

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 had been held on December 18, 1952, between the representatives of the Food and Drug Administration and the tomato canning industry, on the subject of relief from the act's ban on decomposition, but that no relief had been granted by the Food and Drug Administration; (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 5, 1953, the claimant filed a motion to strike and an application for judgment in its favor, and, on March 13, 1953, the court denied the claimant's motion. The claimant submitted a reply to the Government's motions on March 18, 1953. The case came on for hearing before the court on April 10, 1953, but the claimant failed to appear. The Government thereupon moved the court for judgment on the pleadings, which was granted on the basis that all material facts stated in the libel had been admitted by the claimant's "answer." Accordingly, the court, on April 10, 1953, entered a decree of condemnation and ordered that the product be destroyed.

### NUTS AND NUT PRODUCTS\*

**21792. Adulteration of black walnut meats. U. S. v. 30 Cartons \* \* \*. (F. D. C. No. 36758. Sample No. 86226-L.)**

**LIBEL FILED:** June 9, 1954, Western District of Kentucky.

**ALLEGED SHIPMENT:** On or about March 5, 24, and 31, 1954, by the Acker Black Walnut Corp., from Broadway, Va.

**PRODUCT:** 30 30-pound cartons of black walnut meats at Louisville, Ky., in possession of Huter-Quest & Co., Inc.

**LABEL, IN PART:** "Granule Grade Handpicked Pasteurized Black Walnut Meats."

**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 *E. coli*; and, Section 402 (a) (4), the article had been prepared under insanitary conditions whereby it may have become contaminated with filth.

**DISPOSITION:** September 7, 1954. The Acker Black Walnut Corp., 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 to be brought into compliance with the law, under the supervision of the Food and Drug Administration. The product subsequently was denatured for use as animal feed.

\*See also No. 21754.