

the District Court of the United States for said district libels praying the seizure and condemnation of 1,217 cases of salmon, remaining in the original unbroken packages at New Orleans, La., alleging that the article had been shipped by the C. F. Buelow Co., from Seattle, Wash., in two consignments, namely, on or about December 8 and 29, 1922, respectively, and transported from the State of Washington into the State of Louisiana, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: "Pink Beauty Brand \* \* \* Pink Salmon \* \* \* Guaranteed by Weiding & Independent Fisheries Co., Under the Food and Drugs Act June 30, 1906 \* \* \* Packed by Weiding & Independent Fisheries Co. Seattle, Wash." The remainder of the article was labeled in part: "Watermelon Brand \* \* \* Puget Sound Chum Salmon \* \* \* Packed by Deer Harbor Fisheries Co. Inc Deer Harbor, Washington, Seattle, Washington."

Adulteration of the article was alleged in the libels for the reason that it was composed in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance.

On June 26, 1923, no claimant having appeared for the property, judgment of the court was entered, finding the product to be misbranded and to consist of putrid matter, and it was ordered by the court that it be condemned and destroyed by the United States marshal.

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

**12219. Misbranding of butter. U. S. v. 27 Boxes and 9 Boxes of Butter. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 17722. I. S. No. 7107-v. S. No. C-4098.)

On August 16, 1923, the United States attorney for the Eastern District of Louisiana, 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 27 10-pound boxes and 9 30-pound boxes of butter, remaining in the original unbroken packages at Baton Rouge, La., alleging that the article had been shipped by the Brookhaven Creamery Co., from Gloster, Miss., on or about August 6, 1923, and transported from the State of Mississippi into the State of Louisiana, and charging misbranding in violation of the food and drugs act, as amended. The article was labeled in part: (Carton) "Brookhaven Fancy \* \* \* Creamery Butter \* \* \* One Pound Net \* \* \* The within contents weighed 1 lb. when packed \* \* \* contents are not guaranteed to weigh at time of sale the amount marked on the package \* \* \* Brookhaven Creamery Co. Brookhaven, Mississippi."

Misbranding of the article was alleged in the libel for the reason that the statement, "One Pound Net," was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further 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.

On November 12, 1923, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

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

**12220. Misbranding of tankage. U. S. v. 160 Sacks of Success Brand Digester Tankage. Decree of condemnation and forfeiture. Product released under bond.** (F. & D. No. 18280. I. S. No. 8834-v. S. No. C-4270.)

On February 2, 1924, the United States attorney for the District of Indiana, 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 160 sacks of Success brand digester tankage, remaining in the original unbroken packages at Francesville, Ind., alleging that the article had been shipped by the United Bi-Products Co. from Chicago, Ill., on or about July 10, 1923, and transported from the State of Illinois into the State of Indiana, and charging misbranding in violation of the food and drugs act. The article was labeled in part: "Success Brand Digester Tankage \* \* \* Protein 60% Manufactured By United Bi-Products Company \* \* \* Chicago, East St. Louis."

Misbranding of the article was alleged in substance in the libel for the reason that the statement, "Protein 60%," was false and misleading and deceived and misled the purchaser, in that the article did not contain 60 per cent of protein but did contain a less amount.

On February 28, 1924, the United Bi-Products Co., Chicago, Ill., having appeared and filed its claim for the property and an answer of admission, and

having paid the costs of the proceedings, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon the execution of a bond in the sum of \$500, in conformity with section 10 of the act.

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

**12221. Adulteration of canned salmon. U. S. v. 800 Cases, et al., of Salmon. Tried to the court and a jury. Verdict for the Government. Decrees of condemnation and forfeiture. Product released under bond to be used as fish food.** (F. & D. Nos. 16925, 16996. I. S. Nos. 7878-v, 7880-v, 7883-v, 7884-v. S. Nos. W-1238, W-1244.)

On November 21 and 23, 1922, respectively, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 1,600 cases of salmon, remaining in the original unbroken packages at Astoria, Oreg., alleging that the article had been shipped by Jeldness Bros. & Co. from Point Ellis, Wash., in two consignments, namely, on or about September 16 and 20, 1922, respectively, and transported from the State of Washington into the State of Oregon, and charging adulteration in violation of the food and drugs act.

Adulteration of the article was alleged in the libels for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid animal substance, and in that filthy, decomposed, and putrid salmon had been substituted for normal salmon of good commercial quality.

On February 11, 1924, the two libels having been consolidated into one cause of action, 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 charge to the jury (Bean, *D. J.*):

"GENTLEMEN OF THE JURY: These are actions—there are two of them—brought by the Government to condemn certain lots of canned salmon on the ground that it is adulterated within the meaning of the pure food and drugs act. It is charged in each of the libels that this salmon was adulterated because it consisted in whole or in part of filthy, decomposed, and putrid animal substances. The respondent or owner of the property has filed an answer denying the allegations of the bill. It has been stipulated by counsel, however, that the salmon in question was in fact shipped in interstate commerce and that the samples taken by agents and representatives of the Government, or used by the representatives of the Government in their tests, were taken from this lot of salmon, so that the question for you to determine in this case and the contested question is whether or not this salmon was adulterated within the meaning of this statute.

"As I said to you a moment ago, the statute provides that for the purpose of this act an article shall be deemed adulterated, in the case of food, if it consists in whole or in part of filthy, decomposed, or putrid animal substances. Now, the word 'filthy' in that connection simply means dirty, nasty, unwholesome; 'decay' means decomposed, rotten, spoiled; and 'putrid' means being in a state of putrefaction, tainted, or in such a state of decomposition that the odor therefrom is offensive to the smell. And if you believe from the preponderance of the evidence in this case that the salmon in question was either filthy, decayed, or putrid, it will be your duty to find in favor of the Government. If, on the other hand, you do not so believe, then it will be your duty to find in favor of the claimant in this case.

"Now this is a civil action and a proceeding under the pure food and drugs act. That law is a wholesome law. It is a law that is designed and intended by Congress to protect the public by prohibiting the shipment in interstate commerce of unwholesome or deleterious food, and it should be enforced by courts and juries with that object in view.

"Now the statute does not define what shall be considered filthy, decayed, or putrid within the meaning of the statute, so that each case must depend upon its own facts, and if it appears that this salmon—if you believe that this salmon was of such a character on account of its condition that it was not up to the standard required or ordinarily required in the commercial world—then it would be adulterated within the meaning of the statute.

"It is not necessary, however, for the Government to show that the eating of the salmon would be injurious to the health of the individual. That is not the question in the case, but the question is whether unwholesome to such an extent that it would not satisfy the ordinary requirements of the commercial world. If it is, then it ought to be condemned; if it is not, then your findings should be in favor of the defendant.