

**21788. Adulteration of canned tomatoes. U. S. v. 180 Cases \* \* \*. (F. D. C. No. 33923. Sample No. 38866-L.)**

**LIBEL FILED:** On or about October 14, 1952, Western District of Virginia.

**ALLEGED SHIPMENT:** On or about August 5, 1952; by Lord-Mott Co., Inc., from Baltimore, Md.

**PRODUCT:** 180 cases, each containing 24 cans, of tomatoes at Coeburn, Va.

**LABEL, IN PART:** (Can) "Contents 1 Lb. 12 Ozs. Old Reliable Brand Tomatoes."

**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 15, 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 the same reasons for dismissing the libel that were contained in the "answer" filed in the libel action reported in the preceding notice of judgment, No. 21787.

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."

The matter came on for hearing before the court on June 3, 1953, at which time Lord-Mott Co., Inc., formally appeared as claimant to argue the defenses set forth in its "answer." At the conclusion of the argument, the court ruled in favor of the Government. On June 4, 1953, the court entered an order of condemnation on the basis that all material facts stated in the libel appeared to have been admitted by the claimant's answer and that no issue of fact remained. The product subsequently was disposed of as animal feed.

**21789. Adulteration of canned tomatoes. U. S. v. 239 Cases \* \* \*. (F. D. C. No. 34730. Sample No. 38912-L.)**

**LIBEL FILED:** On or about March 3, 1953, Western District of Virginia.

**ALLEGED SHIPMENT:** On or about August 19, 1952, by Lord-Mott Co., Inc., from Baltimore, Md.

**PRODUCT:** 239 cases, each containing 24 cans, of tomatoes at Coeburn, Va.

**LABEL, IN PART:** (Can) "Contents 1 Lb. 12 Ozs. Old Reliable Brand Tomatoes Trace of Calcium Salt Added."

**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 May 5, 1953, Lord-Mott Co., Inc., in the capacity of claimant, filed a document entitled "Answer, Motions to Strike and Application for Judgment In Favor of Defendant," in which it claimed (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 Food and Drug Administration had used 20 percent of the microscopic fields as a "working tolerance" on tomato juice which was the lowest "working tolerance" the Food and Drug Administration had used over the years on any tomato product, whereas nearly every can of the official samples of the canned tomatoes involved in the instant case was found upon analysis to be below such "working tolerance"; (3) that

Section 402 of the Act was ambiguous; (4) that the product was not injurious to the consumer; and, (5) that the principles of the case of the United States v. 558 Cases of Tomatoes (reported in notices of judgment on food, No. 20082) were applicable to the instant case. The company requested also that judicial notice be taken of the case of the United States v. 68 Cases of Tomatoes (reported in notices of judgment on food, No. 21787) and of a meeting held on December 18, 1952, by representatives of the tomato industry concerning relief from the act's ban on decomposition, and also of a letter written by the claimant to the Chairman of the House of Representatives Committee on Interstate and Foreign Commerce.

The Government filed a motion for judgment on the pleadings. The matter came on for hearing before the court on June 3, 1953. At its conclusion, the court ruled in favor of the Government. On June 4, 1953, the court entered an order of condemnation on the basis that all material facts stated in the libel appeared to have been admitted by the claimant's answer and that no issue of fact remained. The product subsequently was disposed of as animal feed.

**21790. Adulteration of canned tomatoes. U. S. v. 600 Cases, etc. (F. D. C. No. 35914. Sample Nos. 55695-L, 55696-L.)**

**LIBEL FILED:** On or about October 9, 1953, Northern District of New York.

**ALLEGED SHIPMENT:** On or about August 10, 1953, by Thomas Roberts & Co., Inc., from Hynson, Md.

**PRODUCT:** 600 cases, each containing 24 1-pound cans, and 125 cases, each containing 6 6-pound, 6-ounce cans, of tomatoes at Utica, N. Y.

**LABEL, IN PART:** (Can) "Pride Of The Farm Brand \* \* \* Tomatoes."

**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:** February 1, 1955. Thomas G. McMahon & Co., Inc., Utica, N. Y., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for segregation and destruction of the unfit portion under the supervision of the Department of Health, Education, and Welfare. 388 cases containing 24 1-pound cans and 66 cases containing 6 6-pound, 6-ounce cans of the product were found unfit and were destroyed.

**21791. Adulteration of tomato puree. U. S. v. 50 Cases \* \* \*. (F. D. C. No. 34028. Sample No. 3252-L.)**

**LIBEL FILED:** October 20, 1952, District of Kansas.

**ALLEGED SHIPMENT:** On or about October 1, 1952, by Lord-Mott Co., Inc., from Baltimore, Md.

**PRODUCT:** 50 cases, each containing 48 cans, of tomato puree at Topeka, Kans.

**LABEL, IN PART:** (Can) "Lord-Mott's Tomato Puree Made From Whole Ripe Tomatoes Contents 10½ Oz. Avoir."

**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 23, 1952, Lord-Mott Co., Inc., in the capacity of claimant, submitted a letter to the court designated as an "answer" to the