and he kept some of it at 158° for 18 hours and he didn't get any red color. Some of it he heated to 212° for 2 hours and he didn't get any red color, and in order to get a red color, he had to heat the honey to 212° and keep it at that heat for 18 hours, and then he said he did get a red color, but it wasn't honey and it would not be fit for sale.

It is a question of fact, and you must decide it between the two. You will remember that in all other questions the burden is upon the Government.

Now, that test was made and they found the presence of some foreign substance that indicated, in their opinion, that it was commercial invert sugar, and then they put it through two more tests, and one of them was by polarization, and that is a very technical matter. The rays of light when they are sent into the product will get a twist in one direction or you will get a twist in another direction. It is something that cannot easily be demonstrated, and they say that these twists of light indicate the presence of commercial invert sugar.

The last test was to find out whether there was anything else in there, and through an elaborate chemical process, they found the presence of a certain. definite quantity of tartaric acid, and they say that fits in with the whole theory, because tartaric acid is used to make commercial invert sugar. Now, I asked one of the witnesses why commercial invert sugar was used instead of ordinary cane sugar, and the answer was because it is a much more satisfactory adulterant to use, because it is harder to detect. These tests, at least it seemed to me, were not extremely simple tests, but they took quite some time and quite some scientific knowledge and skill, but that is no reason why they should be rejected. The only thing is whether you believe those substances were there, whether they have convinced you by the weight of the evidence that commercial invert sugar is present in real large quantities. If you so find, you will find in favor of the libellant. If you do not so find, you will find in favor of the defendant. That is all there is to the case. You can put everything else connected with it out of your minds.

Mr. KEOUGH: May I ask for an exception to that part of your honor's charge where you said that were the jury to find that either of these men were deliberately lying or were incompetent—

THE COURT: The Government's?

Mr. KEOUGH: Yes. It does seem to me that there is a wider latitude than that.

THE COURT: What else could they find?

Mr. KEOUGH: Well, as to how far their conclusions may be based upon convincing scientific evidence—

THE COURT: Members of the jury, you must use your judgment about that. If you can find for the defendant and still find that these Government witnesses are truthful, competent, and skillful, maybe you can do it—I couldn't do it.

(Exception noted for defendant by direction of the court.)

Mr. KEOUGH: Also the test described by Dr. Osborn, as I remember, in his test he did not include any Puerto Rican honey.

THE COURT: That is right. I have not attempted to give you every fact. It is your recollection of these facts that governs the case. If I have stated anything different from what you remember, you will take your own recollection.

The jury returned a verdict for the Government. On July 9, 1935, the court having denied a motion for a new trial, judgment of condemnation was entered and it was ordered that the wrappers and labels be removed from the article and that it be turned over to some charitable institution.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

26179. Adulteration and misbranding of dairy feed. U. S. v. El Reno Mill & Elevator Co., a corporation. Plea of nolo contendere. Fine, $20 and costs. (F. & D. no. 36050. Sample no. 10156-B.)

This case involved dairy feed that showed a marked excess of crude fiber, a deficiency in nitrogen-free extract, and a wide variation in the composition of the product from that declared on the label.

On November 25, 1935, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the El Reno Mill & Elevator Co., a corporation, trading at El Reno, Okla., alleging that on or about May 14, 1935, the defendant company shipped from the State of Oklahoma into the State of Texas a number of sacks of dairy feed, which was adulterated and

misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Home Town 21% Protein Dairy Feed with Limestone * * * Manufactured by El Reno Mill & Elevator Company El Reno, Oklahoma."

The article was alleged to be adulterated in that a product containing more than 10 percent of crude fiber and less than 44 percent of nitrogen-free extract, containing undeclared alfalfa meal, soybean oil meal, and corn gluten meal, and not containing declared yellow corn meal, corn gluten feed, and dried beet pulp, had been substituted for the article.

The article was alleged to be misbranded in that the statements "Guaranteed Analysis * * * Crude Fiber not more than 10.00 Per Cent, * * * Nitrogen-Free Extract not less than 44.00 Per Cent" and "Composed of wheat bran, 43% protein cottonseed meal, yellow corn meal, ground whole oats, ground whole barley, dried beet pulp, corn gluten feed, 34% protein linseed meal, ¾% salt, 2% ground limestone", borne on the tags attached to the sacks containing the article, were false and misleading and in that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since the said statement represented that the article contained not more than 10 percent of crude fiber and not less than 44 percent of nitrogen-free extract and was composed solely of the ingredients declared on the tag; whereas it contained more than 10 percent of crude fiber and less than 44 percent of nitrogen-free extract and was not composed of the ingredients declared since it did not contain yellow corn meal, corn gluten feed, or dried beet pulp, which were declared on the tag, and did contain alfalfa meal, soybean oil meal, and corn gluten meal which were not declared.

On September 17, 1936, a plea of nolo contendere was entered on behalf of the defendant company and the court imposed a fine of $20 and costs.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

26180. Adulteration of tomato paste. U. S. v. 249 Cases of Tomato Paste. Decree of condemnation and destruction. (F. & D. no. 36131. Sample no. 26888–B.)

This case involved tomato paste that contained filth resulting from worm infestation.

On or about August 14, 1935, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 249 cases of tomato paste at Norfolk, Va., alleging that the article had been shipped in interstate commerce on or about July 20, 1935, by the Howard Terminal, from Oakland, Calif., and charging adulteration in violation of the Food and Drugs Act.

The article was labeled in part: "G. F. & D. Brand Tomato Paste with Basil * * * Packed Expressly for Galanidis, Forchas and Dourus, Inc., Norfolk, Virginia."

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy vegetable substance.

On January 15, 1936, the Manteca Canning Co., having filed an answer to the libel, judgment of condemnation was entered and it was ordered that the product be destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

26181. Misbranding of canned tomatoes. U. S. v. 97 Cases and 362 Cases of Canned Tomatoes. Decrees of condemnation. Product released under bond to be relabeled. (F. & D. nos. 36130, 36184. Sample nos. 27449–B, 49001–B.)

These cases involved canned tomatoes that fell below the standard established by this Department and that were not labeled to indicate that they were substandard.

On August 18 and August 21, 1936, the United States attorney for the District of Kansas, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 97 cases of canned tomatoes at Wichita, Kans., and 362 cases of canned tomatoes at Arkansas City, Kans., alleging that the article had been shipped in interstate commerce in part on or about January 28, 1935, by Tyrrell & Garth from Highlands, Tex., and in part on or about June 24, 1935, by A. A. Laughlin from Los Fresnos, Tex., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Pan-Tree Brand Tomatoes, * * * Distributed by the Ranney Davis Mercantile Co. * * * Wichita, Kansas."