

CHARGE: 402(a)(3)—contained decomposed fish when shipped.

DISPOSITION: 6-16-58. Default—destruction.

24980. Frozen whiting. (F.D.C. No. 41540. S. No. 2-622 P.)

QUANTITY: 69 cases, 5 10-lb. pkgs. each, at Charlotte, N.C.

SHIPPED: 2-27-58, from Greenville, S.C. This was a return shipment.

LIBELED: 5-2-58, W. Dist. N.C.

CHARGE: 402(a)(3)—contained decomposed fish when shipped.

DISPOSITION: 6-23-58. Default—destruction.

24981. Frozen rosefish fillets. (F.D.C. No. 41549. S. No. 6-747 P.)

QUANTITY: 97 10-lb. ctns. at Boston, Mass.

SHIPPED: The fillets were prepared and packed from fish caught by the fishing vessel "Ethelena" in the Atlantic Ocean outside the limits of Massachusetts and landed at Boston, Mass., on 4-24-58.

LABEL IN PART: (Ctn.) "19594 Rec'd 4-24-8"; (cellophane wrapper) "Georges Bank * * * Rosefish Fillets."

LIBELED: 5-7-58, Dist. Mass.

CHARGE: 402(a)(3)—contained parasitic cysts when shipped.

DISPOSITION: 6-23-58. Default—destruction.

24982. Oysters. (Inj. No. 305.)

COMPLAINT FOR INJUNCTION FILED: 10-12-56, Dist. Md., against the Oxford Packing Co., Inc., Oxford, Md.

CHARGE: The complaint alleged that the defendant was engaged in the business of processing, preparing, packing into hermetically sealed or friction-top cans, and selling and distributing raw oysters; and that the defendant had been introducing and delivering for introduction into interstate commerce, oysters which were adulterated within the meaning of 402(b)(2) in that water had been substituted in part for oysters, and 402(b)(4) in that water had been added, mixed, and packed with the oysters so as to increase their bulk and reduce their quality.

The complaint alleged also that the oysters purported to be and were represented as shucked oysters, a food for which definitions and standards of identity have been prescribed; that such definitions and standards provided that oysters should be shucked, washed, and drained prior to packing in such a manner that not over 5 percent of drained liquid would be found in the oysters within 15 minutes after packing; that extensive experimental packs of authentic oysters established that oysters packed in conformity with the standards would not exceed the 5 percent limit of drained liquid; that specific shipping experiments showed that legally packed oysters would not subsequently release liquid and that there would be no increase in the drained liquid contents of the cans of oysters with the passage of time after packing; that samples collected from interstate shipments made by the defendant, upon analysis, disclosed the presence of amounts of liquid greatly in excess of 5 percent; that such analytical findings established that the defendant's oysters were adulterated by the addition of water which could have been added by (1) excessive soaking of the oysters in fresh water to the extent that the oysters absorbed a large quantity of water, (2) the addition of water to the cans of oysters at the time of packing, (3) inadequate draining of the oysters after washing so that a sig-

nificant portion of the wash water was retained and packed into the cans with the oysters, or (4) a combination of the above factors.

The complaint alleged further that since the time the defendant commenced business in 1952 the Food and Drug Administration had examined samples from 41 interstate shipments of the firm's oysters; that 20 of these shipments (48 percent) were found to contain drained liquid in excess of that permitted by the standards; that 9 of the sampled lots were seized in possession of the consignees, and that in these lots as much as 13.3 percent of free liquid was found with the average of the 9 samples being 10.08 percent; that the average of the solids found in the samples of the lots seized was 10.11 percent while the average solids of 6 authentic packs made of the firm's plant by Food and Drug Inspectors (oysters observed being prepared, shucked, and then washed and drained as specified in the standards) during the oyster seasons 1952, 1953, 1954, and 1956 was 14.14 percent; and that the difference between the solids content of the authentic packs and the solids content of the sampled lots indicated that the latter contained added water.

It was alleged also that the defendant was well aware that its activities resulted in violations of the law; and that repeated warnings given to the management during factory inspections, during the preparation of authentic packs, and at administrative hearings resulting from seizures and violative shipments encountered, had brought about a practice of packing "according to the book" only when Food and Drug Inspectors were present at the plant.

DISPOSITION: 1-18-57. The defendant having consented, the court entered a preliminary injunction enjoining and restraining the defendant (until the complaint filed by the Government was dismissed by the Government or set aside by the court upon hearing the complaint for permanent injunction) from causing to be introduced and delivering for introduction into interstate commerce, raw oysters or any other such articles of food which are packed in such manner that over 5 percent of drained liquid is found in the oysters at any time after 15 minutes after packing and are thus adulterated within the meaning of 402(b) (2) and (4).

FRUITS AND VEGETABLES

CANNED FRUIT*

24983. Maraschino cherries, cocktail cherries, and glace cherries (4 seizure actions). (F.D.C. Nos. 41255, 41342, 41346, 41380. S. Nos. 44-575 M, 64-564/5 M, 65-618 M, 88-225 M.)

QUANTITY: 5 cases, 4 1-gal. cans each, of maraschino cherries and 4 cases, 4 1-gal. cans each, of cocktail cherries at Albany, N.Y.; 9 barrels of maraschino cherries at Buffalo, N.Y.; 2 barrels of maraschino cherries at St. Louis, Mo.; and, 25 35-lb. cans of glace cherries at North East, Pa.

SHIPPED: Between 11-20-57 and 12-19-57, from North East, Pa., by Ohio Fruit Products, Inc. to Albany, and Buffalo, N.Y., Cleveland, Ohio, and St. Louis, Mo. On 12-10-57, the Cleveland shipment was returned to North East, Pa.

LABEL IN PART: (Cases) "Whole Maraschino Cherries" and "Cocktail Cherries"; (bbls.) "Whole Maraschino Cherries" and "Non-bleeding Maraschino Cherries"; (35-lb. cans) "Garden of Eden Whole and Broken Glace Cherries."

*See also No. 24990.