

ALLEGED SHIPMENT: On or about November 1, 2, and 16, 1945, from the State of Indiana into the States of Kentucky and Tennessee.

LABEL, IN PART: "Franklin Tomato Puree Salt Added."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a decomposed substance by reason of the presence of decomposed tomato material.

DISPOSITION: December 4, 1946. A plea of guilty having been entered on behalf of the defendant, the court imposed a fine of \$200.

11462. Adulteration of tomato puree. U. S. v. Mays Packing Co. Plea of guilty. Fine, \$100. (F. D. C. No. 20459. Sample No. 16066-H.)

INFORMATION FILED: August 6, 1946, Southern District of Indiana, against the Mays Packing Co., a corporation, Mays, Ind.

ALLEGED SHIPMENT: On or about November 1, 1945, from the State of Indiana into the State of Michigan.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a decomposed substance by reason of the presence of decomposed tomato material.

DISPOSITION: September 6, 1946. A plea of guilty having been entered on behalf of the defendant, the court imposed a fine of \$100.

11463. Adulteration of tomato puree. U. S. v. Pleasant Hill Canning Co. Plea of guilty. Fine, \$200. (F. D. C. No. 20452. Sample Nos. 35074-H, 35076-H, 35077-H.)

INFORMATION FILED: July 30, 1946, Southern District of Ohio, against the Pleasant Hill Canning Co., a partnership, Pleasant Hill, Ohio.

ALLEGED SHIPMENT: On or about October 22, 1945, from the State of Ohio into the State of Missouri.

LABEL, IN PART: "Tomato Puree * * * Packed by Pleasant Hill Canning Co. Pleasant Hill, Ohio."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a decomposed substance by reason of the presence of decomposed tomato material.

DISPOSITION: August 15, 1946. A plea of guilty having been entered on behalf of the defendant, a fine of \$200 was imposed by the court.

11464. Adulteration of tomato puree. U. S. v. Kenneth N. Rider Co., Inc. Plea of guilty. Fine, \$250. (F. D. C. No. 20438. Sample Nos. 14317-H, 14319-H, 14343-H, 14590-H.)

INFORMATION FILED: July 24, 1946, Southern District of Indiana, against the Kenneth N. Rider Co., Inc., Trafalgar, Ind.

ALLEGED SHIPMENT: Between the approximate dates of September 17 and October 12, 1945, from the State of Indiana into the State of Kentucky.

LABEL, IN PART: "Red Gold [or "Trafalgar"] Brand Indiana Tomato Puree."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in part of a decomposed substance by reason of the presence of decomposed tomato material.

DISPOSITION: August 23, 1946. A plea of guilty having been entered on behalf of the defendant, the court imposed a fine of \$250.

11465. Adulteration of tomato puree. U. S. v. 998 Cases * * *. (F. D. C. No. 7932. Sample No. 1403-F.)

LIBEL FILED: July 16, 1942, Western District of Michigan.

ALLEGED SHIPMENT: On or about January 10, 1942, from Lebanon, Ind., by the Ladoga Canning Co.

PRODUCT: 998 cases, each containing 6 6-pound, 8-ounce cans, of tomato puree at Fremont, Mich.

LABEL, IN PART: "Ladoga Brand Tomato Puree."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a decomposed substance.

DISPOSITION: The Ladoga Canning Co., claimant, filed on or about August 1, 1942, a motion to quash on the ground that the seizure of the product was in violation of the Fourth Amendment to the Constitution, and that the libel did not allege facts sufficient to sustain an action for relief in admiralty. Briefs were thereafter filed by the parties, and on September 21, 1942, the following ruling was made by the court:

RAYMOND, District Judge: "It being the view of the court that proceedings for condemnation under Section 304 (a) of the Federal Food, Drug and Cosmetic Act (21 U. S. C. A., Section 334) are essentially civil and are intended for protection of the lives and health of the public, and that they are not designed to obtain information for use in evidence against the owner and that therefore the Fourth Amendment to the Constitution is inapplicable (see *United States v. Eighteen Cases of Tuna Fish*, 5 F. (2d) 979; *United States v. B. & M. External Remedy*, 36 F. (2d) 53; *Boyd v. United States*, 116 U. S. 616; *North American Cold Storage Co. v. City of Chicago*, 211 U. S. 306; 15 Ann. Cas. 281; 56 C. J. 1166; 25 C. J. 1173; 22 Am. Jur., Food, Section 81), an order may be entered denying the motion of Ladoga Canning Company to quash warrant and seizure and for return of goods."

On October 5, 1942, the claimant filed exceptions to the libel for the following reasons: First, that the libel did not allege facts sufficient to sustain an action for relief in admiralty and, second, that the libel was indefinite and uncertain because it did not state what decomposed substance was present in the product.

An answer to the exceptions was filed on or about November 16, 1942, stating that the question raised by the first exception was *res judicata* by reason of the court's opinion of September 21, 1942. In answer to the second exception, the answer alleged that the product consisted in whole or in part of decomposed tomato material, as evidenced by mold.

On January 14, 1943, the court entered an order sustaining the Government on both points.

Following the entry of the order of January 14, 1943, the claimant filed its answer to the libel, denying that the product was adulterated; and, in addition, the claimant propounded a number of interrogatories, together with a motion for an order compelling answers to the interrogatories. The granting of such motion was opposed by the Government, and on April 21, 1943, the following opinion was handed down by the court:

RAYMOND, District Judge: "In proceedings in admiralty for seizure and destruction of alleged adulterated tomato puree introduced into interstate commerce, claimant has filed a motion for an order compelling answers to interrogatories. These interrogatories seek disclosure of the following information: (1) the extent to which the seized goods consisted of decomposed tomato products at time of shipment; (2) the number of cans taken out of shipment and their contents examined, with the can marks of each can; (3) the number of cans found to contain decomposed products, with the can mark of each can; (4) the nature of the test or examination made of the contents of each can; (5) the result of the test or examination made of the contents of each can with the can mark of each such can.

"The issue before the court under the statute is whether or not the food was adulterated when introduced into or while in interstate commerce. For this reason, the first interrogatory, as to whether the goods consisted of decomposed products at the time of shipment is wholly immaterial.

"The remaining interrogatories, in substance, seek to obtain from the libellant evidence upon which it will rely to support its own allegations, and are objectionable for this reason. In the case of *Coronet Phosphate Co. v. United States Shipping Co.*, 260 F. 846, Judge Learned Hand said (page 849):

* * * Interrogatories in the admiralty serve two purposes, to amplify the pleadings of the party interrogated, and to procure evidence in support of the libel or defense of the party interrogating. *Bock v. Int. Nav. Co.* (D. C.) 124 Fed. 711; *The Baker Palmer* (D. C.) 172 Fed. 154. They should not, however, be used merely to fish into the evidence which the party interrogated may produce in support of his own allegations. This limitation upon discovery has remained even in the most modern rules of procedure. A party is of course entitled to know whether his opponent admits the truth of his own allegations, and how far, so as to avoid unnecessary preparation for trial. He is not entitled to know what evidence his adversary will produce to prove the adversary's allegations, and what evidence he must himself produce to overcome the case so made. The result will, of course, be, as it has been in the past, that he must go to trial some-

what in the dark as to what he must meet. The pleadings are intended to advise him of that, and interrogatories are proper to reduce those allegations to very specific form. They should be encouraged for that purpose, but so far as they call upon the pleader to go further, and give, not only the details of his allegations, but the evidence by which he means to prove them, they are liable to abuse. If there develop on the trial a case of genuine surprise, the court, especially where there is no jury, has ample power to protect the party surprised.

"While it has been held that admiralty rule No. 31 as to interrogatories to parties should be as broadly construed as federal rule 33 touching disclosure of an adversary's case (see *The Exermont*, 1 F. R. D. 574; *Citro Chemical Co. v. Bank Line Limited*, 1 F. R. D. 638), the better rule is that interrogatories may not be used to examine the opposite party as to evidence upon which the other will rely to support his own case (*Jensen v. Sinclair Nav. Co.*, 58 F. (2d) 407; *Cargo Carriers v. The Prospect*, 2 F. R. D. 519; *The Arthur Connors*, 35 F. Supp. 775).

"An order will be entered denying the motion filed February 26, 1943."

On April 25, 1944, a motion was filed by the Government for amendment of the libel, to allege that the product consisted in whole or in part of decomposed tomato material, as evidenced by mold, rot fragments, fly eggs, and fly maggots. The claimant subsequently requested that as a condition to the granting of the Government's motion for amendment, terms be imposed requiring the Government to disclose certain analytical data. After hearing the argument of the counsel and after due consideration of briefs submitted, the court, on July 10, 1944, granted the motion without imposition of the terms requested by claimant. The claimant thereafter withdrew its answer to the libel, and on November 18, 1944, judgment of condemnation was entered.

On November 20, 1944, the court ordered that the portion of the product which was found fit for food be released to the Ladoga Canning Co., and that the remainder be delivered to a Federal institution, for use as animal feed.

11466. Adulteration of tomato puree. U. S. v. 500 Cases * * *. (F. D. C. No. 20599. Sample No. 40703-H.)

LIBEL FILED: July 30, 1946, Eastern District of Missouri.

ALLEGED SHIPMENT: On or about June 14, 1946, by the Meyer Canning Co., from Edinburg, Tex.

PRODUCT: 500 cases, each containing 48 10½-ounce cans, of tomato puree at St. Louis, Mo.

LABEL, IN PART: "Gold Inn Brand Tomato Puree."

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 tomato material.

DISPOSITION: September 4, 1946. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

11467. Adulteration of tomato puree. U. S. v. 23 Cases * * *. (F. D. C. No. 20372. Sample No. 45520-H.)

LIBEL FILED: June 27, 1946, District of Oregon.

ALLEGED SHIPMENT: On or about June 7, 1946, by Wellman-Peck & Co., from San Francisco, Calif.

PRODUCT: 23 cases, each containing 6 6-pound, 8-ounce cans, of tomato puree at Portland, Oreg.

LABEL, IN PART: "Wellman Whole Tomato Puree."

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 tomato material.

DISPOSITION: October 15, 1946. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

11468. Adulteration of tomato puree and tomato juice. U. S. v. 248 Cases, etc. (F. D. C. Nos. 20662, 20663, 20695. Sample Nos. 39995-H, 51261-H, 51262-H, 67310-H, 67311-H.)

LIBELS FILED: August 14 and 22, 1946, Eastern District of Arkansas, Western District of Missouri, and District of Minnesota.