

**20031. Adulteration and misbranding of canned sardines. U. S. v. 500 Cases**  
\* \* \*. (F. D. C. No. 34263. Sample No. 42399-L.)

**LIBEL FILED:** December 2, 1952, Northern District of California.

**ALLEGED SHIPMENT:** On or about November 19, 1952, by the San Xavier Fish Packing Co., from Monterey, Calif., to San Francisco, Calif., for shipment to the Philippine Islands.

**PRODUCT:** 500 cases, each containing 100 5-ounce cans, of sardines at San Francisco, Calif. Examination showed that the product was anchovies.

**LABEL, IN PART:** (Can) "AAA Triple A Brand in Tomato Sauce \* \* \* California Sardines."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (2), anchovies had been substituted in whole or in part for sardines.

Misbranding, Section 403 (b), the product was offered for sale under the name of another food, sardines.

**DISPOSITION:** January 23, 1953. Ziel & Co., Inc., San Francisco, Calif., having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond to be relabeled under the supervision of the Federal Security Agency.

**20032. Adulteration and misbranding of canned sardines. U. S. v. 421 Cases**  
\* \* \*. (F. D. C. No. 34265. Sample No. 27319-L.)

**LIBEL FILED:** December 2, 1952, Northern District of California.

**ALLEGED SHIPMENT:** On or about November 19, 1952, by the Santa Cruz Canning Co., from Moss Landing, Calif., to San Francisco, Calif., for shipment to the Philippine Islands.

**PRODUCT:** 421 cases, each containing 48 15-ounce cans, of sardines at San Francisco, Calif. Examination showed that the product was anchovies, containing little, if any, tomato sauce.

**LABEL, IN PART:** "Fortune Brand California Sardines In Tomato Sauce."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (2), anchovies had been substituted in whole or in part for sardines.

Misbranding, Section 403 (a), the label statement "Sardines In Tomato Sauce" was false and misleading as applied to anchovies containing little, if any, tomato sauce.

**DISPOSITION:** January 23, 1953. D. B. Berelson & Co., San Francisco, Calif., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for relabeling under the supervision of the Federal Security Agency.

**20033. Adulteration of canned sardines. U. S. v. 466 Cans \* \* \*. (F. D. C. No. 34268. Sample No. 33839-L.)**

**LIBEL FILED:** December 1, 1952, Eastern District of Michigan.

**ALLEGED SHIPMENT:** On or about October 3, 1952, by the Great A & P Tea Co., from New York, N. Y.

**PRODUCT:** 466 3 $\frac{3}{4}$ -ounce cans of sardines at Detroit, Mich.

**LABEL, IN PART:** "Topmast Brand Product of Norway \* \* \* Fancy Norwegian Smoked Brisling Sardines in Pure Olive Oil Packed By: A/S Fønnes Preserving Co. Ltd. Bergen Norway."

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance by reason of the presence of decomposed fish.

**DISPOSITION:** January 12, 1953. Default decree of condemnation and destruction.

**20034. Action for declaratory judgment. L. C. Mays Co., Inc., and Lamar C. Mays v. Federal Security Agency, Food and Drug Administration, and E. C. Boudreaux. Complaint dismissed. Appeal taken to Court of Appeals for Fifth Circuit. Appeal dismissed.**

**COMPLAINT FILED:** On or about December 13, 1951, L. C. Mays Co., Inc., New Orleans, La., and Lamar C. Mays, president of the corporation, filed a complaint against the Federal Security Agency, the Food and Drug Administration, and E. C. Boudreaux, Chief of the New Orleans District of the Food and Drug Administration.

**NATURE OF CHARGE:** The complaint alleged that L. C. Mays Co., Inc., and Lamar C. Mays, plaintiffs in the case, bought, sold, stored, and distributed canned oysters and canned shrimp in interstate commerce; that on or about October 16, 1951, Food and Drug Administration inspectors, pursuant to Section 704 of the Federal Food, Drug, and Cosmetic Act, requested of a certain storage company permission to enter its warehouse and inspect canned shrimp which had been shipped in interstate commerce and stored in the warehouse to the account of the plaintiffs; and that the plaintiffs did not object to the entry of the inspectors into the warehouse, but that they did instruct the warehouseman to refuse the inspectors permission to withdraw samples of shrimp for laboratory examination.

The complaint further alleged that the refusal was justified because Section 704 of the Act did not authorize inspectors to obtain samples of foodstuffs for analyses, but that, nevertheless, the plaintiffs were served on or about December 6, 1951, with a "Notice of Hearing" and "Charge Sheet," under Section 305 of the Act, informing the plaintiffs that investigations by the Food and Drug Administration indicated that a violation of Section 301 (f) of the Act, relating to refusal to permit inspection as authorized by Section 704, had occurred for which the plaintiffs were responsible. In the alternative, it was alleged that if sample collection was authorized by law, the statute was unconstitutional, contravening the Fourth Amendment because it permitted unlawful search and seizure, and the Fifth Amendment because it violated the privilege against self-incrimination and was a taking of private property without due process of law.

**PRAYER FOR RELIEF:** That judgment be entered declaring (1) that Section 704 of the Act did not authorize Food and Drug inspectors to obtain for analyses samples of packaged foods during inspection of a warehouse and (2) that the refusal to grant permission for the withdrawal of samples was not a violation of Section 301 (f); and enjoining further administrative action.

**DISPOSITION:** The Government filed a motion for dismissal of the complaint, on the ground that such complaint failed to state a claim on which relief could be granted. On April 16, 1952, the matter came on for argument before the court, at the conclusion of which the court granted the Government's motion for dismissal. The decision was appealed to the United States Court of Appeals for the Fifth Circuit, and on February 13, 1953, the appeal was dismissed by that court, on the ground that the case had become moot as a result of the