

SHIPPED: 5-20-57, from Franklin, La., by Daigleville Packing Co.

LIBELED: 6-11-57, S. Dist. Miss.

CHARGE: 402 (a) (3)—contained decomposed shrimp when shipped.

DISPOSITION: 7-18-57. Consent—claimed by Daigleville Packing Co. Segregated; 494 cases destroyed.

24020. Oysters. (Inj. No. 293.)

COMPLAINT FOR INJUNCTION FILED: 9-29-55, Dist. Md., against Seacoast Oyster Co., Inc., Baltimore, Md., to enjoin the interstate shipment of adulterated oysters.

CHARGE: The complaint alleged that the defendant at the time of filing the complaint was engaged in the business of processing, preparing, packing into hermetically sealed cans, and selling and distributing raw oysters; and, that the defendant had been introducing and delivering for introduction into interstate commerce oysters which were adulterated within the meaning of 402 (b) (2) in that water had been substituted in part for oysters, and 402 (b) (4) in that water had been added, mixed, and packed with the oysters so as to increase their bulk and reduce their quality.

The complaint alleged also that the defendant did not engage in the shucking of oysters, but rather purchased shucked oysters in bulk from plants in the Pamlico Sound area of North Carolina and from the Chesapeake Bay area in Maryland; that after such oysters had been packed by the defendant into 12-ounce and one-pint cans they were shipped in interstate commerce; that extensive authentic packs of oysters from these areas established that, when packed in conformity with existing regulations, not over 5 per cent of drained liquid would be found in the oysters within 15 minutes after packing; that specific shipping experiments of authentic packs of oysters from these areas established that there would be no increase in the drained liquid content of the cans of oysters with the passage of time after packing; that samples collected from interstate shipments made by the defendant, upon analysis, disclosed the presence of amounts of liquid greatly in excess of 5 per cent; and, that such analytical findings established that the oysters were adulterated by (1) the excessive soaking of the oysters in fresh water before packing to the extent that the oysters absorbed a large quantity of water, or (2) the addition of water to the oysters at the time of packing, or (3) the inadequate draining of the oysters after washing so that a significant proportion of the wash water was retained and packed with the oysters, or (4) combinations of the above-mentioned factors.

The complaint further alleged that, since the time the defendant commenced business in 1952, the Food and Drug Administration had examined 85 interstate shipments of the firm's oysters; that 38 of these shipments (45 percent) contained added water, and that, in nearly every case, the oysters were seized; that an additional 21 shipments contained lesser amounts of added water but were not seized; that only 26 shipments (30 per cent) complied with the requirements of the law; that during the 1952-1953 season, approximately 3,658 pints of oysters shipped by the defendant, worth approximately \$2,839.75, were seized because of the presence of added water; that, during the 1953-1954 season, approximately 1,903 pints of oysters shipped by the defendant, worth approximately \$1,600.25, were seized because of the presence of added water; that, during the 1954-1955 season, approximately 2,273 pints of oysters shipped

by the defendant, worth approximately \$1,815.28, were seized because of the presence of added water; and, that none of the seizures had been contested.

It was alleged also that the defendant corporation was well aware that its activities resulted in violations of the law; that, in addition to the warnings received as a result of the seizure proceedings, considerable effort had been expended by the Food and Drug Administration to advise the defendant corporation relative to legal methods of packing oysters; that, at the time of each factory inspection, in 1952, 1953, and 1954, inspectors of the Food and Drug Administration had discussed with responsible officers of the corporation the proper method of handling oysters; that the same subject was discussed with the president of the corporation when he responded to notices sent to the corporation in 1953 and 1955; and, that, notwithstanding such warnings, the defendant had failed to correct its method of operation and would continue to introduce and cause to be introduced, and deliver and cause to be delivered for introduction into interstate commerce raw oysters adulterated as aforesaid.

DISPOSITION: The Government filed a motion for preliminary injunction, and an answer to such motion was filed by the defendant. A hearing in the matter was held on 10-10-55. On 11-2-55, the court issued a preliminary injunction enjoining and restraining the defendant (until the complaint filed by the Government is dismissed upon its motion, or set aside by the court upon hearing the complaint for permanent injunction), from directly or indirectly introducing or causing to be introduced, or delivering or causing to be delivered for introduction into interstate commerce raw oysters or any other such articles of food which are packed in such a manner that over 5 percent of drained liquid is found in the oysters at any time after fifteen minutes after packing and are thus adulterated within the meaning of 402 (b) (2) and (4).

24021. Oysters. (Inj. No. 293.)

PETITION FILED: On 4-23-57, in the District of Maryland, the United States attorney filed a petition for an order to show cause why the Seacoast Oyster Co., Inc., Baltimore, Md., and John H. Leonard, president of the corporation, should not be punished for criminal contempt of the preliminary injunction which had been entered against the corporation on 11-2-55 (preceding notice of judgment on foods, No. 24020).

CHARGE: The petition alleged that, following the entry of the injunction, the defendants had shipped in interstate commerce, on or about 11-9-56, 11-13-56, 11-16-56, and 12-18-56, from Baltimore, Md., to Altoona, Pa., Clarksburg, W. Va., Evansville, Ind., and Morgantown, W. Va., quantities of raw oysters in cans which contained added water as evidenced by examinations showing an average drained liquid content in the oysters ranging between 10 percent and 37.5 percent; and that by reason of such shipments of oysters the defendants were in criminal contempt of the injunction which restrained the defendants from shipping raw oysters which are packed in such a manner that over 5% of drained liquid is found in the oysters at any time after 15 minutes after packing and are thus adulterated within the meaning of Sections 402 (b) (2) and 402 (b) (4).

DISPOSITION: On 4-23-57, the order to show cause was issued. On 5-3-57, the defendants pleaded guilty to violation of the injunction; and the court fined the defendant corporation \$750, and sentenced the defendant, Leonard, to jail for 90 days. On 6-17-57, the court modified the jail sentence to 2 months.