

LABEL, IN PART: "Frostopac Brand Cleaned Headless * * * H&G Scaled Whiting."

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

DISPOSITION: June 8, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

8222. Adulteration of crab meat. U. S. v. 2 Barrels of Crab Meat. Default decree of condemnation and destruction. (F. D. C. No. 16726. Sample No. 778-H.)

LIBEL FILED: June 27, 1945, Southern District of New York.

ALLEGED SHIPMENT: On or about June 23, 1945, by United Seafood Co., from Apalachicola, Fla.

PRODUCT: 2 barrels, each containing 100-pounds, of crab meat at New York, N. Y. This product was contaminated with fecal *Esch. coli*, and a portion was decomposed.

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

DISPOSITION: July 26, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

8223. Adulteration of canned oysters. U. S. v. 179 Cases and 49 Cases of Canned Oysters. Tried to the court. Judgment ordering portion of product released and remainder condemned and destroyed. Judgment affirmed on appeal. (F. D. C. Nos. 10034, 10215. Sample Nos. 28975-F, 29085-F, 29090-F.)

LIBELS FILED: May 29 and July 9, 1943, Middle District of Georgia.

ALLEGED SHIPMENT: On or about April 12, 1943, by the L. C. Mays Co., from Biloxi, Miss.

PRODUCT: 179 cases of oysters at Athens, Ga., and 49 cases of oysters at Elberton, Ga., each case containing 48 7½-ounce cans.

LABEL, IN PART: (Cans) "C. C. Brand Oysters * * * Packed By C. C. Company Biloxi, Miss."

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

DISPOSITION: On December 6, 1943, the cases having been consolidated and the C. C. Co., Biloxi, Miss., claimant, having filed an answer denying that the product was adulterated, the case was tried to the court without a jury. On December 29, 1943, the court made its findings that the product, with the exception of a portion identified by a certain code number, was adulterated. Judgment was thereupon entered, ordering that the fit portion be released and the remainder condemned and destroyed. Subsequently, the claimant having filed an appeal, the Circuit Court of Appeals for the 5th Circuit, on October 30, 1944, handed down the following memorandum opinion, reversing the district court and remanding the case with directions to dismiss the libel:

LEE, Circuit Judge: "The appellee by separate proceedings in rem sought to condemn two interstate shipments of canned oysters packed by appellant at its plant in Biloxi, Mississippi. One shipment of 179 cases, each containing 48 cans of 'C. C. Brand Oysters,' was consigned to Webb-Crawford Company, Athens, Georgia, and the other shipment of 49 cases, each containing 48 cans of 'C. C. Brand Oysters,' was consigned to Thornton Grocery Company, Elberton, Georgia. The actions, brought under the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A., Section 301, et seq., were consolidated for trial and tried to the court without a jury. The court found that one lot of oysters, code number 4J70, was not adulterated, was fit for food, and ordered it released. The remaining lots were found adulterated, unfit for food, and were ordered destroyed. The sole issue is whether the oysters were adulterated in violation of 21 U. S. C. 342 (a) (3) in that they were wholly or partially decomposed.

"The Federal Food, Drug and Cosmetic Act, after providing for condemnation proceedings by libel, with reference to procedure, provides: 'The article shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury . . . ' 21 U. S. C. Section 334 (b).

"The rule in this court in admiralty cases is that the hearing on appeal is de novo, and that it is the appellate court's duty to review the whole case and