PRODUCT: 17 cases, each containing 12 24-ounce jars, of sauerkraut at Cleveland, Ohio, and 69 cases and 119 cases, each containing 12 2-pound jars, of sauerkraut at Athens and Canton, Ohio, respectively. Examination showed that the jars contained less drained sauerkraut and more brine than jars of those sizes should contain. Because of the tendency of the product to disperse in the packing medium, the jars appeared to contain more sauerkraut than they did.

LABEL, IN PART: "Kokomo Brand * * * Sauerkraut."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), brine had been substituted in part for sauerkraut, which the product was represented to be.

Misbranding, Section 403 (d), the container was so filled as to be misleading since the jars appeared to contain more sauerkraut than was actually the case.

DISPOSITION: Between May 26 and July 19, 1945, no claimant having appeared, judgments were entered ordering that portions of the product be delivered to public institutions and that the remainder be condemned and destroyed.

9135. Adulteration of canned turnip greens. U. S. v. 822 Cases of Canned Turnip Greens. Default decree of condemnation and destruction. (F. D. C. No. 15832. Sample Nos. 23922–H, 23923–H.)

LIBEL FILED: March 29, 1945, Middle District of Alabama.

ALLEGED SHIPMENT: On or about December 14, 1944, and January 16, 1945, by the G. L. Webster Co., Inc., and Taylor & Sledd, Inc., from Cheriton, Va.

PRODUCT: 822 cases, each containing 6 cans, of turnip greens, at Montgomery, Ala.

LABEL, IN PART: "Webster's Brand Turnip Greens."

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

DISPOSITION: May 2, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

9136. Adulteration of canned spinach. U. S. v. 298 Cases of Canned Spinach (and 1 other seizure action against canned spinach). Consent decree of condemnation. Product ordered released under bond. (F. D. C. Nos. 15887, 15888. Sample Nos. 22025–H, 22915–H.)

LIBELS FILED: April 6, 1945, Eastern District of Missouri.

ALLEGED SHIPMENT: On or about January 29, 1945, by the Appleby-Young Canning Co., from Johnson, Ark.

PRODUCT: 495 cases, each containing 6 6-pound, 2-ounce cans, of spinach at St. Louis, Mo.

LABEL, IN PART: "Hiwasse Brand Spinach."

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

DISPOSITION: June 22, 1945. The Appleby-Young Canning Co., claimant, having admitted the allegations of the libels, and the cases having been consolidated, 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.

TOMATO PRODUCTS*

9137. Adulteration of tomato catsup. U. S. v. 147 Cases of Tomato Catsup. Default decree of condemnation and destruction. (F. D. C. No. 15895. Sample No. 17350–H.)

LIBEL FILED: April 10, 1945, Eastern District of Wisconsin.

ALLEGED SHIPMENT: On or about November 16, 1944, by the Fettig Canning Corporation, from Elwood, Ind.

PRODUCT: 147 cases, each containing 24 14-ounce bottles, of tomato catsup, at Milwaukee, Wis.

LABEL, IN PART: (Bottle) "Vine Ripe Tomato Catsup Made From Fresh Ripe Tomatoes."

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

*See also No. 9115.

DISPOSITION: May 17, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

9138. Adulteration of canned tomato juice. U. S. v. 379 Cases of Canned Tomato Juice. Default decree of condemnation. Product ordered destroyed and the cans salvaged. (F. D. C. No. 16120. Sample No. 3040–H.)

LIBEL FILED: May 7, 1945, District of Columbia.

ALLEGED SHIPMENT: On or about February 23, 1945, by the Gervas Canning Co., from Fredonia, N. Y.

PRODUCT: 379 cases, each containing 6 No. 10 cans, of tomato juice at Washington, D. C.

LABEL, IN PART: "Sunny Dawn Grade A Fancy Tomato Juice * * * Distributed By Table Products Company Oakland, California."

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

DISPOSITION: June 20, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed and the cans salvaged.

9139. Adulteration and misbranding of tomato sauce. U. S. v. 254 Cases and 499 Cases of Tomato Sauce. Tried to the court. Decree of condemnation. Product ordered released under bond. (F. D. C. No. 15176. Sample Nos. 96915–F, 96916–F.)

LIBEL FILED: January 31, 1945, Eastern District of Arkansas.

ALLEGED SHIPMENT: On or about October 17 and November 22, 1944, by the Uddo and Taormina Co., from Crystal Springs, Miss.

PRODUCT: 753 cases, each containing 48 10-ounce cans, of tomato sauce at Helena, Ark.

LABEL, IN PART: "Baby Brand Tomato Sauce."

NATURE OF CHARGE: Adulteration, Section 402(b)(2), an unconcentrated, or a slightly concentrated, unspiced, comminuted tomato liquid with added salt had been substituted in whole or in part for tomato sauce, an article which is understood to be a spiced, comminuted tomato product, more concentrated than was this article.

Misbranding, Section 403(a), the label statement "Tomato Sauce" was false and misleading as applied to an unconcentrated, or slightly concentrated, comminuted tomato liquid with added salt.

DISPOSITION: The Uddo Taormina Co., claimant, having filed an answer denying that the product was adulterated or misbranded, the case came on for trial before the court. After consideration of the evidence and arguments of counsel on December 21, 1945, the following memorandum opinion was handed down:

LEMLEY, *District Judge:* "This case arises under the Federal Food, Drug, and Cosmetic Act of June 25, 1938, and more particularly under those provisions of the Act prohibiting the introduction, or delivery for, introduction into interstate commerce of any food that is adulterated or misbranded, and for seizure thereof. 21 U. S. C. A. Secs. 331, 334, 342, and 343.

"The United States filed an information herein for the condemnation of two lots of 254 and 499 cases, respectively, containing 48 ten ounce cans each of a product labeled, in part, 'Baby Brand Tomato Sauce,' and seized the same pending this litigation.

"It was alleged in the information that the cases in question were in the possession of the Interstate Grocer Company, of Helena, Arkansas, having been shipped to said company in interstate commerce from Crystal Springs, Mississippi, by Uddo & Taormina Company, of that point.

"The information further alleged that the article was adulterated in violation of Sec. 342 (b) (2), Title 21, U. S. C. A., in that an unconcentrated or a slightly concentrated unspiced tomato liquid with added salt had been substituted for tomato sauce, 'an article understood to be a spiced comminuted tomato product which is more concentrated than this article.'