

21785. Adulteration of Bar-Be-Que relish. U. S. v. 13 Cases * * *. (F. D. C. No. 37294. Sample No. 77231-L.)

LIBEL FILED: October 12, 1954, District of Delaware.

ALLEGED SHIPMENT: On or about July 30, 1954, by Mrs. Sands Food Products, from Norristown, Pa.

PRODUCT: 13 cases, each containing 12 16-ounce jars, of Bar-Be-Que relish at Wilmington, Del.

LABEL, IN PART: (Jar) "Mrs. Sands Spiced Bar-Be-Que Relish * * * Mfd. By de Solms Norristown, Penna."

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 parts and other insect fragments; and, Section 402 (a) (4), the article had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: November 23, 1954. Default decree of condemnation and destruction.

21786. Adulteration of chowchow. U. S. v. 15 Cases * * *. (F. D. C. No. 37293. Sample No. 77150-L.)

LIBEL FILED: October 12, 1954, District of Delaware.

ALLEGED SHIPMENT: On or about August 13, 1954, by Mrs. Sands Food Products, from Norristown, Pa.

PRODUCT: 15 cases, each containing 12 1-pint jars, of chowchow at Wilmington, Del.

LABEL, IN PART: (Jar) "Mrs. Sands Old Fashion Chow Chow * * * Mfd. By de Solms Norristown, Penna."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by the reason of the presence of flies, fly parts, and other insect fragments; and, Section 402 (a) (4), the article had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: November 23, 1954. Default decree of condemnation and destruction.

TOMATOES AND TOMATO PRODUCTS

21787. Adulteration of canned tomatoes. U. S. v. 68 Cases * * *. Government's motion to strike claimant's "answer" sustained in part. (F. D. C. No. 33862. Sample No. 4334-L.)

LIBEL FILED: September 12, 1952, Western District of Kentucky.

ALLEGED SHIPMENT: On or about August 6, 1952, by Lord-Mott Co., Inc., from Baltimore, Md.

PRODUCT: 68 cases, each containing 24 cans, of tomatoes at Louisville, Ky.

LABEL, IN PART: (Can) "Iona Tomatoes Net Wt. 1 Lb. 12 Ozs. Standard Quality Grade C."

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: On December 17, 1952, Lord-Mott Co., Inc., without filing a formal claim, submitted a letter to the court designated as an "answer" to

the libel. The "answer" failed to deny the allegations of the libel, but instead set forth approximately 5 different reasons for dismissing the libel as follows: (1) That the Federal Security Administrator had over the years allowed a tolerance for decomposition which he had gradually lowered to what was asserted to be an "unreasonable" level; (2) that the inspectors who collected the samples of the product acted illegally and that the evidence so obtained should be suppressed; (3) that a meeting of a number of tomato packers had been called to discuss relief from the act's ban on decomposition; (4) that a congressional committee was scheduled to investigate the Food and Drug Administration in the near future; and, (5) that the product was not injurious to the consumer.

The Government filed motions to have the court enter either a default judgment or a judgment on the pleadings. The Government filed also a motion to strike the "answer." On March 27, 1953, the court handed down the following decision on the Government's motions:

SHELBOURNE, *District Judge*:

ORDER

"This case is before the Court on Libelant's motion (1) to strike Claimant's answer and such portions thereof as seem proper on the alleged grounds that (1) no claim to the seized article has been filed by the Libelee and (2) the answer consists entirely of matter which is immaterial to this action and (3) the defenses relied upon in the answer are insufficient in law.

"2. An application for default judgment for the alleged reason that no claimant has appeared to make a claim of ownership to the seized articles.

"1. While Lord Mott & Company, Inc., in its somewhat informal answer has not spelled out a formal claim to the goods, it is apparent from the answer that the Company is here desiring to claim the libeled goods and to contest the right of the Government to confiscate them. On this ground, the Libelant's motion to strike is overruled.

"So much of the answer as assails the Regulations as unreasonable is overruled. Libelee has not denied that its product is technically adulterated.

"The third defense of the answer refers to a proposed meeting of Canners, which will be held to discuss administration of the Food Laws. This paragraph #3 is stricken. Likewise, the fourth defense is stricken. Congressional action, such as referred to in this defense has not yet resulted and proposed legislation cannot be considered until it is legally enacted.

"The paragraph of respondent's answer, in which the writer offers to consume in open Court, a can of the tomatoes, is likewise immaterial and is stricken.

"The only issue in this case, as it is presently posed is whether the inspection, which resulted in the seizure of the tomatoes, was in violation of the law. In other words, did the Government legally take its sample? U. S. v. Cardiff, 21 Law Week 4045 — U. S. —.

"Therefore, the motion of the Government to strike the answer as a whole is overruled, as its motion for judgment on the pleadings. Its motion to strike the third and fourth defenses as numbered in the answer and to strike so much of the answer as refers to the offer of George S. Clark to eat a can of the tomatoes and drink the juice, as a test of the claimed contraband, is sustained."

On July 1, 1953, Lord-Mott Co., Inc., advised that it did not desire to offer further defenses to the libel and consented to the entry of a default decree. On July 10, 1953, the court entered a decree of condemnation and ordered that the product be delivered to a public institution, for use as animal feed.