

"12. *Drosophila* fly eggs and maggots present in food for human consumption constitutes filth within the purview and meaning of the Federal Food, Drug, and Cosmetic Act (chapter 21 U. S. C., Section 342 [402] (a) (3)). The presence of a high number of said fly eggs or maggots, however, in a single can of whole tomatoes, when many cans of the same lot or code show none or a trifling amount of eggs and maggots, does not warrant and justify seizure and condemnation of the entire lot or code. The provisions of Chapter 21 U. S. C. Section 336, do not require the administrator to institute libel proceedings for minor violations of the chapter whenever the public interest will be served adequately by a suitable written notice or warning. In this case, no notice or warning, either oral or written, was made by the administrator upon the claimant. The fly eggs and maggot count, found in the samples analyzed, is certainly infinitesimal and inconsequential in quantity, and for the government to libel and seize food in such a case will only serve to prevent the carrying on of commercial canning of tomatoes, and destroy the canning industry. The officers of the Federal Food and Drug Administration should not, in their zeal to enforce the provisions of the Act, impose standards of performance that are unattainable or impractical. In proper instances the provisions outlined in Chapter 21 U. S. C., Section 336, giving appropriate notice and warning to the canner is available to the officers of the government.

CONCLUSIONS OF LAW

I

"The claimant, THE JAQUA COMPANY, an Indiana corporation, is within the jurisdiction of this Court by voluntary appearance therein.

II

"The subject matter of this action is within the jurisdiction of this Court.

III

"The 253 cases each containing 24 cans of an article labeled in part, 'Iona Tomatoes Net Wt. 1 Lb. 3 Ozs.,' being the subject of seizure in this proceeding, is not adulterated food within the meaning of the Federal Food, Drug and Cosmetic Act (21 U. S. C. 342 [402] (a) (3)).

IV

"Since the proofs and evidence show that none of the tomatoes involved in the seized lot contained substantial amounts of fly eggs and maggots, but that the majority of them contained none, and the balance contained them only in such infinitesimal and inconsequential quantities, which could not be eliminated by the selection of the best fruit available, and the exercise of proper care in the various steps of the canning operation; and since the findings of fly eggs and maggots in the seized samples averaged considerably less than the 'working tolerance' established by the government, I find the issues for the claimant and against the libelant, and find that judgment should issue directing the United States Marshal for the Northern District of Illinois, Eastern Division, to release and deliver said 253 cases of No. 2 cans of tomatoes labeled 'Iona Tomatoes' to the claimant, and that the said United States Marshal should pay the storage charges which have accrued subsequent to date of seizure; and that judgment should enter accordingly."

In accordance with the above findings and conclusions, the court, on April 22, 1953, ordered that the libel be dismissed and that the product be released to the claimant.

20083. Adulteration of canned tomatoes. U. S. v. 1,200 Cases * * *. (F. D. C. No. 34228. Sample No. 56527-L.)

LIBEL FILED: November 17, 1952, Middle District of Tennessee.

ALLEGED SHIPMENT: On or about September 30, 1952, by Albert W. Sisk & Son, from Cambridge, Md.

PRODUCT: 1,200 cases, each containing 24 1-pound cans, of tomatoes at Nashville, Tenn.

LABEL, IN PART: (Can) "Pine Cone Brand Tomatoes."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of fly eggs and maggots.

DISPOSITION: March 9, 1953. Default decree of condemnation and destruction.

20084. Adulteration of canned tomatoes. U. S. v. 962 Cases * * *. (F. D. C. No. 34158. Sample No. 54340-L.)

LIBEL FILED: November 20, 1952, District of Delaware.

ALLEGED SHIPMENT: On or about October 29, 1952, by Thomas Roberts & Co., Inc., from Detroit, Mich.

PRODUCT: 962 cases, each containing 24 1-pound, 3-ounce cans, of tomatoes at Frederica, Del.

LABEL, IN PART: (Can) "Pride Of The Farm Brand."

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

DISPOSITION: February 11 and March 3, 1953. Default decree of condemnation. The court ordered that the product be delivered to a State institution, for use as animal feed.

20085. Misbranding of canned tomatoes. U. S. v. 890 Cases * * *. (F. D. C. No. 34515. Sample No. 34765-L.)

LIBEL FILED: December 29, 1952, Eastern District of Arkansas.

ALLEGED SHIPMENT: On or about August 20, 1952, by Roberts Bros., Inc., from Baltimore, Md.

PRODUCT: 890 cases, each containing 24 15½-ounce cans, of tomatoes at Eudora, Ark.

LABEL, IN PART: (Can) "Roberts Big R Brand."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the product fell below the standard of quality for canned tomatoes since it contained excessive peel and the label failed to bear a statement that the product fell below such standard.

DISPOSITION: January 19, 1953. The shipper, claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond to be relabeled under the supervision of the Federal Security Agency.

20086. Misbranding of canned tomatoes. U. S. v. 478 Cases * * *. (F. D. C. No. 34419. Sample No. 69193-L.)

LIBEL FILED: December 11, 1952, District of New Mexico.

ALLEGED SHIPMENT: On or about September 19, 1952, by the Valley Canning Co., from Canutillo, Tex.