

LIBELED: On or about 2-19-62, S. Dist. Tex.

CHARGE: 402(a)(3)—contained a decomposed substance when shipped.

DISPOSITION: On or about 4-4-62. Consent—destruction.

27796. Frozen frog legs. (F.D.C. No. 46846. S. No. 26-149 T.)

QUANTITY: 47 10-lb. boxes at Detroit, Mich.

SHIPPED: 10-11-60, from New York, N.Y.

LIBELED: 12-12-61, E. Dist. Mich.

CHARGE: 402(a)(3)—contained decomposed frog legs while held for sale.

DISPOSITION: 3-20-62. Default—destruction.

27797. Herring and rollmops. (F.D.C. No. 47209. S. Nos. 61-315 T, 61-319/20 T.)

QUANTITY: 40 cases, 12 jars each, of herring; and 100 cases, 12 jars each, of rollmops, at St. Louis, Mo.

SHIPPED: 1-30-62 and 2-20-62, from Chicago, Ill., by Vita Food Products, Inc.

LABEL IN PART: (Jar) "Vita Brand Imported Creamed Fillets * * * 12 Oz. Net 10 Oz. Net Fish Packed by Vita Food Products, Inc. New York-Chicago Contains: Herring, Onions, Distilled Vinegar, Sour Cream, Sugar, Salt and Spices" and "Vita Brand Imported Rollmops * * * 16 Oz. Net 14 Oz. Net Fish Packed by Vita Food Products, Inc., New York-Chicago Contains: Herring, Pickles, Onions, Distilled Vinegar, Salt and Spices."

RESULTS OF INVESTIGATION: Examination showed that the article contained less than the stated quantity of fish.

LIBELED: 3-8-62, E. Dist. Mo.

CHARGE: 403(a)—when shipped, the label statements (40-case lot) "10 Oz. Net Fish" and (100-case lot) "14 Oz. Net Fish" were false and misleading.

DISPOSITION: 3-28-62. Consent—claimed by Vita Food Products, Inc., Chicago, Ill., and released under bond for relabeling.

27798. Canned salmon. (F.D.C. No. 46338. S. No. 45-347 R.)

QUANTITY: 29 cases, 12 4-lb. cans each, at Richmond, Ind.

SHIPPED: 5-31-61, from Chicago, Ill., by L & M Supply Co.

LABEL IN PART: (Case and can) "Happy Day Pink Salmon Distributed by Emard Packing Co., Inc., Seattle, Wash."

RESULTS OF INVESTIGATION: Examination showed the article to be poor quality chinook salmon.

LIBELED: On or about 9-21-61, S. Dist. Ind.

CHARGE: 402(b)(2)—when shipped, poor quality chinook salmon had been substituted in whole or in part for pink salmon; and 403(a)—the label statement "Pink Salmon" was false and misleading.

DISPOSITION: 11-15-61. Consent—claimed by Emard Packing Co., Inc., Seattle, Wash., and released under bond for relabeling.

27799. Fresh oysters. (F.D.C. No. 46554. S. No. 45-579 T.)

QUANTITY: 230 jars at Memphis, Tenn.

SHIPPED: 11-17-61, from New Orleans, La., by Paul Zibilich Co., Inc.

LABEL IN PART: (Jar) "Banner Brand Oysters Paul Zibilich Co. Inc. 617-21 Piety St., New Orleans, La."

LIBELED: 11-30-61, W. Dist. Tenn.

CHARGE: 403(e) (2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of contents.

DISPOSITION: 1-11-62. Default—delivered to a public institution for use as animal feed.

FRUITS AND VEGETABLES

CANNED FRUIT

27800. Canned applesauce. (F.D.C. No. 42444. S. Nos. 4-109 P, 4-839 P, 4-865/6 P.)

INFORMATION FILED: 8-4-59, Dist. Md., against American Stores Co., a corporation, Hurlock, Md., Isadore Shocket, t/a Empire Jobbing House, Baltimore, Md., Albert Klaff, an employee of Isadore Shocket, Rivolanne, Inc., a corporation, t/a Union Fish Co., Washington, D.C., and Sol Sacks and Frank LoCastro, vice president and secretary-treasurer, respectively, of Rivolanne, Inc.

SHIPPED: 10-15-58, from Maryland to the District of Columbia.

LABEL IN PART: (Jar) "ACME IDEAL Net Weight 15 Ounces APPLE SAUCE."

CHARGE: 402(a) (3)—contained decomposed applesauce when shipped.

PLEA: Nolo contendere by American Stores Co., Isadore Shocket, and Albert Klaff; not guilty by Rivolanne, Inc., Sol Sacks, and Frank LoCastro.

DISPOSITION: On 10-16-59, the American Stores Co. was fined \$400 and Shocket and Klaff were each fined \$250, plus costs.

The case against the other defendants came on for trial before the court and jury on 3-21-60. The trial was concluded on 3-24-60, with the jury's return of a verdict of guilty against Rivolanne, Inc., and Frank LoCastro, and a verdict of not guilty against Sol Sacks. Thereafter, a motion for a directed verdict of acquittal or in the alternative for a new trial was filed and on 5-20-60, the following opinion was handed down by the court:

CHESNUT, *District Judge*: "The Criminal Information in this case charged that the six named defendants 'unlawfully caused to be introduced and delivered for introduction into interstate commerce, at Baltimore, Maryland, for delivery to Washington, District of Columbia, a number of jars' of adulterated food, containing 'decomposed apple sauce', on or about October 15, 1958.

"The three defendants first named, American Stores Company, Isadore Shocket, trading as Empire Jobbing House, and Albert Klaff, by counsel, respectively filed pleas of nolo contendere which were accepted by the Court (District Judge Watkins), and were respectively fined in varying amounts. The remaining three defendants, Rivolanne, Inc., a corporation, Sol Sacks and Frank LoCastro, respectively by their counsel when arraigned, pleaded 'not guilty' and were tried by a jury. The verdict of the jury as to Sacks was 'not guilty' but 'guilty' as to Rivolanne and LoCastro. At the trial, counsel for the defendants filed a motion for a directed verdict of acquittal which was denied and after the verdict counsel for LoCastro and Rivolanne have renewed their motion for a directed verdict of acquittal or in the alternative for a new trial. After careful consideration of the oral arguments and briefs of counsel on the latter motion, I have concluded that both motions