

**CHARGE:** 402 (a) (3)—contained insects, insect fragments, and rodent hairs; and, 402 (a) (4)—prepared under insanitary conditions.

**DISPOSITION:** 2-21-55. Default—destruction.

### TOMATOES AND TOMATO PRODUCTS

**22178. Canned tomatoes.** (F. D. C. No. 33898. S. No. 3-738 L.)

**QUANTITY:** 1,600 cases, 24 1-lb. cans each, at Orangeburg, S. C.

**SHIPPED:** 9-10-52, from Baltimore, Md., by Oriole Packing Co., Inc.

**LIBELED:** 10-3-52, E. Dist. S. C.

**LABEL IN PART:** (Can) "Essex Brand \* \* \* Tomatoes."

**CHARGE:** 402 (a) (3)—contained decomposed tomato material when shipped.

**DISPOSITION:** On 1-2-53, a letter in the nature of an answer was filed by the Oriole Packing Co., Inc. When the case was called for trial on 4-13-53, no response was made by the claimant; and, on 5-5-53, a decree was entered condemning the article and ordering its destruction.

**22179. Canned tomatoes (3 seizure actions).** (F. D. C. Nos. 32341, 32361, 32650. S. Nos. 33-131 L, 34-089 L, 35-613 L.)

**QUANTITY:** 542 cases at Duluth, Minn., 399 cases at Green Bay, Wis., and 450 cases at St. Louis, Mo. Each case contained 24 1-lb., 3-oz. cans.

**SHIPPED:** Between 10-18-51 and 11-1-51, from New Castle, Ind., by the Westwood Canning Co.

**LIBELED:** 12-29-51, Dist. Minn.; 1-9-52, E. Dist. Wis.; and 2-8-52, E. Dist. Mo.

**LABEL IN PART:** (Can) "Westwood Brand Tomatoes" or "Wizdom Tomatoes."

**CHARGE:** 402 (a) (3)—all lots contained fly eggs and maggots, and the 450-case lot and the 542-case lot contained decomposed tomato material when shipped; and, 402 (a) (4)—all lots were prepared under insanitary conditions.

**DISPOSITION:** The Westwood Canning Co., an Indiana corporation, appeared as claimant in all three cases. Pursuant to an agreement entered into between counsel for the claimant and the United States attorneys, orders for the consolidation and removal of these cases for trial in the Southern District of Ohio were entered on 3-7-52 and 3-21-52. Subsequently, interrogatories served upon the Government by the claimant were answered. A motion to amend the three libels to include a charge of adulteration within the meaning of Section 402 (a) (4) was filed, and on 10-3-52, the entry granting the motion was filed.

Exceptions to the three libels were filed by the claimant on the ground that the libels failed to allege that the tomatoes involved were adulterated to the extent of being unfit for human consumption. On 12-31-52, an order was entered overruling the exceptions. The Government filed interrogatories and a request for admissions on 12-22-52, to which the claimant subsequently replied.

On 12-31-52, an answer was filed by the claimant denying that the products were adulterated as alleged in the libels. The consolidated cases came to trial before the court and jury on 1-19-53. A verdict for the Government was returned by the jury on 2-16-53, and on 3-16-53, judgments of condemnation were entered, which permitted the release of the tomatoes under bond to the claimants to be brought into compliance with the law.

On 5-4-53, the claimant filed a document entitled "Motion for Relief from Judgment." This document consisted of three separate motions: a motion to set aside the verdict and the decree, a motion for a new trial, and a motion to modify the decree. On 6-11-53, an order was entered overruling these motions. Thereafter, the claimant failed to exercise the privilege granted to it to bring the tomatoes into compliance with the law, and on 10-14-53, orders of destruction were entered. The lot seized in Wisconsin was destroyed, and the lots seized in Minnesota and Missouri were delivered to charitable institutions to be consumed by animals.

**22180. Canned tomatoes.** (F. D. C. No. 36895. S. No. 87-852 L.)

QUANTITY: 818 cases, 24 1-lb. cans each, at Philadelphia, Pa.

SHIPPED: 6-24-54, from Chestertown, Md., by A. W. Sisk & Son.

LIBELED: 7-19-54, E. Dist. Pa.

LABEL IN PART: (Can) "Red-Glo Tomatoes."

CHARGE: 402 (a) (3)—contained decomposed substance when shipped.

DISPOSITION: 8-11-54. Consent—claimed by Chester Packing Co., Chestertown, Md. Segregated, 252 cases destroyed.

**22181. Canned tomatoes.** (F. D. C. No. 37574. S. No. 2-388 M.)

QUANTITY: 585 cases, 24 1-lb. cans each, at Washington, D. C.

SHIPPED: Between 8-12-54 and 11-2-54, from Delta, Pa., by R. D. and D. B. Snyder.

LIBELED: 1-4-55, Dist. Columbia.

LABEL IN PART: (Can) "Aunt Nellie's Solid Pack Tomatoes."

CHARGE: 402 (a) (3)—contained fly eggs, maggots, and decomposed tomato material; and, 402 (a) (4)—prepared under insanitary conditions.

DISPOSITION: 2-23-55. Default—consumption by animals.

**22182. Canned tomatoes.** (F. D. C. No. 37596. S. No. 12-822 M.)

QUANTITY: 273 cases, 24 1-lb., 3-oz. cans each, at Philadelphia, Pa.

SHIPPED: 10-5-51, from Hightstown, N. J., by Farm Fresh Packing Corp.

LIBELED: 1-10-55, E. Dist. Pa.

LABEL IN PART: (Can) "Little Darling \* \* \* Tomatoes."

CHARGE: 402 (a) (3)—contained fly eggs and maggots when shipped.

DISPOSITION: 3-28-55. Default—destruction.

**22183. Canned tomatoes.** (F. D. C. No. 37354. S. No. 78-011 L.)

QUANTITY: 148 cases, 24 1-lb. cans each, at Wallace, N. C.

SHIPPED: 7-20-54, from Cambridge, Md., by Phillips Packing Co., Inc.

LIBELED: 11-19-54, E. Dist. N. C.

LABEL IN PART: (Can) "Phillips Delicious \* \* \* Tomatoes."

CHARGE: 402 (a) (3)—contained decomposed tomato material when shipped.

DISPOSITION: 1-26-55. Consent—claimed by Phillips Packing Co., Inc. Segregated, 924 cans destroyed.

**22184. Canned tomatoes and canned peas.** (F. D. C. No. 37051. S. Nos. 80-682/3 L.)