

10509. Adulteration and misbranding of olive oil. U. S. * * * v. 51 Cans of Lucca Brand Olive Oil. Default decree of condemnation, forfeiture, and destruction or sale. (F. & D. No. 651-c.)

On or about May 6, 1921, the United States attorney for the Northern District of Ohio, acting upon a report by the Commissioner of Health of the City of Cleveland, Ohio, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 51 cans of Lucca Brand olive oil. at Cleveland, Ohio, alleging that the article had been shipped by the Western States Trading Co., Chicago, Ill., on or about February 1, 1921, and transported from the State of Illinois into the State of Ohio, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Lucca Brand Olive Oil. Pure Olive Oil."

Adulteration of the article was alleged in the libel for the reason that a substance, cottonseed oil, had been substituted wholly or in part for the said article, thereby lowering its quality, strength, and value.

Misbranding was alleged for the reason that the article was an imitation of, and offered for sale under the distinctive name of, another article, to wit, olive oil.

On May 10, 1922, 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 sold if fit for human consumption and if not fit for human consumption that it be destroyed by the United States marshal.

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

10510. Misbranding of semola. U. S. * * * v. 191 Boxes of * * * Semola. Decree ordering release of product under bond. (F. & D. No. 652-c.)

On March 16, 1922, the United States attorney for the District of Maine, acting upon a report by an official of the Department of Agriculture of the State of Maine, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 191 boxes of semola, remaining unsold in the original unbroken packages at Portland, Me., alleging that the article had been shipped from Milwaukee, Wis., on or about January 12, 1922, and transported from the State of Wisconsin into the State of Maine, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: "D'Annunzio Brand Finest Quality Prodotto Di Pura Semola Busalacchi Bros. Macaroni Co., Milwaukee, Wis."

Misbranding of the article was alleged in substance in the libel for the reason that it was [food] in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the said package in terms of weight, measure, or numerical count.

On March 20, 1922, the Ferguson-Bedell Co., agent for the Basulacchi Bros. Macaroni Co., Milwaukee, Wis., having entered an appearance as claimant for the property, judgment of the court was entered ordering that the product be released to said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$600, in conformity with section 10 of the act.

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

10511. Adulteration and misbranding of canned red kidney beans. U. S. * * * v. 25 Cases and 25 Cases of [So-Called] Red Kidney Beans. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. Nos. 12200, 12201. I. S. Nos. 8118-r, 8121-r. S. Nos. C-1775, C-1781.)

On February 21, 1920, the United States attorney for the Western District of Missouri, 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 25 cases and 25 cases of so-called red kidney beans, remaining unsold in the original unbroken packages at Kansas City, Mo., alleging that the article had been shipped on or about January 15 and 19, 1920, respectively, by the Marshall Canning Co., Marshalltown, Iowa, and transported from the State of Iowa into the State of Missouri, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Uncle William Brand Red Kidney Beans * * * Packed by Marshall Canning Co., Marshalltown, Iowa."

Adulteration of the article was alleged in the libels for the reason that long cranberry beans had been mixed and packed with, and substituted wholly or in part for, red kidney beans.

Misbranding was alleged for the reason that the label on the article, "Red Kidney Beans," was false and misleading and deceived and misled the purchaser when applied to a product consisting of long cranberry beans; and for the further reason that the article was an imitation of, and sold under the distinctive name of, another article, to wit, red kidney beans.

On July 8, 1921, the matter having come on to be heard on the pleadings and stipulation of the Marshall Canning Co., Marshalltown, Iowa, claimant, the court found the product to be adulterated and misbranded and ordered its condemnation as such. It was further ordered by the court that the product might be released to said claimant upon payment of the costs of the proceedings and the execution of bond amounting in the aggregate to \$200, in conformity with section 10 of the act, conditioned in part that the product be correctly relabeled.

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

10512. Misbranding and alleged adulteration of salmon. U. S. * * * v. 80 Cases and 1,379 Cases Canned Salmon * * *. Tried to the court. Finding for claimant on charge of adulteration and for government on charge of misbranding. Product under charge of misbranding released to claimant under bond for relabeling; balance of product released unconditionally. (F. & D. Nos. 13822, 13854. I. S. Nos. 10138-t, 10132-t, 10136-t. S. Nos. W-784, W-788.)

On or about October 27 and November 10, 1920, the United States attorney for the Western District of Washington, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 80 cases of canned salmon, labeled in part "Medium Red Salmon * * * Lionax Brand Cohoe Sockeye Salmon," and 1,379 cases of canned salmon labeled in part "Northern Brand Pink Alaska Salmon Packed by Northern Packing Co., Juneau, Alaska," remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped by the Northern Packing Co., Juneau, Alaska, August 27, 1920, and transported from the Territory of Alaska into the State of Washington, and charging adulteration with respect to both consignments and misbranding with respect to the 80-case consignment of Lionax Brand salmon.

Adulteration of the article was alleged in the libels for the reason that it consisted wholly or in part of [a] filthy, decomposed, and putrid animal substance.

Misbranding of the Lionax Brand consignment was alleged for the reason that the word "sockeye," appearing only partly obliterated on a portion of the label of the article, was false and misleading and deceived and misled the purchaser by representing the article as sockeye salmon, when it was not.

On April 12, 1921, the cases which were consolidated for trial came on for hearing before the court, and after the submission of evidence and arguments by counsel, the 80-case consignment of Lionax Brand salmon was found to be misbranded, and it was found by the court that the Government's charges of adulteration with respect to all of the salmon had not been established, as will more fully appear from the following decision of the court (Cushman, D. J.):

I have too many matters under advisement now, and I am not going to take this matter under advisement.

So far as the misbranding is concerned, I hold with the government. I think, according to the decisions which you read, that it is not whether the brand is going to deceive the jobbers and wholesalers and retailers and people who trade in these things, but whether it is liable to deceive the consuming public. I am very much like Miss Kolnitz—I never heard of the word "Cohoe" until this case began, and if I saw it on a can of salmon I was about to buy, I would not know whether it referred to a canner or the fish or what it referred to. I have lived here almost thirty years and eaten canned salmon most of the time, so why I presume I am an average specimen of the public. I take it everyone in this country is familiar with the word "sockeye," and finding it on a can of salmon not completely obliterated, but with this fancy stamp on there, more or less ornamental, would tend to deceive. I think a purchaser going into a retail store to buy a can of salmon would reasonably conclude that that was intended to be a part of the label and might very easily be misled. The decree that is appropriate for forfeiture in that case will be prepared and submitted to the court.

As regards the other lot of salmon, and so far as the 80 cases are concerned also, the court is inclined to agree with Judge Sessions, that this act certainly