

**5530. Adulteration and misbranding of sauerkraut. U. S. v. 129 Cases of Sauerkraut (and 2 other seizure actions against sauerkraut). Decrees of condemnation. Portion of product ordered destroyed and remainder released under bond for reconditioning.** (F. D. C. Nos. 10158, 10419, 10420. Sample Nos. 12292-F, 12293-F, 42163-F.)

Examination showed that decomposition had taken place in a portion of the product, and that the remainder was fluffed so that the containers appeared well filled; but with fairly light pressure the product could be pressed down to approximately three-fourths the original volume.

On June 26 and August 25, 1943, the United States attorneys for the Middle District of Tennessee and the District of Oregon filed libels against 129 cases, each containing 6 No. 10 cans, of sauerkraut at Nashville, Tenn., and a total of 850 cases, each containing 12 jars of sauerkraut, at Portland, Oreg., alleging that the article had been shipped in interstate commerce on or about May 21 and July 15, 1943, from Nappanee, Ind., and Kent, Wash., by Libby, McNeill and Libby; and charging that it was adulterated and that a portion was misbranded. It was labeled in part: "Libby's Sauerkraut."

The lot at Nashville was alleged to be adulterated in that a substantial proportion was in cans which were swelled and were "leakers," and decomposition had taken place through action of the product on tin. The lots at Portland were alleged to be adulterated in that liquid packing medium had been substituted in whole or in part for sauerkraut; and to be misbranded in that their containers were so filled as to be misleading, the jars containing an excessive amount of liquid packing medium which was not apparent when the jars were observed by the purchaser.

On October 19, 1943, Libby, McNeill and Libby having appeared as claimant for the lots at Portland and consented to the entry of decrees, judgments of condemnation were entered and the product was ordered released under bond for reconditioning under the supervision of the Food and Drug Administration. On November 29, 1943, no claimant having appeared for the remainder of the product, judgment of condemnation was entered and it was ordered destroyed.

#### TOMATOES AND TOMATO PRODUCTS \*

**5531. Misbranding of canned tomatoes. U. S. v. 1,400 Cases, 697 Cases, and 501 Cases of Canned Tomatoes. Consent decrees of condemnation. Product ordered released under bond to be relabeled.** (F. D. C. Nos. 10332, 11051, 11228. Sample Nos. 28985-F, 35834-F, 47648-F.)

On July 27, November 3, and December 4, 1943, the United States attorneys for the Northern and Southern Districts of Georgia and the Southern District of Iowa filed libels against 1,400 cases at Atlanta, Ga., 697 cases at Augusta, Ga., and 501 cases at Ottumwa, Iowa, each case containing 24 cans of tomatoes, alleging that the article had been shipped by Apte Bros. Canning Co from Bushnell, Fla., McColl, S. C., and Edinburg, Tex., within the period from on or about July 2, 1943, to September 11, 1943; and charging that it was misbranded. The article was labeled in part: (Cans) "Colonial Tomatoes \* \* \* Distributors Colonial Stores Incorporated," "Lord Fairfax Brand [or "Apte"] Tomatoes \* \* \* Apte Bros. Canning Co. Distributors. General Offices Miami, Florida."

The article was alleged to be misbranded in that it purported to be a food for which a standard of quality had been prescribed by regulations as provided by law, but its quality fell below such standard in the case of the Colonial and Fairfax brands with respect to strength and redness of color and, in the case of the Apte brand, because the peel per pound of canned tomatoes in the container covered an area of more than 1 square inch, and the blemishes per pound of canned tomatoes in the container covered an area of more than one-fourth square inch; and its labels failed to bear, in such manner and form as the regulations specify, a statement that it fell below such standard.

On August 26 and December 9, 1943, and January 5, 1944, the Apte Bros. Canning Co., claimant, having admitted the allegations of the libels, judgments of condemnation were entered and the product was ordered released under bond, conditioned that it be relabeled under the supervision of the Food and Drug Administration.

\*See also No. 5520, tomato soup.