

was a party to it or not, or whether the company knew it had been done, if it had in fact been done. Any excessive quantity of water, if it had been packed in these oysters, whether Golden & Co. had any knowledge of it or not, and they sold them in that condition, why then that would constitute the offense that is prescribed in this law.

So the case in its last analysis comes down to the proposition whether or not when these oysters were packed, an excessive quantity over and above what was in the run of the business, in the trade here in this section, was put in these oysters at that time. If that was done, whether Golden & Co. knew of it or not, if they handled an oyster in that condition, in which that had been done, then they would be guilty under this law.

I do not know that I could be of any assistance in reviewing the testimony. You heard it and paid careful attention to it. You heard the testimony here of the Government's witness as to the conduct of the employees and as to the taking of the samples. Of course, it is immaterial how big a bulk of oysters was taken, whether a can of oysters containing a gallon, or not, if an excessive amount of water was found in the sample. It is immaterial whether that was found at the bottom or the top of the can; if an excessive amount of water was in the can either at the top or bottom; that would constitute an adulteration of the oysters.

The question to consider is whether or not when the agent took the sample he got a fair sample of it. It might be if there was any more than a normal quantity of water, more than 6 per cent, that greater part was at the top of the can, for it has been shown by demonstration that the water comes to the top of the can. It might be that the sample was taken off the top and when the water had settled there, and that perhaps would not be truly representative of the quantity of liquid in the can, whereas if it had been stirred up before it would not show that excessive quantity. So it is proper for you to consider that in your deliberations. I do not mean to intimate by that that the proof shows that the agent was negligent in taking the sample. I simply mean to call attention to the fact in determining if he got a fair and representative sample, as fair a sample as this can could supply.

It is not necessary for me to say that this defendant stands here like any other defendant. The fact that it is a corporation and handles food products does not put it in a position different from any one else, and you ought not to be influenced by the high cost of living or any other consideration. This thing of adulterating food is, of course, a thing that ought not to go on, and wherever guilt is shown you should not hesitate to bring in a verdict of guilt, but still you ought not to be carried away by any hue and cry about the high cost of living, or a large corporation being engaged in the business, or anything like that. But you must go to the actual question, and the question to be determined is, Has this defendant committed this offense? If you are satisfied that he has, you must bring in a verdict against him, but you must be satisfied beyond all reasonable doubt. You should not let the high cost of living influence you. You ought to simply follow the straight edge of reason and logic in this case and decide the case on the evidence and the facts.

The jury then retired and after due deliberation returned a verdict of guilty, and, on February 23, 1922, the court imposed a fine of \$50.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

10396. Misbranding of olive oil and compound oil. U. S. * * * v. 25 Gallon Cans and 55 Quart Cans of Olive Oil and 10 Gallon Cans of Compound Oil. Consent decrees of condemnation and forfeiture. Products released under bond. (F. & D. Nos. 15462, 15530. I. S. Nos. 15481-t, 15482-t, 15483-t. S. Nos. E-3603, E-3604.)

On October 7 and 10, 1921, respectively, the United States attorney for the District of Connecticut, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 25 gallon cans and 55 quart cans of olive oil and 10 gallon cans of compound oil, remaining unsold in the original unbroken packages at Bridgeport, Conn., alleging that the articles had been shipped by the Reliable Importing Co., New York, N. Y., on or about August 2 and September 9, 1921, respectively, and transported from the State of New York into the State of Connecticut, and charging misbranding in violation of the Food and Drugs Act, as amended. The articles were labeled in part, respectively: "Olio D'Oliva Puro Importato * * * Lucca Italia Vapore-Marina Brand Net Contents 1 Gal." (or "1 Quart") " * * * Sirota & Segerman, Importers &

Packers, Lucca, Italy, N. Y. U. S. A.”; and “Contadina Brand Oil Superior Quality * * * A Compound Net Contents 1 Gal. * * * Contadina Oil Co., N. Y.”

Misbranding of the articles was alleged in substance in the libels for the reason that the labels on each of the cans containing the said articles bore the following statements, respectively, “Net Contents 1 Gal.” and “Net Contents 1 Quart,” which statements were false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the articles were food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages.

On February 24, 1922, the Reliable Importing Co., New York, N. Y., claimant, having consented to the entry of decrees, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the products be released to the said claimant upon payment of the costs of the proceedings and the execution of good and sufficient bonds, in conformity with section 10 of the act.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

10397. Misbranding of Dr. Weare's heave remedy and Dr. Weare's Cow-Health. U. S. * * * v. 108 Packages of Dr. Weare's Heave Remedy, et al. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 15496, 15497. Inv. Nos. 29548, 29549, 29550. S. Nos. E-3615, E-3616.)

On November 4, 1921, and January 28, 1922, respectively, 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 libels for the seizure and condemnation of 152 packages of Dr. Weare's heave remedy and 15 packages of Dr. Weare's Cow-Health, remaining in the original unbroken packages at Spartansburg and Corry, Pa., respectively, alleging that the articles had been shipped by the Dr. Weare Medicine Co., Fairport, N. Y., on or about July 20 and August 12, 1921, respectively, and transported from the State of New York into the State of Pennsylvania, and charging misbranding in violation of the Food and Drugs Act, as amended.

Analyses of samples of the articles by the Bureau of Chemistry of this department showed that the heave remedy consisted essentially of linseed meal, wheat middlings, charcoal, iron sulphate, alum, and small amounts of copper sulphate and arsenic trioxid; and that the Cow-Health consisted essentially of linseed meal, wheat middlings, corn gluten feed, charcoal, ginger, iron sulphate, magnesium sulphate, sulphur, and salt.

Misbranding of the articles was alleged in substance in the libels for the reason that the following statements appearing in the labelings, regarding the curative and therapeutic effects of the respective articles, to wit, (heave remedy) “* * * Heave Remedy For Heaves, * * * Distemper, Epizootic, Worms, * * * for Heaves * * * Remedy for Chronic Cough, * * * and Distemper * * *,” (Cow-Health) “* * * A Special Medicine For Cow Diseases. * * * Cow-Health Is a Remedy for Abortion (Slinking), Barrenness * * * Caked Bag * * * and all diseases peculiar to the cow. * * * To Prevent Abortion—In cases where the cow shows signs of immediate abortion, (generally about seven months) give two tablespoonfuls Cow-Health twice a day in warm mash until the danger is averted. In herds and localities where abortion is liable to occur through being epidemic, feed a heaped teaspoonful once a day for three months previous to the period when the abortion would be liable to occur. Barrenness—Give a tablespoonful twice a day for three weeks. If not effective, repeat. * * * For scouring calves give a heaped teaspoonful as above. To Remove Retained Afterbirth—Give two tablespoonfuls in hot mash, night and morning, until removed. * * * Cow-Health Is the result of many years of practical experimenting in the endeavor to find some specific which would prevent the losses to which profit in cows has always been liable. It contains powerful ingredients which have never before been used for the purpose, and to these discoveries is due the wonderful success of ‘Cow-Health.’ It acts directly and positively on the generative organs, * * * For Abortion. For Barrenness * * *,” were false and fraudulent, since the said articles contained no ingredients or combinations of ingredients capable of producing the effects claimed.

On March 7, 1922, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the products be destroyed by the United States marshal.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*