

"Such then was the uniform construction of the earlier act of 1906. And the act of 1938 follows the earlier act (on this point) so closely that it is only reasonable to infer that Congress intended to continue the substance of the earlier act as judicially construed. This conclusion is further confirmed by Senate Report No. 361, March 13, 1935, on S. 5, calendar 375, 74th Congress, First Session, introduced by Senator Copeland on January 3, 1935. This report states: 'the provisions of section 301 (2), (3), and (5) (later incorporated into 21 U. S. C. A. 342 (a)) dealing with filthy food and food from diseased animals are essentially the same as those of the present law.' And the report of the Committee on Interstate and Foreign Commerce, 75th Congress, Third Session, on S. 5, states: 'The measure * * * amplified and strengthens the provisions to safeguard the public health.' Thus clearly Congress intended that the clause 'or if it is otherwise unfit for food,' which the act of 1938 added to the earlier act, should enlarge rather than restrict the class of products subject to condemnation.

"Some of the Government witnesses in their testimony took the position that the product here involved, although not deleterious to health, was nonetheless unfit for food. As my findings in paragraph 7 show, I have been unable to find any convincing proofs here to substantiate this distinction.

"But the mere fact that under my construction of the act cases may occasionally occur—of which this is perhaps one—in which a product is condemned though not actually unfit for food, by no means demonstrates that I have erroneously construed the act. It suggests only that Congress considered that the unrestricted circulation in interstate commerce of foods containing decomposed substances was a practice fraught with such dangerous tendencies that that broad class of substances should be prescribed. But section 306 of the act, 21 U. S. C. A. 336, vests a broad discretion in the Secretary of Agriculture to forego the prosecution of 'minor violations.' Thus Congress definitely recognized that cases might occasionally fall within the ban of the act as having a dangerous tendency, even though the tendency, in the judgment of the Secretary, was too slight or remote to justify prosecution. In other words, the *degree* of the violation is important only for its effect upon the administrative discretion; it affects not at all the scope of the legislative ban which the judicial power when once invoked must apply."

On April 18, 1942, judgment of condemnation was entered, and the product was ordered released to the claimant under bond, conditioned that certain codes which previous examination had shown to contain decomposed material be separated from the lot and destroyed, and that the balance be examined further and the bad portion separated and destroyed under the supervision of the Food and Drug Administration.

3762. Adulteration of tomato paste. U. S. v. 700 Cases of Tomato Paste (and 2 other seizure actions against tomato paste). Default decrees of condemnation and destruction. (F. D. C. Nos. 6513, 6515-6517, incl. Sample Nos. 22869-E, 22870-E, 23239-E, 23240-E, 23701-E, 23702-E, 23703-E.)

On December 15, 16, and 29, 1941, the United States attorney for the District of Maryland, the Eastern District of Louisiana, and the Eastern District of New York filed libels against 2,840 cases of tomato paste at New Orleans, La., 325 cases at Baltimore, Md., and 1,000 cases at Brooklyn, N. Y., alleging that the article had been shipped in interstate commerce on or about November 19 and 22, 1941, by Herschel California Fruit Products Co., Inc., from San Jose, Calif.; and charging that it was adulterated in that it consisted in whole or in part of a decomposed substance. The article was labeled in part: "Contadina [or 'Pacific Star'] Tomato Paste."

On January 17, 1942, an order was entered in the District of Maryland, permitting the packer, Herschel California Fruit Products Co., Inc., and the Government to take samples; and ordering that 10 cases which had been seized but were not included in the libel, be returned to the owner. On March 30, April 8, and June 23, 1942, no claim having been entered, judgments of condemnation were entered, and the product was ordered destroyed.

3763. Adulteration of tomato paste. U. S. v. 124 Cases of Tomato Paste (and 2 other seizure actions against tomato paste). Consent decree of condemnation of decomposed portion. (F. D. C. Nos. 6971, 7147, 7426, 7427. Product ordered released under bond for segregation and Sample Nos. 81551-E, 81609-E, 81613-E, 81738-E.)

Between March 3 and May 2, 1942, the United States attorney for the District of Colorado filed libels against 232 cases of tomato paste at Denver, and 77 cases at Colorado Springs, Colo., which had been consigned by Herschel California

Fruit Products Co., Inc., alleging that the article had been shipped in interstate commerce on or about September 24 and November 8, 1941, from San Jose, Calif.; and charging that it was adulterated in that it consisted in whole or in part of a decomposed substance. The article was labeled in part: "Contadina [or "Pacific Star"] Tomato Paste."

On August 3, 1942, Herschel California Fruit Products Co., Inc., claimant, having admitted the allegations of the libels, judgments of condemnation were entered and the product was ordered released under bond for segregation and destruction of the unfit portions.

3764. Adulteration of tomato paste. U. S. v. 600 Cases of Tomato Paste. Consent decree ordering portion of product condemned and destroyed, and the remainder released. (F. D. C. No. 6970. Sample Nos. 81369-E, 81549-E.)

On March 3, 1942, the United States attorney for the District of Colorado filed a libel against 600 cases each containing 100 6-ounce cans of tomato paste at Denver, Colo., which had been consigned by the Riverbank Canning Co., alleging that the article had been shipped in interstate commerce on or about December 17, 1941, from Riverbank, Calif.; and charging that it was adulterated in that it consisted in whole or in part of a decomposed substance. The article was labeled in part: "Zelo Brand Choice Quality Pure Tomato Paste."

On June 4, 1942, the Riverbank Canning Co., claimant, having admitted that a portion of the article, identified by certain codes, was adulterated, judgment was entered condemning the said codes and ordering that they be destroyed. The claimant having denied that the remaining codes were adulterated and the court having found that the charge of adulteration with respect to such codes was not sustained, they were ordered delivered to the claimant.

3765. Adulteration of tomato puree. U. S. v. 220 Cases, 147 Cases, and 102 Cases of Tomato Puree. Default decrees of condemnation and destruction. (F. D. C. Nos. 7075, 7112, 7375. Sample Nos. 71696-E, 71699-E, 71834-E.)

On March 20 and 28, and April 22, 1942, the United States attorneys for the Eastern District of Missouri and the Western District of Tennessee filed libels against 367 cases each containing 6 No. 10 cans of tomato puree at St. Louis, Mo., and 102 cases each containing 6 No. 10 cans of tomato puree at Memphis, Tenn., alleging that the article had been shipped in interstate commerce within the period from on or about June 28, 1941, to on or about March 18, 1942, by Everitt Packing Co. from Underwood, Ind.; and charging that it was adulterated in that it consisted in whole or in part of a decomposed substance. The article was labeled in part: (Cans) "Haase's Magic Circle Brand Tomato Puree. A. C. L. Haase Co. Distributors" or "Ever-It Brand Tomato Puree."

On May 8 and 27 and June 20, 1942 no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

3766. Adulteration of tomato puree. U. S. v. 280 Cases and 245 Cases of Tomato Puree. Default decrees of condemnation and destruction. (F. D. C. Nos. 7345, 7371. Sample Nos. 66190-E, 71424-E, 71425-E.)

On April 17 and 24, 1942, the United States attorneys for the Northern District of Illinois and the Eastern District of Missouri filed libels against 280 cases each containing 6 No. 10 cans of tomato puree at Chicago, Ill., and 245 cases each containing 48 10½-ounce cans of tomato puree at St. Louis, Mo., alleging that the article had been shipped in interstate commerce on or about December 8 and 15, 1941, and January 9, 1942, by Hougland Packing Co. from Franklin, Ind.; and charging that it was adulterated in that it consisted in whole or in part of a decomposed substance. The article was labeled in part: (Cans) "Franklin Brand Whole Tomato Puree," or "American Lady [or "Top-most"] Tomato Puree."

On June 20 and 30, 1942 no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

3767. Adulteration of tomato puree. U. S. v. 149 Cases and 95 Cases of Tomato Puree. Decrees of condemnation and destruction. (F. D. C. Nos. 7327, 7620. Sample Nos. 66191-E, 86576-E.)

On April 15 and June 11, 1942, the United States attorney for the Northern District of Illinois filed libels against 149 cases each containing 48 10½-ounce cans and 95 cases each containing 6 No. 10 cans of tomato puree at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about March 11 and May 7 and 23, 1942, by Loudon Packing Co. from Terre Haute, Ind.; and charging that it was adulterated in that it consisted in whole or in