CHARGE: 402 (a) (3)—contained insects, insect fragments, and rodent hairs; and, 402 (a) (4)—prepared under insanitary conditions.

DISPOSITION: 2–21–55. Default—destruction.

TOMATOES AND TOMATO PRODUCTS

22178. Canned tomatoes. (F. D. C. No. 33898. S. No. 3–738 L.)

QUANTITY: 1,600 cases, 24 1-lb. cans each, at Orangeburg, S. C.

SHIPPED: 9–10–52, from Baltimore, Md., by Oriole Packing Co., Inc.

LIBELED: 10–3–52, E. Dist. S. C.

LABEL IN PART: (Can) "Essex Brand * * * Tomatoes."

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

DISPOSITION: On 1–2–53, a letter in the nature of an answer was filed by the Oriole Packing Co., Inc. When the case was called for trial on 4–13–53, no response was made by the claimant; and, on 5–5–53, a decree was entered condemning the article and ordering its destruction.

22179. Canned tomatoes (3 seizure actions). (F. D. C. Nos. 32341, 32361, 32650. S. Nos. 33–131 L, 34–089 L, 35–613 L.)

QUANTITY: 542 cases at Duluth, Minn., 399 cases at Green Bay, Wis., and 450 cases at St. Louis, Mo. Each case contained 24 1-lb., 3-oz. cans.

SHIPPED: Between 10–18–51 and 11–1–51, from New Castle, Ind., by the Westwood Canning Co.

LIBELED: 12–29–51, Dist. Minn.; 1–9–52, E. Dist. Wis.; and 2–8–52, E. Dist. Mo.

LABEL IN PART: (Can) "Westwood Brand Tomatoes" or "Wizdom Tomatoes."

CHARGE: 402 (a) (3)—all lots contained fly eggs and maggots, and the 450-case lot and the 542-case lot contained decomposed tomato material when shipped; and, 402 (a) (4)—all lots were prepared under insanitary conditions.

DISPOSITION: The Westwood Canning Co., an Indiana corporation, appeared as claimant in all three cases. Pursuant to an agreement entered into between counsel for the claimant and the United States attorneys, orders for the consolidation and removal of these cases for trial in the Southern District of Ohio were entered on 3–7–52 and 3–21–52. Subsequently, interrogatories served upon the Government by the claimant were answered. A motion to amend the three libels to include a charge of adulteration within the meaning of Section 402 (a) (4) was filed, and on 10–3–52, the entry granting the motion was filed.

Exceptions to the three libels were filed by the claimant on the ground that the libels failed to allege that the tomatoes involved were adulterated to the extent of being unfit for human consumption. On 12–31–52, an order was entered overruling the exceptions. The Government filed interrogatories and a request for admissions on 12–22–52, to which the claimant subsequently replied.

On 12–31–52, an answer was filed by the claimant denying that the products were adulterated as alleged in the libels. The consolidated cases came to trial before the court and jury on 1–19–53. A verdict for the Government was returned by the jury on 2–16–53, and on 3–16–53, judgments of condemnation were entered, which permitted the release of the tomatoes under bond to the claimants to be brought into compliance with the law.