

**25542. Adulteration of canned salmon. U. S. v. Henry J. Emard, trading as Emard Packing Co. Plea of guilty. Fine \$200 with costs. (F. & D. no. 32907. Sample nos. 54878-A, 54888-A.)**

A decomposed substance was a part of this product.

On October 24, 1934, the United States attorney for the District of Alaska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Henry J. Emard, trading as Emard Packing Co., Anchorage, Alaska, alleging shipment in violation of the Food and Drugs Act as amended, on or about July 24, 1933, from Anchorage, Alaska, to Seattle, Wash., of quantities of canned salmon that was adulterated. The product was unlabeled, but the cases bore certain code markings, to wit, "Talls HH K-47" on some, and "Talls HH 46" and other markings on others.

Adulteration of the article was charged under the allegation that it consisted in part of a decomposed animal substance.

On December 23, 1935, a plea of guilty having been entered, the defendant was fined \$200 with costs.

W. R. GREGG, *Acting Secretary of Agriculture.*

**25543. Adulteration of butter. U. S. v. Newman Grove Cooperative Creamery Co., Inc. Plea of guilty. Fine, \$10 and costs. (F. & D. no. 33777. Sample no. 67377-A.)**

This product was represented to be butter, but it contained less than 80 percent by weight of milk fat.

On October 19, 1934, 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 Newman Grove Cooperative Creamery Co., Inc., a corporation, Newman Grove, Nebr., alleging shipment in violation of the Food and Drugs Act as amended, on or about March 8, 1934, from Omaha, Nebr., to New York, N. Y., of a number of tubs containing an article of food, billed as butter, that was adulterated. The article was labeled in part: (Tub) "3648 New York 4 4 $\frac{1}{4}$ ."

Adulteration of the product was charged under the allegations that it purported to be butter; that the product contained less than 80 percent by weight of milk fat; and that a product that contained less than said percentage of milk fat had been substituted for what the article purported to be, namely, butter.

The defendant pleaded not guilty in an "answer" in which it alleged (a) that it had acted "without any fault, negligence, criminal intent, or wrongful intent of any kind whatsoever" and (b) that it "had been placed in jeopardy." The answer was without a statement of facts as a basis for the second of these allegations. However, it otherwise appears that in a precedent libel a number of the tubs of butter in the shipment which was the basis for the charge preferred in the information had been seized, and subsequently reconditioned pursuant to a provision in a judgment of condemnation and forfeiture, at an expense to the defendant of \$160.12. The Government demurred to the answer. The court sustained the demurrer in a memorandum opinion, as follows:

DONOHUE, District Judge: There has been submitted to the Court the demurrer of the United States of America to the answer of the defendant. This demurrer searches the entire record. The defendant contends that the information is not sufficient to charge an offense under the provisions of the act known as "Foods and Drugs Act", while the Government contends that the information is sufficient, and the matter set forth in the answer does not constitute a defense.

The charging part of the information is that the defendant did within the jurisdiction of this court unlawfully ship and deliver for shipment, a consignment of tubs containing an article of food billed as butter, then follows the charge that the articles of food so billed did not meet the requirement of the act defining butter within the terms thereof.

The provisions of the Food and Drug Act, Title 21 U. S. C. A. paragraph 2, in so far as it applies to this case, prohibits the introduction into any state or territory, from any other state or territory, any article of food which is adulterated or misbranded, and provides that any person who shall ship or deliver for shipment from any state or territory to any other state or territory, or who shall receive in any state or territory, and having so received shall deliver, etc. In this case, we think the information sufficiently charges the delivery of this article of food for shipment within the jurisdiction of this Court. The receiving and delivery of the shipment would constitute a separate offense within the New York jurisdiction.