

"In this case the Formulary set 16 per cent of ash as the highest quantity of ash which, under that law, could be contained in this drug, represented by these roots. In other words, if the aletris roots in the bale, shipped from North Carolina into Pennsylvania, contained over 16 per cent of ash on test, then the drugs, under the act, were adulterated. If the roots, as transported, did not contain that much ash upon analysis or test, then it was not adulterated, and the Government had no authority or right to seize it; so that it becomes a question of fact for the Jury, taking into consideration all the testimony in the case on both sides, as to whether this bale or package of these drugs was adulterated, in the sense that the quantity that was transported contained more than 16 per cent of ash.

"You have heard the testimony of the Government analyst, who testified that from samples taken by the Government inspector he made an analysis from those samples, that it was found in one case the ash content was 23 per cent and in the other case 21 per cent.

"The defendant in the case has called, as one of its witnesses, its chemist, who testified that he made an analysis or test of samples taken from these roots, and that, under that test, they only showed 5 per cent of ash, so that you have here a difference in these tests.

"There was a quantity of 416 pounds, I think it was—418 pounds of this root that remained in this bale, and it is a question for the Jury to determine whether, taking that whole quantity, the roots or drugs were adulterated, in that they contained more than 16 per cent of ash.

"Of course, you heard the testimony as to the fact that these roots are dug out of the ground, and that earth, necessarily, adheres to them, and that they are shipped in interstate commerce without being washed, so that the question would be whether there was enough other matter in those roots at the time they were shipped, and while they were being transported, to conclude that the whole quantity was adulterated, or that the whole quantity was not adulterated.

"Those are the outstanding points, upon which the Jury will have to consider the case.

"If, after taking into consideration all the testimony, you believe that when this bale of these roots was transported, they were adulterated, in the sense that, upon test, the quantity transported would have shown an adulteration or an ash of over 16 per cent, then your verdict should be in favor of the Government.

"If, however, you do not believe the testimony shows that the bale of roots transported did contain, on test, ash equal to 16 per cent or above 16 per cent, then your verdict should be for the defendant.

"I do not think that there is anything further I can say to you in the case. You will have to consider the case on all the evidence presented, and determine whether or not the quantity transported, taken from North Carolina and delivered here in Philadelphia in the package, was adulterated when it was transported and delivered."

The jury then retired and after due deliberation returned a verdict for the defendant.

On March 9, 1928, a decree was entered ordering the product returned to the H. K. Mulford Co., and the libel dismissed.

W. M. JARDINE, *Secretary of Agriculture.*

15539. Adulteration and alleged misbranding of butter. U. S. v. 7 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 22055. I. S. No. 19881-x. S. No. 94.)

On August 26, 1927, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 7 tubs of butter, remaining in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped by the Osseo Cooperative Creamery Co., from Osseo, Wis., August 22, 1927, and transported from the State of Wisconsin into the State of Illinois, and charging adulteration and misbranding in violation of the food and drug act.

Adulteration of the article was alleged in the libel for the reason that it was deficient in butterfat, in that it contained less than 80 per cent of butterfat, the standard established by Congress. Adulteration was alleged for the further reason that a substance deficient in butterfat had been mixed and

packed with the said article so as to reduce, lower, and injuriously affect its quality and strength.

Misbranding was alleged for the reason that the article was offered for sale under the distinctive name of another article, butter.

On October 13, 1927, Hunter Walton & Co., Chicago, Ill., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment was entered finding the product adulterated and ordering its condemnation and forfeiture, and it was further ordered by the court that the said product be released to the claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, conditioned in part that it be reprocessed so as to contain not less than 80 per cent of butterfat.

W. M. JARDINE, *Secretary of Agriculture.*

15540. Adulteration of fig bars. U. S. v. 51 Cases of Fig Bars. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 22287. I. S. No. 13124-x. S. No. 333.)

On December 14, 1927, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 51 cases of fig bars, remaining in the original unbroken packages at Denver, Colo., consigned by Zion Institutions & Industries, Zion, Ill., alleging that the article had been shipped from Zion, Ill., on or about October 31, 1927, and transported from the State of Illinois into the State of Colorado, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated, in that it consisted in whole or in part of a filthy, decomposed, or putrid vegetable substance.

On January 26, 1928, 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.

W. M. JARDINE, *Secretary of Agriculture.*

15541. Adulteration of figs. U. S. v. 85 Cases and 50 Cases of Figs. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 22291, 22292. I. S. Nos. 13142-x, 13143-x, 13145-x. S. No. 344.)

On December 16, 1927, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying seizure and condemnation of 135 cases of figs, remaining in the original unbroken packages at Denver, Colo., consigned by the Sunland Sales Cooperative Assoc., Fresno, Calif., alleging that the article had been shipped from Fresno, Calif., in various consignments, on or about November 11 and November 28, 1927, respectively, and transported from the State of California into the State of Colorado, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Blue Ribbon Brand Choice Mission Figs Produced & Packed by California Peach & Fig Growers, Main Office Fresno, Calif."

It was alleged in the libels that the article was adulterated, in that it consisted, in whole or in part, of a filthy, decomposed, or putrid vegetable substance.

On January 26, 1928, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be destroyed by the United States marshal.

W. M. JARDINE, *Secretary of Agriculture.*

15542. Adulteration of figs. U. S. v. 25 Boxes of Figs. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 22194. I. S. No. 17329-x. S. No. 206.)

On or about December 1, 1927, the United States attorney for the Eastern 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 praying seizure and condemnation of 25 boxes of figs, remaining in the original unbroken packages at Walla Walla, Wash., consigned by the Sunland Sales Cooperative Assoc., from Fresno, Calif., alleging that the article had been shipped from Fresno, Calif., on or about October 17, 1927, and transported from the State of California into the State of Washington, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Blue Ribbon Brand Choice Mission Figs. Produced & Packed by California Peach & Fig Growers, Fresno, Calif."