

16737. Adulteration of canned tomato soup. U. S. v. 150 Cases \* \* \* (and 1 other seizure action). (F. D. C. Nos. 28981, 28982. Sample Nos. 65526-K, 65527-K.)

**LIBELS FILED:** April 19, 1950, Eastern District of Wisconsin.

**ALLEGED SHIPMENT:** On or about November 15, 1949, by the H. J. McGrath Co., from Baltimore, Md.

**PRODUCT:** 200 cases, each containing 6 6-pound, 9-ounce (or 8-ounce) cans, of tomato soup at Milwaukee, Wis.

**LABEL, IN PART:** (Can) "McGrath's Condensed Tomato Soup" or "Pieper's Pure Food Condensed Tomato Soup."

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance by reason of the presence of decomposed tomato material.

**DISPOSITION:** September 7, 1950. Default decrees of condemnation and destruction.

### OILS

16738. Alleged adulteration and misbranding of oil. U. S. v. Antonio Corrao Corp., Antonio Corrao, Paul Corrao, Loumen Drug Co., and Louis Memmoli. Pleas of not guilty. Tried to the court. Indictment against Paul Corrao, Loumen Drug Co., and Louis Memmoli dismissed. Corporation and Antonio Corrao found guilty. Fine of \$6,000 against corporation; suspended sentence of 1 year against Antonio Corrao. Judgment of district court reversed by circuit court of appeals; defendant corporation and Antonio Corrao discharged. (F. D. C. No. 26791. Sample Nos. 8143-K, 8146-K to 8148-K, incl., 8151-K, 8152-K.)

**INDICTMENT RETURNED:** March 29, 1949, Eastern District of New York, against the Antonio Corrao Corp., Brooklyn, N. Y., Antonio Corrao, Paul Corrao, the Loumen Drug Co., a corporation, Brooklyn, N. Y., and Louis Memmoli.

The pertinent facts in this case appear below:

**DISPOSITION:** Pleas of not guilty having been entered by the defendants, a motion to dismiss the indictment and various counts thereof was filed; and on May 12, 1949, this motion was denied. The case came for trial before the court, and on January 12, 1950, the court rendered a verdict finding the Antonio Corrao Corp. and Antonio Corrao guilty and dismissing the indictment against the other defendants. On January 19, 1950, the court imposed a fine of \$6,000 against the corporation and sentenced Antonio Corrao to 1 year in prison, but suspended the prison sentence.

On January 19, 1950, the court denied the defendants' motion to set aside the verdict, and an appeal was taken to the Court of Appeals for the Second Circuit.

On November 16, 1950, the circuit court reversed the judgment of the district court, handing down the following memorandum opinion:

**FRANK, Circuit Judge:** "The defendants went to trial before the district judge without a jury, pursuant to an indictment, the first two counts of which read as follows:

'Count One: That the Antonio Corrao Corporation, a corporation, organized and existing under the laws of the State of New York, and trading and doing business in the Borough of Brooklyn, City and State of New York, and Antonio Corrao, an individual, and Paul Corrao, an individual, and Loumen