

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, because it was not normally colored and the fruit was not peeled since the average amount of peel per pound of net content exceeded one square inch, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that such canned food fell below such standard.

On March 18, 1938, W. H. Sanford, claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled.

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

28863. Misbranding of canned cherries. U. S. v. 61 Cases of Cherries. Default decree of condemnation. Product delivered to charitable institution. (F. & D. No. 41669. Sample No. 67645-C.)

This product was packed in water and fell below the standard for fill of container established by this Department but was not labeled to indicate that it was substandard. It was also short weight.

On February 11, 1938, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 61 cases of canned cherries at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about August 3, 1937, from Frankfort, Mich., by the Elberta Packing Co., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Telmo Brand Red Sour Pitted Cherries * * * Distributed by Franklin MacVeagh & Co., Chicago."

It was alleged to be misbranded in that the statement on the label, "Contents 1 Lb. 5 Oz. Avd.," was false and misleading and tended to deceive and mislead the purchaser when applied to an article that was short weight; in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package since the quantity stated was not correct; and in that it was canned food and fell below the standard of quality, condition, and fill of container promulgated by the Secretary of Agriculture for such canned food, since the cherries were packed in water and their drained weight was less than 13.5 ounces, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that such canned food fell below such standard.

On April 28, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a charitable institution.

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

28864. Misbranding of canned cherries. U. S. v. 16 Cases, 9 Cases, and 12 Cases of Canned Cherries. Consent decree ordering product released under bond. (F. & D. Nos. 41728, 41729. Sample Nos. 14871-D, 14872-D.)

This product was packed in water and the labels of two lots did not bear the statement prescribed by this Department. The other lot fell below the standard for fill of container established by this Department and was not labeled to indicate that it was substandard.

On or about February 2, 1938, the United States attorney for the District of Idaho, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 37 cases of canned cherries at Wallace, Idaho, alleging that the article had been shipped in interstate commerce on various dates between November 17, 1937, and January 5, 1938, from Spokane, Wash., by the Roundup Grocery Co., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Falls Brand * * * Pitted Sour Cherries [or 'High Tide Brand Red Sour Pitted Cherries'] Packed for Roundup Grocery Co., Spokane, Wash."

It was alleged to be misbranded in that it was canned food, and the 16-case and the 12-case lots fell below the standard of quality, condition, and fill of container, and the 9-case lot fell below the standard of fill of container, promulgated by the Secretary of Agriculture for such canned food, and its labels did not indicate that it fell below such standards.

On March 15, 1938, the Roundup Grocery Co., claimant, having consented to the entry of a decree, the product was ordered released under bond conditioned that it not be disposed of contrary to law.

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