

LIBEL FILED: September 13, 1948, Northern District of Illinois.

ALLEGED SHIPMENT: On or about June 21, 1948, by the Pennsylvania Frosted Foods Co., from Southampton, Pa.

PRODUCT: 129 cases, each containing 24 12-ounce packages, of frozen asparagus at Chicago, Ill.

LABEL, IN PART: "Libby's Frozen Fresh All Green Asparagus Spears."

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 insects.

DISPOSITION: October 5, 1948. Default decree of condemnation and destruction.

13825. Adulteration of frozen asparagus. U. S. v. 26 Cases, etc. (F. D. C. No. 25143. Sample Nos. 5125-K, 5126-K.)

LIBEL FILED: July 28, 1948, District of Massachusetts.

ALLEGED SHIPMENT: On or about May 24, 1948, by the Pennsylvania Frosted Foods Co., from New York, N. Y.

PRODUCT: 39 cases, each containing 20 2-pound, 8-ounce packages, of frozen asparagus at Quincy, Mass.

LABEL, IN PART: "Penn Pact Asparagus [or "Jumbo Asparagus"] Spears."

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 insects.

DISPOSITION: September 22, 1948. Default decree of condemnation and destruction.

13826. Adulteration of frozen lima beans. U. S. v. 1,950 Cases * * *. Government's motion to strike and to dismiss intervening petition of third party overruled. Fit portion of product ordered released; remainder condemned and ordered destroyed. (F. D. C. No. 24631. Sample No. 43416-K.)

LIBEL FILED: On or about May 18, 1948, Northern District of Illinois.

ALLEGED SHIPMENT: On or about February 26, 1948, by Ventura Farms Frozen Foods, Inc., from Oxnard, Calif.

PRODUCT: 1,950 cases, each containing 36 12-ounce packages, of frozen lima beans at Chicago, Ill.

LABEL, IN PART: "Ventura Farms Brand Fordhook Lima Beans."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), the product was unfit for food by reason of its disagreeable odor and flavor, rendering it unpalatable.

DISPOSITION: June 7, 1948. Ventura Farms Frozen Foods, Inc., filed an answer, not as owner but as the packer and shipper of the product, alleging that the owner was the Lakeside Fish and Oyster Co., and denying that the product was adulterated at the time it was packed and shipped. On June 10, 1948, the Lakeside Fish & Oyster Co. filed an intervening petition, alleging that it was the buyer and had an interest in the product not as owner but as the holder of a vendee's lien arising out of the rescinded contract of sale. The petitioner alleged that it had a cause of action against the seller for breach of warranty and prayed for judgment and attachment of the product, subject to the rights and claims of the United States of America.

On June 22, 1948, the Government's motion to strike and to dismiss the intervening petition was overruled in the following order of the court:

BARNES, *District Judge*: "This cause coming on to be heard upon the Motion of the United States of America to Strike the Intervening Petition of Lakeside Fish & Oyster Co., a corporation, filed herein by leave of court on June 10, 1948, and upon the special appearance and Motion of Ventura Farms Frozen Foods, Inc. to Dismiss said Intervening Petition of Lakeside Fish & Oyster Co., a corporation; and it appearing that the Motion to Strike of the United States of America is based upon the grounds that this Court lacks jurisdiction over the parties and the cause of action described in said Intervening Petition, and that the action of the United States of America is one in rem, and that the only jurisdiction this Court has over the parties hereto is with reference to the right of the Government to seize the article which is the subject matter of the libel suit, and that the order permitting Lakeside Fish & Oyster Co. to intervene and to file its Intervening Petition was erroneous; and that the Motion to Dismiss of Ventura Farms Frozen Foods, Inc., said Intervening Petition of Lakeside Fish & Oyster Co. is filed for the purpose of contesting the jurisdiction of this Court to hear and determine the matters and things set forth in the Intervening Petition of Lakeside Fish & Oyster Co. and its jurisdiction to enter any judgment in personam against Ventura Farms Frozen Foods, Inc., and said Motion to Dismiss is based upon the grounds that this Court has no jurisdiction of the matters and things set forth in said Intervening Petition, and no jurisdiction of the person of Ventura Farms Frozen Foods, Inc. to hear and determine, with respect to Ventura Farms Frozen Foods, Inc., the matters and things set forth and the relief prayed for in said Intervening Petition;

"And the Court having heard the arguments of counsel and being fully advised in the premises, FINDS that:

"1. The order of this Court entered June 10, 1948, permitting Lakeside Fish & Oyster Co., a corporation, to intervene and to file its Intervening Petition was proper, and said Lakeside Fish & Oyster Co. is properly before this Court upon its said Intervening Petition.

"2. This Court has jurisdiction of the subject matter of said Intervening Petition of Lakeside Fish & Oyster Co. and of the matters and things set forth in said Intervening Petition.

"3. That this Court has jurisdiction over the person of Ventura Farms Frozen Foods, Inc. and jurisdiction to hear and determine the matters and things set forth and remedies prayed for in said Intervening Petition as respects Ventura Farms Frozen Foods, Inc., including jurisdiction to enter a judgment in personam against Ventura Farms Frozen Foods, Inc.

"IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

"A. The motion of the United States of America to strike said Intervening Petition of Lakeside Fish & Oyster Co., and the motion of Ventura Farms Frozen Foods, Inc. to dismiss said intervening Petition be and the same are hereby overruled and denied.

"B. The United States of America and Ventura Farms Frozen Foods, Inc. shall answer said Intervening Petition of Lakeside Fish & Oyster Co., a corporation, within fifteen (15) days from this date."

Subsequently, the Ventura Farms Frozen Foods, Inc., filed a request for admission of certain facts, to which the Government filed its answer and objections. In its answer the Government stated that it did not at the time claim that any of the article was adulterated, with the exception of a portion, consisting of 93 cases, which was identified by a certain code. On October 5, 1948, both interveners consenting, and the intervening petition and cross-claim of the Lakeside Fish and Oyster Co. having been dismissed with prejudice on stipulation of the interveners, judgment was entered ordering the 1,851 cases of the product which the Government did not claim to be adulterated, to be released to the Lakeside Fish & Oyster Co. The remaining 93 cases were condemned and ordered released under bond to the Lakeside Fish & Oyster Co., to be denatured or destroyed under the supervision of the Food and Drug Administration.

13827. Adulteration of dried lima beans. U. S. v. 16 Bags * * *. (F. D. C. No. 25483. Sample No. 31264-K.)

LIBEL FILED: August 24, 1948, District of Arizona.