

heard and considered the original libel as amended and the answer of the claimant, and having heard the testimony of witnesses and the arguments of counsel, and being fully advised in the premises, found in part as follows: That the product arrived at Portsmouth, Ohio, on or about March 26, 1913, and remained at said city until on or about April 6, 1913. That during said period, from March 28, 1913, until April 6, 1913, the said city of Portsmouth was wholly or in part submerged by flood waters which were contaminated with fecal matter and sewerage pollution. That the railroad car containing the product was submerged in said waters to a depth of approximately 8 inches and the bags upon the floor of said car containing the shelled peanuts were immersed in said flood waters to a distance of approximately 3 inches from the bottom of the bags containing the article. That the product was thereafter transported to the city of Chicago and delivered at the Pennsylvania depot in said city on or about April 16, 1913. The court further found, as a conclusion of law, from the foregoing special findings of fact, that the product was adulterated, in that it consisted in part of a filthy and decomposed vegetable substance.

It further appearing to the court that for the purpose of preserving such quantity of the product as might upon final determination be found to be not filthy and decomposed, an order was on May 7, 1913, duly entered authorizing the separation of the portion of the product which should appear not to be filthy, decomposed, and unfit for food, and such separation was made pursuant to the order of the court, it was therefore ordered, adjudged, and decreed that the product heretofore separated pursuant to the order of the court and designated as filthy, decomposed, and unfit for food be declared to be condemned and confiscated to the United States and destroyed by the United States marshal, and it was further ordered, adjudged, and decreed that the quantity of the product separated and designated as not filthy, decomposed, and unfit for food be declared released to said claimant.

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

WASHINGTON, D. C., *April 14, 1914.*

**3081. Adulteration of tomato paste. U. S. v. 5 Cases of Tomato Paste. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5184. S. No. 1738.)**

On April 29, 1913, the United States attorney for the District of Minnesota, 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 5 cases, each containing 100 cans of tomato paste, remaining unsold in the original unbroken packages and in possession of Stone-Ordean-Wells Co., Duluth, Minn., alleging that the product had been shipped by the Ignatius Gross Co., New York, N. Y., and transported from the State of New York into the State of Minnesota, being received by the said Stone-Ordean-Wells Co. on or about December 23, 1912. The product was labeled: "Conserva di Tomate—Packed by our Special Process—(Picture design of red ripe tomato Rossa)—Guaranteed by American Conserve Co. under the Food and Drugs Act, June 30, 1906, Serial number 9270—Containing 1/10 of 1 percent of Benzoate of Soda and 15 percent salt—This can contains 15 Oz. net Weight Tomato Conserve—American Conserve Co. New York. Directions \* \* \* (Picture design of medals and American and Italian flags.)"

Adulteration of the product was alleged in the libel for the reason that it consisted wholly or in part of a filthy, decomposed, and putrid vegetable substance and was unfit for food.

On July 20, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered that the product should be destroyed by the United States marshal.

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

WASHINGTON, D. C., *April 14, 1914.*