

5532. Misbranding of canned tomatoes. U. S. v. 1,360 Cases of Canned Tomatoes. Decree of condemnation. Product ordered released under bond for relabeling. (F. D. C. No. 9451. Sample No. 20172-F.)

On March 1, 1943, the United States attorney for the District of Rhode Island filed a libel against 1,360 cases, each containing 24 cans, of tomatoes at Providence, R. I., alleging that the article had been shipped in interstate commerce on or about January 12, 1943, by A. W. Sisk & Son, from Hebron, Md.; and charging that it was misbranded. The article was labeled in part: (Can) "Preston Brand Tomatoes Albert W. Sisk & Son Distributors Not Manufacturers * * * Aberdeen, Md."

The article was alleged to be misbranded in that it purported to be and was represented as a food for which a standard of quality had been prescribed by regulations promulgated pursuant to law, but its quality fell below such standard since it contained tomato peel per pound of canned tomatoes in the container which covered an area of more than 1 square inch, whereas the standard provides that the tomato peel per pound of canned tomatoes shall cover an area of not more than one square inch; and its label failed to bear, in such manner and form as the regulations specify, a statement that it fell below such standard.

On September 3, 1943, George A. Bounds, doing business as George A. Bounds & Co., Hebron, Md., having appeared as claimant and having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond for relabeling under the supervision of the Food and Drug Administration.

5533. Alleged adulteration of tomato catsup. U. S. v. The Summit Packing Co., Inc. Plea of not guilty. Trial by court. Judgment of not guilty. (F. D. C. No. 7685. Sample Nos. 73206-E, 73212-E.)

On October 3, 1942, the United States attorney for the Northern District of Indiana filed an information against the Summit Packing Co., Inc., a corporation, at Wellsboro, Ind., alleging shipment on or about March 21 and April 7, 1942, from the State of Indiana into the State of Missouri of a quantity of tomato catsup that was adulterated in that it consisted in whole or in part of a decomposed substance. The article was labeled in part: "Pagin's [or "Lady Clare"] Brand Tomato Catsup," or "Pagin's * * * Tomato Catsup."

On May 3, 1943, counsel for the defendant filed a motion for a bill of particulars, which motion was granted, and on November 16, 1943, the court ordered that the desired information be filed by November 20, 1943. On November 26, 1943, the case came on for trial before the court. Evidence was introduced and arguments of counsel heard at the conclusion of which the court found the defendant not guilty.

5534. Adulteration and misbranding of tomato paste. U. S. v. 79 Cases of Tomato Concentrate. Decree of condemnation. Product ordered released under bond to be brought into compliance with the law. (F. D. C. No. 10066. Sample No. 14447-F.)

On June 18, 1943, the United States attorney for the District of Arizona filed a libel against 79 cases, each containing 6 No. 10 cans, of tomato concentrate at Phoenix, Ariz., alleging that the article had been shipped in interstate commerce on or about April 30, 1943, by the Pleasant Grove Canning Co., from Provo, Utah; and charging that it was adulterated and misbranded. It was labeled in part: (Cans) "Utah Valley Brand Tomato Concentrate."

It was alleged to be adulterated in that tomato puree had been substituted in whole or in part for tomato paste, which the article purported and was represented to be. It was alleged to be misbranded in that it was offered for sale under the name of another food, and in that it purported to be and was represented as tomato paste, a food for which a definition and standard of identity had been prescribed by regulations promulgated pursuant to law, but it failed to conform thereto since such definition and standard provides that tomato paste shall contain not less than 25 percent of salt-free tomato solids, whereas it contained less than 25 percent of salt-free tomato solids, and its label failed to bear, as the regulations require, the name of the food specified in the definition and standard.

On September 3, 1943, the Pleasant Grove Canning Co. having appeared as claimant, judgment of condemnation was entered and the product was ordered released under bond, conditioned that it be brought into compliance with the law under the supervision of the Food and Drug Administration.