

20060. Misbranding of canned cherries and canned corn. U.S. v. 30 Cases of Canned Cherries. Default decree of condemnation, forfeiture, and sale. U.S. v. 82 Cases of Canned Corn. Product adjudged misbranded and ordered released under bond to be relabeled. (F. & D. Nos. 28484, 28485. Sample Nos. 2386-A, 2397-A.)

These actions involved shipments of canned cherries and canned corn, respectively. Sample cans, examined from both lots, were found to contain less than the declared weight. The canned cherries were also found to be below the standard for canned cherries promulgated by this Department and were not labeled to show that they were substandard.

On July 21, 1932, the United States attorney for the District of New Mexico, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of 30 cases of canned cherries at Las Vegas, N.Mex., and 82 cases of canned corn at Albuquerque, N.Mex. It was alleged in the libels that the articles had been shipped in interstate commerce by the Otoe Food Products Co., of Nebraska City, Nebr., the canned corn having been shipped on or about October 29, 1930, from Hamburg, Iowa, to Albuquerque, N.Mex., and the canned cherries having been shipped on or about November 21, 1931, and March 3, 1932, from Nebraska City, Nebr., to Las Vegas, N.Mex., and that they were misbranded in violation of the Food and Drugs Act as amended. The articles were labeled in part: "Nature's Best Otoe Brand Pitted Red Cherries Net Weight 1 Lb. 5 Oz."; and "Pioneer Brand Narrow Grain Sugar Corn Contents 1 Lb. 1½ oz."; "Packed By Otoe Food Products Co. Nebraska City, Nebraska."

It was alleged in the libels that the articles were misbranded in that the statement "Net Weight 1 Lb. 5 Oz." with respect to the canned cherries, and the statement, "Contents 1 Lb. 1½ oz.," with respect to the canned corn, were false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the articles were in package form and the quantities of the contents were not plainly and conspicuously marked on the outside of the packages. Misbranding of the canned cherries was alleged for the further reason that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, in that the liquid portion read less than 16 degrees Brix, and its label did not bear a plain and conspicuous statement as prescribed by the Secretary, indicating that the article fell below such standard. Misbranding of the canned cherries was alleged for the further reason that the label was false and misleading, since it did not apprise the purchaser that the article was water-packed cherries.

On August 22, 1932, no claimant having appeared for the canned cherries, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the article be relabeled "Water-Packed Cherries, Contents One Lb.," and sold by the United States marshal. On the same date, the Brown Bros. Brokerage Co., having appeared as claimant for the canned corn, a decree was entered adjudging the product to be misbranded in that it was short weight, and ordering that it be released to the claimant upon payment of costs and the execution of a bond in the sum of \$375, conditioned that it be relabeled "One Lb.," and that it should not be disposed of in violation of the Federal Food and Drugs Act and all other laws.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20061. Adulteration and misbranding of butter. U.S. v. 31 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 28553. Sample Nos. 3930-A, 3942-A.)

This action involved the shipment of a quantity of butter, samples of which were found to contain less than 80 percent by weight of milk fat, the standard prescribed by Congress.

On or about July 5, 1932, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 31 tubs of butter, remaining in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about June 21, 1932, by Wauzeka Creamery Co., from Wauzeka, Wis., to Chicago, Ill., 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 butter fat had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had