

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 649, FOOD AND DRUGS ACT.

ADULTERATION OF OLIVES.

On or about December 20, 1909, Psaki Brothers, a corporation, New York City, shipped from the State of New York to the State of Pennsylvania 10 barrels of olives. Examination of samples of this product made by the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report thereon that said shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Eastern District of Pennsylvania.

In due course a libel was filed in the District Court of the United States for said district against the said 10 barrels of olives, charging the above shipment, and alleging the product so shipped to be adulterated, in that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance, and praying seizure and condemnation of the product. Thereupon the said Psaki Brothers entered its appearance and filed an answer denying the allegations of the libel. The cause coming on for hearing, the issues were tried before a jury. After hearing the testimony and arguments of counsel for the respective parties, the jury was charged by the court as follows:

CHARGE OF THE COURT.

Hon. J. B. McPHERSON, *District Judge.*

The attempt of the Government in this case is to forfeit this property, and the method of procedure is, for the Government, if it supposes it has sufficient grounds for believing the Act to have been violated, to take possession of the property. Any person who has an interest in that property has a right to come forward and claim it, and claim that the Government's proceeding was not justified; and so we have a case such as is brought before us. While in form it is between the Government and this property, in substance it is between the Government and the man who claims it; so that your verdict in the present case will be for the Government, in case you find that this property should be forfeited, and for the claimant if you find that it ought not to be forfeited. You

will not have any money verdict to render, nor anything to do with the value of this property at all. The verdict will simply be, I repeat, in one case for the Government or, in the other case, for the claimant.

One section of this statute provides that articles intended for food may be condemned and forfeited "if, either in whole or in part, they shall be filthy, decomposed or putrid," and the Government claims that, in this particular case, the articles in question were both filthy and decomposed. We will leave the word "putrid" out of the case. There is no averment that they were putrid. If the Government has offered evidence which satisfies you that they were either filthy or decomposed, the case is made out. The Government is not bound to prove that they were both filthy and decomposed.

Now you see that what you have to do is, as a question of fact, to determine from the evidence laid before you whether these olives can fairly and properly be said to be filthy or decomposed. That requires you to consider what meaning we can properly apply to the words which I have emphasized, namely, filthy and decomposed, and then apply the meaning to the evidence as you have heard it. Right there we are confronted with the difficulty that so often confronts us, of determining just exactly what the meaning of a particular word is. You know, in the ordinary affairs of life, how difficult it often is to get at the precise meaning which a person who may be talking intends his words to bear, and he may have the same difficulty in getting at what your words may mean. It is a common difficulty that confronts the business man. Language, as you also know, very often means what we intend it to mean. There are very few words which have a precise, technical meaning, always the same. Sometimes they have one meaning and sometimes another. That is a common situation, and we simply have to do with our speech as best we can and endeavor to ascertain what it means in the particular situation in which the words are being used. Sometimes a word may mean one thing in a particular set of circumstances, and have an entirely different meaning, or, at all events, a somewhat different meaning, when applied to another subject.

You must bear in mind that these two words, "filthy" and "decomposed" are used in this case before us with reference to food, with reference to articles that are offered for food and, therefore, you must view the evidence in the light of the subject-matter to which your attention has been directed; because it is quite clear that a situation which might justify a jury in finding a food was decomposed might not justify them in finding that some other substance was either filthy or decomposed.

Now the word "filthy" is capable of a variety of meanings. I suppose it is not unfair to say that it is the superlative degree of such a condition as we refer to as "soiled." When we speak of an article as soiled, that would be a sufficiently accurate statement, I suppose, in your minds and mine. Then if you say an article is "dirty," I think you go a step farther. Perhaps you might call that the comparative degree, for our purposes. It certainly goes a little farther, I think, than the word "soiled." Then, if you use the word "filthy," I think you are all conscious that we have gone a step farther than that. An article can hardly be said to be filthy unless it has gone somewhat farther than the word "dirty."

Now what have the witnesses said in regard to these articles? Were they filthy, regarded as articles of food? The point to which the Government directs your attention, and the only point to which the Government directs your attention, in that respect, is the alleged presence of worms and the excreta of worms, which are said to have been found in these barrels. What are the facts in that regard? I do not intend to go over the evidence at all, or to direct your atten-

tion to what any particular witness may have said. You have heard the evidence and you must determine what the facts were, to what extent worms, or the excreta of worms, were found in these olives, and, when you have determined this fact, it may justify you in finding that you can properly regard them as filthy.

So in regard to the word "decomposed." That is a word with quite an extensive scope. Scientifically, it is quite clear that, the moment a chemical change takes place in any article, it begins to decompose. Take sugar, for example. The moment sugar begins to change its character—and it may change into a good many substances—it begins that moment to decompose, to break down, to form other combinations, and that is scientifically called the process of decomposition. It does not follow, however, that the scientific meaning is to be applied to this case. It is quite clear to all of us that it is not intended in this statute to bear a strict scientific meaning; that it should mean simply a change of the chemical constituents of a substance. It is allied, if I may use a general word, to the idea that it is connoted by the word "rotten." "Putrid" goes a step farther; but, as I say, we are not concerned with the stage to which the word "putrid" may be properly applied. The sense in which "decomposed" is used in this Act means that stage which, if carried somewhat farther, would bring you to the state of a particular substance which would properly be called rotten. I do not think it goes as far as rotten.

Now you can see at once that the word "decomposed," when applied to food—and that is the subject, I call your attention again, to which you must apply these words—the word "decomposed," as applied to food, may have different meanings. What you would call a decomposed food product may have one meaning in one set of circumstances and a different one in another. Take certain cheeses which are used extensively as articles of food. I think on some of them—I shall not name any—there would be a general agreement that they could be properly spoken of as decomposed to some extent; and certainly with regard to some kinds of game that are eaten—eaten, at all events, by epicures—they are undoubtedly decomposed. "High," as you know, is often used for game when it reaches a certain stage. People sometimes do not like it, and sometimes go so far as to call it rotten. In that connection I may say that the Act of Congress is not concerned with the question as to whether some people will eat foods that are decomposed or dirty. That is not the test that is applied to them. It is quite true that some people are willing to eat articles that to others would be disgusting, and there is no standard that can be applied generally. In a Statute which has been passed by Congress, any word, speaking generally, is to have the ordinary and general meaning which is given to it in common speech. Statutes, speaking generally, you know, are addressed to the people. They are commands to the people, telling them what they shall do or omit to do, and, therefore, it is the ordinary and natural, general, meaning which the words bear, that those words have.

Those are the rules, or principles of construction, of the words with which we are concerned in this case. Their scope and meaning are to be determined as applied to the subject matter of this statute, namely, with reference to articles of food, and you must apply these rules to the evidence in the case and determine whether these olives, about which we have heard this evidence, are properly to be spoken of as filthy, or properly to be spoken of as decomposed. If they are either one of the two; if either one of the two words is properly applicable to them; if they are filthy, or decomposed, then the Government has made out its case.

This is a proceeding which, as I have said to you, would forfeit this property, that is, take it away from the owner and transfer it to the United States, or authorize the United States to condemn and destroy it; at all events, to deprive the owner of the property. It is, therefore, a severe remedy. It is a penalty, strictly speaking, and, while these proceedings are not criminal proceedings, they are not very far removed in their nature from criminal proceedings. Therefore, a higher degree of proof is required from the United States in a proceeding such as this than would be required of it were it an ordinary money suit on an obligation to the United States. It is not only required that there should be a fair weight of the evidence in favor of the United States, but there is a requirement that the United States should make out its case by evidence that is of a higher quality; evidence that may properly be described as clear, convincing and satisfactory. You now must determine whether, judged by that standard, the United States has made out its case in reference to the articles to which I have referred.

I shall not say anything about the evidence in the case, as it has been given to you by the various witnesses, except to say a word about two of the witnesses who testified for the Government. I refer to the testimony of the two young women who were heard yesterday. Their testimony has been held up before you to ridicule, and I do not think it was justified. There is no reason why the testimony of any witness should not be attacked by any person opposed to it, and it is for the jury to determine what weight is to be given to the testimony of any witness—and the weight to be given to the testimony of these witnesses is entirely for the jury; but I am sure the jury will agree with me that their testimony was not ridiculous, or properly capable of being held up to ridicule. They certainly were highly intelligent witnesses, they certainly were careful witnesses, and I am sure the jury will agree with the court that they were intending, at all events, to give you as much light and as much satisfactory light as was possible for them to do on this subject. Just how far their testimony is to have weight with you, is wholly for you. With that, in connection with all the other evidence in the case, I leave the case for your consideration.

If the jury desire to have any of these samples for inspection, and will let us know, we will be glad to send them out. We will not trouble you with that just now, but if, when you come to consider the case, you would like to have any of these samples, please send us word and we will let you have anything you want.

Thereafter, in due form of law, the jury returned its verdict in favor of the libellant, and upon motion of the United States attorney for said district, the court issued its decree, condemning and forfeiting said 10 barrels of olives to the United States for the cause in the said libel set forth, and ordering their destruction by the marshal of said district, which order was forthwith executed.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *October 21, 1910.*