

# United States Department of Agriculture,

## OFFICE OF THE SECRETARY.

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### NOTICE OF JUDGMENT NO. 555, FOOD AND DRUGS ACT.

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#### ADULTERATION AND MISBRANDING OF CANNED TOMATOES.

On or about September 7, 1909, C. W. Baker & Sons, Aberdeen, Md., shipped from the State of Maryland into the State of Texas 2,000 cases of canned tomatoes, each of which cases was labeled "2 doz. No. 3 Perfection Brand Tomatoes," the cans contained in said cases being each labeled "Perfection Brand Tomatoes, Packed by R. G. Charles, Westover, Summerset Co., Md." Analysis of samples of this product made in the Bureau of Chemistry, United States Department of Agriculture, indicated that it was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Northern District of Texas.

In due course a libel was filed in the District Court of the United States for said district, charging the above shipment and alleging that said 2,000 cases of tomatoes, and each of them, were misbranded and adulterated in this, to wit, that each case is labeled "2 doz. No. 3 Perfection Brand Tomatoes," which said label represented that the said cases, and each of them, contained, as aforesaid, tomatoes in cans, when in truth the said cases and each of them contained an adulterated and misbranded article of food, to wit, two dozen cans each of a filthy, decomposed, and putrid vegetable substance, and also contained a poisonous ingredient which might render the said substance injurious to health, to wit, salts of tin, and praying seizure and condemnation of the product.

Whereupon R. G. Charles, a resident of the State of Maryland, appeared and filed an answer to said libel, claiming to be the sole owner of the two thousand cases of tomatoes involved and excepting and objecting to said libel on the ground that he was not furnished one of the three samples of the product involved, which were taken by an inspector of the United States Department of Agriculture; that he was not furnished a copy of the findings made in connection with the examination and analysis of said samples; that by reason

of the lack of a copy of said findings he was unable, when cited to a hearing, to submit intelligently oral or written evidence impugning such findings; that only a small percentage, not over 4 per cent, of the cans in question were bad; that the defective character of such bad cans was visible on superficial examination; and averring that the contention that the presence of such small number of bad cans rendered the entire shipment subject to condemnation and forfeiture was a taking of the defendant's property without due process of law, and therefore in violation of the fifth amendment of the Constitution of the United States, and praying the dismissal of the libel, that the property seized be returned to the defendant and that he be dismissed with all his costs.

The case coming on for hearing, the issues were submitted to the court without the intervention of a jury, and the court, being fully informed in the premises, rendered its decree in substance as follows:

UNITED STATES OF AMERICA	} March 25, 1910.
<i>vs.</i>	
2,000 CASES OF CANNED TOMATOES.	

On this day came on to be heard the above entitled and numbered cause, and R. G. Charles appeared as claimant to the property therein libelled, after having given cost bond as required by the statute, and thereupon came the United States of America, libellants, by their District Attorney, William H. Atwell, and the claimant in person and by his attorneys, and each and all announced ready for trial.

The matters of law, as well as of fact being submitted to the Court without a jury, the Court is of the opinion, after having heard the pleadings and testimony and being advised as to the law, and having heard the argument of counsel, that the allegations of the libel are true, and that the tomatoes libelled are interstate commerce, from the State of Maryland to the State of Texas, intended for food, and that a portion of the two thousand cases of canned tomatoes is unfit for food, in that the same is decomposed and contains putrid matter, and further that the same contain salts of tin, an ingredient deleterious to health, and it further appearing to the Court that there are in said two thousand cases of canned tomatoes some good cans and some bad cans, as hereinbefore described, and it further appearing to the Court that the said two thousand cases of canned tomatoes were seized by the United States Marshal under the said libel, and from the return of the said officer it appears that the same said two thousand cases of canned tomatoes are still in his possession.

Now, therefore, it is ordered, adjudged and decreed that the said United States Marshal for the Northern District of Texas shall separate the good cans from the bad cans, which said bad cans are herein and hereby condemned, and that after such separation the said Marshal shall deliver to the claimant, the said R. G. Charles, such cans as are good, and shall destroy such cans as are bad.

It is further ordered, adjudged and decreed that the costs of this proceeding shall be taxed against the claimant, the said R. G. Charles, and that the Marshal shall be reimbursed for such expenses in carrying out this judgment as under the law he is entitled to, to be charged and taxed as other costs.

And it is so ordered, adjudged and decreed, for all of which let execution issue.

To this decree the claimant at the time excepted, and in open court gave notice of appeal to the U. S. Circuit Court of Appeals for the Fifth Circuit and upon application made therefor was allowed sixty days from the date hereof for perfecting his appeal.

EDWARD R. MEEK, *Judge.*

Said R. G. Charles, within the period of sixty days allowed by the terms of said decree, perfected his appeal to the United States Circuit Court of Appeals for the Fifth Circuit, where the case is now pending on writ of error.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. HAYS,

*Acting Secretary of Agriculture.*

WASHINGTON, D. C., *August 11, 1910.*

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