

TOMATOES AND TOMATO PRODUCTS

14073. Adulteration of canned tomatoes. U. S. v. 549 Cases * * * (and 1 other seizure action). (F. D. C. Nos. 25908, 25909. Sample Nos. 19791-K, 19988-K.)

LIBELS FILED: November 10 and 24, 1948, Western District of Kentucky and Southern District of Ohio.

ALLEGED SHIPMENT: On or about September 14 and 15, 1948, by Stokely-Van Camp, Inc., from Greenfield, Ind.

PRODUCT: Tomatoes. 549 cases at Louisville, Ky., and 229 cases at Columbus, Ohio. Each case contained 24 1-pound, 3-ounce cans.

LABEL, IN PART: "Stokeley's Finest Tomatoes."

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: January 24 and 28, 1949. Default decrees of condemnation. The 229 cases at Columbus, Ohio, were ordered destroyed. The 549 cases at Louisville, Ky., were ordered delivered to a charitable institution, for use as animal feed.

14074. Misbranding of canned tomatoes. U. S. v. 273 Cases * * *. F. D. C. No. 25996. Sample No. 23516-K.)

LIBEL FILED: November 5, 1948, Western District of Arkansas.

ALLEGED SHIPMENT: On or about July 15, 1948, by the Timpson Valley Canning Co., from Big Sandy, Tex.

PRODUCT: 273 cases, each containing 24 1-pound, 3-ounce cans, of tomatoes at Texarkana, Ark.

LABEL, IN PART: "Hall Bros Quality Tomatoes * * * Packed By Hall Bros. Canning Co., Timpson, Texas."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the product fell below the standard of quality for canned tomatoes because of low drained weight and excess peel, and its label failed to bear the substandard legend as required by the regulations.

DISPOSITION: January 15, 1949. Default decree of condemnation. The product was ordered delivered to a Federal institution.

14075. Adulteration of tomato catsup. U. S. v. Kent Food Corp. Plea of guilty. Fine, \$350. (F. D. C. No. 24052. Sample No. 76150-H.)

INFORMATION FILED: September 17, 1948, Eastern District of New York, against the Kent Food Corp., Brooklyn, N. Y.

ALLEGED SHIPMENT: On or about October 30, 1946, from the State of New York into the State of Pennsylvania.

LABEL, IN PART: "Michigan Brand Grade A Tomato Catsup * * * Packed By Beutel Canning Co. Bay City, Mich."

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

DISPOSITION: January 13, 1949. A plea of guilty having been entered, the court imposed a fine of \$350.

14076. Adulteration of tomato catsup. U. S. v. 1,574 Cases * * *. (F. D. C. No. 22580. Sample No. 76150-H.)

LIBEL FILED: February 26, 1947, Middle District of Pennsylvania.

ALLEGED SHIPMENT: On or about November 2, 1946, by the Kent Food Corp., from Brooklyn, N. Y.

PRODUCT: 1,574 cases, each containing 24 14-ounce bottles, of tomato catsup at Scranton, Pa.

LABEL, IN PART: "Michigan Brand Grade A Tomato Catsup * * * Packed By Beutel Canning Co. Bay City, Mich."

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: December 29, 1948. The shipper having appeared as claimant, but subsequently having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

14077. Adulteration of tomato catsup. U. S. v. 902 Cases * * * (and 1 other seizure action). Tried to the court. Judgment of district court permitting release of product for export overruled by circuit court of appeals. Decree of condemnation and destruction. (F. D. C. Nos. 22307, 22308. Sample Nos. 76148-H, 76149-H.)

LIBELS FILED: February 26, 1947, Eastern District of New York.

ALLEGED SHIPMENT: On or about November 2, 1946, by the Beutel Canning Co., from Bay City, Mich.

PRODUCT: Tomato catsup. 902 cases at Maspeth, L. I., N. Y., and 215 cases at Brooklyn, N. Y. Each case contained 24 14-ounce bottles.

LABEL, IN PART: "Michigan Brand Grade A Tomato Catsup."

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

DISPOSITION: The Kent Food Corp., Brooklyn, N. Y., and the Clark-Iger Food Products Co., Inc., claimants, filed a motion for the entry of an order permitting the sale of the product for export. On July 3, 1947, the claimants' motion was granted, and on July 16, 1947, a decree was entered consolidating the 2 actions and ordering the product condemned and released under bond for export.

On June 16, 1948, the Circuit Court of Appeals for the Second Circuit reversed the lower court, with the following opinion:

CLARK, Circuit Judge: "This appeal presents the question whether food condemned as adulterated in interstate commerce under the prohibition of the Federal Food, Drug, and Cosmetic Act, § 304, 21, U. S. C. A. § 334, may be released to the owners for export to another country. The district court, in an endeavor to conserve food available for human consumption and relying upon a provision of the Act exempting food products intended for export, § 801 (d), 21 U. S. C. A. § 381 (d), held in favor of the claimant owners. The United States has appealed, contending that such action is beyond the court's power.

"Here two libels were filed on February 26, 1947, for the seizure and condemnation of two lots of tomato catsup shipped in interstate commerce in November, 1946. Kent Food Corp. claimed the 215 cases involved in the first libel. It also claimed 441 of the 902 cases attached in the second libel, while Clark-Iger Food Products Co., Inc., claimed the remaining 461 cases. Claimants without answering moved for an order approving a consent to a decree of condemnation entered on condition that an order be made directing the United States Marshal to release the catsup to the owners and permit