12816. Adulteration of canned blended orange and grapefruit juice. U. S. v. 904 Cases * * * (and 1 other seizure action). (F. D. C. Nos. 23462, 23511. Sample Nos. 87612–H, 91374–H, 91385–H.)

LIBELS FILED: July 2 and 21, 1947, Eastern District of New York and District of Connecticut.

ALLEGED SHIPMENT: On or about April 14 and 22, 1947, by Sasson-King, Ltd., from Lakeland and Tampa, Fla.

PRODUCT: 904 cases at Brooklyn, N.Y., and 287 cases at Hartford, Conn., each case containing 12 1-quart, 14-fluid ounce cans, of blended orange and grapefruit juice.

LABEL, IN PART: (Can) "Golden Harvest Brand [or "Lady Jean Supreme Quality"] Florida Blended Orange and Grapefruit Juice."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of fly eggs and maggots.

DISPOSITION: September 5 and October 10, 1947. Default decrees of condemnation and destruction.

12817. Adulteration of canned orange and grapefruit juice. U. S. v. 750 Cases * * *. (F. D. C. No. 23456. Sample No. 91379–H.)

LIBEL FILED: June 25, 1947, Eastern District of New York.

ALLEGED SHIPMENT: On or about April 28, 1947, by the Pasco Packing Co., from Dade City, Fla.

PRODUCT: 750 cases, each containing 24 1-pint, 2-ounce cans, of orange and grapefruit juice at Brooklyn, N. Y.

LABEL, IN PART: (Cans) "Gerbro Unsweetened Orange and Grapefruit Juice * * * Gerber Bros. Distributors Brooklyn, N. Y."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or part of a filthy substance by reason of the presence of fly eggs and maggots.

DISPOSITION: December 30, 1947. Default decree of condemnation and destruction.

12818. Adulteration of orange flavor sirup. U. S. v. 5 Barrels * * *. (F. D. C. No. 23349. Sample Nos. 83375–H, 83376–H.)

LIBEL FILED: July 9, 1947, Southern District of Ohio.

ALLEGED SHIPMENT: About May 2 and June 6, 1947, by O'Donnell & Co., Chicago, Ill.

PRODUCT: 5 55-gallon barrels of orange flavor sirup at Columbus, Ohio.

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), saccharin, having no food value, had been substituted in whole or in part for sugar; and, Section 402 (b) (4), saccharin had been mixed and packed with the article so as to reduce its quality and strength and make it appear better and of greater value than it was.

DISPOSITION: September 24, 1947. Default decree of destruction.

12819. Adulteration of tomato juice. U. S. v. 2,050 Cases * * * (and 4 other seizure actions). Tried to the jury; verdict for the Government. Judgment of condemnation and destruction. Judgment sustained on appeal to Circuit Court of Appeals. Certiorari to United States Supreme Court denied. (F. D. C. Nos. 18885, 19334, 19390, 19583, 19584. Sample Nos. 14487–H, 16974–H, 35005–H, 59633–H, 59634–H.)

LIBELS FILED: Between January 22 and April 2, 1946, Eastern District of Missouri, Northern District of Ohio, and Western District of Pennsylvania.

ALLEGED SHIPMENT: Between the approximate dates of September 26, 1945, and February 26, 1946, by the Salamonie Packing Co., from Warren, Ind., and Holley, N. Y.

PRODUCT: Tomato juice. 2,050 cases at St. Louis, Mo.; 1,397 cases at Cleveland and 1,792 cases at Bryan, Ohio; and 422 cases at Pittsburgh and 860 cases at McKees Rocks, Pa. Each case contained 6 3-quart cans.

LABEL, IN PART: (Portion) "Salamonie [or "Weideman Boy Brand," or "Premier"] Tomato Juice."

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 17 and 18, 1946. The Salamonie Packing Co. having appeared as claimant, and the cases having been consolidated for trial in the Eastern District of Missouri, the actions were tried to a jury and a verdict for the Government was returned.

On December 20, 1946, judgment of condemnation and destruction was entered. Thereupon, the claimant filed an appeal to the Circuit Court of Appeals for the Eighth Circuit, and on January 6, 1948, the court handed down the following opinion affirming the judgment of the Circuit Court:

SANBORN, *Circuit Judge:* "The Government, pursuant to § 304 (a) of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, 21 U. S. C. A. § 334 (a), instituted five separate libels against certain cases of canned tomato juice shipped in interstate commerce by appellant. In each libel the Government sought the condemnation of the accused tomato juice on the ground that it was adulterated within the meaning of 21 U. S. C. A. § 342 (a) (3), in that it consisted, in whole or in part, of a decomposed substance by reason of the presence of decomposed tomato material. The libels were consolidated. The appellant in its answer denied that its product was 'adulterated,' and alleged that it was 'neither harmful nor poisonous, but good and safe for human consumption.' On motion of the Government, the court struck from the answer the allegation that the juice was fit for human consumption.

"The case was tried to a jury. The Government's evidence showed that the accused tomato juice contained mold and decomposed tomato material. There was no evidence that the juice was unfit for food. Some evidence was introduced by appellant to show that the juice was not offensive to the sense of smell or taste, and that no decomposed material was observable to the naked eye. At the close of the evidence, appellant moved for a directed verdict on the ground that there was no evidence that the accused product was unfit for food. The District Court denied the motion. The jury returned a verdict for the Government. From the judgment and decree, directing the destruction of the tomato juice, this appeal is taken.

"The contentions of appellant are (1) that an article of food must be proved to be unfit for food before it can be adjudged to be 'adulterated' within the meaning of § 342 (a) (3) of Title 21, U. S. C. A., and (2) that evidence of fitness for food is admissible in determining whether an article of food is 'adulterated.'

"The pertinent language of § 342 is as follows:

> A food shall be deemed to be adulterated—
> (a) * * * (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food * * *.

"The following paragraph of appellant's brief concisely states its position relative to this language:

> The section of the statute referred to above provides that food is to be deemed adulterated if 'it consists in whole or in part of a filthy, putrid, or decomposed substance, *or is otherwise unfit for food.*' The last phrase of the above provision 'or is otherwise unfit for food' was placed in the statute when the law was re-enacted in 1938. It is appellant's contention that this phrase qualifies the preceding part of the sentence; and means that the product must not only be decomposed, but must be decomposed to the extent of being unfit for food; and that, therefore, the burden is on the government to prove that the product is unfit for food before the government can demand the destruction of the product.

"Virtually the same argument which appellant makes here was presented to and rejected by the Circuit Court of Appeals of the Tenth Circuit in the case of United States v. 1851 Cartons, etc., 146 F. 2d 760. We think that the court in that case has fully demonstrated that the statute means that food which contains filthy, putrid, or decomposed matter is to be deemed adulterated, whether or not it is fit for food. Apparently, for years, food processors have been endeavoring, unsuccessfully, to secure a ruling which would compel the Government, in cases such as this, to prove that an accused article of food contained so much decomposed matter as to make it unfit for human consumption. See United States v. Two Hundred cases of Adulterated Tomato Catsup, (D. C., D. Oregon) 211 F. 780, 782–783 and other cases cited in United States v. 1851 Cartons, etc., supra, page 761 of 146 F. 2d.

"If the statute in question needs amendment, in the public interest, to guard against the possibility of the destruction of wholesome food by the Government, the appellant's remedy is to call the matter to the attention of Congress.

"We conclude that the District Court did not err in ruling that the question

whether the tomato juice was fit for food was not and could not be made an issue in the case.

"The judgment appealed from is affirmed."

The claimant filed a petition for a writ of certiorari to the United States Supreme Court, which was denied on March 29, 1948.

12820. Adulteration of tomato juice. U. S. v. 105 Cases * * *. (F. D. C. No. 21813. Sample No. 81389–H.)

LIBEL FILED: November 5, 1946, District of Oregon.

ALLEGED SHIPMENT: On or about September 29 and October 2, 1946, by the Pacific Fruit & Produce Co., from Walla Walla, Wash.

PRODUCT: 105 cases, each containing 12 1-quart, 14-fluid-ounce cans, of tomato juice at Pendleton, Oreg.

LABEL, IN PART: "Corner State Brand Tomato Juice * * * Packed by Wapato Packing Company, Wapato, Washington."

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: March 12, 1947. Default decree of condemnation and destruction.

12821. Adulteration and misbranding of fountain sirups. U. S. v. 9 Cases and 12 Bottles * * *. (F. D. C. No. 23176. Sample Nos. 86547–H to 86550–H, incl.)

LIBEL FILED: June 9, 1947, Eastern District of Illinois.

ALLEGED SHIPMENT: On or about September 13 and November 2, 1946, by the A. W. Mendenhall Co., from Dallas, Tex.

PRODUCT: Fountain sirups. 9 cases, each containing 4 1-gallon bottles, and 12 1-gallon bottles, at East St. Louis, Mo.

LABEL, IN PART: "Lone Star Fountain Strawberry Syrup [or "Vanilla Syrup," "Cherry Syrup," or "Pineapple Syrup"]."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), artificially flavored and colored acidulated solutions of sugars, corn sirup, water, and sodium benzoate, containing less soluble solids than are contained in fountain fruit sirups, had been substituted for fountain strawberry sirup, vanilla sirup, cherry sirup, and pineapple sirup, respectively, which the articles were represented to be.

Misbranding, Section 403 (a), the label designations, "Fountain Strawberry Syrup," "Vanilla Syrup," "Cherry Syrup," or "Pineapple Syrup," were false and misleading.

DISPOSITION: July 2, 1947. Default decree of condemnation. The products were delivered to a charitable institution.

Nos. 12822 to 12829 report actions involving wine that contained monochloracetic acid, which is a poisonous and deleterious substance that is unsafe within the meaning of the law, since it is a substance not required in the production of the article and could have been avoided by good manufacturing practice.

12822. Adulteration of wine. U. S. v. 144 Cases, etc. (and 32 other seizure actions). (F. D. C. Nos. 22247, 22249, 22250, 22444, 22452, 22464, 22465, 22480 to 22486, incl., 22491 to 22494, incl., 22515, 22525, 22526, 22605, 22752, 22753, 22785, 22786, 22822, 22824, 22829, 22834, 22849, 22850, 22993. Sample Nos. 14918–H to 14923–H, incl., 14996–H to 14999–H, incl., 15508–H, 15509–H, 40081–H, 40082–H, 40557–H to 40559–H, incl., 48834–H, 50519–H, 51982–H, 51983–H, 52788–H to 52790–H, incl., 52792–H to 52795–H, incl., 52797–H, 53655–H, 53656–H, 53672–H, 53841–H, 53845–H to 53848–H, incl., 53943–H, 53944–H, 53949–H to 53955–H, incl., 54041–H, 54116–H, 54117–H, 69098–H, 69333–H to 69336–H, incl., 69834–H, 73120–H to 73124–H, incl., 73667–H, 77041–H, 77050–H to 77052–H, incl., 77056–H, 77057–H, 77107–H to 77110–H, incl.)

LIBELS FILED: Between January 29 and April 30, 1947, Eastern District of Kentucky, Eastern and Western Districts of Wisconsin, Northern and Southern Districts of Indiana, Northern and Southern Districts of Ohio, Eastern District of Missouri, Eastern and Western Districts of Michigan, District of Minnesota, and Western and Northern Districts of Texas.