

they were made from mixtures composed of less than 45 parts by weight of the fruit, or fruit juice, ingredient to each 55 parts by weight of one of the saccharine ingredients, and since they contained added phosphoric acid or phosphate, which are not permitted as ingredients of peach preserves or grape jelly.

DISPOSITION: August 15, 1949. Default decree of condemnation. The court ordered that the products be delivered to a charitable institution.

### CANNED VEGETABLES

15190. Alleged adulteration of canned asparagus. U. S. v. 298 Cases \* \* \*. Tried to the court. Judgment for the claimant. (F. D. C. No. 25681. Sample No. 36541-K.)

LIBEL FILED: October 25, 1948, District of Oregon; amended libel filed March 17, 1949.

ALLEGED SHIPMENT: On or about June 4 and July 7, 1948, by the Top-Side Canning Co., from Grandview, Wash.

PRODUCT: 298 cases, each containing 24 1-pound, 3-ounce cans, of asparagus at Salem, Oreg.

LABEL, IN PART: "Ski-Slide Brand Center Cuts Tips Removed All Green Asparagus."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article was unfit for food by reason of the presence of hard and woody pieces of asparagus.

Misbranding, Section 403 (g) (1), the article failed to conform to the definition and standard of identity for asparagus cuts, tips removed. The definition and standard provides that asparagus cuts, tips removed, are the edible, succulent portion of sprouts of the asparagus plant from which the tip has been removed, cut in pieces, whereas the article consisted of hard and woody pieces of asparagus stalks.

DISPOSITION: The Top-Side Canning Co., claimant, having filed an answer denying that the product was adulterated and misbranded, the case came on for trial before the court without a jury on May 6, 1949. After the trial had been concluded, the court handed down the following opinion on May 9, 1949:

McCOLLOCH, *District Judge*: "Defendant is an asparagus packer. One of his products is the center cut of the asparagus. This retails for 20¢ per can (1 lb. 3 oz.) containing 95 to 100 cuts, as compared with 40 to 45 cents per can for the choicer tips.

"The Government contends that defendant's center cuts are fibrous and woody beyond the permissible limits set up by the Federal Food, Drug, and Cosmetic Administration. Three witnesses for the Government said that they had each eaten a can (or attempted to) of defendant's cuts. The composite of their testimony was that 25% or more of the cuts were inedible, and the Government's witnesses condemned them as a food product.

"On the other hand, the Director of Mary Cullen's Cottage found only 5 or 6 pieces out of 100 that she had to lay aside. Confronted with this conflict in testimony, I obtained counsels' consent to eat a can. This I have done, although I confess had I understood all the difficulties of the undertaking, I might not have been so bold.

"To eat a can of asparagus, hand-running, as the saying is, is quite a chore. I took three days to eat the can. That, I can now state, is as much as an old protein user should attempt on his first venture into herbalism. I suspect the Government witnesses tried to eat their cans all at one time, and that may explain the severity of their judgment about defendant's asparagus. I can see where after 50 or 60 cuts, eaten without spelling oneself, one might become very particular.

"My test more than confirmed Miss Laughton's good opinion of the cuts. She found 5 or 6 per cent inedible, whereas I ate all of my can, and felt that I was helped by it. There was one runty, tough piece and two or three slivers, but I treated them as de minimis.

"I agree with the Director of Mary Cullen's Cottage that this is an excellent product, particularly considering its low price. Not everybody in this country can 'keep up with the Joneses' and eat only asparagus tips. Indeed it seems strange to me that the Government should be interested in keeping from the market a moderately priced, wholly nutritious food product. I should think in this period of declining income the Government's interest would be the other way. If Mr. Prendergast will prepare appropriate findings, I will give his client's center cuts a clean bill of health. They deserve it."

On May 14, 1949, the court made findings of fact and conclusions of law to the effect that the fibrous and woody portions of the product were insignificant and de minimis and that the product was not adulterated or misbranded, and ordered that the libel be dismissed.

**15191. Misbranding of canned mushrooms. U. S. v. 24 Cases, etc. (F. D. C. No. 27248. Sample Nos. 40718-K, 40719-K.)**

**LIBEL FILED:** May 19, 1949, District of Montana.

**ALLEGED SHIPMENT:** On or about April 14, 1949, by the Olympia Mushroom Farms, Olympia, Wash.

**PRODUCT:** 24 cases, each containing 24 cans, and 11 cases, each containing 12 cans, of mushrooms at Butte, Mont.

**LABEL, IN PART:** "Dawn Fresh Fancy Button Mushrooms Net Drained Wt. 8 Oz. Avd." or "Dawn Fresh Pieces and Stems Mushrooms Net Drained Wt. 4 Oz. Avd."

**NATURE OF CHARGE:** Misbranding, Section 403 (e) (2), the product was in package form and failed to bear a label containing an accurate statement of the quantity of the contents since the cans were short-weight.

**DISPOSITION:** August 12, 1949. The Olympia Mushroom Farms, claimant, having admitted the allegations of the libel, judgment was entered and the court ordered that the product be released under bond to be relabeled, under the supervision of the Food and Drug Administration.

**15192. Adulteration and misbranding of canned spinach. U. S. v. 75 Cases, etc. (F. D. C. No. 27057. Sample Nos. 51421-K, 51422-K.)**

**LIBEL FILED:** April 20, 1949, Southern District of Indiana.

**ALLEGED SHIPMENT:** On or about January 6, 1949, by the Meyer Canning Co., from Edinburg, Tex.

**PRODUCT:** 75 cases, each containing 24 1-pound, 2-ounce cans, and 58 cases, each containing 6 6-pound, 6-ounce cans, of spinach at Muncie, Ind.

**LABEL, IN PART:** "Glendale Brand Spinach" and "Gold Inn Brand Spinach."

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

Misbranding, Section 403 (g) (1), the article failed to conform to the definition and standard of identity for canned spinach since the standard provides that canned spinach is sealed in a container and so processed by heat as to prevent spoilage, and the article had not been processed by heat so as to prevent spoilage.

**DISPOSITION:** August 8, 1949. Default decree of forfeiture and destruction.