

**28665. Adulteration of butter. U. S. v. 14 Tubs of Butter. Decree of condemnation and forfeiture. Property ordered released under bond. (F. & D. No. 41800. Sample No. 2934-D.)**

This product was deficient in milk fat.

On February 7, 1938, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 14 tubs of butter at San Francisco, Calif., alleging that the article had been shipped in interstate commerce on or about January 13, 1938, by the Beatrice Creamery Co. from Topeka, Kans., and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat as prescribed by act of March 4, 1923.

On February 15, 1938, the Wilsey Bennett Co., San Francisco, Calif., having appeared as claimant, judgment of condemnation was entered, and it was ordered that the butter be released to the claimant under bond conditioned that it be brought up to the legal standard under the supervision of this Department.

W. R. GREGG, *Acting Secretary of Agriculture.*

**28666. Alleged adulteration and misbranding of preserves and jellies. U. S. v. 430 Cases of Preserves and Jellies (and 3 other seizures of similar products). Tried to the court. Libels ordered dismissed. (F. & D. Nos. 38437, 38521, 39039, 39040, 39199. Sample Nos. 3074-C, 3075-C, 9913-C, 10201-C, 10223-C to 10228-C, incl., 10472-C, 10473-C, 10474-C, 10476-C.)**

On November 16, 1936, and February 8 and March 11, 1937, the United States attorney for the District of Arizona, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 470 cases and 2,573 jars of assorted preserves and jellies in various lots at Phoenix and Tucson, Ariz., alleging that the articles had been shipped in interstate commerce on or about July 2 and 22, September 8 and 24, October 5, 1936, January 2 and 20 and February 2, 1937, from Los Angeles, Calif., by the Kopper Kettle Syrup Co., and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part: "Kopper Kettle Brand \* \* \* Kopper Kettle Syrup Co. Los Angeles."

The libels alleged in substance that the articles were adulterated in that there had been mixed and packed with them, so as to reduce or lower their quality, one or more of the following substances, viz: Sugar, pectin, acid, or fruit moisture, or water which should have been removed by boiling. They were alleged to be adulterated further in that mixtures containing less fruit or fruit juice and more sugar than preserves and jellies should contain had been substituted for preserves and jellies, which they purported to be; and in that the aforesaid substances had been mixed with the said preserves and jellies in a manner whereby inferiority was concealed.

The articles were alleged to be misbranded in that the following statements borne on the labels, "Pure Strawberry [or "Peach," "Apricot," "Red Raspberry," "Blackberry," or "Loganberry"] Preserves," and "Pure Concord Grape [or "Strawberry," "Crabapple," "Red Currant," "Plum," "Blackberry," "Youngberry," or "Red Raspberry"] Jelly," were false and misleading and tended to deceive and mislead the purchaser when applied to articles resembling preserves and jellies, but which allegedly were not preserves or jellies; and in that they were imitations of and were offered for sale under the distinctive names of other articles, preserves and jellies.

J. D. Armstrong and B. D. Topf, copartners trading as the Kopper Kettle Syrup Co., having appeared as claimants, the cases were consolidated and came on for trial before the court without a jury on October 26, 1937. At the conclusion of the Government's case, upon motion of the claimants, the libels were dismissed as to the jellies. A motion to dismiss as to the preserves was overruled. The trial was resumed and concluded on October 28, 1937, and the issues were submitted to the court on briefs. On January 6, 1938, the court made its finding that the preserves were not adulterated or misbranded and on January 18, 1938, entered judgment that the libels be dismissed and the preserves released to the claimants—the jellies having been released by order dated October 29, 1937.

W. R. GREGG, *Acting Secretary of Agriculture.*