

tomatoes prescribed by Section 53.41 (a) (1) of regulations promulgated by the Administrator pursuant to 21 U. S. C. A. 341 (Sec. 401 of the Act). But, it is argued by the claimants, that since the food is wholesome and fit for human consumption, it could be sold under correct labeling and the purchaser would therefore not be misled. The Government counters with the proposition that once an article has been condemned as adulterated, its contraband character cannot be cured by a truthful statement of the manner in which it is adulterated, and the fact that it is fit for human consumption is immaterial.

"The test of adulteration within the meaning of the Act does not turn upon whether the article is non-injurious and fit for human consumption. The Act was not intended to be confined to misbranding and the addition of adulterated substances deleterious to the health of consumers. It provides protection to the consumer from 'economic adulteration' by which less expensive ingredients are substituted, or the proportion of more expensive ingredients is diminished so as to make the commonly identified article inferior to that which the consumer would expect to receive when purchasing it, although not in itself deleterious. Federal Security Adm. v. Quaker Oats Co., 318 U. S. 218; United States v. 36 Drums of Pop'n Oil, 164 F. 2d 250; United States v. 2 Bags, etc., 147 F. 2d 123.

"The term 'canned tomatoes' is certainly a common or usual name for a standard article, and concededly by the addition of the water, the article under seizure here falls below the standard of quality of canned tomatoes provided in Section 53.41 of regulations promulgated by the Federal Security Agency; and is adulterated in that a substance has been substituted wholly or in part therefor. The use of a substandard label does not raise the standard of identity to comply with the Act and regulations.

"It thus becomes unnecessary to consider whether the article was also misbranded within the meaning of Section 403 (g) of the Act (21 U. S. C. A. 343 (g) (1)). The judgment is reversed."

In accordance with the foregoing opinion and in view of the failure by the claimant in requesting permission for the release of the product for reprocessing, an order was entered on June 26, 1950, directing that the product be destroyed. The product was disposed of for use as hog feed.

16539. Adulteration of tomato catsup. U. S. v. Perry Canning Co. Plea of guilty. Fine, \$500. (F. D. C. No. 29606. Sample No. 76606-K.)

INFORMATION FILED: August 25, 1950, District of Utah, against the Perry Canning Co., a corporation, Perry, Utah.

ALLEGED SHIPMENT: On or about August 23, 1949, from the State of Utah into the State of Missouri.

LABEL, IN PART: "Mountain Made Tomato Catsup * * * Perry Canning Co. Perry, Utah."

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

DISPOSITION: August 25, 1950. A plea of guilty having been entered, the court fined the corporation \$500.

16540. Adulteration of tomato puree. U. S. v. 213 Cases * * *. (F. D. C. No. 28846. Sample No. 64471-K.)

LIBEL FILED: February 9, 1950, District of Minnesota.

ALLEGED SHIPMENT: On or about September 27, October 21, and November 13, 1949, by the Lomax Canning Co., from Lomax, Ill.

PRODUCT: 213 cases, each containing 6 6-pound, 8-ounce cans of tomato puree at Minneapolis, Minn.

LABEL, IN PART: (Can) "Mississippi Valley Brand Tomato Puree."