

That the matter of cost will abide the determination of this case, and be taxed by the Court in accordance with law.

This the 30th day of September, 1948.

UNITED STATES OF AMERICA

By: J. Ellis Mundy
United States Attorney
Hewlett & Dennis, T. F. Bowden
By: Charles S. Barton
Counsel for Ernest F. Tark

That the United States Marshal withdraw from storage all of said potatoes except two bags of each brand thereof, and destroy the same without prejudice to either party hereto by delivering the same to the United States Penitentiary, at Atlanta, Georgia, to be consumed by livestock, and that the two bags of each brand of said potatoes be continued in storage until the final determination of this cause, and shall constitute the entire res of said cause.

It is ordered further that the said destruction of said potatoes shall not affect the issues involved, which shall be preserved until the final determination of the cause, nor shall affect the taxing of the cost in the proceeding, but that this destruction is by consent of both parties and in order to minimize the incident cost of storage.

BY THE COURT, this the 12th day of October, 1948.

Robert L. Russell
UNITED STATES DISTRICT JUDGE.

It is hereby stipulated and agreed by the parties hereto that the four bags of potatoes seized and stored in the Atlanta Company on or about January 7, 1948, in the above stated libel, and left in storage in accordance with the order of the Court dated October 12, 1948, are not in existence or identifiable, either as potatoes or as edible food or otherwise and it is further stipulated and agreed that this stipulation be made a part of the record of the case.

This 8th day of March, 1950.

W. G. McCullough
Assistant United States District
Attorney for the Government
Hewlett & Dennis, T. F. Bowden
By: Charles S. Barton
Attorneys for Claimant

Approved and ordered filed as a part of the record, March 8, 1950.

M. Neil Andrews
U. S. JUDGE.

"In this state of the record I find it unnecessary to adjudicate the case in its entirety because I think it is moot.

"There is no res. A part of it was destroyed in accordance with the stipulation of September 30, 1948; the remaining four bags which stood for the whole are no longer in existence. The cause should not proceed merely to fix liability for costs.

"See United States v. 3 Unlabeled 25-Pound Bags Dried Mushrooms, Seventh Circuit, 157 F. (2d) 722 and cases cited; Postal Telegraph-Cable Company v. City of Montgomery, 69 So. 428; Cullen v. Levee Improvement Dist. No. 3, 77 S. W. (2d) 310.

"The complaint is hereby dismissed.

"This 13th day of March 1950."

16386. Adulteration of potatoes. U. S. v. 356 Sacks * * *. (F. D. C. No. 29223. Sample No. 32370-K.)

LIBEL FILED: May 12, 1950, Northern District of California.

ALLEGED SHIPMENT: On or about April 25, 1950, by Ambro Rosaschi, from Wellington, Nev.

PRODUCT: 356 sacks, each containing 100 pounds, of potatoes at San Jose, Calif.

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 parasitic worms.

DISPOSITION: June 15, 1950. Default decree of condemnation and destruction.

TOMATOES AND TOMATO PRODUCTS

16387. Adulteration of canned tomatoes. U. S. v. 299 Cases * * *. (F. D. C. No. 29233. Sample No. 72903-K.)

LIBEL FILED: May 18, 1950, Western District of Kentucky.

ALLEGED SHIPMENT: On or about April 28, 1950, by the Preston Rider Packing Co., from Campbellsburg, Ind.

PRODUCT: 299 cases, each containing 24 1-pound, 3-ounce cans, of tomatoes at Louisville, Ky.

LABEL, IN PART: "Pendennis Tomatoes."

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 fly eggs and maggots; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: July 5, 1950. A default decree of condemnation was entered, and the court ordered that the product be released to a public institution, for use as animal feed.

16388. Adulteration of tomato catsup. U. S. v. Sardik Food Products Corp. Plea of nolo contendere. Fine, \$200. (F. D. C. No. 27530. Sample Nos. 19866-K, 46249-K, 46250-K.)

INFORMATION FILED: September 20, 1949, Southern District of Indiana, against the Sardik Food Products Corp., Shirley, Ind.

ALLEGED SHIPMENT: On or about February 16 and April 29, 1949, from the State of Indiana into the States of Tennessee and Missouri.

LABEL, IN PART: "Kroger Tomato Catsup * * * Distributed By The Kroger Co., Cincinnati 2, Ohio" and "Laurel Brand Tomato Catsup * * * Packed For J. F. Conrad Grocer Co. St. Louis, Mo."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a decomposed substance by reason of the presence of decomposed tomato material.

DISPOSITION: July 14, 1950. A plea of nolo contendere having been entered, the court imposed a fine of \$200.

16389. Adulteration of tomato puree. U. S. v. 41 Cases * * *. (F. D. C. No. 28853. Sample No. 64472-K.)

LIBEL FILED: February 10, 1950, District of Minnesota.

ALLEGED SHIPMENT: On or about February 15, 1949, by the Illinois Canning Co., from Hoopeston, Ill.

PRODUCT: 41 cases, each containing 6 6-pound, 6-ounce cans, of tomato puree at Minneapolis, Minn.

LABEL, IN PART: "Joan of Arc Fine Foods Tomato Puree."

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: July 10, 1950. A default decree of condemnation was entered, and the court ordered that the product be disposed of for animal feed, or destroyed.