

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy, putrid, or decomposed vegetable substance.
DISPOSITION: August 7, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

10152. Adulteration of blueberries. U. S. v. 3 Crates of Blueberries. Default decree of condemnation and destruction. (F. D. C. No. 17366. Sample No. 7471-H.)

LIBEL FILED: August 4, 1945, Southern District of New York.

ALLEGED SHIPMENT: On or about August 2, 1945, by E. J. Matthews, from Hazleton, Pa.

PRODUCT: 3 crates, each containing 24 quart baskets, of blueberries at New York, N. Y. Examination showed that the product was infested with maggots.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy, putrid, or decomposed vegetable substance.

DISPOSITION: August 9, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

10153. Adulteration of pitted dates. U. S. v. 91 Boxes of Pitted Dates. Default decree of condemnation and destruction. (F. D. C. No. 15855. Sample No. 20182-H.)

LIBEL FILED: On or about April 23, 1945, District of Kansas.

ALLEGED SHIPMENT: On or about February 27, 1945, by T. M. Duche and Sons, Inc., from New York, N. Y.

PRODUCT: 91 70-pound boxes of pitted dates at Kansas City, Kans.

LABEL, IN PART: "Clean Sound and Fresh Dates Grown in Iraq * * * Sphinx Brand."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of beetles, larvae, and dirt.

DISPOSITION: September 20, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed. The product was used as hog feed.

10154. Adulteration of frozen crushed pineapple. U. S. v. 1,549 Cases of Frozen Crushed Pineapple. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 17489. Sample No. 36423-H.)

LIBEL FILED: September 24, 1945, Western District of Washington.

ALLEGED SHIPMENT: On or about August 16, 1945, by the Keim Produce Co., from Tucson, Ariz.

PRODUCT: 1,549 cases, each containing 24 1-pound cups, of frozen crushed pineapple at Seattle, Wash. Examination showed that the product was fermented.

LABEL, IN PART: "Miller's Lone Star Frozen Crushed Pineapple * * * Miller Bros. Foods Co., Edinburg, Texas."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: October 26, 1945. The Keim Produce Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration.

MISCELLANEOUS FRUIT PRODUCTS

10155. Adulteration of raisin paste. U. S. v. 50 Cases of Raisin Paste. Default decree of condemnation and destruction. (F. D. C. No. 17301. Sample No. 4262-H.)

LIBEL FILED: August 22, 1945, Eastern District of Pennsylvania.

ALLEGED SHIPMENT: On or about September 20, 1943, by the William A. Camp Co., Inc., from New York, N. Y.

PRODUCT: 50 cases, each containing 40 pounds, of raisin paste at Philadelphia, Pa.

LABEL, IN PART: "Skyline Brand Muscat Paste Packed by North Ontario Dried Fruit Co. Los Angeles, California."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of weevils, larvae, and insect fragments.

DISPOSITION: September 12, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

10156. Adulteration of black raspberry puree. U. S. v. 1,322 Cans of Black Raspberry Puree. Consent decree of condemnation. Product ordered released under bond. Motion by claimant for order requiring Government to supervise reprocessing, and motion by Government to set aside portion of decree; motions denied. (F. D. C. No. 18933. Sample No. 14464-H.)

LABEL FILED: February 4, 1946, Northern District of Ohio.

ALLEGED SHIPMENT: On or about September 8, 1945, by Arthur C. Marquart & Co., Benton Harbor, Mich.

PRODUCT: 1,322 cans of black raspberry puree at Cleveland, Ohio.

LABEL, IN PART: "Black Raspberry Puree 30 Pounds Net The Telling Belle Vernon Co. Cleveland, Ohio."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: March 12, 1946. The Telling-Belle Vernon Co., 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 distilled for use in making cordials or brandies, or that it be reprocessed for the purpose of making jellies, under the supervision of the Food and Drug Administration. On July 15, 1946, a motion was filed by the claimant to require the Food and Drug Administration to supervise the reprocessing of the product into jelly. Thereafter, a motion was filed on behalf of the Government to set aside the portion of the consent decree permitting the reprocessing of the product for use as jelly. On or about November 8, 1946, after consideration of the briefs of the parties, the court handed down the following decision:

JONES, *District Judge*: "This case was disposed of by a consent decree approved by attorneys for the claimant and the United States Attorney representing the Government. The decree provides for the condemnation of the black raspberry puree because it was adulterated and upon bond allows the reconditioning by distillation or reprocessing for making cordials, brandies or jellies but subject to the approval of the Food and Drug Administration of the Federal Security Agency.

"The claimant wants to reprocess the puree by filtration and make jelly of it. The Food and Drug Administration objects to this method and refuses to supervise a reconditioning process of the filtration type because, as it says, such a process would not produce a product which it would approve for human consumption.

"The claimant has filed a motion for an order of the court to require the Food and Drug Administration to supervise such a reprocessing. The plaintiff has moved to set aside that portion of the decree which allows the reprocessing by the pressing or filtration method. Voluminous briefs and affidavits have been filed by both parties.

"There is some doubt as to the authority of the court to alter a consent decree. However, it seems unnecessary to change the decree of the court. Without a trial it is not possible to determine whether the reprocessing method proposed by the claimant complies with the provisions of the Pure Food and Drug law. That was not an issue in this case nor should it be determined on the motion of the claimant supported by affidavits and the briefs filed. That would be the issue in a new case if the claimant were allowed to reprocess the puree as it proposes and if the puree were subsequently condemned by the Food and Drug Administration.

"The purpose of vesting discretion and supervisory powers in the Food and Drug Administration as to reprocessing was to avoid such a succession of suits. After a product has been condemned its reprocess is a permissive matter within the discretion of the court as indicated by the use of the word 'may' in the statute. The statute also provides that the reconditioned puree must be brought into compliance with the provisions of the Pure Food and Drug law under the supervision of the Administration. Where several methods of reprocessing are enumerated, as in this decree, the question of who shall deter-