

the General Commission Co., Kansas City, Mo., alleging that the article had been shipped from Kansas City, Mo., on or about July 17, 1923, and transported from the State of Missouri into the State of California, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "100# Net Red Dog Distributed By General Commission Co. Kansas City, Mo. Protein, Not Less Than 15.00% Fat, Not Less Than 2.50% Fiber, Not More Than 4.00%."

Adulteration of the article was alleged in the libel for the reason that it contained ground bran, ground screenings, and flour, which had been mixed and packed with and substituted wholly or in part for the said article.

Misbranding of the article was alleged in substance for the reason that the above-quoted statements appearing in the labeling were false and misleading and deceived and misled the purchaser, in that the said article contained ground bran, flour, and screenings. Misbranding was alleged for the further reason that the article was an imitation of and was offered for sale under the distinctive name of another article.

On September 25, 1923, the case having come on for final disposition before the court, a decree of condemnation was entered, and it was ordered by the court that the product be disposed of in accordance with law. The decree further provided that the product might be released to the claimant, the General Commission Co., Kansas City, Mo., 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 it be relabeled in a manner satisfactory to this department.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

**11858. Adulteration of shell eggs. U. S. v. 98 Cases and 41 Cases of Eggs. Consent decree of condemnation and forfeiture. Product released under bond.** (F. & D. Nos. 17768, 17769. I. S. Nos. 3973-v, 3974-v. S. Nos. C-4070, C-4074.)

On or about July 17 and 18, 1923, respectively, the United States attorney for the Northern District of Illinois, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 139 cases of eggs, remaining unsold in the original unbroken packages at Chicago, Ill., alleging that 98 cases of the product had been shipped by the Gifford Farm Club, from Gifford, Mo., July 15, 1923, and that 41 cases of the said product had been shipped by Larson & Weiner, from Stockholm, Wis., July 12, 1923, and that the article had been transported from the States of Missouri and Wisconsin, respectively, into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

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

On July 21, 1923, the cases having been consolidated into one action and Harry H. Redfaern Co., of Chicago, Ill., claimant, having admitted the material allegations of the libels 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 it be candled under the supervision of this department, the bad portion destroyed and the good portion released.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

**11859. Adulteration of shell eggs. U. S. v. 10 Cases of Eggs. Default decree ordering destruction of the product.** (F. & D. No. 17854. I. S. No. 17832-v. S. No. C-4117.)

On or about September 4, 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 10 cases of eggs at Chicago, Ill., alleging that the article had been shipped by James Formanek, from Irving, Iowa, August 14, 1923, and transported from the State of Iowa into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in substance in the libel for the reason that it consisted in part of a filthy animal substance, for the further

reason that it consisted in part of a decomposed animal substance, and for the further reason that it consisted in part of a putrid animal substance.

On September 27, 1923, no claimant having appeared for the property, it was ordered by the court that the product be destroyed.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

**11860. Misbranding and alleged adulteration of canned salmon. U. S. v. 200 Cases and 200 Cases of Canned Salmon. Tried to the court without a jury. Judgment of condemnation and forfeiture with provision for release under bond. Claimant failed to execute bond and product was destroyed. (F. & D. Nos. 15941, 15942. I. S. Nos. 18222-t, 18223-t. S. No. C-3410.)**

On January 28, 1922, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels, and thereafter amended libels, praying the seizure and condemnation of 400 cases of canned salmon, in part at Galveston and in part at Houston, Tex., alleging that the article had been shipped by the Seaboard Co., Seattle, Wash., on or about November 16, 1921, and transported from the State of Washington into the State of Texas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Can) "Kay-Square Brand \* \* \* Pink Salmon \* \* \* Keen-Eye Inspection Fresh Fish Clean Canneries \* \* \* Inspected \* \* \* Kenai Packing Co. Seattle, Wash."

Adulteration of the article was alleged in the libels as amended 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 statements appearing in the labels, "Inspected" and "Keen-Eye Inspection Fresh Fish," were false and misleading and deceived and misled the purchaser.

On March 30, 1923, the cases came on for trial before the court without a jury. After the submission of evidence and arguments by counsel the court took the matter under advisement, and on April 5, 1923, handed down the following memorandum opinion (Hutcheson, jr., *D. J.*):

"These two cases are proceedings under separate numbers against two lots of salmon, one originally libeled in Galveston and proceeded against in Galveston under the Galveston number, D. L. 724, later transferred to Houston; the other libeled against in Houston and proceeded against in Houston under D. L. No. 419.

"The Government contends for condemnation and forfeiture on the ground (1) that the articles are misbranded and (2) that they are adulterated, in that they consist wholly or in part of filthy, decomposed, and putrid animal substance, in violation of paragraphs 6 and 7 of the Food and Drugs Act of 1906.

"In each of these cases the Seaboard Company appeared as claimant and filed exceptions and answer, and under orders of the court by agreement between the parties from time to time samples of the seized shipments were taken and examined.

"Not until the trial had concluded was any point made as to the right of the claimant to appear and claim, and at that time the Government's counsel made the contention that the interest of the claimant was not shown.

"This motion, if it ever was meritorious, comes too late. (*United States v. 46 Packages*, 183 Fed. 644.)

"Each can had on it a pinkish red label showing a picture in relief of a salmon, under it the words, 'Select Pink Salmon,' by the side of the picture the following, 'Keen-Eye Inspection Fresh Fish Clean Canneries,' and this was in white lettering. In black letters, to simulate a stamp, was the word 'Inspected.'

"The evidence on the part of the Government was that this product was not Government inspected, and that if the stamp was intended to make the impression of Government inspection, it was false.

"The evidence of the Government was also overwhelming that the fish was not fresh fish in the sense of that term as used in the canning trade, that is, fish canned when they had been on the floor not over forty-eight hours—which was the time limit fixed by the Government witness and not contradicted—within which fish could be said to be fresh.

"The testimony was also overwhelming that the fish, if not putrid or rotten, was a poor and therefore not a select pack of pink salmon, for while pink salmon is according to the testimony one of the inferior brands, it varies in quality according to the freshness and general character of the fish put up.