

# United States Department of Agriculture,

OFFICE OF THE SECRETARY.

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## NOTICE OF JUDGMENT NO. 2523.

(Given pursuant to section 4 of the Food and Drugs Act.)

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**U. S. v. 150 Cases Tomato Catsup. Decree of condemnation by default.  
Goods ordered destroyed.**

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### ADULTERATION AND MISBRANDING OF TOMATO CATSUP.

On February 7, 1912, the United States Attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 150 cases of tomato catsup remaining unsold in the original unbroken packages and in possession of the Marx Extract Co., New Orleans, La., alleging that the product had been shipped on or about December 6, 1911, by the Huss Edler Preserve Co., Chicago, Ill., and transported from the State of Illinois into the State of Louisiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Phoenix Brand Contains 1-10 of 1% Benzoate of Soda, Tomatoes and parts thereof, Catsup made from fresh ripe stock, Guaranteed by Marx Extract Co., under the Food & Drugs Act, June 30, 1906. Serial No. 30300. Marx Extract Co. New Orleans, La."

Adulteration of the product was alleged in the libel for the reason that samples thereof were analyzed and examined and found to contain 350,000,000 bacteria per cc and 190 yeasts and spores per one-sixtieth cubic millimeter, and mold filaments were found present in 45 per cent of the microscopic fields examined, and said product consisted in part of filthy and decomposed vegetable substances. Adulteration was alleged for the further reason that a product of apples had been substituted for tomato catsup and was mixed therewith so as to reduce, lower, and injuriously affect its quality and strength. Misbranding was alleged for the reason that the label set forth above indicated that the product was manufactured by the Marx Extract Co., New Orleans, La., whereas, in truth and in fact, it was manufactured by the Huss Edler Preserve Co., Chicago, Ill.,

and said label was false and misleading as it further indicated that the product was made of tomatoes and parts thereof and did not indicate that it contained any product of apples, whereas, in truth and in fact, it did contain a product of apples, and the label was false and misleading as to the said product and the ingredients thereof and was such as to deceive and mislead the purchaser into believing that it was made of tomatoes alone instead of tomatoes and some product of apples of which it was composed in part.

On April 1, 1912, Fred C. Edler, doing business as the Huss Edler Preserve Co., filed his answer to the libel, and on January 18, 1913, said United States Attorney filed a rule to show cause why the answer should not be stricken from the record by reason of the claimant's default in filing a stipulation for costs as required by admiralty rules; and on February 18, 1913, an order was entered by the court striking the answer from the record.

On February 25, 1913, the case having come on for final hearing, and no claimant appearing for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal, and that Fred C. Edler and the Huss Edler Preserve Co. pay all the costs.

B. T. GALLOWAY,  
*Acting Secretary of Agriculture.*

WASHINGTON, D. C., *July 12, 1913.*