the letter of December 24, 1952, from Lord-Mott Co., Inc., were: first, that the standard of quality established by the regulations is not 'in the interest of consumers'; second, that the intervenor disagrees with the tolerance for alcohol-insoluble solids of peas established by the regulations; third, that the Administrator acted illegally in sampling the seized food at shipping terminals, and that the action should therefore be dismissed; and fourth, that the recent decision in *United States v. Cardiff*, 344 U. S. 174, and a proposed investigation of the Food and Drug Administration by the House Interstate and Foreign Commerce Committee in some way militates against the United States maintaining this action.

"7. Subsequent to the receipt of the above-dated letter from Lord-Mott Co., Inc., the United States filed an application for default decree, a motion to strike, and a motion for judgment on the pleadings; and, later, a motion to strike and application for judgment was filed by Lord-Mott Co., Inc.

CONCLUSIONS OF LAW

"1. For reasons apparent in the subsequent conclusions of law, I conclude it is unnecessary to rule upon libelant's application for default decree and will treat the letters signed by George S. Clark, sales manager of Lord-Mott Co., Inc., as answers, motions to strike and to dismiss, and applications for judgment.

"2. The libel filed by the United States of America states a claim upon which condemnation of the seized article should be granted by this Court under the provisions of 21 U. S. C. 334 [304] (a) and 343 [403] (h) (1).

"3. The failure of Lord-Mott Co., Inc., to deny any of the allegations of the libel results in all of the allegations in the libel being admitted pursuant to the provisions of Rule 8 (d) of the Federal Rules of Civil Procedure.

"4. The so-called defenses advanced by Lord-Mott Co., Inc., are insufficient in law to state a defense and set forth no grounds upon which the libel should be dismissed.

"5. The letters from Lord-Mott Co., Inc., setting forth the proposed defenses are hereby ordered stricken as insufficient to state a defense and as immaterial to this proceeding and its motions to strike and to dismiss and its applications for judgment are hereby denied.

"6. The motions of the United States of America to strike and for judgment on the pleadings are hereby granted."

In accordance with the above findings and conclusions, the court, on April 24, 1953, entered a decree of condemnation and ordered that the product be released under bond to the claimant for relabeling under the supervision of the Department of Health, Education, and Welfare.