

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

shipment by said company, in violation of the food and drugs act as amended, in two consignments, namely on or about May 29 and June 6, 1924, respectively, from the State of California into the State of Colorado of quantities of green peas, in unmarked hampers, which were misbranded.

Misbranding of the article was alleged in the information for the 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 package.

On April 12, 1925, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$50.

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

**13368. Adulteration of canned sardines. U. S. v. 90 Cases of Sardines. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 19846. I. S. No. 15609-v. S. No. E-5132.)

On March 3, 1925, the United States attorney for the Western 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 90 cases of sardines, remaining in the original unbroken packages at Pittsburgh, Pa., alleging that the article had been shipped by the North Lubec Mfg. & Canning Co., or the Maine Coop. Sardine Co., from Eastport, Me., in various consignments, namely, on or about September 9 and 19, October 27, and November 21, 1924, respectively, and transported from the State of Maine into the State of Pennsylvania, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Eagle Brand American Sardines In Mustard Sauce Packed By North Lubec Manufacturing & Canning Co., Factories North Lubec and Stonington, Me."

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

On May 28, 1925, 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.

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

**13369. Adulteration and misbranding of butter. U. S. v. J. G. Turnbull Co. Plea of guilty. Fine, \$10.** (F. & D. No. 19324. I. S. No. 10856-v.)

At the February, 1925, term of the United States District Court, within and for the District of Vermont, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in the district court aforesaid an information against the J. G. Turnbull Co., a corporation, Norton Mills, Vt., alleging shipment by said company, in violation of the food and drugs act, on or about July 31, 1924, from the State of Vermont into the State of New Hampshire, of a quantity of butter which was adulterated and misbranded. The article was labeled in part: (Package) "Creamery Butter."

Analyses of samples of the article by the Bureau of Chemistry of this department showed that 4 samples averaged 74.39 per cent of milk fat.

Adulteration of the article was alleged in the information for the reason that a substance deficient in milk fat, in that it contained less than 80 per cent by weight of milk fat, had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat, as prescribed by the act of March 4, 1923.

Misbranding was alleged for the reason that the statement "Creamery Butter," borne on the packages containing the article, was false and misleading, in that it represented that the article was butter, to wit, a product containing not less than 80 per cent by weight of milk fat, as prescribed by the act of March 4, 1923, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was butter, to wit, a product containing not less than 80 per cent by weight of milk fat, whereas it was not butter, in that it contained less than 80 per cent by weight of milk fat. 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 April 8, 1925, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$10.

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