

was labeled in part: (Tag) "Joseph F. Herrmann & Company, of Chicago, Ill., Guarantees this Herrmann's Digester Tankage to contain not less than * * * 60.0 per cent of crude protein."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the said sample contained 55.8 per cent of protein.

Adulteration of the article was alleged in the information for the reason that a substance containing less than 60 per cent of crude protein had been substituted for digester tankage guaranteed to contain not less than 60 per cent of crude protein, which the said article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Joseph F. Herrmann & Company, of Chicago, Ill., Guarantees this Herrmann's Digester Tankage to contain not less than 60.0 per cent of crude protein," borne on the tags attached to the sacks containing the article, was false and misleading, in that the said statement represented that the article contained not less than 60 per cent of protein, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 60 per cent of crude protein, whereas it did not contain 60 per cent of crude protein but did contain a less amount.

On July 13, 1925, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$50 and costs.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13603. Adulteration of butter. U. S. v. the George Freese's Sons Co. Plea of guilty. Fine, \$25. (F. & D. No. 17920. I. S. No. 1699-v.)

On January 19, 1924, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the George Freese's Sons Co., a corporation, Fostoria, Ohio, alleging shipment by said company, in violation of the food and drugs act, on or about February 24, 1923, from the State of Ohio into the State of Massachusetts, of a quantity of butter which was adulterated.

Analysis by the Bureau of Chemistry of this department of 8 samples of the article showed an average of 78.70 per cent of fat and 16.79 per cent of moisture.

Adulteration of the article was alleged in the information for the reason that a product deficient in milk fat and containing an excessive amount of moisture had been substituted for butter, which the said article purported to be.

On June 24, 1925, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$25.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13604. Adulteration and misbranding of butter. U. S. v. 41 Tubs and 36 Tubs of Butter. Consent decrees of condemnation and forfeiture. Product released under bond. (F. & D. Nos. 20213, 20214. I. S. Nos. 24748-v, 24749-v. S. Nos. E-5397, E-5399.)

On June 29, 1925, the United States attorney for the Southern District of New York, 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 77 tubs of butter, remaining in the original unbroken packages at New York, N. Y., one libel alleging shipment by McDougall Terminal Wholesale Co., and one libel alleging shipment by the McDougall Terminal Warehouse, from Duluth, Minn., on or about June 17, 1925, the article having been transported from the State of Minnesota into the State of New York, and charging adulteration and misbranding in violation of the food and drugs act.

Adulteration of the article was alleged in the libels for the reason that a substance deficient in butterfat had been mixed and packed therewith so as to reduce, lower, or injuriously affect its quality or strength and had been substituted in whole or in part for the said article.

Misbranding was alleged for the reason that the article was offered for sale under the distinctive name of another article.

On July 11 and 14, 1925, respectively, the Minnesota-Cooperative Dairies Assoc. and the Farmers Cooperative Creamery having appeared as claimants for respective portions of the product and having admitted the allegations of the libels and consented to the entry of decrees, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be released to the said claimants upon payment of the costs of the proceedings.

suit is also offered. The issues being practically alike, a single jury may try them, thereby securing six separate trials without calling as many juries.

The Government has seized six certain interstate shipments of canned salmon described in the six several suits, claiming adulteration, in that each shipment consisted in whole or in part of decomposed salmon. An added ground of seizure is alleged as to two of the shipments, claiming that each was misbranded.

Section 7, paragraph 6, of the food and drugs act (Comp. St. ss. 8723 and 8724) of 1906, provides 'that for the purpose of this act, an article shall be deemed to be adulterated: In the case of food, if it consists in whole or in part of decomposed * * * animal substance.' Section 8 provides 'that for the purpose of this act the term "misbranded" as used herein shall apply to all drugs or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device, regarding such articles * * * which shall be false or misleading in any particular.' And in the case of food, paragraph 2 'if it be labeled or branded so as to deceive or mislead the purchaser.' Section 10 of the act provides that adulterated articles shall be excluded from interstate commerce and be subject to seizure by the Government through the district courts by process of libel for condemnation. It is conceded that the salmon was moving from Seattle, Wash., consigned to Texas points.

The Government as libelant in each of the suits stands as a plaintiff and seeks condemnation and destruction of each shipment. The claimants are owners or consignees, taking the attitude of defendants.

Responsive to the publication of notices of the Government's purpose, the various claimants named in each libel have intervened, asserting ownership of the several shipments seized in each suit, and deny in each suit that the salmon was adulterated or misbranded as charged by the Government and charge that no lawful grounds exist for the seizure, condemnation, or destruction of the property and say that each shipment should be delivered to the respective claimant.

The statute requires you to decide whether the salmon consisted in whole or in part of decomposed animal substance and, in two of the suits, whether those two particular shipments of salmon were misbranded.

The word 'decomposed' as used in the statutes, applying its ordinary meaning, is a state of decomposition, and 'decomposition' means a condition of being decayed, putrid, or rotten. If, therefore, you find that the salmon in question was decomposed as defined, you should find for the Government, libelant, and against the claimants.

Section 7 of the act refers to the adulteration of the 'article.' Each shipment consists of hundreds of cases of salmon, each case containing 48 cans. Does the use of the word 'article' in the statute have reference to a single package, such as a can, or does it refer to the separate case, or to the shipment as a whole? You are instructed that the word 'article' as used does not refer to the single, separate can, or to the single or separate case, of salmon in each shipment, but refers to each lot or shipment seized under each of the several suits.

The letter of the statute forbids the transportation and sale in interstate commerce of an article of food which is decomposed. The words used are free and clear from ambiguity, and each has a common, ordinary, every-day, well-known meaning. It would, therefore, be improper for you to take into consideration any evidence which tends to show that the salmon is fit or unfit for food, or harmful to health. There is nothing in the statute itself which would make the state of healthfulness or the edibility of the article relevant to your inquiry. Those considerations, if in your minds, must be disregarded. It makes no difference whether the salmon was fit for food and healthful or was not.

Decomposition begins where life ends, but that is not the sort of decomposition meant by the statute. The moment life commences, in a sense it begins to fade, and the moment that life ceases, in a sense decomposition begins, and increases by degrees to rottenness, decomposition, and decay. The witnesses both for the claimants and the libelant uniformly testify as to salmon that three well defined degrees of decomposition exists after life has ceased. The first definite or least degree of decomposition was described as "stale," the second or next greater degree was called "tainted," and the third or last degree indicates total decomposition and was called "putrid." If you find and believe that the evidence in these suits has fixed such degrees or states of decom-

and the execution of bonds in the aggregate sum of \$2,080, in conformity with section 10 of the act, conditioned in part that it be reworked so as to contain at least 80 per cent of butterfat.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13605. Adulteration and misbranding of canned salmon. U. S. v. 100 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. (F. & D. Nos. 17265, 17266, 17270, 17271, 17287, 17375, 17387. S. Nos. C-3877, C-3883, C-3884, C-3905, C-3914, C-3954.)

On February 10 and 17 and March 16 and 22, 1923, respectively, the United States attorney for the Western District of Texas, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels, and thereafter amendments to two of the said libels, praying the seizure and condemnation of 2,205 cases of canned salmon, remaining in the original unbroken packages in various lots at Brenham, Austin, and Waco, Tex., respectively, alleging that a portion of the article had been shipped by the Pacific American Fisheries, Seattle, Wash., October 11, 1922, that a portion was shipped by G. Batcheller Hall, Seattle, Wash., November 28, 1922, and that the remainder thereof was shipped by the Kelley-Clarke Co., Seattle, Wash., in part October 14, 1922, in part November 10, 1922, and in part December 8, 1922, and that the said article had been transported from the State of Washington into the State of Texas, and charging adulteration with respect to all of the said product and misbranding with respect to 1,014 cases of the product, in violation of the food and drugs act. The cans containing the article were labeled, variously: "Daybreak Brand Chum Salmon Packed In Alaska By Southern Alaska Canning Co., Seattle, Wash."; "Sambo Brand Chum Salmon Packed In Alaska By Southern Alaska Canning Co., Main Office Seattle, Wash."; "Snowshoe Brand Select Pink Alaska Salmon Packed In Alaska By Southern Alaska Canning Co. Seattle."; "Diamond "S" Brand Pink Salmon Packed By Alaska Sanitary Packing Co. Wrangell, Alaska, Main Office Seattle"; "King Bird Brand Pink Salmon Packed For Pacific American Fisheries, Bellingham, Wash."; "Oasis Brand Pink Salmon Packed By Pyramid Packing Co., Sitka, Alaska G. Batcheller Hall Co. Distributor Seattle, Wash." The King Bird brand salmon was further labeled: (Case) "King Bird Brand Salmon Packed by George Inlet Packing Co. Ketchikan, Alaska."

Adulteration of the article was alleged in the libels with respect to all of the said product for the reason that it consisted in part of a decomposed, filthy, and putrid animal substance.

Misbranding was alleged with respect to the product involved in the 100 cases of Snowshoe brand salmon for the reason that the design in relief of a salmon, and the words "Select Pink" and "Alaska Salmon," borne on the labels of the cans containing the article, were false, in that they represented that the contents of the said cans was select pink Alaska salmon, whereas the contents of the said cans was a poor pack of pink salmon of an inferior and not a select grade, and for the further reason that the said representation was misleading, in that it was calculated to deceive purchasers into believing the facts so falsely represented.

Misbranding was alleged with respect to the product involved in the 914 cases of Diamond "S" brand salmon, in that the statement "15½ Oz. Net Fresh Salmon Cooked In Can After Sealing," appearing on the labels of the cans containing the article, was false, in that it represented that the contents of the said cans was so many ounces of fresh salmon, whereas in fact the said contents was not fresh fish in the sense of the term as used in the canning trade, and for the further reason that the said representation was misleading, in that it was calculated to deceive purchasers into believing the facts so falsely represented.

On January 27, 1925, the Southern Alaska Canning Co., Seattle, Wash., the Pacific American Fisheries, Bellingham, Wash., and the Shear Co., Waco, Tex., having appeared as claimants for respective portions of the product, the cases 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 (West, D. J.):

"GENTLEMEN OF THE JURY: The issues of fact in six separate suits are submitted to you for determination. The parties have agreed and the court has consented that this may be done. The evidence in general has relevancy to each and every suit. Direct evidence having application to each particular