

On July 24, 1933, the G. B. R. Smith Milling Co. having appeared as claimant for the property and having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the claimant upon payment of costs and the execution of a bond in the sum of \$500, or the deposit of a certified check for like amount, conditioned in part that it be relabeled or repacked to the declared weight.

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

21307. Misbranding of canned cherries. U. S. v. 75 Cases of Canned Cherries. Default decree of forfeiture and destruction. (F. & D. no. 30694. Sample no. 41938-A.)

This case involved a shipment of canned cherries which were labeled, "Solid Pack", and which were found to be packed in a liquid medium. The article fell below the standard for canned cherries, since the sugar solution of the liquid portion was low, and it was not labeled to indicate that it was substandard.

On July 6, 1933, the United States attorney for the District of Idaho, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 75 cases of canned cherries at Pocatello, Idaho, alleging that the article had been shipped in interstate commerce on or about November 9, 1931, by the Pacific Northwest Canning Co., from Puyallup, Wash., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Famous Puyallup Brand Solid Pack Pitted Red Sour Cherries * * * Packed by Pacific Northwest Canning Company, Puyallup, Washington."

It was alleged in the libel that the article was misbranded in that the statement on the label, "Solid Pack", was false and misleading and deceived and misled the purchaser when applied to an article packed in a liquid packing medium. Misbranding was alleged for the further reason that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, because the packing medium read less than 16 degrees Brix, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On July 29, 1933, no claimant having appeared for the property, judgment of 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.*

21308. Misbranding of Flavor-Rite Cho-Co-Malt. U. S. v. 99¾ Dozen Jars of Flavor-Rite Cho-Co-Malt. Consent decree of condemnation and forfeiture. Product released under bond to be relabeled. (F. & D. no. 30695. Sample no. 43209-A.)

This case involved a product labeled to convey the impression that it contained chocolate and an appreciable amount of malt. Examination showed that it consisted essentially of cocoa and sugar, with only a small amount, if any, of malt. The statement of the quantity of the contents was not plain and conspicuous.

On or about July 5, 1933, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 99¾ dozen jars of the said Flavor-Rite Cho-Co-Malt at Bridgeport, Conn., alleging that the article had been shipped in interstate commerce on or about June 14, 1933, by the Flavor Rite Cho-Co Malt Co., from Brooklyn, N.Y., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Flavor Rite Cho-Co Malt Co. Brooklyn, N.Y."

It was alleged in the libel that the article was misbranded in that the statement on the label, "Cho-Co-Malt", was false and misleading and deceived and misled the purchaser when applied to an article which consisted essentially of cocoa, sugar, and water. Misbranding was alleged for the further reason that the article was sold under the distinctive name of another article and 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 July 20, 1933, the Flavor Rite Cho-Co-Malt Co., Brooklyn, N.Y., 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