

**20972. Adulteration and misbranding of prepared mustard. U. S. v. 42 Cases, et al., of Prepared Mustard. Portion of product released under bond to be relabeled. Remainder condemned and ordered delivered to charitable institutions, or destroyed. (F. & D. nos. 29759, 29775, 29839, 29907, 29929. Sample nos. 18205-A, 21539-A, 21607-A, 33172-A, 33173-A, 34501-A.)**

These cases involved interstate shipments of prepared mustard which was found to be short weight. Examination also showed the presence of added mustard bran in certain lots.

On January 20, 1933, the United States attorney for the Middle District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 42 cases of prepared mustard at Dothan, Ala. On January 26 and on February 11, 1933, libels were filed in the Northern District of New York against 35 cases of prepared mustard at Utica, N.Y., and 18¾ dozen jars at Syracuse, N.Y.; on March 6, 1933, a libel was filed against 62 cases of the product at Worcester, Mass., and on March 15, 1933, a libel was filed in the Southern District of Alabama against 150 cases at Mobile, Ala. It was alleged in the libels that the article had been shipped in interstate commerce, by the Mid-West Food Packers, Inc., from Fowlerton, Ind., into the States of New York, Massachusetts, and Alabama, that the shipments had been made between October 29, and December 28, 1932, that a portion was adulterated and that all lots were misbranded in violation of the Food and Drugs Act as amended. A portion of the article was labeled; "Thames Brand Prepared Mustard Contents 2 lbs." The remainder was labeled: "Mid-West Brand Prepared Mustard Contents 8 Oz. [or "Net Contents 1 Lb. Avd." or "Contents 2 Lbs."] \* \* \* Mid West Food Packers, Inc., Fowlerton [or "Marion"] Indiana."

It was alleged in the libels that a portion of the article was adulterated in that mustard bran had been substituted in part for the article.

Misbranding was alleged with respect to the portion of the article containing mustard bran for the reason that the statement, "Prepared Mustard," 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. Misbranding was alleged with respect to all lots for the reason that the statements, "Contents Two Lbs.", "Contents 8 Oz.", "One Lb. Avd.", and "Net Contents Two Lbs.", were false and misleading and deceived and misled the purchaser, and for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statements made on the labels were incorrect.

The Ayers Brokerage Co. filed a claim for the product seized at Dothan, Ala. No claimant appeared in the remaining cases. On April 11 and 26, 1933, judgment was entered in the Northern District of New York, condemning and forfeiting the product, and on April 20, and July 8, 1933, similar decrees were entered in the Massachusetts and Southern Alabama cases. The lot seized at Worcester, Mass., was ordered destroyed and the lots seized at Syracuse, N.Y., and Mobile, Ala., were ordered delivered to charitable institutions in lieu of destruction, in view of the fact that the article contained no deleterious ingredient. On May 24, 1933, the lot seized at Dothan, Ala., was released to the claimant to be relabeled with a statement of the correct weight.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

**20973. Alleged adulteration of barley mixed oats. U. S. v. 800 Sacks of Barley Mixed Oats. Tried to a jury. Verdict and judgment for claimant. Appeal to Circuit Court of Appeals. Judgment of lower court affirmed. (F. & D. no. 26280. I. S. nos. 26527, 26528. S. no. 4623.)**

This case involved an interstate shipment of 800 sacks of barley mixed oats which, upon examination, were found to contain moisture in excess of the amount normally found in such product.

On April 24, 1931, the United States attorney for the Southern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States a libel praying seizure and condemnation of 800 sacks of barley mixed oats at Mileston, Miss., alleging that the article had been shipped in interstate commerce, on or about April 10, 1931, by Embrey E. Anderson, from Memphis, Tenn., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Barley Mixed Oats Sulphur Bleached containing added salt, 159¼ lbs. net."