31143. Misbranding of butter. U. S. v. John Newton Hall (Lexington Ice & Creamery Co.). Plea of guilty. Fine, $50. (F. & D. No. 39791. Sample No. 43426–C.)

This product was short of the declared weight.

On November 4, 1937, the United States attorney for the Southern District of Mississippi filed an information against John Newton Hall, trading as Lexington Ice & Creamery Co., at Lexington, Miss., alleging shipment on or about May 10, 1937, from the State of Mississippi into the State of Louisiana of quantities of butter which was misbranded. The article was labeled in part: "Clear Brook Creamery Butter [or "Country Roll Creamery Butter] * * * Distributed by Wilson & Co."

It was alleged to be misbranded in that the statements, (carton of a portion) "Net Weight 1 Pound," (labels of individual cubes in said cartons) "¼ Lb. Net Weight," and (wrappers of country roll butter) "1 Lb. Net Weight," were false and misleading since the cartons and wrappers contained smaller amounts of butter than those declared on the labels. A portion of the article was alleged to be misbranded further in that it was food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the package.

On November 6, 1941, the defendant entered a plea of guilty and the court imposed a fine of $50.

31144. Adulteration of frozen eggs. U. S. v. 300 Cans of Frozen Eggs. Decree entered finding portion of product adulterated and ordering its condemnation and destruction; and finding remainder unadulterated and ordering its release. Government's motion to amend decree denied. (F. & D. No. 43044. Sample No. 29784–D.)

Examination of this product showed the presence of decomposed eggs.

On July 11, 1938, the United States attorney for the Eastern District of Pennsylvania filed a libel against 300 cans of frozen eggs at Reading, Pa., alleging that the article had been shipped in interstate commerce on or about June 4, 1938, by Armour & Co. from Springfield, Mo.; and charging that it was adulterated in that it consisted in whole or in part of a filthy, decomposed, and putrid animal substance. The article was labeled in part: "Armour's Star Quality Cloverbloom Frozen Eggs."

On August 3, 1938, Armour & Co., claimant, filed a petition praying that the Government show cause why the libel should not be dismissed. This petition was denied and on November 14, 1938, claimant filed an answer denying that the article was adulterated as charged in the libel. On January 16, 1939, the claimant filed an amended answer to the libel admitting that 7 cans of the product contained a filthy, decomposed, and putrid substance, but denying that the remaining 292 cans contained such filthy, decomposed, and putrid substance.

On January 17, 1939, judgment was entered finding 7 cans adulterated and ordering their condemnation and destruction; and finding that the remaining 293 cans were not adulterated and ordering their delivery to the claimant.

On September 8, 1939, the Government's petition to amend the decree was denied with the following opinion:

KALODNER, *Judge*. "On January 11, 1938, a libel was filed by the United States of America, seeking the condemnation and forfeiture of 300 cans of frozen eggs, which were owned by the claimant and had been shipped in interstate commerce. Adulteration of the entire 300 cans was alleged in the libel.

"Orders were issued by this court to take samples, and a joint inspection was made of every one of the 300 cans by the Government's inspector and a representative of the claimant. The Government inspector found that only 7 of the 300 cans inspected were objectionable and that the 293 remaining cans were pure.

"Thereafter the claimant's amended answer to the libel admitted that the 7 cans were impure and denied (in consonance with the findings of the Government inspector) that the remaining 293 cans were impure.

"Subsequently a consent decree was entered by this court on motion of the United States of America adjudging the 7 cans to be adulterated and the remaining 293 cans to be pure. The decree ordered the condemnation and forfeiture of the 7 adulterated cans and the return of the 293 pure cans to the claimant.

"Thereafter the United States of America filed a petition to amend the aforementioned decree, asserting that it did not conform to the pleadings; that since the libel averred the entire 300 cans to be adulterated in whole or in part, and the claimant's amended answer admitted the shipment to be adulterated in part, that the decree should have (1) ordered the condemnation of the entire 300 cans

and (2) should have ordered the destruction of the 7 cans and the return to the claimant of the remaining 293 cans.

"It is clear and unquestioned that the amended decree if made, would accomplish nothing more or less than the decree sought to be amended; under the amended decree the 7 impure cans would be destroyed and the 293 pure cans returned to the claimant exactly as was done under the original decree.

"The admitted facts as to the condition of the 300 cans (7 adulterated and 293 pure) sustain the original consent decree as it was made. The parties, in joining in the decree, gave effect to the law which decrees the condemnation and destruction of adulterated food. Any further discussion or action by the court would be merely academic and would serve no useful purpose. No precedent is intended to be here established with respect to the questions academic to the determination of this matter.

"Accordingly, the petition to amend the decree is denied."

31145. Adulteration and misbranding of wheat gray shorts and screenings. U. S. v. Charles B. Stout (Majestic Flour Mill). Plea of nolo contendere. Fine, $50. (F. & D. No. 42749. Sample No. 3919–D.)

This product contained a smaller percentage of crude protein and crude fat and a larger percentage of crude fiber than those declared on the label. It consisted of wheat brown shorts and screenings and not of wheat gray shorts and screenings, as labeled.

On October 13, 1939, the United States attorney for the Western District of Missouri filed an information against Charles B. Stout, trading as Majestic Flour Mill, Aurora, Mo., alleging shipment on or about January 12, 1939, from the State of Missouri into the State of Texas of a quantity of wheat gray shorts and screenings which were adulterated and misbranded.

The article was alleged to be adulterated in that wheat brown shorts and screenings had been substituted in whole or in part for wheat gray shorts and screenings, which it purported to be.

It was alleged to be misbranded in that the statements, "Wheat Gray Shorts and Screenings" and "Crude protein not less than 17.00 Per Cent Crude Fat not less than 4.00 Per Cent Crude Fiber not more than 6.00 Per Cent," borne on the label were false and misleading and in that it was labeled so as to deceive and mislead the purchaser since the said statements represented that it consisted of wheat gray shorts and screenings and contained the amount of crude protein, crude fat, and crude fiber represented on the label; whereas it consisted of wheat brown shorts and screenings and contained not more than 15.86 percent of crude protein, not more than 3.79 percent of crude fat, and not less than 7.11 percent of crude fiber.

On January 10, 1941, the defendant entered a plea of nolo contendere and the court imposed a fine of $50.

31146. Unlawful and unauthorized use of seafood inspection legend. U. S. v. Max Pinkus (John Price & Co.). Plea of nolo contendere. Fine, $1,000, of which $750 was remitted. (F. & D. No. 42806. Sample No. 54447–E.)

This case represented unlawful and unauthorized use of the seafood inspection legend.

On August 11, 1942, the United States attorney for the Eastern District of Pennsylvania filed an information against Max Pinkus, trading as John Price & Co., Philadelphia, Pa., alleging that the defendant had labeled and caused to be labeled a quantity of shrimp that had been shipped in interstate commerce in unlabeled jars by affixing and causing to be affixed to the jars a label bearing, among others, the following statements: "Garden Brand Shrimp. Production supervised by United States Food and Drug Administration. Packed for John Price & Co., Phila, Pa." The information alleged further than the defendant, by so labeling and causing the article to be so labeled, unlawfully used a label authorized by the Food and Drugs Act of 1906 without proper authority to do so, since the statement "Production Supervised by United States Food and Drug Administration" represented that the article had been handled, prepared, and packed in compliance with the requirements of said act of Congress as amended and all regulations promulgated thereunder, namely, that the premises, equipment, sanitation, methods of handling, containers, and labeling used in the production of the article had been examined and inspected by inspectors designated by the Administrator of the Federal Security Agency for such purposes; whereas it had not been handled, prepared, and packed in compliance with said act of Congress.