but during at least the greater part of that same period standard brands of the spiced product have likewise been so accepted; and, after all, what we are concerned with here is, what do housewives, cooks, restaurateurs, and other buyers throughout the United States, understand tomato sauce to be; not what a part of the consuming public in four states only might consider it to be.

"It has been argued that in view of the heavy sales of the seized product in the four states mentioned, consumers there will not be misled by the brand 'Tomato Sauce', and that the consuming public elsewhere will not be deceived since practically all of claimant's output is sold in these states. The answer to this is that claimant can, if it sees fit, sell its product anywhere in the country, if it is not misbranded, and, moreover, the population of the four states mentioned does not remain static, but is constantly changing, due to the influx of people from other sections of the country.

"Claimant's contention with respect to trade acceptance over a long period of time is weakened somewhat by the fact that up until the time the Administrator fixed the minimum standards for tomato puree and tomato paste, it had sold its product under those names as well as the name of tomato sauce. Conceding such acceptance, however, as stated, we do not feel that consumer acceptance in four states, alone, can establish a criterion for a food product shipped in interstate commerce.

"The seized article is more nearly a tomato juice than any other tomato product that has been discussed in this lawsuit. Dr. Osborne classed it as a beverage. He is an expert on beverages, being in charge of the Beverage Section of the Food Division of the Food and Drug Administration. We examined it and tasted it. It is somewhat heavier than the ordinary tomato juice that we use on our tables. It still may be a beverage, however, it is not a puree due to its low concentration, and it is not a tomato sauce, which, according to the evidence in this case, is a puree with spices added. Not being a tomato sauce, it is misbranded.

"The question of strict or liberal construction of the Act was argued at considerable length by counsel for claimant and for the libelant, and it was contended by the former that since this case involved a libel by the Government to forfeit property of one of its citizens, the proof required must be of a degree higher than a mere preponderance, citing *Van Camp Sea Food Co., Inc.*, v. *United States*, 3 Cir., 82 F. 2d 365. The libelant, on the other hand, contended that the rule of strict construction invoked by the claimant should not be applied, since the Federal Food, Drug, and Cosmetic Act was enacted to protect the public, and should therefore be liberally construed, and cited *United States* v. *Research Laboratories, Inc.*, 9 Cir., 126 F. 2d 42, to sustain its position. It is not necessary for us to choose between those conflicting theories since in our opinion the Government has established its claim of misbranding by clear and satisfactory evidence. The following language, however, used by the Supreme Court in *United States* v. *Ninety-Five Barrels of Vinegar*, 265 U. S. 438, 443, appears significant in this connection:

> It is not difficult to choose statements, designs and devices which will not deceive. Those which are ambiguous and liable to mislead should be read favorably to the accomplishment of the purpose of the act. The statute applies to food, and the ingredients and substances contained therein. *It was enacted to enable purchasers to buy food for what it really is.* (Citing cases.)

"The seized product should be condemned, but, being a wholesome food, should not be destroyed. The order will be that the cans under seizure be sold by the Marshal after being properly labeled. The sale, however, may be avoided if the claimant will pay the costs of this proceeding and give bond conditioned that the article shall not be sold or disposed of contrary to law, as provided in Section 334 (d) of the Act.

"Findings of fact and conclusions of law made in accordance with this opinion are filed herewith."

On March 13, 1946, judgment of condemnation was entered and the product was ordered released under bond to be relabeled under the supervision of the Federal Security Agency.

9140. Adulteration of tomato sauce. U. S. v. 699 Cases of Pan-American Sauce. Consent decree of condemnation and destruction. (F. D. C. No. 15935. Sample No. 20047-H.)

LIBEL FILED: April 24, 1945, District of Nebraska.

ALLEGED SHIPMENT: On or about March 13, 1945, by the Finer Foods Packing Corporation, from Terre Haute, Ind.

PRODUCT: 699 cases, each containing 24 14-ounce bottles, of Pan-American Tomato Sauce at Lincoln, Nebr.

LABEL, IN PART: "Pan-American Sauce Tomato Pulp, Beets, Celery, Cracker Meal, Sugar, Salt, Vinegar."

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 vegetable material.

DISPOSITION: July 7, 1945. The Finer Foods Packing Corporation, claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

MEAT AND POULTRY*

9141. Adulteration of frozen poultry. U. S. v. 47 Barrels and 11 Cases of Frozen Poultry. Default decree of condemnation and destruction. (F. D. C. No. 17045. Sample No. 31466-H.)

LIBEL FILED: August 17, 1945, Southern District of California.

ALLEGED SHIPMENT: On or about April 11, 1945, by the Baldwin Park Poultry Farms, from Salt Lake City, Utah.

PRODUCT: 47 barrels and 11 cases containing about 10,601 pounds of frozen poultry at Los Angeles, Calif.

NATURE OF CHARGE: Adulteration, Section 402 (a) (5), the article was in whole or in part the product of diseased animals.

DISPOSITION: September 14, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

9142. Adulteration of frozen turkeys. U. S. v. 40 Boxes of Frozen Turkeys. Product ordered released under bond for segregation and condemnation of unfit portion. (F. D. C. No. 16400. Sample No. 9462-H.)

LIBEL FILED: June 4, 1945, Western District of New York.

ALLEGED SHIPMENT: On or about May 21, 1945, by the Benson Products Co., from Benson, Minn.

PRODUCT: 40 boxes containing a total of 3,210 pounds of turkeys at Buffalo, N. Y.

LABEL, IN PART: "Pride of Minnesota Hens [or "Turx," or "Mixture"]."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance; and, Section 402 (a) (5), it was in whole or in part the product of a diseased animal.

DISPOSITION: June 11, 1945. The Benson Products Co. having appeared as claimant, judgment was entered ordering the product released under bond, conditioned that the turkeys be eviscerated, under the supervision of the Food and Drug Administration, and the unfit portion condemned. The unfit portion was denatured.

9143. Adulteration of green turtles. U. S. v. 58 Dead Green Turtles. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 15284. Sample No. 6414-H.)

LIBEL FILED: February 15, 1945, Southern District of New York.

ALLEGED SHIPMENT: On or about January 23, 1945, by Merren and Co., from Tampa, Fla.

PRODUCT: 58 green turtles at New York, N. Y.

NATURE OF CHARGE: Adulteration, Section 402 (a) (5), the article was in whole or in part the product of an animal which had died otherwise than by slaughter.

DISPOSITION: June 4, 1945. Moore and Co., Soups, Inc., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond for conversion to industrial uses, under the supervision of the Food and Drug Administration.

*See also No. 9115.