

21128. Adulteration of canned tuna fish. U. S. v. 99 Cases of Tuna Fish. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 28433. Sample no. 8853-A.)

This case involved an interstate shipment of canned tuna fish that was in part decomposed.

On June 25, 1932, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 99 cases of tuna fish at Buffalo, N.Y., alleging that the article had been shipped in interstate commerce on May 18, 1932, by Hunt Bros. Packing Co., from San Francisco, Calif., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Brest-O-Chicken Brand * * * Tuna Fish Extra Fancy * * * Packed by Westgate Sea Products Company, San Diego, California."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a decomposed animal substance.

On June 26, 1933, 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.

M. L. WILSON, *Acting Secretary of Agriculture.*

21129. Adulteration of canned salmon. U. S. v. 3,500 Cases of Canned Salmon, more or less. Product released under bond for separation and destruction of adulterated portion. (F. & D. no. 29001. Sample nos. 25117-A, 26126-A.)

This case involved a shipment of canned salmon, samples of which were found to be in part decomposed.

On October 4, 1932, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of approximately 3,500 cases of canned salmon at Alameda, Calif. On May 4, 1933, the libel was amended to cover only that portion of the goods in unlabeled tall cans coded E 11, followed by an anchor in a vertical position pointing upward. It was alleged in the libel as amended that the article had been shipped by the Alaska Packers Association, from Bristol Bay, Alaska, to Alameda, Calif., on or about August 8 and August 22, 1932, and that it was adulterated in violation of the Food and Drugs Act.

The libel alleged that the article was adulterated in that it consisted in part of a decomposed animal substance.

On May 29, 1933, the Alaska Packers Association, having appeared as claimant for the portion of the product seized, consisting of approximately 1,200 cases, judgment was entered ordering that it be released to the claimant upon payment of costs and the execution of a bond in the sum of \$7,200. The bond was conditioned that all decomposed salmon be destroyed and that the wholesome portion be recanned subject to inspection and approval by this Department.

M. L. WILSON, *Acting Secretary of Agriculture.*

21130. Adulteration of canned salmon. U. S. v. Kadiak Fisheries Co. Plea of guilty. Fine, \$50 and costs. (F. & D. no. 28182. I. S. nos. 34725, 36201, 38907.)

This case was based on interstate shipments of canned salmon, samples of which were found to be decomposed.

On January 16, 1933, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Kadiak Fisheries Co., a corporation, Seattle, Wash., alleging the interstate shipment of various lots of canned salmon which had been guaranteed by the defendant company as complying with the Federal Food and Drugs Act, and which were in fact adulterated. The information alleged that the E. H. Hamlin Co., Seattle, Washington, had shipped on or about August 14, 1931, from the State of Washington into the State of Pennsylvania, and on or about September 4, 1931, from the State of Washington into the State of Massachusetts, quantities of canned salmon; that the R. E. Cotter Co. trading at Seattle, Wash., had shipped on or about August 15, 1931, from the State of Washington into the State of California, and thence into the State of Kansas, a quantity of canned salmon; that the defendant company, prior to said shipments, had delivered to the said shippers invoices

containing a guaranty that the product was not adulterated or misbranded in violation of the Food and Drugs Act; that the article was adulterated, and that the defendant company was amenable to prosecution and the penalties which, but for said guaranty, would have attached to the shippers. The article was labeled in part, variously: "Uncle Sam Brand Pink Alaska Salmon Packed by Kadiak Fisheries Co., Kodiak, Alaska Office-Seattle, Wash."; "Criterion Alaska Salmon * * * Kadiak Fisheries Co., KFC Kodiak, Alaska"; "I. G. A. Brand Pink Salmon * * * Packed for Independent Grocers Alliance Distributing Co., Chicago, Illinois."

The information charged that the article was adulterated in that it consisted in part of a decomposed animal substance.

On May 23, 1933, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$50 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

21131. Alleged adulteration and misbranding of oysters. U. S. v. J. Waldron Bayles and Samuel A. Bayles (Oyster Bay Oyster Co.). Tried to a jury. Information ordered dismissed; defendants acquitted by direction of the court. (F. & D. no. 28040. I. S. nos. 2094, 2095, 11024.)

On December 14, 1932, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against J. Waldron Bayles and Samuel A. Bayles, copartners, trading as the Oyster Bay Oyster Co., Oyster Bay, N. Y., charging shipment by said defendants in violation of the Food and Drugs Act, on or about December 10 and December 15, 1930, from the State of New York into the State of Washington, of quantities of oysters which were alleged to be adulterated and misbranded.

The information charged that the article was adulterated in that a substance, excessive water, had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and strength, and had been substituted in part for oysters, which the article purported to be. Adulteration was alleged for the further reason that a valuable constituent of the article, oyster solids, had been in part abstracted.

It was further alleged in the information that the article was misbranded in that the statement "Oysters", borne on the tag attached to the cases was false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser. Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article.

On April 12, 1933, the defendants having each entered a plea of not guilty, the case came on for trial before a jury. On motion of counsel for the defendants counts 2 and 4 charging misbranding of the product were dismissed. After hearing the evidence the court ordered the remaining counts dismissed and directed that the defendants be acquitted.

M. L. WILSON, *Acting Secretary of Agriculture.*

21132. Misbranding of paprika and black pepper. U. S. v. 12 Cartons of Paprika and 17 Cases and 13¾ Cases of Black Pepper. Default decrees of condemnation, forfeiture, and destruction. (F. & D. nos. 28874, 28955. Sample nos. 13251-A, 13254-A, 13362-A.)

These cases involved the interstate shipment of quantities of paprika and black pepper, sample packages of which were found to contain less than the declared weight.

On September 7 and September 26, 1932, the United States attorney for the Middle District of Alabama, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 12 cartons of paprika and 30¾ cases of black pepper at Montgomery, Ala., alleging that the articles had been shipped in interstate commerce, in various consignments, on or about November 30, 1931, April 4, and August 5, 1932, by the Hudson Tea & Spice Co., Inc., from Brooklyn, N. Y., and charging misbranding in violation of the Food and Drugs Act as amended. The paprika was labeled: (Carton) "Hudson Brand HTO Pure Paprika * * * 4 Oz. Net Weight." The pepper was labeled: (Package) "Alabama Maid Brand Black Pepper * * * 5/8 Oz. Net Weight."

It was alleged in the libels that the articles were misbranded in that the statements on the respective labels, "4 Oz. Net Weight" and "5/8 Oz. Net