NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of insect-infested and dirty apricots.

DISPOSITION: July 7, 1948. Default decree of condemnation and destruction.

13639. Adulteration of dried apricots. U. S. v. 124 Cases * * *. (F. D. C. No. 24036. Sample Nos. 33267–K, 37319–K.)

LIBEL FILED: December 23, 1947, Western District of Washington.

ALLEGED SHIPMENT: On or about October 29, 1947, by Rosenberg Bros. & Co., from Fresno, Calif.

PRODUCT: 124 30-pound cases of dried apricots at Tacoma, Wash.

LABEL, IN PART: "Stadium Brand California Dried Apricots Pacific Sales Co. Tacoma, Wash."

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 insect-infested and dirty apricots.

DISPOSITION: March 3, 1948. Rosenberg Bros. & Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond, to be used for purposes other than for human consumption, under the supervision of the Federal Security Agency. The product was subsequently denatured and disposed of for use as hog feed.

13640. Adulteration of prunes. U. S. v. 361 Boxes * * * (and 3 other seizure actions). Cases consolidated and tried to the jury. Verdict for Government. Decree of condemnation and destruction. (F. D. C. Nos. 19965, 20042, 20235, 20390. Sample Nos. 58199–H, 58633–H, 58634–H.)

LIBELS FILED: May 27 and 28, June 10, and July 18, 1946, Southern District of New York, District of Maine, Northern District of New York, and Western District of Washington.

ALLEGED SHIPMENT: On or about February 16 and March 9, 1946, by Rosenberg Bros. & Co., from Riddle and Portland, Oreg.

PRODUCT: Prunes. 361 boxes at New York, N. Y., 475 boxes at Portland, Maine, 770 boxes at Albany, N. Y., and 177 cases at Seattle, Wash. Each box and case contained 25 pounds.

LABEL, IN PART: "Northland Brand [or "Red Ribbon Brand"] * * * Dried Oregon Prunes."

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 prunes affected with brown rot.

DISPOSITION: Rosenberg Bros. & Co., claimant, having filed a motion for consolidation and transfer of the cases, the United States District Court for the Western District of Washington, on November 15, 1946, entered an order directing the consolidation and transfer of the cases to the District of Oregon for trial. On June 4, 1947, the United States District Court for the District of Oregon dismissed the cases from that court and directed that the records in each case be forwarded to the court in which the cases had originated.

On August 26, 1947, pursuant to agreement of the parties, the United States District Court for the Western District of Washington entered an order consolidating the cases for trial in that district. The matter came on for trial before a jury on April 13, 1948, and at the conclusion of the trial on April 14, the jury returned a verdict in favor of the Government. On May 10, 1948, judgment of condemnation was entered and the product was ordered destroyed.

13641. Adulteration of raisins. U. S. v. Peggy Boothe and John Campodonico. Pleas of not guilty. Tried to the court. Judgment of guilty. Each defendant fined $100. (F. D. C. No. 21524. Sample Nos. 5061–H, 5062–H, 10889–H, 25689–H, 45465–H, 47092–H, 53001–H.)

INFORMATION FILED: March 14, 1947, Northern District of California, against a partner in the Boothe Fruit Co., Modesto, Calif., Peggy Boothe, and John Campodonico, plant superintendent.

ALLEGED SHIPMENT: On or about December 1, 1945, and January 16 and 24 and February 4, 1946, from the State of California into the States of Colorado, Pennsylvania, New York, and Ohio.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in part of a decomposed substance by reason of the presence of moldy and decomposed raisins.

DISPOSITION: March 3, 1948. A plea of not guilty having been entered by the defendants, the case was tried before the court. On March 3, 1948, the following opinion and order was handed down finding the defendants guilty and imposing a fine of $100 against each.

LEMMON, *District Judge*: "This matter came on regularly for trial by the Court sitting without a jury. Emmet J. Seawell, Asst. United States Attorney, appeared for and on behalf of the plaintiff. The defendants were present with their attorney, Edward T. Taylor. Evidence was introduced, briefs have been filed, and the cause was duly submitted.

"The court finds that Peggy Boothe, defendant above named, was at all times herein mentioned the owner of and doing business under the name of Boothe Fruit Co. trading at Modesto, in the State of California, within the Northern Division of the Northern District of the State of California, and the defendant John Campodonico was at all times herein mentioned the superintendent and agent of the said Peggy Boothe; that on or about the 1st day of December, 1945, the defendants unlawfully caused to be introduced and delivered for introduction into interstate commerce at said city of Modesto, State of California, for delivery to Denver, Colorado, consigned to a shipper's order, notify J. B. Morris Co., c/o Weicker T & S Co., a number of cartons, each containing a food; that upon each of said cartons appeared the following printed matter:

30 Lbs. Net Prepared with Sulphur Dioxide
SUN NUGGET BRAND
Fancy
Golden Bleached
THOMPSON SEEDLESS RAISINS
Packed for
BOOTHE FRUIT CO.
Modesto—California;

that said food consisted in part of a decomposed substance by reason of the presence in said food of moldy and decomposed raisins.

"That on or about the 16th of January, 1946, the defendants unlawfully caused to be introduced and delivered for introduction into interstate commerce at Empire, State of California, for delivery to Pueblo, Colorado, consigned to order of Boothe Fruit Co., notify J. B. Morris Co., a number of cartons, each containing a food; that upon each of said cartons appeared the following printed matter:

30 Lbs. Net
SUN NUGGET
Fancy
Seedless Raisins
Packed by
BOOTHE FRUIT CO.
Modesto—California;

that said food consisted in part of a decomposed substance by reason of the presence in said food of moldy and decomposed raisins.

"That on or about the 24th day of January, 1946 the defendants unlawfully caused to be introduced and delivered for introduction into interstate commerce at Stockton, State of California, for delivery to Philadelphia, Pennsylvania, consigned to E. W. Mills Company, a number of cartons, each containing a food; that upon each of said cartons appeared the following printed matter:

30 Lbs. Net Wt.
SUN NUGGET
Prepared with
Sulphur Dioxide
Extra Choice—or (Choice)
Golden Bleached Thompson
Seedless Raisins
PACKED FOR
THE BOOTHE FRUIT CO. MODESTO, CAL.;

that said food consisted in part of a decomposed substance by reason of the presence in said food of moldy and decomposed raisins.

"That on or about the 4th day of February, 1946, the defendants unlawfully caused to be introduced and delivered for introduction into interstate commerce at Empire, State of California, for delivery to Buffalo, New York, with partial unloading at Cleveland, Ohio, consigned to The A & P Co., a number of cartons, each containing a food; that upon each of said cartons appeared the following printed matter:

30 Lbs. Net Wt.
HALL SEAL
CHOICE
Golden Bleached Thompson
Seedless Raisins
PACKED FOR
HARRY HALL & CO. INC. S. F. CALIF.;

that said food consisted in part of a decomposed substance by reason of the presence in said food of moldy and decomposed raisins;

"That the said mold hereinbefore referred to as to each shipment was dead.

"The question presented is whether dead mold contained within raisins which were introduced into interstate commerce violated the Federal Food, Drug and Cosmetic Act, especially Sections 331, 333, 342 (a) (3) of Title 21 U. S. C. It is apparent that the mold was the result of drying moldy grapes.

"It is admitted that dried fruits are covered by the Act, and that the administrator thereof does not have authority to establish a standard for dried fruits. It becomes the duty of the court to enforce the evident intent of Congress to protect the public (and at the same time maintain a reasonable approach with regard to the problem created in processing food).

"There being no fixed standard, each case in which it is alleged food is adulterated must be determined on the facts presented. U. S. v. 200 Cases of Adulterated Tomato Catsup 211 Fed. 780. The question posed is whether raisins consisting in part of a decomposed substance are adulterated under the measure of the Act.

"In determining if a food is adulterated the Act gives certain definitions among which is the following: '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 obvious intent of Congress was to continue the strict construction of the act as it pertained to food. The words 'or if it is otherwise unfit for food' should be considered in the nature of emphasis and as an additional factor rather than words of qualification. The conditions must be considered in the disjunctive, U. S. v. 1851 Cartons, etc. Fish 146 F 2d 760; and this clause does not add an additional requirement, U. S. v. 935 Cases, etc. Tomato Puree, 65 F. Supp. 503.

" 'The fact that a product cannot be prepared and shipped in interstate commerce except in a decomposed or rotted state certainly can not justify permitting it so to be transported considering the plain language and purpose of the statute; nor are conditions of weather or methods of canning important if the product is found to be decomposed and rotten upon examination following interstate shipment. * * * If the product under the evidence was in a state of substantial decomposition and rotten, as those terms are well understood, that ends their right to interstate shipment * * *.' U. S. v 935 Cases, etc., 65 F. Supp. 503, 505.

"To fall within the provisions of the Act it is not necessary that the decomposition be injurious to health or that it be unfit for human consumption. U. S. v. 200 Cases, etc. 211 Fed. 780, Anderson & Co. v. U. S. 284 Fed. 542 (9 Cir.), U. S. v. 1851 Cartons, etc. 146 F. 2d 760, U. S. v. Commercial Creamery Co. 43 F. Supp. 714.

"The evidence having showed a substantial percentage of decomposition being present in the raisins shipped in interstate commerce by the defendants, there is a violation of the Federal Food, Drug and Cosmetic Act, and the defendants are guilty as charged in each of the four counts.

"It appears that the raisins involved had originally been processed with the end in view that twenty percent thereof would be diverted to the United States; that standards were set by the United States and that the defendants endeavored

to meet those standards and that government inspectors inspected and passed upon the raisins so produced. Under these circumstances the court finds that there was an absence of deliberate violation of the statute and the court deems that a fine of $25 as to each defendant and as to each count, or a total fine of $100 as to each defendant, would be an appropriate punishment. Imposition of sentence will be made in the absence of the defendants if they will file with this court within 10 days from the date hereof their written consent that such imposition of sentence may be made in the absence of said defendants pursuant to Rule 43 of the Federal Rules of Criminal Procedure; if such consent is not filed within said period the matter of pronouncing sentence will be upon the calendar of this court on Monday, March 15th, 1948."

MISCELLANEOUS FRUIT PRODUCTS*

13642. Adulteration of applesauce. U. S. v. 548 Cases * * * (and 1 other seizure action). (F. D. C. Nos. 22504, 22505. Sample Nos. 41303–H, 41304–H.)

LIBELS FILED: February 11 and 12, 1947, Eastern District of Missouri and Southern District of Illinois.

ALLEGED SHIPMENT: On or about September 23, 1946, by Stokely-Van Camp, Inc., Indianapolis, Ind., from Owosso, Mich.

PRODUCT: Applesauce. 548 cases at Canton, Mo., and 45 cases at Quincy, Ill. Each case contained 24 1-pound, 4-ounce cans.

LABEL, IN PART: "Our Favorite Brand Apple Sauce * * * Distributed By Fame Canning Company, Inc., Indianapolis, Ind."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product was unfit for food by reason of its having an offensive sulfide-like odor and taste.

DISPOSITION: May 24, 1948. The cases having been consolidated for trial in the Eastern District of Illinois, and Stokely-Van Camp, Inc., claimant, having withdrawn its answer and requested the entry of a decree of condemnation, judgment of condemnation was entered and the product was ordered destroyed.

13643. Misbranding of applesauce. U. S. v. 502 Cases * * *. Claimant's request for answer to interrogatories granted. Consent decree of condemnation. Product ordered released under bond to be relabeled. (F. D. C. No. 22584. Sample No. 69925–H.)

LIBEL FILED: On or about March 11, 1947, Northern District of Illinois.

ALLEGED SHIPMENT: On or about September 6, 1946, by Stokely-Van Camp, Inc., from Owosso, Mich.

PRODUCT: 502 cases, each containing 24 1-pound, 4-ounce cans, of applesauce at Chicago, Ill.

LABEL, IN PART: "Our Favorite Brand Apple Sauce Sugar Added * * * Distributed By Fame Canning Company, Inc. Indianapolis, Ind."

NATURE OF CHARGE: Misbranding, Section 403 (a), the label statement "Sugar Added" was misleading since the product contained little, if any, added sugar.

DISPOSITION: Stokely-Van Camp, Inc., having appeared as claimant and having filed interrogatories on November 5, 1947, the court ruled in favor of the claimant, as follows:

LABUY, *District Judge:* "In accord with the opinion of the Supreme Court of the United States in *443 Cans of Frozen Egg Products* v. *U. S.*, 226 U. S. 172 and *C. J. Hendry Co.* v. *Moore*, 318 U. S. 133, holding that district courts proceed as courts of common law and not as courts of admiralty regarding seizures on the land, this court holds the Federal Rules of Civil Procedure apply to these proceedings.

"The libel herein relates to misbranding in that the addition of the words SUGAR ADDED to the label is misleading 'as applied to an article containing little if any added sugar.' Interrogatories submitted by defendant request substantially the following information: type and description of tests used to determine sugar content and amount of sugar content in the product, when and by whom the tests were taken, number of samples tested, and amount of sugar disclosed by such tests. These are directed to the evidentiary facts underlying the allegation in the libel of 'little if any added sugar' and are directed to

*See also Nos. 13502–13504, 13509, 13510.