

The COURT. "Gentlemen, the court further instructs you that what I said in reference to the evidence of the county inspector, as I recall the evidence, was that he had had no experience or training, and testified that the weights he used in testing he had not weighed. The court wants to emphasize that you are the sole judges of the facts in deciding what the witnesses testified to. You had the same opportunity to hear the evidence that the court did, and you will decide the evidence on the facts uninfluenced by the court. In speaking of intent, that means an intent to violate the law. I further call your attention to the fact that the regulations referred to, part of which I read, also contain this: 'Discrepancies'—that means variations—'under classes (1) and (2) of this paragraph'—paragraph (1) being the one I read to you—'shall be as often above as below the marked quantity.' Are there any further exceptions?"

The jury then retired and after due deliberation returned a verdict of guilty on the misbranding charge, and the court imposed a fine of \$100 on each of 28 counts, a total of \$2,800, together with the costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*

**13366. Misbranding and alleged adulteration of canned oysters. U. S. v. 100 Cases Canned Oysters, et al. Consent decree of condemnation and forfeiture. Product released under bond to be relabeled (F. & D. No. 19907. I. S. Nos. 14427-v, 14429-v, 21150-v. S. No. W-1685)**

On March 18, 1925, the United States attorney for the Western District of Washington, 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 500 cases of canned oysters, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped by James E. Eyman, from New Orleans, La., February 7, 1925, and transported from the State of Louisiana into the State of Washington, and charging adulteration and misbranding in violation of the food and drugs act as amended. One hundred cases of the product were labeled in part: (Can) "Lopez Oysters Southland Brand Cove Oysters 7½ to 8 oz. Oysters Packed & Guaranteed By Lopez-Desporte Packing Co. Biloxi, Miss. Under The Food & Drugs Act Of June 30, 1906." Two hundred and fifty cases of the product were labeled in part: (Can) "Our Choice Oysters Contents 10 Oz." One hundred and fifty cases of the product were labeled in part: (Can) "Pride of Gulf Brand Cove Oysters Contents 4 Ozs. Oyster Meat Packed By Caernarvon Canning Co. Caernarvon, La., And New Orleans, La."

Adulteration of the article was alleged in the libel for the reason that a substance, water, or brine, had been mixed and packed with and substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the drained weight of oysters contained in the cans was less than stated on the respective labels, and for the further reason that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages. Misbranding was alleged with respect to a portion of the product for the reason that the statement appearing in the labeling "Guaranteed By Lopez-Desporte Packing Co. Biloxi, Miss. Under the Food and Drugs Act Of June 30, 1906" was false and misleading and deceived and misled the purchaser.

On March 18, 1925, James E. Eyman, New Orleans, La., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of the court was entered, finding the product misbranded and ordering its condemnation and forfeiture, and it was further ordered by the court that the said product be released to the 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 relabeled under the supervision of this department.

C. F. MARVIN, *Acting Secretary of Agriculture.*

**13367. Misbranding of green peas. U. S. v. A. Levy & J. Zentner Co. Plea of guilty. Fine, \$50. (F. & D. No. 19299. I. S. Nos. 12218-v, 12227-v.)**

On February 26, 1925, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against A. Levy & J. Zentner Co., a corporation, San Francisco, Calif., alleging