

"It is not only public policy to prevent the distribution of food that is decomposed but it is also public policy to conserve the food supply, for it is the greater which includes the less. It may be that it is in answer to this that the libelant contends that the statute reading 'the same shall be disposed of by *destruction or sale* as the said court may direct',—destruction of the wholesome portion of the seizure is not demanded by the law but a sale is permitted.

"It may be conceded that where a separation of the decomposed food from the wholesome might be readily accomplished without expense, the court would be authorized to in one decree order the destruction of the decomposed food and the sale of the wholesome, but in a seizure such as the present, the evidence showing that each can of salmon must be punctured or opened in order to determine whether the contents is wholesome, stale, tainted, or putrid, and the wholesome—in order to preserve it—thereafter re-sealed and re-cooked, such a course is unwarranted. It is not to be expected that the claimant would pay such expense nor is it shown that the libelant has any appropriation from which such expense could be paid or that the court would be warranted in putting libelant to such expense. It follows that any sale ordered by the court would be of the entire seizure, which would be objectionable for reasons presently stated.

"It is not to be expected that strangers to this proceeding, at a point from which salmon is distributed throughout the United States and over a great part of the world, will, upon a sale, bid anything near the actual value of a product condemned as partly decomposed. It is to be anticipated that the claimant for a nominal amount will become the purchaser. The seized product would then be free and might be sold intrastate without reconditioning insofar as any law of the United States is concerned.

"In view of such consequences, a greater danger than any here shown would alone warrant (costs being paid), the denial of a decree for delivery upon claimant giving the statutory bond in an amount which is hereby fixed at \$10,000. That such is the proper course in such a case appears to have been recognized by the Circuit Court of Appeals for this circuit in *A. O. Anderson vs. United States*, 284 Fed. 542-545.

"A question remains upon which the parties have not been heard. The seized cans of salmon are not at present labeled. The second cooking of the cans of salmon found wholesome, to which reference has been made, leaves the contents of the can not the equal of the original pack—less palatable than if not reheated.

"The statute contains no express provision directing the court, in order to avoid the danger of misleading the purchaser, to require the affixing to the cans of fish found to be good and so treated, before disposition by claimant, of a label showing they have been twice cooked. The same rule in this respect would apply if the seizure, instead of being a product of the United States, was a shipment from a foreign country.

"Upon the question of the authority and propriety of the court so requiring, the parties will be heard at the time of the settlement of the Findings of Fact, Conclusions of Law and Decree, which will be upon notice.

"The Clerk will notify the attorneys for the parties of the filing of this decision."

On June 30, 1934, judgment of condemnation was entered and it was ordered by the court that the product be released to the claimant, costs of the proceedings having been paid and a bond in the sum of \$10,000, conditioned that the product would not be disposed of contrary to the provisions of the Food and Drugs Act having been posted.

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

**22564. Adulteration of butter. U. S. v. Western Produce Co., Inc. (Lubbock Poultry & Egg Co.). Plea of guilty. Fine, \$50. (F. & D. no. 29340. I. S. no. 31665.)**

This case was based on an interstate shipment of butter that contained less than 80 percent by weight of milk fat.

On August 18, 1933, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Western Produce Co., Inc., trading under the name of the Lubbock Poultry & Egg Co. at Lubbock, Tex., alleging shipment by said company, in violation of the Food and Drugs Act, on or about October 12, 1931, from the State of Texas into the State of New Mexico, of a quantity of butter that was adulterated. The article was labeled in part: "Finest Creamery Butter \* \* \* Packed for Safeway Stores, Incorporated."

It was alleged in the information that the article was adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which must contain not less than 80 percent by weight of milk fat as required by the act of Congress of March 4, 1923, which the article purported to be.

On June 20, 1934, a plea of guilty was entered on behalf of the defendant company, and the court imposed a fine of \$50.

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

**22565. Adulteration of tomato pulp. U. S. v. Wabash Valley Canning Co. Tried to the court. Judgment of guilty. Fine, \$50. (F. & D. no. 30175. I. S. nos. 44841, 50137, 50600.)**

This case was based on a shipment of tomato pulp, samples of which were found to be in part decomposed.

On June 1, 1933, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Wabash Valley Canning Co., a corporation, Attica, Ind., alleging shipment by said company, in violation of the Food and Drugs Act, on or about October 28, 1931, from the State of Indiana into the State of Illinois, of a quantity of tomato pulp that was adulterated.

It was alleged in the information that the article was adulterated in that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On June 24, 1933, a plea of not guilty was entered on behalf of the defendant company. On June 8, 1934, the case having come on for trial before the court, judgment of guilty was entered and a fine of \$50 imposed.

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

**22566. Adulteration of butter. U. S. v. Soren Sorenson (Kimball Creamery Co.). Plea of guilty. Fine, \$25 and costs. (F. & D. no. 30227. Sample no. 3570-A.)**

This case was based on a shipment of butter that contained less than 80 percent by weight of milk fat.

On September 26, 1933, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Soren Sorenson, trading as the Kimball Creamery Co., Kimball, Nebr., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 27, 1932, from the State of Nebraska into the State of Illinois, of a quantity of butter which was adulterated.

It was alleged in the libel that the article was adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which must contain not less than 80 percent by weight of milk fat as required by the act of Congress of March 4, 1923, which the article purported to be.

On June 11, 1934, the defendant entered a plea of guilty, and the court imposed a fine of \$25 and costs.

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

**22567. Adulteration of butter. U. S. v. Orchard Alfalfa Cooperative Creamery Co. Plea of guilty. Fine, \$25 and costs. (F. & D. no. 30251. Sample no. 11021-A.)**

This case was based on a shipment of butter that contained less than 80 percent by weight of milk fat.

On September 27, 1933, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Orchard Alfalfa Cooperative Creamery Co., a corporation, Orchard, Nebr., alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 9, 1932, from the State of Nebraska into the State of New York, of a quantity of butter which was adulterated.

It was alleged in the information that the article was adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which must contain not less than 80 percent by weight of milk fat as defined by the act of Congress of March 4, 1923, which the article purported to be.

On June 20, 1934, a plea of guilty was entered on behalf of the defendant company, and the court imposed a fine of \$25 and costs.

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