

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, lead arsenate, which might have rendered it injurious to health.

On November 10, 1931, no claimant having appeared for the property, judgment of condemnation was entered and it was ordered by the court that the product be destroyed by the United States marshal or delivered to a private benevolent organization of Pittsburgh. Objection having been made by a representative of this department to the release of the apples without provision being first made to insure the removal of the lead arsenate before their use, the marshal destroyed the product.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19022. Adulteration and misbranding of butter. U. S. v. 30 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 27826. I. S. No. 45210. S. No. 5534.)

Samples of butter from the shipment herein described having been found to contain less than 80 per cent of milk fat, the standard provided by Congress, the Secretary of Agriculture reported the matter to the United States attorney for the Northern District of Illinois.

On December 1, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 30 tubs of butter, remaining in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped by the Whitehall Creamery Association, from Whitehall, Wis., on or about November 11, 1931, and had been transported from the State of Wisconsin into the State of Illinois, and charging adulteration and misbranding in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that a substance deficient in butterfat had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for the said article. Adulteration was alleged for the further reason that the article was deficient in butterfat, in that it contained less than 80 per cent of butterfat.

Misbranding was alleged for the reason that the article had been sold and shipped as butter, which was false and misleading in that the said article contained less than 80 per cent of milk fat.

On December 3, 1931, Goldenberg Bros. & Co., Chicago, Ill., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant to be reworked under the supervision of this department upon payment of costs and the execution of a bond in the sum of \$500, conditioned that it should not be sold or otherwise disposed of contrary to the Federal food and drugs act and other existing laws.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19023. Adulteration of canned tuna. U. S. v. 620 Cases of Canned Tuna. Tried to the court. Judgment for the Government. Decree of condemnation, forfeiture, and destruction. (F. & D. No. 26364. I. S. No. 12424. S. No. 4700.)

Samples of canned tuna from the shipment herein described having been found to be decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Washington.

On May 14, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 620 cases of canned tuna, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped by the California Sea Food Co., Los Angeles, Calif., on or about April 17, 1931, and had been transported from the State of California into the State of Washington, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Tuna for Pets Not Intended for Human Consumption * * * California Packing Corporation * * * San Francisco, Calif."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a decomposed animal substance.

On June 9, 1931, Morris Muskatel, Seattle, Wash., entered an appearance in the case and filed a claim and answer to the libel. On July 29, 1931, the case having come on for trial before the court, evidence was introduced on behalf

of the Government and the claimant. On August 25, 1931, the court handed down the following memorandum decision (Neterer, J.):

"Libelant seeks to condemn 620 cases of canned tuna, labeled 'Tuna for pets not intended for human consumption * * *.' The libelant's expert testified that he examined 96 cans in San Francisco of the quantity in issue by opening the cans, testing the contents for firmness, and smelling to determine the condition; that 21 per cent were in advanced stage of decomposition, the remaining were in satisfactory condition. At trial 12 cans were opened, selected at random. One was shown to be decomposed by the same test. The same standards were applied as applied to tuna consigned for human consumption. The claimant's expert at trial agreed with libelant's witness that the cans examined at trial, one of which was condemned, were not in a state of decomposition; but he stated that the condemned can is fit for the purposes for which it was intended, and that he had fed a number of like cans to his own cat, and the cat thrived.

"From all the evidence presented the conclusion is inevitable that some of the canned product was decomposed and others tainted. 21 per cent of the 96 cans examined were somewhat decomposed, and that between 8 and 9 per cent of the remaining portion was tainted to the extent that it was susceptible to smell, making practically one-third of the product open to criticism and imposing upon the public a canned product, of which one-third was unsound.

"The act is broad in its provision, and section 6 provides the term 'food,' as used, shall include food for man or other animals. The intent of the act, no doubt, was to prevent imposition of fraud upon the public by canning and commercializing a product which was decomposed and not in a healthy, normal condition. The provisions of the act are broader than its title, which shows the object to be against adulterated, misbranded, poisonous, and deleterious food, drugs, etc. The act, no doubt, was primarily in the interest of humanity and against fraudulent practices.

"The product by its label, presumably, is for dogs and cats. As to that, however, there is no evidence. The same standard of test was applied as for human consumption. Common sense enters into and becomes a part of every law, in the absence of explicit enactment. The same standard—test and strictness—applied to food for human consumption may not be applied to food branded for animals other than man—'Man, the autocrat among animals'—Heine. 'Man,' said Thomas Browne, 'is a noble animal, splendid in ashes, and pompous in the grave. A dog is never offended at being pelted with bones,' although a man's best friend is his dog, who often has more trouble to get food than to digest it. The old maxim, 'Who will not feed cats must feed mice and rats,' may be contemplated. But with all considerations and tests, there are other pets than dogs and cats, and in view of the broad scope of the act and of the large percentage of decomposed and tainted commodity (practically one-third), the seizure is confirmed, and an order of condemnation is directed."

On November 4, 1931, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal, and that the claimant pay costs.

ARTHUR M. HYDE, *Secretary of Agriculture.*

19024. Misbranding of cottonseed meal. U. S. v. Elk City Cotton Oil Co. Plea of guilty. Fine, \$50 and costs. (F. & D. No. 26597. I. S. No. 19707.)

Samples of cottonseed meal from the shipment herein described having been found to contain less crude protein and more crude fiber than declared on the label, the Secretary of Agriculture reported the matter to the United States attorney for the Western District of Oklahoma.

On November 14, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid an information against the Elk City Cotton Oil Co., a corporation, Elk City, Okla., alleging shipment by said company, in violation of the food and drugs act, on or about October 15, 1930, from the State of Oklahoma into the State of Texas, of a quantity of cottonseed meal that was misbranded. The tags attached to the sacks containing the article were labeled in part: "43% Protein Elko Brand Cottonseed Meal Prime Quality Manufactured by Elk City Cotton Oil Company, Elk City, Oklahoma Guaranteed Analysis: Crude Protein not less than 43.00 Per Cent * * * Crude Fiber not more than 12.00 Per Cent."

It was alleged in the information that the article was misbranded in that the statements, to wit, "Guaranteed Analysis: Crude Protein not less than