

22562. Adulteration and misbranding of frozen eggs. U. S. v. 700 Cans of Frozen Eggs. Decree of condemnation and forfeiture. Product released under bond. (F. & D. no. 28002. I. S. no. 52267. S. no. 6037.)

This case involved a shipment of frozen eggs which upon analysis were found to be low in solids and fat, indicating the presence of added water.

On April 11, 1932, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 700 cans of frozen eggs at Detroit, Mich., alleging that the article had been shipped in interstate commerce, on or about May 19, 1931, by Swift & Co., from Keokuk, Iowa, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Brookfield Frozen Eggs, free from adulterants * * * Swift & Company. U. S. A. Whole."

It was alleged in the libel that the article was adulterated in that water had been mixed and packed therewith so as to reduce, lower, or injuriously affect its quality or strength, and had been substituted in part for the article.

Misbranding was alleged for the reason that the statement on the label, "Frozen Eggs free from Adulterants", was false and misleading and deceived and misled the purchaser.

On July 27, 1932, Swift & Co., claimant, having admitted the allegations of the libel and paid costs of the proceedings, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the claimant upon the execution of a bond in the sum of \$500, conditioned that it should not be disposed of in violation of the Federal Food and Drugs Act and all other laws.

M. L. WILSON, *Acting Secretary of Agriculture.*

22563. Adulteration of canned salmon. U. S. v. 1,443 Cases of Canned Salmon. Tried to the court. Judgment for the Government. Decree of condemnation; product released under bond. (F. & D. no. 28938. Sample nos. 14839-A, 26041-A.)

Samples of canned salmon taken from the shipment in this case were found to be partially decomposed.

On September 21, 1932, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 1,443 cases of canned salmon at Seattle, Wash., alleging that the article had been shipped in interstate commerce, on or about July 24, 1932, by Libby, McNeill & Libby, from Lockpok, Alaska, and charging adulteration in violation of the Food and Drugs Act.

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

On October 19, 1932, Libby, McNeill & Libby entered an appearance and filed a claim and answer. On November 20, 1933, a motion for the entry of an order directing that the product be delivered to claimant was argued before the court and denied. On February 28, 1934, the case was tried to the court and on May 23, 1934, the following memorandum decision was handed down (Cushman, D. J.):

"The statute (title 21, U. S. C. A., sectn. 14) in part, provides:

* * * * Upon payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of said sections, or the laws of any State, Territory, District, or insular possession, the court may by order direct that such articles be delivered to the owner thereof. * * *

"Libelant contends that, although the owner offers to pay the costs and give bond and the court finds that the seized food is only decomposed in part; that it is feasible to separate the decomposed portion from the remainder and that the claimant offers to do so under the supervision of representatives of the Food and Drug Administration, yet, the court, by the act quoted, is vested with a discretion and may refuse delivery to the owner and order the destruction or sale of the seizure.

"Conceding, in a suit such as the present, a principle analogous to that of equity requiring a petitioner for such relief to come into court with clean hands, yet two objections appear to its application in this case:

"First, the evidence does not warrant the court in finding intentional wrong doing on the part of the claimant.

"Second, public policy may require the relaxation of the rule recognized by the maxim to which reference is made. 21 Corpus Juris 189, Sect. 175 and cases cited to the text.