

11347. Adulteration and misbranding of canned tomatoes. U. S. v. 1,000 Cases, et al., of Canned Tomatoes. Consent decrees entered providing for release of product under bond. (F. & D. Nos. 15488, 15489, 15490, 15491, 15521. I. S. Nos. 9310-t, 9313-t, 9317-t. S. Nos. E-3612, E-3627.)

On October 22 and November 1, 1921, respectively, the United States attorney for the Southern District of Georgia, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 1,800 cases of canned tomatoes, remaining unsold in the original packages at Savannah, Ga., alleging that the article had been shipped by D. E. Foote & Co., Inc., Baltimore, Md., September 9, 1921, and transported from the State of Maryland into the State of Georgia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "'Fox' * * * Brand" (or "Compass Brand") "Tomatoes * * * Packed by D. E. Foote & Co. Inc. Baltimore, Md."

Adulteration of the article was alleged in the libels for the reason that added purée, pulp and juice from skins and cores, and water had been mixed and packed with and substituted for the said article, to wit, tomatoes. Adulteration was alleged for the further reason that the article was mixed and packed in a manner whereby damage and inferiority were concealed.

Misbranding was alleged in substance for the reason that the statements, "'Fox' * * * Brand Tomatoes" or "Compass Brand Tomatoes," as the case might be, together with the design of a red tomato, appearing on the said labels, were false and misleading and deceived and misled the purchaser for the reason that the contents of the said cans was not made up solely of the article represented by said label, but the said article had mixed therewith purée, pulp and the juice from skins and cores of tomatoes, and water. Misbranding was alleged for the further reason that the article was an imitation of and offered for sale under the distinctive name of an article other than that contained in the said cans, that is, the contents of the said cans was offered for sale as tomatoes and not as tomatoes mixed with other substances.

On December 10, 1921, D. E. Foote & Co., Inc., Baltimore, Md., claimant, having filed an answer admitting the allegations of the libel and praying the release of the product to be relabeled under the supervision of this department, judgments of the court were entered ordering that the said product be released to the claimant upon the execution of bonds in the aggregate sum of \$1,285.30, in conformity with section 10 of the act.

C. W. PUGSLEY, *Acting Secretary of Agriculture*

11348. Misbranding and alleged adulteration of canned oysters. U. S. v. 529 Cases of Oysters. Decree of condemnation and forfeiture. Product released upon deposit of collateral. (F. & D. No. 17090. I. S. Nos. 8302-v, 7800-v. S. Nos. W-1261, W-1262.)

On or about December 29, 1922, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 529 cases of oysters at Tacoma, Wash., alleging that the article had been shipped by the Dunbar-Dukate Co., from New Orleans, La., in part March 6 and in part September 29, 1922, and transported from the State of Louisiana into the State of Washington, and charging adulteration and misbranding in violation of the Food and Drugs Act, as amended. A portion of the article was labeled in part: "Buck Oysters Standard Packed by Dunbar-Dukate Co. New Orleans, La. Biloxi, Miss * * * Net Contents 10 Ounces Oyster Meat." The remainder of the said article was labeled in part: "Imperial Brand High Grade Packed By Dunbar-Dukate Co. New Orleans, La. Biloxi, Miss. Imperial Brand Cove Oysters Net Contents 8 Ounces Oyster Meat."

Adulteration of the article was alleged in the libel for the reason that water or brine had been mixed and packed with and substituted wholly or in part for the article.

Misbranding was alleged for the reason that the statement, "Net Contents 10 Ounces Oyster Meat," was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was [food] in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On January 13, 1923, the Dunbar-Dukate Co., Inc., New Orleans, La., having entered an appearance as claimant for the property and having confessed judgment, a decree of condemnation and forfeiture was entered, the court finding