

the person, the purchaser, a member of the public getting that kind of a can, upon such examination as they would be likely to give it, say about it? Would they think it was olive oil, or would they think it was cottonseed oil? The defendant says cottonseed oil slightly flavored with olive oil is the compound indicated there, and that it is clearly stated in these letters. The Government says those are the only small letters, except the quarter of gallon net, on the whole can; and that they do tend to mislead the public and are a false branding. The Government further says: "What could have been the object of putting this tree and the 'Termini Imerese' on?" There is no proof that any cottonseed oil ever came from that part of the world, in Sicily. What would it mean except that this was olive oil.

The question for you to determine on count 8, as in the case of the Fontanella oil in count 5, is, what is the effect of this? What did  $\frac{1}{4}$  of a gallon net mean in view of all the evidence, and was it correct? Next, what is the effect of this description? Is it a misbranding? Is it something calculated to deceive the public or not? If you find on count 5 in respect to the Fontanella oil that the can did not contain a half-gallon, and are satisfied beyond a reasonable doubt of that fact, then you will find a verdict for the Government upon count 5.

If you find on count 8 that the Termini Imerese can either did not contain  $\frac{1}{4}$  of a gallon net, or was misbranded in respect to the description of the contents, that is to say, the kind of oil and where it came from, in either of those events, if you find either fact beyond a reasonable doubt, you are to find a verdict for the Government; otherwise for the defendant, who, of course, is entitled, as in all criminal cases, to the presumption of innocence until he is proved guilty beyond a reasonable doubt.

Mr. STANTON (attorney for defendant). If the court please, might I request you to charge the jury that the character of this defendant should be taken into consideration in their deliberations?

The COURT. No; it is a question of what he did, not a question of intent; it is a question, Mr. Stanton, of whether this statement as to what the can contained is correct, and the picture and descriptive words on the other can indicating or not indicating, as the jury may think, origin, whether that is correct. If the defendant's concern put it out and traded in it, even though he did not know it, he has got to know it; it is not a question of a man's motive.

This Pure Food Law, of course, is a very important law. It is for the purpose of protecting people and seeing that the public get fair statements as to weights, origins and all that sort of thing. It should be administered also, of course, both by the courts and juries, in a rational and sensible way.

The jury thereupon retired, and after due deliberation returned a verdict in favor of the Government on the charge of short measure, and thereafter on January 19, 1920, in accordance with said verdict, the court imposed a fine of \$50 on the defendant.

E. D. BALL, *Acting Secretary of Agriculture.*

**7709. Adulteration and misbranding of olive oil. U. S. \* \* \* v. 200 Cases \* \* \* of Alleged Olive Oil. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. Nos. 9390, 9391. I. S. Nos. 2208-r, 2209-r, S. No. W-248.)**

On or about October 11, 1918, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases, each containing 2 5-gallon cans of alleged olive oil, remaining unsold in the original unbroken packages at San Pedro, Calif., alleging that the article had been shipped on or about May 11, 1918, by John T. Delany, New York, N. Y., and transported from the State of New York into the State of California, and charging adulteration and misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part, "5 Gal. Net."

Adulteration of the article was alleged in the libel for the reason that cottonseed oil had been mixed and packed with, and substituted wholly or in part for, olive oil, so as to reduce and lower and injuriously affect its quality and strength.

Misbranding of the article was alleged in the libel for the reason that the article was billed and invoiced as "Imp. Olive Oil," whereas, in truth and in fact, the article was not "Imp. Olive Oil," but contained a mixture of cottonseed oil and olive oil, and that the invoicing and billing of the article was calculated to deceive and mislead the purchasers of the article. Misbranding was further alleged in that the article was an imitation of, and was offered for sale under the distinctive name of, another article, to wit, "Imp. Olive Oil," whereas the article was not "Imp. Olive Oil," but was a mixture of cottonseed oil and olive oil. Misbranding was further alleged in that the quantity of the contents of each of the cans was not correctly stated on the cans in that the said cans were labeled "5 Gal. Net," whereas each can contained a less amount of oil than 5 gallons.

On February 4, 1919, the French Sardine Co., Smith & Doyle, and the Southern California Fish Co., claimants, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to said claimants, or any of them, upon the payment of the costs of the proceedings and the execution of a bond in the sum of \$3,000, conditioned in part that the product be labeled "Cottonseed Oil Flavored with Olive Oil 4 8 Gals.," and when so labeled be inspected by an inspector of this department.

E. D. BALL, *Acting Secretary of Agriculture.*

**7710. Adulteration of raisins. U. S. \* \* \* v. 2400 Cases \* \* \* Ungraded Raisins. Consent decree of condemnation and forfeiture. Product ordered released under bond. (F. & D. No. 11153. I. S. No. 3026-r. S. No. W-178 )**

On September 3, 1919, 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 for the seizure and condemnation of 2400 cases, labeled in part "California Associated Raisins Co. Eat Raisins 25 Pounds Net Ungraded Raisins," remaining unsold in the original unbroken packages at Seattle, Wash., alleging that the article had been received on or about August 19, 1919, at Seattle, Wash., having been consigned by E. Y. Foley, San Francisco, Calif., and transported from the State of California into the State of Washington, and charging adulteration under the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that sand had been mixed and packed with the article so as to reduce, lower, and injuriously affect its quality and strength, and that it consisted wholly or in part of a filthy, decomposed, and putrid vegetable substance.

On November 24, 1919, E. Y. Foley, claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of \$2,500, in conformity with section 10 of the act, conditioned in part that the product be denatured under the direction of this department.

E. D. BALL, *Acting Secretary of Agriculture.*

**7711. Adulteration and misbranding of olive oil. U. S. \* \* \* v. Nicholas Cosentino. Plea of guilty. Fine, \$50. (F. & D. No. 11122. I. S. Nos. 7504-r, 7505-r.)**

On January 7, 1920, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against