

tion of the business. He determines the business policies of the corporation.

"3. The defendants, International Exterminator Corporation and Harlan K. Baker, have been and are now engaged in the business of providing and causing to be provided exterminator and pest-control services to establishments, such as warehouses, mills, and dryers, throughout the State of Texas.

"4. Some of the establishments serviced by defendants store, sell and process foods such as dried beans, rice, flour, sugar, cornmeal, lima beans, salt, bakery supplies, and animal and poultry feeds, both prior to shipment of such foods in interstate commerce and subsequent to receipt of such foods in interstate commerce. Some of such establishments store and sell such foods after receipt of such foods in interstate commerce, but do not hold such foods prior to shipment in interstate commerce. Some of such establishments store, sell and process such foods prior to shipment in interstate commerce, but do not receive such foods in interstate commerce.

"5. The services of the defendants are provided to such establishments by agents of the defendants, working under contract with defendant, International Exterminator Corporation. Defendants receive a percentage of the monies received by such agents for the performance of such services.

"6. In providing the aforesaid exterminator and pest-control services to the said establishments, the said agents sometimes use a water solution of a poisonous rodenticide known as Compound 1080.

"7. The Court submitted this case to the jury on the following special issues:

*SPECIAL ISSUE NO. 1:* Do you find from a preponderance of the evidence that, unless prevented by court action from so doing, the defendant, International Exterminator Corporation, through its officers, agents or authorized representatives, will in reasonable probability in the future engage in the practice of using, or causing the use of, or participating in the use of, or of being responsible for the use of, Compound 1080 in establishments where at least some of the food which may be there located is being held for sale prior to or after shipment in interstate commerce, in such manner that the Compound may in reasonable possibility contaminate any of the food in such establishments?

The form of your answer will be either "YES" or "NO."

*SPECIAL ISSUE NO. 2:* Do you find from a preponderance of the evidence that, unless prevented by court action from so doing, the defendant, Harlan K. Baker, acting either by himself or through others, will in reasonable probability in the future engage in the practice of using, or causing the use of, or participating in the use of, or of being responsible for the use of, Compound 1080 in establishments where at least some of the food which may be there located is being held for sale prior to or after shipment in interstate commerce, in such manner that the Compound may in reasonable possibility contaminate any of the food in such establishments?

The form of your answer will be either "YES" or "NO."

"8. The jury answered each of said special issues "YES."

"9. The plaintiff and the defendants agreed to the submission of this cause to the jury on special issues; there were no objections to the issues as submitted.

"10. The findings of the jury in answer to said special issues are supported by a preponderance of the evidence.

"11. The Court adopts the findings of the jury and incorporates them as part of its own findings of fact.

#### CONCLUSIONS OF LAW

"1. This Court has jurisdiction of the parties and of the subject matter.

"2. The plaintiff is entitled to the relief granted by the judgment of this Court entered herein on January 3, 1962, to which judgment reference is here made under the provisions of 21 U.S.C. 332(a)."

**28573. Dried Great Northern beans, dried pinto beans, and dried black-eyed beans.** (F.D.C. No. 42750. S. Nos. 22-380/2 P.)

**QUANTITY:** 50 100-lb. bags of Great Northern beans; 1 100-lb. bag of pinto beans; and 8 100-lb. bags of black-eyed beans, at Kansas City, Kans., in possession of Nelson's Super Merchandise Mart.

**SHIPPED:** Between 9-11-58 and 10-10-58, from Gering, Nebr., and Kansas City, Mo.

**LIBELED:** 1-5-59, Dist. Kans.

**CHARGE:** 402(a) (3)—contained rodent urine (Great Northern and pinto beans); and 402(a) (4)—held under insanitary conditions.

**DISPOSITION:** 4-10-59. Consent—claimed by Walter H. Nelson. Segregated; 2,142 lbs. denatured for use as animal feed.

**28574. Dried pinto beans.** (F.D.C. No. 48076. S. No. 90-841 T.)

**QUANTITY:** 24 100-lb. bags, at Greenville, Tex.

**SHIPPED:** On an unknown date, from Montana or Wyoming.

**LIBELED:** On or about 10-4-62, N. Dist. Tex.

**CHARGE:** 402(a) (3)—while held for sale, the article contained insects, insect larvae, and insect excreta.

**DISPOSITION:** 12-4-62. Default—delivered to a public institution for use as animal feed.

**28575. Canned black-eyed peas.** (F.D.C. No. 47994. S. No. 71-299 T.)

**QUANTITY:** 70 cases, each containing 48 15-oz. cans, at Oklahoma City, Okla.

**SHIPPED:** 5-30-62 and 6-18-62, from Athens, Tex., by Athens Canning Co.

**LABEL IN PART:** (Can) "HOMEFOLK BRAND GREEN FRESH SHELLED BLACKEYE PEAS packed by Athens Canning Company, Athens, Texas."

**RESULTS OF INVESTIGATION:** Examination showed that the article had an off-odor and flavor.

**LIBELED:** 8-23-62, W. Dist. Okla.

**CHARGE:** 402(a) (3)—the article was unfit for food when shipped.

**DISPOSITION:** 8-29-62. Default—delivered to a public institution for use as animal feed.

**28576. Cabbage.** (F.D.C. No. 48347. S. No. 33-485 V.)

**QUANTITY:** 140 50-lb. bags, at Chariton, Iowa.

**SHIPPED:** 10-23-62, from Hayward, Minn., to Kansas City, Mo., by Noland Bros., and reshipped to Chariton, Iowa.

**LABEL IN PART:** (Bag) "New Cabbage Produce of U.S.A."

**LIBELED:** 10-30-62, S. Dist. Iowa.

**CHARGE:** 402(a) (2) (B)—when shipped, the article was a raw agricultural commodity and contained a pesticide chemical, namely, endrin, which was unsafe within the meaning of 408(a), since the quantity of such pesticide chemical on cabbage was not within the limits of the tolerance prescribed by regulations.

**DISPOSITION:** On 11-8-62, Chariton Wholesale Grocery Co. of Chariton, Iowa, filed a claim and answer, and consented to the destruction of the article. On 11-9-62, the Government moved to dismiss the action and showed to the court that the claimant had consented to the immediate destruction of the article, and that the article had been destroyed. On 11-13-62, the court dismissed the action.

**28577. Potatoes.** (F.D.C. No. 48038. S. No. 82-545 T.)

**QUANTITY:** 900 50-lb. bags, at San Antonio, Tex.

**SHIPPED:** 9-11-62, from Winchester, Wash., by Sun-Glo Producers, Inc.