

DISPOSITION: December 12, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

8028. Adulteration of crab meat. U. S. v. Howard W. Shaw (Southern Crab Co.).
Plea of nolo contendere. Fine, \$100. (F. D. C. No. 14261. Sample Nos. 28873-F, 28875-F.)

INFORMATION FILED: February 26, 1945, Southern District of Florida, against Howard W. Shaw, trading as the Southern Crab Co., Fernandina, Fla.

ALLEGED SHIPMENT: On or about June 3 and 6, 1944, from the State of Florida into the State of New York.

VIOLATIONS CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance as evidenced by the presence of fecal *Escherichia coli*; and, Section 402 (a) (4), it has been prepared and packed under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: April 4, 1945. The defendant having entered a plea of nolo contendere, a fine of \$50 on each of 2 counts was imposed.

8029. Adulteration of canned oysters. U. S. v. 673 Cases of Canned Oysters.
Tried to the court. Judgment ordering portion of product returned to the claimant; remainder condemned and released under bond. (F. D. C. No. 10068. Sample No. 42276-F.)

LIBEL FILED: June 8, 1943, Middle District of Tennessee.

ALLEGED SHIPMENT: On or about May 13, 1943, by the Mavar Shrimp and Oyster Co., from Biloxi, Miss.

PRODUCT: 673 cases, each containing 48 10-ounce cans, of oysters, at Nashville, Tenn.

LABEL, IN PART: "Oysters * * * New Style Pack More Oysters Per Can, Gibbs And Co., Inc. Distributors, Baltimore, Md. * * * Bull Head Brand."

VIOLATION CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: On July 30, 1943, the Mavar Shrimp & Oyster Co., Ltd., claimant, filed an answer denying that the product was adulterated. Thereafter, the claimant having submitted a list of five interrogatories requesting information in regard to the details of the examination of samples, and the government having filed objections, the matter came on for hearing, following which an order was entered on January 19, 1944, directing that the interrogatories be answered. Subsequently, a motion filed by the claimant for the release of a portion of the product under seizure, on the ground that it was fit for consumption, was overruled.

On May 28, 1945, the cause was submitted to the court upon the pleadings, evidence, exhibits, and argument of counsel for the Government and claimant, and, after due consideration thereof, the court, on May 30, 1945, entered its findings of fact and conclusions of law as follows:

DAVIES, *District Judge:*

FINDINGS OF FACT

"1. A Libel in Rem was filed herein by the United States of America on June 8, 1943, against 673 cases, more or less, each containing 48 cans of an article labeled in part (can) "OYSTERS, CONTENTS, 10 OZ. AVOIR. NEW STYLE PACK MORE OYSTERS PER CAN, GIBBS AND CO., INC., DISTRIBUTORS, BALTIMORE, MD., 7½ OZS. DRAINED WEIGHT, BULL HEAD BRAND," in the possession of H. G. Hill Company of Nashville, Davidson County, Tennessee; that said cases of oysters were processed, packed and owned by the co-partnership Mavar Shrimp and Oyster Company, Ltd., claimant, and that said oysters were shipped and transported on or about May 13, 1943 from the city of Biloxi, Mississippi, via Louisville and Nashville Railroad, to H. G. Hill Company in Nashville, Tennessee, and that said oysters were intended to be sold or offered for sale in the Middle District of Tennessee.

"2. That said shipment was composed of 673 cases, more or less, of oysters, consisting of 26 Codes designated by the following numbers: 2BCB 2BGB 2BGC 2BGD 2BGE 2BGF 2BGG 2BGH 2BGI 2BGJ 2BHB 2BHC 2BHD 2BHE 2BHF 2BHG 2BHH 2BHJ 2BIA 2BIB 2BIC 2BID 2BIH 2BII 2BIJ 2EE.

"3. That the plaintiff took a pre-seizure sample from said cases of oysters identified as sample 42276-F, and pursuant to an order entered in this cause

on the 16th day of June, 1943, as authorized by Section 334 (c) of Title 21 United States Code, plaintiff took a representative sample from said cases of oysters identified as sample 32160-F. In taking both of these samples the Government representatives took a number of cans from each Code, recognizing the fact that each Code represented a separate lot or pack. These samples were examined and tested by the smell or organoleptic test in Government laboratories by Government representatives and these examinations of said samples revealed; (a) That all the cans in both samples were normal in exterior appearance. (b) That adulteration did not extend to the entire shipment in that decomposed oysters were found only in the samples of the following codes:

Code No. 2BCB consisting of 10 cases.
 Code No. 2BGH consisting of 45 cases.
 Code No. 2BGJ consisting of 4 cases.
 Code No. 2BHF consisting of 80 cases.
 Code No. 2BIH consisting of 2 cases.
 Code No. 2EE consisting of 18 cases.

159 cases.

(c) That no decomposed oysters were found in the samples taken from the remaining Codes and adulteration did not extend to them.

CONCLUSIONS OF LAW

"1. That the shipment of cases of canned oysters had moved in interstate commerce.

"2. That representatives of plaintiff took a representative sample from each Code and that each Code represented a separate lot or pack of oysters.

"3. That adulteration extended to only the cases of oysters in the following Codes:

Code No. 2BCB consisting of 10 cases.
 Code No. 2BGH consisting of 45 cases.
 Code No. 2BCJ consisting of 4 cases.
 Code No. 2BHF consisting of 80 cases.
 Code No. 2BIH consisting of 2 cases.
 Code No. 2EE consisting of 18 cases.

159 cases.

"4. That the remainder of the shipment of oysters composed of the other Codes are not adulterated within the meaning of the provisions of Subsection (a) (3) of Section 342, Title 21 United States Code, and therefore adulteration does not extend to the entire shipment.

"5. That the cans of oysters contained in the Codes in which adulterated oysters were found, as set out in 3 above, are condemned.

"6. That the oysters contained in the other Codes involved herein are not subject to condemnation."

On May 30, 1945, judgment was entered ordering that the portion found to be unadulterated be returned to the claimant and that the remainder be condemned and released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration.

8030. Adulteration of canned oysters. U. S. v. 985 Cases of Canned Oysters. Portion ordered released; remainder condemned and ordered released under bond. (F. D. C. No. 10280. Sample No. 36239-F.)

LABEL FILED: July 22, 1943, District of Colorado.

ALLEGED SHIPMENT: On or about May 19, 1943, by the Anticich Canning Co., from Biloxi, Miss.

PRODUCT: 985 cases, each containing 48 7½-ounce cans, of oysters at Denver, Colo.

LABEL, IN PART: "American Beauty Brand Oysters."

VIOLATION CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: The Anticich Canning Co., claimant, filed an answer on August 26, 1943, denying that the product was adulterated, and subsequently filed a petition for a release of a portion of the product which had been examined and