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.

The information also charged the defendant with misbranding the article in violation of the Federal Food, Drug, and Cosmetic Act, as reported in food notices of judgment published under that act.

On September 9, 1942, a plea of nolo contendere was entered and the court imposed a fine of $1,000 on each of the 2 counts and remitted $750 of each fine.

31147. Adulteration of canned mackerel. U. S. v. 10 Cases of Canned Mackerel (and 3 other seizure actions involving canned mackerel). Consent decrees of condemnation. Product ordered released under bond conditioned that portion identified by one code be destroyed. Portions ultimately delivered to State fisheries for use as fish food upon failure to comply with the terms of the decree. (F. & D. Nos. 44102 to 44105, incl. Sample No. 33987–D.)

Samples of this product were found to be in part decomposed.

On October 8 and 13, 1938, the United States attorney for the Eastern District of North Carolina filed libels against 80 cases of canned mackerel in various lots at Elkin, Wilson, Weldon, and Rocky Mount, N. C., alleging that the article had been shipped in interstate commerce on or about September 22, 1938, by Foote Bros. & Co. from Norfolk, Va.; and charging that it was adulterated in that it consisted in whole or in part of a decomposed animal substance. It was labeled in part: "Sunset Brand California Mackerel. Packed by Southern California Fish Corporation, Los Angeles Harbor, Calif."

On October 15 and December 11, 1940, the Southern California Fish Corporation having appeared as claimant for all lots and the seizure located at Wilson, Weldon, and Rocky Mount having been consolidated, judgments of condemnation were entered and the product was ordered released to the claimant under bond conditioned that the portion identified by a certain code be destroyed.

On August 26, 1941, the claimant having failed to comply with the terms and conditions of the consolidated decree covering the lots seized at Wilson, Weldon, and Rocky Mount; the court ordered the claimant to appear and show cause why the petition of the Government that the product be destroyed should not be allowed. On September 26, 1941, the claimant having failed to resist the petition of the Government, judgment was entered ordering destruction of the product. On November 6, 1941, this decree was amended to provide that the fish be turned over to the State Department of Conservation and Development for use as food for fish.

31148. Adulteration of canned mackerel. U. S. v. 300 Cartons of Canned Mackerel. Default decree of condemnation and destruction. (F. & D. No. 44548. Sample No. 20357–D.)

Examination of this product showed the presence of decomposed mackerel.

On December 19, 1938, the United States attorney for the Eastern District of Louisiana filed a libel again 300 cartons of canned mackerel at New Orleans, La., alleging that the article had been shipped in interstate commerce on or about November 29, 1938, by the Southern California Fish Corporation from Terminal Island, Calif.; and charging that it was adulterated in that it consisted in whole or in part of a decomposed animal substance. The article was labeled in part: (Cans) "Sunset Brand California Mackerel."

On March 7, 1941, the case having been called and no claimant appearing, judgment of condemnation was entered and the product was ordered destroyed.

31149. Adulteration of canned strained green beans. U. S. v. 22 Cases and 128 Cases of Canned Strained Green Beans. Default decree of condemnation and destruction. (F. & D. Nos. 44952, 44953. Sample Nos. 31132–D, 41156–D, 41157–D).

This product contained extraneous material which might have rendered it injurious to health.

On March 6, 1939, the United States attorney for the District of Colorado filed a libel against 150 cases of canned strained green beans at Denver, Colo., which had been consigned by the Freemont Canning Co., alleging that the article had been shipped in interstate commerce within the period from on or about October 1, 1938, to on or about January 13, 1939, from Freemont, Mich.; and charging that it was adulterated. It was labeled in part: (Cans) "Gerber's Strained Green Beans for Babies For Convalescents For Special Diets."

On January 7, 1941, an amended libel was filed. It was alleged in the amended libel that the article was adulterated in that it contained extraneous material which might have rendered it injurious to health.