

Misbranding was alleged with respect to a portion of the product for the further reason that the statements, to wit, "Contents One Half Gallon," "Contents One Full Gallon," or "Contents One Quart," borne on the labels of the cans containing the said portion, were false and misleading, in that the said statements represented that the cans contained the amount of oil declared on the label, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that the cans contained the amount of oil declared on the label, whereas the cans in certain of the shipments of the product contained less than declared. Misbranding was alleged with respect to the said portion of the product for the further 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 package.

On April 14, 1926, the defendant entered a plea of nolo contendere, and the court imposed a fine of \$660.

W. M. JARDINE, *Secretary of Agriculture.*

**14414. Adulteration and misbranding of butter. U. S. v. 20 Cases of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 21080. I. S. No. 10680-x. S. No. W-1967.)**

On April 17, 1926, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel and subsequently an amended libel praying seizure and condemnation of 20 cases of butter, remaining in the original unbroken packages at Seattle, Wash., delivered for shipment by the Consolidated Dairy Products Co., Seattle, Wash., April 16, 1926, alleging that the article had been prepared for shipment from the State of Washington into the Territory of Alaska, and charging adulteration and misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Case) "Lynden And Darigold Butter Whatcom County Dairymen's Assn, Lynden-Bellingham," (package) "Darigold Pasteurized Creamery Butter One Pound."

Adulteration of the article was alleged in the libel for the reason that a substance deficient in milk fat content had been mixed and packed therewith so as to reduce, lower, or injuriously affect its strength or quality, and had been substituted wholly or in part for the said article, and for the further reason that a valuable constituent, butterfat, had been abstracted from the said article.

It was further alleged in substance in the libel that the article was short weight and was misbranded in violation of the general paragraph, and paragraphs 2 and 3 under food, of section 8 of said act, in that it was [food] in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package. Misbranding was alleged for the further reason that the article was labeled "Butter," which label was false and misleading and deceived and misled the purchaser, and for the further reason that it was offered for sale under the distinctive name of another article.

On April 30, 1926, the Consolidated Dairy Products Co., Seattle, Wash., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$500, conditioned in part that it be repacked under the supervision of this department so as to contain the amount declared on the label and the correct amount of butterfat.

W. M. JARDINE, *Secretary of Agriculture.*

**14415. Adulteration of canned salmon. U. S. v. 548 Cases, et al., of Salmon. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. Nos. 18196, 18197, 18240, 18254, 18255. I. S. Nos. 4908-v, 19339-v, 19340-v, 19342-v, 19344-v. S. Nos. C-4238, C-4239, C-4244, C-4245.)**

On December 21, 27, and 31, 1923, respectively, the United States attorney for the Western District of Kentucky, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 1,435 cases of canned salmon, remaining unsold in the original packages, in various lots at Owensboro, Hopkinsville and Henderson, Ky., respectively, consigned by Jones & Williams, Seattle, Washington, in part from Seattle, Wash., and in part from New Orleans,

La., in various shipments, on or about November 9 and 19, 1923, respectively, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Bell-Can Brand Chum Salmon \* \* \* Packed By Bellingham Canning Company So. Bellingham, Wash."

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.

On May 20, 1926, the Bellingham Canning Co., South Bellingham, Wash., having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation was entered, and it was ordered by the court that the product be delivered to the Buttnick Mfg. & Investment Co., to whom the claimant had sold its interest, upon the execution of a bond in the sum of \$7,000, conditioned in part that it be sorted under the supervision of this department, and the unadulterated portion released and the remainder destroyed.

W. M. JARDINE, *Secretary of Agriculture.*

**14416. Alleged misbranding of Smack. U. S. v. 24 $\frac{7}{8}$  Gallons of Smack. Tried to the court. Judgment for claimant. (F. & D. No. 18820. I. S. No. 17752-v. S. No. C-4430.)**

On December 4, 1924, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel and on October 28, 1925, a stipulation amending said libel, praying seizure and condemnation of 24 $\frac{7}{8}$  gallons of Smack, remaining in the original unbroken packages at Milwaukee, Wis., alleging that the article had been shipped by the Smack Co., from Chicago, Ill., June 9, 1924, and transported from the State of Illinois into the State of Wisconsin, and charging misbranding in violation of the food and drugs act. The article was labeled in part: "Smack \* \* \* Flavor Manufactured By The Smack Company—Chicago, Ill."

It was alleged in the libel that the article was misbranded, in that the analysis showed it to be an artificially colored and artificially flavored sirup, in imitation of another article, to wit, a genuine grape product.

On January 21, 1926, the Smack Co., Chicago, Ill., having appeared as claimant for the property, the case came on for trial before the court, and judgment dismissing the libel was entered as will more fully appear from the following opinion (Geiger, D. J.):

"The Government seized an interstate shipment of 'Smack,' a product with respect to which this preliminary statement may be made. It is manufactured synthetic concentrate, which the Government says is, and is intended to be, a base for a beverage imitative of grape juice. Some time prior to the institution of this proceeding, the product had received attention from the Government because it was shipped under labels bearing the name 'Grape Smack' associated on the label with a picture of a cluster of grapes. At that time the product was similarly advertised in trade journals. After the condemnation of that label by the enforcement officials in a proceeding in court, the manufacturer, the claimant here or its predecessor, ceased that practice, and the article is now advertised, labeled and shipped as 'Smack.'

"Upon the present hearing the Government offered proof of the foregoing—which offer was received subject to later consideration of competency or the like—and also introduced proof tending to show the following:

"That an analysis of the product in question discloses the presence of certain ingredients or constituents, among them water, sugar, tartaric acid, ash, vanillin, and others said to contribute severally to physical properties, flavor, color or the like. The Government witness, upon his direct examination, also testified to the presence of approximately 5 per cent of grape juice; but, I believe, upon his cross-examination failed to sustain that position when he admitted that his conclusion was based wholly upon finding in the product certain ingredients also present in natural grape juice, such as tartaric acid and ash. This infirmity of his testimony seemed to me to be conclusive against the Government when claimant denied the introduction of natural grape juice, but asserted that the ingredients testified to by the Government witness arose not upon the introduction of natural grape juice, but through synthetic introduction as a part of the formula for the entire synthetic product. The Government witness likewise testified that the beverage prepared from this base resembled grape juice in its fluid consistency, color, and taste—indicating the particular synthetic elements capable of producing color and taste, respectively.