

**CHARGE:** 402 (a) (3)—all lots contained rodent urine while held for sale, and the cake flour contained rodent excreta, also; and 402 (a) (4)—all lots held under insanitary conditions.

**DISPOSITION:** 4-28-55. Claimed by Williamsport Wholesale Grocery Co., Inc., and denatured for use as animal feed.

**23973. Roasted peppers.** (F. D. C. No. 39867. S. No. 62-752 M.)

**QUANTITY:** 77 cases, 21 jars each, at Clifton, N. J.

**SHIPPED:** 11-6-56, from Watertown, Mass., by Naples Food Products.

**LABEL IN PART:** "Net Weight 15 Oz. Baldanza's Best Selected Roasted Peppers Red and Green."

**LIBELED:** 2-11-57, Dist. N. J.

**CHARGE:** 402 (a) (3)—contained a decomposed substance when shipped.

**DISPOSITION:** 3-26-57. Default—destruction.

**23974. Whole red peppers.** (F. D. C. No. 40078. S. No. 38-206 M.)

**QUANTITY:** 152 bags, at St. Louis, Mo., in possession of Warehousing Corporation of Missouri, Inc.

**SHIPPED:** 11-8-56, from Florence, S. C.

**LIBELED:** 4-3-57, E. Dist. Mo.

**CHARGE:** 402 (a) (4)—held under insanitary conditions in rodent-stained bags.

**DISPOSITION:** 4-12-57. Consent—claimed by Warehousing Corporation of Missouri, Inc. The urine stained areas of the bags were cut away and the peppers immediately under the urine stains were removed and discarded. The discarded peppers weighing 6 lbs. were destroyed.

**23975. Eggplant appetizer.** (F. D. C. No. 39945. S. Nos. 59-025/6 M.)

**QUANTITY:** 13½ cases, each full case containing 48 cans at Hazleton, Pa.

**SHIPPED:** 4-3-56 and 11-30-56, from Vineland, N. J., by Uddo & Taormina Co.

**LABEL IN PART:** (Can) "Progresso Brand Egg Plant Appetizer Net Contents 4¾ ozs. Avoir. \* \* \* Fancy Caponata."

**LIBELED:** 2-12-57, M. Dist. Pa.

**CHARGE:** 402 (a) (3)—contained fly eggs and maggots when shipped.

**DISPOSITION:** 3-20-57. Default—destruction.

**23976. Eggplant appetizer.** (F. D. C. No. 40104. S. Nos. 61-036/7 M.)

**QUANTITY:** 121 cases, 48 4¾-oz. cans each, at Boston, Mass.

**SHIPPED:** Between 10-19-56 and 2-27-57, from Vineland, N. J., by Uddo & Taormina Co.

**LABEL IN PART:** (Can) "Progresso Brand Egg Plant Appetizer \* \* \* Fancy Caponata."

**LIBELED:** 3-21-57, Dist. Mass.

**CHARGE:** 402 (a) (3)—contained fly eggs and maggots when shipped.

**DISPOSITION:** 5-17-57. Default—destruction.

#### TOMATOES AND TOMATO PRODUCTS

**23977. Canned tomatoes, ripe olives in brine, apple juice, canned beets, and canned herring.** (F. D. C. No. 39454. S. Nos. 32-103 M, 32-105/8 M.)

**QUANTITY:** 36 cases, 48 10-oz. cans each, of canned tomatoes, 22 cases, 48 1-lb.

1 ½-oz. cans each, of ripe olives in brine, 27 cases, 12 1-qt. btls. each, of apple juice, 21 cases, 24 1-lb. jars each, of canned beets, and 35 cases, 48 15-oz. cans each, of canned herring at Philadelphia, Pa.

SHIPPED: During 1954 and 1955, and on 1-27-56, from Baltimore and Tilghman, Md., New York, N. Y., and Masonville, N. J.

LIBELED: 9-10-56, E. Dist. Pa.

CHARGE: 402 (a) (3)—contained a decomposed substance while held for sale.

DISPOSITION: 11-15-56. Default—destruction.

**23978. Peeled Italian tomatoes.** (F. D. C. No. 40127. S. No. 61-123 M.)

QUANTITY: 64 cases, 24 2-lb. 3-oz. cans each, at New Bedford, Mass.

SHIPPED: 1-19-57, from Naples, Italy.

LIBELED: 4-5-57, Dist. Mass.

CHARGE: 402 (a) (3)—contained decomposed tomatoes while held for sale.

DISPOSITION: 5-13-57. Default—destruction.

**23979. Tomato catsup.** (F. D. C. No. 38501. S. No. 27-935 M.)

QUANTITY: 936 cases, 24 btls. each, at Atlanta, Ga.

SHIPPED: 9-3-55, from Elwood, Ind., by Frazier-Schafer Farms, Inc.

LABEL IN PART: (Btl.) "Frazier's Superfine Contents 14 Oz. Avd. Tomato Catsup."

LIBELED: 10-12-55, N. Dist. Ga.

CHARGE: 402 (a) (3)—contained decomposed tomato material when shipped.

DISPOSITION: Frazier-Schafer Farms, a partnership, Elwood, Ind., having appeared as claimant, filed an answer on 11-23-55 denying that the article was adulterated. Thereafter, the Government served written interrogatories upon the claimant and in response thereto, the claimant filed its answers to all interrogatories except for those numbered 4 (d), 5, 12 and 15 to which objections were made. A hearing on the objections was held, and on 4-12-56 the court handed down the following ruling thereon:

"Interrogatories were filed February 6, 1956 and objections thereto are attached to the answers which were filed March 19, 1956.

"*Interrogatory 4 (d)* directs the defendant to 'furnish copies of reports of inspection.' *Interrogatory #5* directs respondent to attach to its answers 'the results of analyses,' and a statement as to when each sample was collected. *Interrogatory #12* in part directs respondent to attach to its answer 'the results of all analyses reported by you,' etc.

"It will be observed that each of the foregoing interrogatories contemplate that the respondent shall attach certain documents to answers. Plaintiff should have employed Rule 34 which contemplates the production of documents in connection with which it is necessary that good cause shall be shown. There are a few cases which uphold the procedure followed by the Government in this case, but the great weight of authority is to the contrary. See *Castro vs. A. H. Bull & Co.* (S. D. N. Y.) 9 F. R. D. 84; *Jones vs. Penn. R. R. Co.* (N. D. Ill.), 7 F. R. D. 662; *Roth, et al vs. Paramount Film Distributing Corp. et al* (W. D. Penn.) 4 F. R. D. 302. It is ruled therefore, that insofar as the foregoing Interrogatories seek the production of documents the objections are sustained, but respondent should answer as to *Interrogatory #5*, 'the results of analyses of all samples taken,' and as to *Interrogatory #12* should state 'the results of all analyses.'

"*Interrogatory #15* desires the names 'of all persons that claimant intends to call as witnesses.' The Interrogatory, as written, if it desires the names of parties having knowledge of the facts, is proper, but if it is designed to commit the respondent to the calling of certain persons as witnesses so as