

26531. Adulteration of canned tuna fish. U. S. v. 100 Cases of Canned Tuna Fish. Decree of condemnation. Product ordered released under bond conditioned that decomposed portion be destroyed. (F. & D. no. 36932. Sample no. 44084-B.)

This case involved canned tuna fish that was in part decomposed.

On January 13, 1936, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 100 cases of canned tuna fish at Springfield, Mass., alleging that the article had been shipped in interstate commerce on or about October 20, 1935, by Franco-Italian Packing Co., Inc., from Terminal Island, Calif., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (Cans) "Wedge-wood Brand Tuna Fish * * * Downing, Taylor Co. Distributors, Springfield, Mass."

The article was alleged to be adulterated in that it consisted in whole or in part of a decomposed animal substance.

On November 23, 1936, the Franco-Italian Packing Co., a corporation, having appeared as claimant and having admitted the allegations of the libel, judgment of condemnation was entered and it was ordered that the product be released under bond, conditioned that the portion which was bad be destroyed.

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

26532. Misbranding of bakery products. U. S. v. Devon Bakeries, Inc. Plea of guilty. Fine, \$155. (F. & D. no. 36093. Sample nos. 22092-B to 22098-B, incl., 42868-B to 42871-B, incl., 44703-B, 44704-B, 44705-B.)

These products were misbranded because of an erroneous statement of the weight of the contents of the packages or failure to bear a plain and correct statement of the quantity of the contents of the packages. One of the products was further misbranded because of false and misleading claims regarding its alleged effectiveness in weight reduction.

On July 16, 1936, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Devon Bakeries, Inc., New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act as amended, on or about August 16, August 27, September 7, September 18, and October 2, 1935, from the State of New York into the State of New Jersey; and on or about July 17, September 18, September 20, and September 25, 1935, from the State of New York into the State of Pennsylvania, of quantities of bakery products which were misbranded. The articles were labeled variously: "Devonets Canape Wafers De Luxe * * * Devon Bakeries, Inc. New York, N. Y. Chicago, Ill. Net Weight Not Less Than 4½ [or "4"] Oz."; "Devonsheer * * * Melba Toast * * * Net Weight Not Less Than 3¾ Ounces"; "Devonsheer * * * 100% Whole Wheat Toast * * * 3⅞ Oz. * * * The Perfect Health Food for Weight Control * * * For Weight Control * * *"; "Devonsheer Old English Golden Brown Toasted Crumbs * * * One Pound Net"; "Devonsheer Kraka Nuts * * * Half Pound Net"; "Devonsheer Gluten-Wheat Melba * * * Composition 2.74 grams * * *."

The articles, with the exception of the gluten-wheat melba, were alleged to be misbranded in that the statements, "Net Weight Not Less Than 4½ Oz.", "Net Weight Not Less Than 3¾ Ounces", "3⅞ Oz.", "One Pound Net", "Half Pound Net", "Net Weight Not Less Than 4 Oz.", and "Ozs. Net, 3⅞ Oz.", borne on the packages containing the various articles, were false and misleading and in that the articles were labeled as aforesaid so as to deceive and mislead the purchaser, since the packages did not each contain the amount declared on the label, but did contain, in most instances, less than the amount so declared. The whole wheat toast was alleged to be misbranded further in that the statements, "For Weight Control * * * The Perfect Health Food for Weight Control", borne on the package, were false and misleading and were borne so as to deceive and mislead the purchaser into the belief that the article was a perfect health food for weight control; whereas it was not the perfect health food for weight control, since it contained no ingredient or combination of ingredients the consumption of which would control weight. All products were alleged to be misbranded in that they were foods in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package since in the case of all

products, with the exception of the gluten wheat melba, a large proportion of the packages contained less than the amount declared, and in the case of the gluten wheat melba, which was labeled "2.74 grams", the quantity of the contents was not stated in terms of avoirdupois weight and most of the packages examined contained less than the amount declared in grams.

On August 13, 1936, a plea of guilty was entered on behalf of the defendant, and the court imposed a fine of \$155.

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

26533. Misbranding of honey. U. S. v. Levi E. Rogers. Plea of nolo contendere. Fine, \$25. (F. & D. no. 37003. Sample nos. 42519-B, 42552-B to 42555-B, incl., 50427-B, 50428-B, 50429-B.)

This case involved a shipment of honey that was short in weight.

On September 15, 1936, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Levi E. Rogers, Binghamton, N. Y., alleging shipment by said defendant in violation of the Food and Drugs Act on or about June 20, September 27, October 9, and October 28, 1935, from the State of New York into the State of Pennsylvania of a number of jars and pails of honey that was misbranded. The article was labeled: "12 Ozs. [or "7½ Ozs.", "21 Ozs.", or "5 Lbs."] Net Wgt. Pure Honey Put up By L. E. Rogers, Binghamton, N. Y."

The article was alleged to be misbranded in that the statements on the jars and pails containing the article, "12 Ozs. Net Wgt.", "7½ Ozs. Net Wgt.", "21 Ozs. Net Wgt.", and "5 Lbs. Net Wgt.", were false and misleading since the jars and pails did not contain the amount declared on the label, but did contain a lesser amount. 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 September 15, 1936, the defendant entered a plea of nolo contendere; and on September 18, 1936, the court imposed a fine of \$25.

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

26534. Adulteration and misbranding of cheese. U. S. v. Sunrise Dairy Products, Inc. Plea of guilty. Fine, \$50 and costs. (F. & D. no. 37007. Sample nos. 42609-B, 50290-B.)

This case involved cheese that was deficient in milk fat and contained excessive moisture.

On April 30, 1936, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Sunrise Dairy Products, Inc., Fremont, Ohio, alleging shipment by said defendant in violation of the Food and Drugs Act, on or about October 2 and October 15, 1935, from the State of Ohio into the State of New York of a quantity of alleged whole milk cheese that was adulterated, and of a quantity of alleged full cream cheese that was adulterated and misbranded in violation of the Food and Drugs Act.

The article represented to be whole milk cheese was alleged to be adulterated in that a product containing in the water-free substance less than 50 percent of milk fat, had been substituted for cheese, a product containing in the water-free substance not less than 50 percent of milk fat, which the article purported to be. The article represented to be full cream cheese was alleged to be adulterated in that a product containing an excessive amount of moisture, i. e., more than 39 percent of water, and containing in the water-free substance less than 65 percent of milk fat, namely, not more than 46.75 percent of milk fat, had been substituted for cream cheese, i. e., a product which should contain in the water-free substance not less than 65 percent of milk fat, which the article purported to be.

The latter product was alleged to be misbranded in that the statement "Full Cream Cheese", borne on the boxes, was false and misleading, since said statement represented that the article was cream cheese, a product containing not more than 39 percent of moisture and containing in the water-free substance not less than 65 percent of milk fat, whereas it contained not less than 40.89 percent of water and not more than 46.75 percent of milk fat; in that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was cream cheese; and in that it was offered for sale under the distinctive name of another article, namely, cream cheese.