

Government was received by him prior to August, 1912. He said about half of it. There has been some testimony as to 40 cases which were seized and were delivered afterwards by the Government to the claimant. The return of the marshal who seized this property shows, as I compute it, a seizure of 920 packages; the number of packages set out in the libel is 861. That would show a surrender of more than 40 packages. In any event, your verdict would be limited to the number of packages stated in the libel, which is 861. If you find that all of these 861 packages came from the shipment of October 12, then you will find a general verdict for the Government, if you find the other facts in favor of the Government. If, however, you are of the opinion that some of the 861 packages were packages which were received prior to August, 1912, then it will be your duty to determine how many of the 861 packages were received prior to August, 1912, and render a verdict for the Government for the difference, indicating that in your verdict.

The claimant has requested me to charge you as follows, and I do so: In order that your verdict may be for the United States of America in this case, the Government must show that the samples taken and analyzed were actually taken from goods transported in interstate commerce subsequent to August 3, 1912. He also requests me to charge you as follows, which I do: In order that your verdict may be for the United States of America, it is necessary for the Government to show that the goods described in the libel herein were the goods actually seized by the Government.

Counsel for the claimant also requests me to call your attention to certain newspaper articles, and one in particular in the Minneapolis Tribune of October 10, with reference to this trial. I say to you that you are bound by your oaths to try this case upon the testimony given here in court, and that you ought not and should not be influenced in any way by anything which the newspapers say about this case, or by anything which any of the witnesses may have said to newspaper reporters, which was published in the newspapers, regarding this case. If any of you read this article, you will lay it aside entirely and determine this case from the evidence which you heard in this court room and not upon anything that you may have heard outside.

In this case the burden of proof is upon the Government and not upon the claimant. The Government must satisfy you by a preponderance of the evidence that its claim upon each one of these different elements which go to make up this claim is true. If you are in doubt as to what the fact may be upon any particular point which it is necessary for the Government to maintain, then your verdict must be for the claimant. You are the exclusive judges of the facts. You are bound to take the law from the court, but upon all questions of fact you are the sole judges, uninfluenced by any opinion which the court may have unintentionally expressed as to what it thinks itself of the case.

The clerk will give you two forms of verdict. One is a verdict for the claimant, and the other is a verdict for the United States Government. If you find for the Government on all of the issues, find that all of the 861 packages seized were in the shipment of October 12, 1912, then you will sign this verdict. If you find that there was only a part of that shipment, or if you find that only a part of the goods seized were in that shipment, then you will indicate the number of packages in your verdict, and find for the claimant as to a certain number of packages.

After due deliberation, the jury returned into court with a verdict in favor of the United States, and on November 28, 1913, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1914.*

**3005. Adulteration of nuts. U. S. v. 50 Boxes and 18 Boxes Mixed Nuts. Decree of condemnation by default. Product ordered destroyed. (F. & D. No. 4911. S. No. 1629.)**

On December 23, 1912, and March 4, 1913, the United States attorney for the district of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district courts of the United States for said district libels for the seizure and condemnation of 50 boxes and 18 boxes, respectively, of nuts, remaining unsold in the original unbroken packages, at Boston, Mass., alleging that the product had been shipped by Birdsong Brothers, New York, N. Y., and transported from the State of New York into the State of Massachusetts, and charging adulteration, in violation of the Food and Drugs Act. The product was labeled, "Elk Brand—Foreign—Domestic—Assorted

Nuts." Adulteration of the product was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On January 15, 1913, and June 6, 1913, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1914.*

**3006. Adulteration of frozen eggs. U. S. v. Benjamin Albert and Abraham Gerber. Plea of guilty. Fine, \$50. (F. & D. No. 4912. I. S. Nos. 3175-d, 13328-d.)**

On June 17, 1913, the United States attorney for the southern district of New York, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district an information against Benjamin Albert and Abraham Gerber, doing business under the firm name and style of Albert & Gerber, New York, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, on March 11, 1912, from the State of New York into the State of Massachusetts, of a quantity of frozen eggs which were adulterated. The product bore no label, but was invoiced as frozen eggs. Examination of samples of the product by the Bureau of Chemistry of this department showed the following results:

*Sample 1.*

cc N/100 iodine solution reduced per 15 grams of sample, 185.8 (an increase of 26 per cent above good commercial eggs).

mg of ammonia per 100 grams of sample (ZnO method), 103.5 (an increase of 106 per cent above good commercial eggs).

mg ammonia per 100 grams of sample (Folin's method by titration), 36.2 (an increase of 180 per cent above good commercial eggs).

mg ammonia per 100 grams of sample (Folin's method by nesslerization), 50.2 (an increase of 232 per cent above good commercial eggs).

All results are calculated to moisture-fat free basis.

Remarks: The results indicate that the sample is decomposed.

*Sample 1-A.*

180,000,000 organisms per gram on plain agar at 25° C.

250,000,000 organisms per gram on plain agar at 37° C.

10,000,000 *B. coli* group per gram.

10,000,000 streptococci per gram.

The results of this analysis indicate that the product consisted in part of some form of decomposed or rotten egg, or that the product was packed from eggs under dirty conditions and that fecal matter from the shells of the eggs or filth in the containers or careless handling badly contaminated the product.

*Sample 2.*

cc N/100 iodine solution reduced per 15 grams of sample, 192.8 (an increase of 31 per cent above good commercial eggs).

mg of ammonia per 100 grams of sample (ZnO method), 95.0 (an increase of 88.6 per cent above good commercial eggs).

mg of ammonia per 100 grams of sample (Folin's method by titration), 25.2 (an increase of 95 per cent above good commercial eggs).

mg of ammonia per 100 grams of sample (Folin's method by nesslerization), 45.3 (an increase of 200 per cent above good commercial eggs).

All results are calculated to moisture-fat free basis.

Remarks: The results indicate that the sample is decomposed.