

On April 11, 1922, no claimant having appeared for the property, judgment of the court was entered ordering the destruction of the product by the United States marshal.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

10498. Misbranding of Madame Dean female pills. U. S. * * * v. 5 Packages * * * and 5 Packages * * * of Madame Dean Female Pills * * * Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 13466. I. S. Nos. 6290-t, 6291-t. S. No. E-2552.)

On September 2, 1920, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5 packages of Madame Dean female pills (special) and 5 packages of Madame Dean female pills (single), at Orange, N. J., alleging that the article had been shipped by Martin Rudy, Lancaster, Pa., on or about June 30, 1920, and transported from the State of Pennsylvania into the State of New Jersey, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: (Box label and wrapper) " * * * Female Pills * * * give relief in Female Disorders of the menstrual functions. * * * for Painful, Irregular and Scanty Menstruation * * *"; (booklet) " * * * irregular, prolonged, or suppressed menstruation. * * * Female Pills afford relief for these ailments. * * * a remedy intended solely for the relief of Amenorrhea, Dysmenorrhea, scanty and irregular menstruation, and other derangements of the reproductive system, * * * especially valuable in the functional changes * * * of the menopause or change of life. * * * Act on the circulatory system of the uterus, thereby relieving painful, irregular and scanty menstruation, and assist in re-establishing or restoring, the menstrual or monthly periods * * * strengthen and build up the uterine function * * *"; (circular) " * * * a great relief against those general complaints the Female Sex is subject to; they help increase the vital quality of the blood; assist to bring nature into its proper channel, * * * for irregular, painful, scanty or suppressed menstruations, * * * should be taken * * * to assist nature with * * * disorders * * * during the change of life period. * * * Continue with the treatment until they give relief. * * * great relief from Pains or Headache; * * * for suppressed menstruation * * * Continue their use until relieved * * * take * * * until the menstrual flow commences again."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the special strength pills contained quinine, aloes, iron sulphate, senecio flowers and herb, ginger, and cornstarch; and that the single strength pills contained quinine, aloes, iron sulphate, hydrastis, ginger, and cornstarch.

Misbranding of the article was alleged in the libel for the reason that the above-quoted statements regarding the curative and therapeutic effects of the said article were false and fraudulent, since it contained no ingredient or combination of ingredients capable of producing the effects claimed.

On July 11, 1921, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

10499. Adulteration of salmon. U. S. * * * v. 430 Cases of Salmon * * * Tried to the court. Verdict favorable to the Government. Product destroyed. (F. & D. No. 12998. I. S. No. 233-r. S. No. E-2331.)

On July 2, 1920, the United States attorney for the Eastern District of South Carolina, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 430 cases of salmon, remaining in the original unbroken packages at Charleston, S. C., alleging that the article had been shipped by the Eufaula Grocery Co., Eufaula, Ala., on or about January 10, 1920, and transported from the State of Alabama into the State of South Carolina, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (Cans) "Prelate Brand Salmon Net Contents 15½ Oz. Alaska Pink Salmon Packed In Alaska By The Fidalgo Island Packing Co. Of Anacortes, Washington * * *"

Adulteration of the article was alleged in substance in the libel for the reason that it was a product which consisted partly or wholly of a filthy, decomposed, and putrid animal substance.

On March 3, 1922, the Fidalgo Island Packing Co. having entered an appearance as claimant for the property and having denied the material allegations of the libel, the case came on for trial before the court without a jury. After the submission of evidence and arguments by counsel the court entered a verdict favorable to the Government, in part as follows (Henry A. M. Smith, J.):

"It appears from the testimony that these 430 cases of salmon consisted of salmon packed apparently prior to the year 1918. It was originally purchased by the United States Government for army use and stored in a warehouse in the city of Brooklyn and after the signing of the armistice was either sold or turned back to the packers and thereupon passed into commercial shipment. This especial shipment was shipped to Eufaula, Ala. There some question appears to have been made about its condition by the Government, and it was shipped back to the city of Charleston, where, when seized, it was stored apparently under some understanding that it was to be reconditioned. At any rate, it was shipped from Eufaula to the city of Charleston

"According to the testimony for the Government, upon examination of the samples taken from this shipment or lot, after careful examination, twelve per cent (12%) of the cans examined were found to be bad, and of the remainder twenty-five or thirty per cent (25% or 30%) were found, in the opinion of those examiners, to be stale and questionable. According to the testimony of the claimant, they had a commercial test in the shape of an examination of this lot of salmon in the city of Charleston by three salmon brokers, who found it practically (so far as the number of cans examined by them were concerned) to be in sound and good condition.

"In many respects, the examination of the brokers is upon the same method of procedure as the examination by the experts, the principal test being that of smell. The brokers in this case, however, do not any of them assume, so far as chemical or bacteriological matters are concerned, to be experts in making this examination.

"Under the order of this court, upon the application of counsel for the claimant, an order was made that samples were to be selected from the cases of not less than one from every forty-three (43) cases, or ten (10) cans in all, to be examined by a chemical expert to be agreed upon in behalf of the Government and the claimant, who should report the result of the examination to the court. This has been done and the ten cans delivered to Parker Laboratory and the report of the laboratory upon the examination is that the ten cans submitted to that laboratory were in good condition and showed no indication of bulging, corrosion, or pitting; that there were no imperfections in the sealing of the cans; that when opened there was no indication of escaping gas or unpleasant odor; that the contents were firm, of good taste and odor, and in good condition; that there was no indication of any substance being mixed or packed to reduce or lower or seriously affect the quality or strength of the contents; nor was there any evidence that the ten cans examined contained any added poisonous or other deleterious ingredient which might render the article injurious to health; that the contents of the cans were examined microscopically and bacteriologically and found to contain no bacteria nor molds which would tend to bring about decomposition nor organisms resulting from decomposition; that the contents of the cans were sterile, showing that the fish was properly packed and sealed and that there was no decomposition; that the contents of the ten cans were well packed, of sound quality, and free from adulteration and contamination.

"Upon considering the whole testimony, it appears that the number of cans examined from the whole lot on behalf of the United States Department of Agriculture, under the Food and Drugs Act, exceeded very substantially the proportion of cans examined otherwise—and it also would appear from the testimony that the examination given on behalf of the department was of a more extended and careful character than that given otherwise. Although it would appear that there is in this entire shipment a very large proportion of cans which from the testimony would appear to be entirely free from any objection on the ground of decomposition or unfit for human food, yet, taking the testimony as a whole it appears to the court and is found as a conclusion of fact that there is an excessive percentage of the shipment which does fall and properly falls under that exception. Although the greater proportion of it may be good, yet in view of the chance of disaster that may result from

human use under the risks of such percentage, it would not seem safe to allow it to be dealt in, as an article of human food. It is no doubt correct that in most cases the very odor, upon opening the can, would bring home to the knowledge of any consumer or would-be consumer, the knowledge that the contents of the can were not fit for human use. That, however, depends in a large measure upon the intelligence of the consumer and upon the susceptibility of his organs of smell; and the casualties that might result in case the consumer fails to be properly advised of the danger of its consumption are such, in the opinion of the court, which would not render it proper to be allowed to be used for human consumption.

"It is therefore ordered, adjudged, and decreed,

"That this lot of cases of salmon so seized does consist in part of a filthy, decomposed, or putrid animal substance to such a percentage in excess of reasonable and salutary requirements as to constitute the shipment misbranded [adulterated] within the prohibition of the Act of Congress. * * *

The decree further provided that the product might be released to the said claimant upon the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that no part of the product be exposed for sale for use as food except after such treatment as should be satisfactory to this department, and that upon failure to file such bond the product be destroyed by the United States marshal. The product was subsequently destroyed.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

10500. Adulteration and misbranding of cottonseed meal. U. S. * * * v. 400 Sacks and 400 Sacks of * * * Cottonseed Meal. Consent decrees approving sale of product for fertilizer purposes. (F. & D. Nos. 15897, 15915. I. S. Nos. 9357-t, 9360-t. S. Nos. E-3752, E-3730.)

On or about January 6 and 16, 1922, respectively, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 800 sacks of alleged cottonseed meal, remaining unsold in the original unbroken packages at Jacksonville, Fla., consigned by the Central Oil Co., Macon, Ga., alleging that the article had been shipped on or about December 9 and 29, 1921, respectively, and transported from the State of Georgia into the State of Florida, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "100 Lbs. Cotton Seed Meal Manufactured by Central Oil Company, Macon, Georgia * * *"

Adulteration of the article was alleged in the libels for the reason that a substance deficient in ammonia, or protein, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and had been substituted wholly or in part for the said article and for the further reason that the article had been mixed and packed in a manner whereby inferiority was concealed.

Misbranding was alleged in substance for the reason that the article was an imitation of, and was offered for sale under the distinctive name of, another article, and for the further reason that the statements on the tags attached to the sacks containing the said article, "Nitrogen 5.76 per cent" and "Ammonia, not less than 7.00 per cent," regarding the article and the ingredients and substances contained therein, were false and misleading and deceived and misled the purchaser, since the said article contained considerably less than 5.76 per cent of nitrogen and 7.00 per cent of ammonia.

On January 13 and 19, 1922, the Central Oil Co., Macon, Ga., having sold the property for fertilizer purposes subject to the entry of decrees authorizing such sale, judgment by consent was entered approving the said sale and ordering that the proceedings be dismissed, that the product be released for the purposes of such sale, and that the claimant pay the costs of the proceedings.

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