

been done and is not here.' And that is the function of this court in this case to declare, and I do so declare, that this shipment of vinegar was misbranded within the meaning of the law. I indicated that upon the issue of adulteration the court is not required to find adulteration—I don't think it is supported by the evidence here—and that count will be dismissed, and upon the other count there will be a decree in the ordinary form of condemnation."

On December 26, 1922, the court having found that the allegations as to the misbranding of the product were true and correct but that the allegations as to the adulteration were unsupported, judgment was entered declaring the product to be misbranded and ordering its condemnation and forfeiture. It was further ordered by the court that the said product be released to the claimant, the Douglas Packing Co., upon payment of the costs of the proceedings and the execution of a bond in the sum of \$500, in conformity with section 10 of the act, conditioned in part that it be relabeled under the supervision of this department.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11327. Adulteration and misbranding of cottonseed meal. U. S. v. 400 Sacks of Cottonseed Meal. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 17208. I. S. No. 2593-v. S. No. E-4296.)

On January 29, 1923, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 400 sacks of cottonseed meal, remaining in the original unbroken packages at Mount Joy, Pa., and vicinity, consigned by the Eastern Cotton Oil Co., Hertford, N. C., alleging that the article had been shipped from Hertford, N. C., on or about January 10, 1923, and transported from the State of North Carolina into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Perfection Cotton Seed Meal 100 Lbs. Net Manufactured By Eastern Cotton Oil Company Hertford, North Carolina. Guarantee Protein not less than 41.00% Equivalent to Ammonia 8.00% * * * Ingredients—made from Upland Cotton Seed."

Adulteration of the article was alleged in the libel for the reason that a substance low in protein, ammonia, had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength and had been substituted wholly or in part for the said article.

Misbranding was alleged in substance for the reason that the labels bore the following statements regarding the article and the ingredients and substances contained therein, "Perfection Cotton Seed Meal * * * Guarantee Protein not less than 41.00% Equivalent to Ammonia 8.00% Ingredients—made from Upland Cotton Seed," which statements were false and misleading in that the said article did not in fact contain 41 per cent of protein, equivalent to 8 per cent of ammonia. Misbranding was alleged for the further reason that the article was an imitation of and offered for sale under the distinctive name of another article.

On February 6, 1923, E. H. Zercher, Mount Joy, Pa., having entered an appearance as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that the said product be relabeled under the supervision of this department.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11328. Adulteration and misbranding of frozen eggs. U. S. v. 92 Cases of Frozen Eggs. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 17273. I. S. No. 4177-v. S. No. C-3882.)

On or about February 8, 1923, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 92 cases of frozen eggs, remaining unsold in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped by W. L. Ogden & Co., from Sioux City, Iowa, January 17, 1923, and transported from the State of Iowa into the State of Illinois and charging adulteration and misbranding in violation of the Food and Drugs

Act, as amended. The article was labeled in part: (Cans) "Cold Storage Hanford Produce Co. Sioux City, Iowa. W. L. Ogden & Co. * * * Eggs."

Adulteration of the article was alleged in the libel for the reason that it consisted wholly or in part of a filthy, decomposed, and putrid animal substance.

Misbranding was alleged for the reason that the article was [food] in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package in terms of weight and measure.

On March 1, 1923, W. L. Ogden and Co., claimant, having admitted the material allegations of the libel and consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that the said product be sorted under the supervision of this department, the bad portion destroyed by the United States marshal and the good portion released to the said claimant.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11329. Adulteration of shell eggs. U. S. v. 500 Cases, et al., of Eggs. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 17278. I. S. Nos. 2639-v, 2640-v, 2641-v, 2642-v. S. No. E-4306.)

On February 12, 1923, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 159 cases and 477 cases, more or less, of eggs, remaining in the original unbroken packages at Philadelphia, Pa., or vicinity, consigned by the Merchants Refrigerating Co., Jersey City, N. J., alleging that the article had been shipped from Jersey City, N. J., on or about January 9, 1923, and transported from the State of New Jersey into the State of Pennsylvania, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Bell-Jones Company, Cold Storage * * * Merchants Ref. Co. N. J.-Cold Storage."

Adulteration of the article was alleged in the libel for the reason that a substance, to wit, ammonia, had been mixed and packed with the said article so as to reduce and lower and injuriously affect its quality. Adulteration was alleged for the further reason that the article consisted in whole or in part of a filthy, decomposed, and putrid animal substance.

On February 28, 1923, the Thomas F. Piper Co., Philadelphia, Pa., having entered an appearance as claimant for the property, a decree of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that the said eggs be broken and denatured with coal oil.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11330. Alleged adulteration of shell eggs. U. S. v. Charles J. Blazek (Blazek & Novotny). Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 12368. I. S. No. 18781-r.)

On July 1, 1920, the United States attorney for the District of North Dakota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Charles J. Blazek, trading as Blazek & Novotny, Pisek, N. Dak., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 19, 1919, from the State of North Dakota into the State of Minnesota, of a quantity of shell eggs which were adulterated.

Examination by the Bureau of Chemistry of this department of 540 eggs from the consignment showed that 47, or 8.7 per cent of those examined, were inedible eggs, consisting of black rots, mixed or white rots, and heavy blood rings.

Adulteration of the article was alleged in the information for the reason that it consisted in whole or in part of a filthy, putrid, and decomposed animal substance.

On January 15, 1923, the case came on for trial before the court and a jury. After the submission of evidence and arguments by counsel the court delivered the following instructions to the jury (Miller, J.):

"Gentlemen of the jury: You have now heard all the evidence in the case and the views held and entertained by counsel with reference to the evidence