

On April 23, 1925, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

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

13318. Adulteration of canned cherries. U. S. v. 17 Cartons and 36 Cartons of Cherries. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 19909. I. S. Nos. 16325-v, 16376-v. S. No. E-5186.)

On March 18, 1925, the United States attorney for the Northern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 53 cartons of canned cherries, remaining in the original unbroken packages at Atlanta, Ga., alleging that the article had been shipped by S. E. Comstock & Co., from Fairport, N. Y., on or about November 15, 1924, and transported from the State of New York into the State of Georgia, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: (Can) "Orchard Farm Brand Red Sour Pitted Cherries * * * Guaranteed And Distributed By Mt. Morris Canning Co. Mt. Morris, N. Y." The remainder of the said article was labeled in part: (Can) "Sweet Violet Brand Red Sour Pitted Cherries * * * Guaranteed And Distributed By Finger Lakes Canning Co., Inc. Penn Yan, N. Y."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On April 28, 1925, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

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

13319. Alleged misbranding of butter. U. S. v. Monotti-Larimer. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 18579. I. S. No. 11728-v.)

On June 27, 1924, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Monotti-Larimer, a corporation, San Francisco, Calif., alleging shipment by said company, in violation of the food and drugs act as amended, on or about February 5, 1924, from the State of California to the Territory of Hawaii, of a quantity of butter which was alleged to be misbranded. The article was labeled in part: (Package) "Gold Medal Brand Pasteurized Butter * * * Monotti-Larimer, Distributors Net Contents 1 Lb."

Examination by the Bureau of Chemistry of this department of 294 packages from the consignment showed that the average net weight of the packages examined was 15.77 ounces.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "Net Contents 1 Lb.," borne on the packages containing the said article, was false and misleading, in that it represented that each of said packages contained 1 pound net of butter, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that each of said packages contained 1 pound net of butter, whereas each of said packages did not contain 1 pound net of butter but did contain a less amount. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On March 18, 1925, the case 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 (St. Sure, D. J.):

"GENTLEMEN OF THE JURY: I will try and be as brief as possible in my instructions to you. You have sat upon juries here in several cases and you have heard me from time to time deliver instructions upon various matters of law which it is my duty to give to you. It may be that you are already familiar with most of the principles of law which govern in cases of this kind.

"I have pointed out to you, I think, and it becomes my duty to do so again, that you are the exclusive judges of the facts. The court is to pass upon the law in the case and to give to you such rules of law as it deems proper for your

guidance. You are to accept the law as given to you by the court. You must not decide this case upon any preconceived notions you may have of the law, or what you think the law should be. It is my duty, as I have said, to give you the law. It is my duty to pass upon questions of law that may arise during the trial of the case. Now, if I make a mistake in ruling upon the law during the trial of the case, or if I make a mistake in giving you instructions, those mistakes of mine may be corrected in another tribunal. If you make a mistake, however, in your verdict, by reason of the fact that you go off on some preconceived idea that you have of what the law should be or what it is, why, that mistake can not be corrected. So you see it is quite important that you observe the rule that you judge only the facts of the case, and that you take the law from the court.

"The information in this case, as you have heard, charges the defendant corporation with violating an act of Congress known as the food and drugs act. Briefly, the defendant is charged in the first count with shipping and delivering for shipment a certain lot of butter which was misbranded. The second count charges that in violation of said act an article of food was shipped and delivered and misbranded by the defendant, in that the contents was not plainly and conspicuously marked on the outside of the package. In the information there is also a charge that this defendant has heretofore been convicted of a charge of violating this act.

"As to the charges in the indictment or information it is the duty of the Government to prove each and every element of the charges against the defendant beyond and to the exclusion of a reasonable doubt. The fact that it appears from the evidence that the defendant has been heretofore convicted of a violation of this food and drugs act should not be considered by you in determining the innocence or guilt of the defendant. You should bear in mind that the defendant here is charged with a violation of the act by shipment of butter from San Francisco to Honolulu, on February 5, 1924, which was underweight, and on that charge alone you are to determine the innocence or guilt of the defendant in this case. The indictment is a mere formal accusation against the defendant and is no evidence of its guilt.

"The burden of proof rests, of course, upon the Government, and, as I have stated, the burden is upon the Government to prove to your satisfaction and beyond or to the exclusion of a reasonable doubt every material element in the case. The defendant is not required to prove his innocence. Every person is presumed to be innocent when charged with a crime. That presumption remains with the defendant throughout the entire trial of the case and goes with the defendant into the jury room with you and remains a part of the case until you arrive at your verdict finding that the defendant is guilty.

"The plea of not guilty entered by the defendant in this case puts in issue every allegation of the information. You must not convict upon mere suspicion, no matter how great that suspicion may be in your minds. You must not convict upon mere conjecture, nor mere probability, but only upon the evidence and all of the evidence in the case, and you must find that that evidence makes the defendant guilty beyond and to the exclusion of a reasonable doubt.

"Now, I have used the words 'reasonable doubt' several times during my charge to you. It is difficult to define just exactly what reasonable doubt means. It is a substantial doubt, that is to say, it is something that is founded upon reason. And I may say to you, as an illustration, that it is a doubt which you are not permitted to base upon mere fancy or mere whim or conjecture or sympathy or because you may not approve of the law or something of that kind. It is something more substantial than that—a doubt which must satisfy a reasonable mind after a full comparison and consideration of all the evidence; a substantial doubt arising from insufficiency of the evidence, not a mere possibility or probability of innocence.

"If two inferences can be drawn from a given act or circumstance, or from a number of given acts or circumstances, one inference being that of guilt and the other that of innocence, it is your duty to draw the inference of innocence and not that of guilt. And I may say that the defendant is clothed with the presumption of good character.

"Now, you are the exclusive judges of the evidence in the case, and you may judge the credibility of a witness by the manner in which he testifies, by his means of knowledge, by his interest in the case, taking into consideration any fact or circumstance that may throw any light upon the case, so long as that fact or circumstance has arisen during the trial of the case. You are to

try this case upon the evidence adduced here in this court room at the trial, and not from any evidence you may have obtained on the outside or anywhere else.

"If you find from all the evidence that the shipment of butter when it left its place of business was full weight and the shortage, if any, was due to the physical condition of the butter and beyond the control of the defendant, you should of course acquit the defendant. If you find from all of the evidence that the statement upon the packages of butter 'Net contents One Pound' was not labeled so as to deceive and mislead the purchaser into the belief that each of said packages contained 1 pound net of the article but the shortage, if any, was the result of inaccuracy beyond the control of the defendant, you must acquit the defendant.

"Now, your verdict should not be made or should not be based upon any single fact in this case, you must understand. You must arrive at your verdict upon a consideration of all of the facts in the case, all of the facts taken together by you and considered and weighed in a dispassionate manner, and you should bring to the trial of this case and to the consideration of the case the same common sense and good judgment that you use in everyday affairs of your business.

"Now, gentlemen of the jury, when you are in the jury room you will select one of your number as foreman. When you have agreed upon a verdict the foreman will sign the verdict, and you will be returned into court where you may deliver your verdict. Remember, of course, that your verdict must be unanimous. You may now retire."

The jury then retired and after due deliberation returned a verdict of not guilty.

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

13320. Adulteration of shell eggs. U. S. v. Charles Sanders. Plea of guilty. Fine, \$5. (F. & D. No. 17603. I. S. No. 7595-v.)

On August 21, 1923, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Charles Sanders, Wellfleet, Nebr., alleging shipment by said defendant, in violation of the food and drugs act, on or about August 23, 1922, from the State of Nebraska into the State of Colorado, of a quantity of shell eggs which were adulterated.

Examination by the Bureau of Chemistry of this department of 1,260 eggs from the consignment showed that 174, or 13.8 per cent of those examined, were inedible eggs, consisting of black rots, mixed or white rots, spot rots, and blood rings.

Adulteration of the article was alleged in the information for the reason that it consisted in part of a filthy and decomposed and putrid animal substance.

On July 7, 1924, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$5.

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

13321. Adulteration and misbranding of morphine sulphate tablets, strychnine sulphate tablets, and codeine sulphate tablets. U. S. v. Western Chemical Co., Inc. Plea of guilty. Fine, \$60. (F. & D. No. 19285. I. S. Nos. 5727-v, 19616-v, 19619-v, 19623-v, 19624-v, 19625-v.)

On April 11, 1925, the United States attorney for the District of Minnesota, 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 Western Chemical Co., Inc., a corporation, trading at Hutchinson, Minn., alleging shipment by said company, in violation of the food and drugs act, on or about February 12, 1924, and April 1, 1924, respectively, from the State of Minnesota into the State of South Dakota, of quantities of morphine sulphate tablets, strychnine sulphate tablets, and codeine sulphate tablets which were adulterated and misbranded. The articles were labeled in part, respectively: "Soluble Hypodermic Tablets Morphine Sulphate $\frac{1}{4}$ Gr.," "Tablet Triturates Morphine Sulphate $\frac{1}{4}$ Gr.," "Tablet Triturates Strychnine Sulphate $\frac{1}{8}$ Gr.," "Soluble Hypodermic Tablets Strychnine Sulphate $\frac{1}{8}$ Gr.," "Tablet Triturates Codeine Sulphate $\frac{1}{4}$ Gr.; Tablet Triturates Codeine Sulphate $\frac{1}{2}$ Gr.," and bore the further statement "Western Chemical Co. Inc. Hutchinson, Minn."

Analyses of samples of the articles by the Bureau of Chemistry of this department showed that: The two consignments of morphine sulphate tablets, labeled " $\frac{1}{4}$ Gr.," averaged not more than 0.2031 grain and 0.2174 grain, respectively,