

centage of the cans bearing such code number contains peas of substandard quality; and

"It appearing to the court and the court having found that the different code marks herein enumerated as embossed on the particular cans indicate that, according to the code mark, that the can was packed during a particular three hour period and on a certain day;

"And the court having determined and found that with rare exceptions, cans of only one code mark were and are found in a single case in said 351 cases of peas;

"It appearing from the pleadings and evidence introduced that those cans bearing code numbers 3P28C TFPN and 4P28C TFPN, contain peas of substandard quality, it is by the court ORDERED, ADJUDGED and DECREED that those cans of peas bearing code numbers 5P27C TFPN, 3P28C TFPN, and 4P28C TFPN, be, and the same are hereby condemned and forfeited to the libellant;

"The Court further finds from the pleadings and evidence introduced that the peas in those cans bearing code numbers 7P27C TFPN and 8P27C TFPN, are of standard quality and that the claimant is entitled to have those cans bearing code numbers 7P27C TFPN and 8P27C TFPN, released to it, without bond, for sale;

"It is therefore ORDERED, ADJUDGED and DECREED that upon payment of all costs of this proceeding by the claimant, the libellant release to the claimant or its authorized representative, without bond, those cans contained in said 351 cases, more or less, of peas, bearing code numbers 7P27C TFPN and 8P27C TFPN.

"It is further ORDERED, ADJUDGED and DECREED that upon payment of all costs of this proceeding by the claimant, and upon the claimant's filing a good and sufficient bond, within ----- days, in the penal sum of ----- Dollars, payable to the United States, conditioned that those cans of peas bearing code numbers 5P27C TFPN, 3P28C TFPN, and 4P28C TFPN, will not be sold or otherwise disposed of contrary to the provisions of this judgment, or any laws of the United States, State, District, Territory or Insular Possession of the United States, such cans of peas shall be delivered to the claimant for the purpose of relabeling such cans of peas under the supervision of the Federal Security Agency, Food and Drug Administration, and upon performance of all such conditions, the bond shall be deemed satisfied, otherwise to remain in full force and effect."

Following the entry of the above decree, a motion was filed on behalf of the Government, seeking the entry of a new judgment or, in the alternative, the granting of a new trial. This motion was denied on or about February 1, 1949.

15438. Alleged adulteration and misbranding of potatoes. U. S. v. Abe Kasviner.
Plea of not guilty. Tried to the jury. Verdict of not guilty. (F. D. C.
No. 23566. Sample Nos. 44379-H, 71509-H.)

INFORMATION FILED: On or about September 18, 1947, District of Nevada, against Abe Kasviner, Reno, Nev.

ALLEGED SHIPMENT: On or about February 14 and April 5, 1947, from the State of Nevada into the State of California.

LABEL, IN PART: (One shipment) "U. S. No. 1 Famous K Brand Russets."
 The other shipment was unlabeled.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product in one shipment consisted in part of a filthy substance by reason of the presence of nematodes.

Misbranding, Section 403 (a), the statement "U. S. No. 1" displayed upon the label of the remaining shipment was false and misleading. The statement represented and created the impression that the article was U. S. No. 1 grade, whereas it was not U. S. No. 1 grade since the article had been damaged by nematodes.

DISPOSITION: A plea of not guilty having been entered, the case came on for trial before the court and jury on January 26, 1948. On January 29, 1948, the jury returned a verdict of not guilty.

TOMATOES AND TOMATO PRODUCTS

15439. Adulteration and misbranding of canned tomatoes. U. S. v. 1,230 Cases
* * *. (F. D. C. No. 27876. Sample No. 47744-K.)

LIBEL FILED: September 28, 1949, Southern District of West Virginia.

ALLEGED SHIPMENT: On or about July 30, 1949, by Albert W. Sisk & Son, from Cambridge, Md.

PRODUCT: 1,230 cases, each containing 24 1-pound, 3-ounce cans, of tomatoes at Logan, W. Va.

LABEL, IN PART: "Pride of the Field * * * Tomatoes Packed By Leonard Simmons, Madison, Md."

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), a product containing added water had been substituted in whole or in part for canned tomatoes.

Misbranding, Section 403 (g) (1), the article failed to conform to the definition and standard of identity for canned tomatoes since it contained added water, which is not a permitted ingredient of canned tomatoes in the definition and standard.

DISPOSITION: November 5, 1949. Default decree of condemnation. The court ordered that the product be delivered to a Federal institution since there was no substance in the product which made it unfit for human consumption.

15440. Adulteration and misbranding of canned tomatoes. U. S. v. 597 Cases
* * *. (F. D. C. No. 28057. Sample No. 47632-K.)

LIBEL FILED: October 17, 1949, Eastern District of Virginia.

ALLEGED SHIPMENT: On or about September 10, 1949, by Albert W. Sisk & Son, from Salem, Md.

PRODUCT: 597 cases, each containing 24 1-pound, 3-ounce cans, of tomatoes at Norfolk, Va.

LABEL, IN PART: (Can) "Pine Cone Brand Tomatoes."

NATURE OF CHARGE: Adulteration, Section 402 (b) (4), water had been added to the article and mixed and packed with it so as to increase its bulk or weight and reduce its quality or strength.

Misbranding, Section 403 (g) (1), the article failed to conform to the definition and standard of identity for canned tomatoes since it contained added water, which is not permitted as an ingredient of canned tomatoes; and, Section 403 (h) (1), the quality of the article fell below the standard of quality for canned tomatoes because of excessive tomato peel, and the label failed to bear a statement that the article fell below such standard.

DISPOSITION: November 23, 1949. Default decree of condemnation. The court ordered that the product be delivered to a Federal institution.

15441. Adulteration and misbranding of canned tomatoes. U. S. v. 165 Cases
* * *. (F. D. C. No. 28047. Sample No. 1942-K.)

LIBEL FILED: On or about October 13, 1949, Northern District of Georgia.

ALLEGED SHIPMENT: On or about August 26, 1949, by the Lively Canning Corp., from Lively, Va.