

having paid the costs of the proceedings, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon the execution of a bond in the sum of \$500, in conformity with section 10 of the act.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

12221. Adulteration of canned salmon. U. S. v. 800 Cases, et al., of Salmon. Tried to the court and a jury. Verdict for the Government. Decrees of condemnation and forfeiture. Product released under bond to be used as fish food. (F. & D. Nos. 16925, 16996. I. S. Nos. 7878-v, 7880-v, 7883-v, 7884-v. S. Nos. W-1238, W-1244.)

On November 21 and 23, 1922, respectively, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 1,600 cases of salmon, remaining in the original unbroken packages at Astoria, Oreg., alleging that the article had been shipped by Jeldness Bros. & Co. from Point Ellis, Wash., in two consignments, namely, on or about September 16 and 20, 1922, respectively, and transported from the State of Washington into the State of Oregon, and charging adulteration in violation of the food and drugs act.

Adulteration of the article was alleged in the libels for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid animal substance, and in that filthy, decomposed, and putrid salmon had been substituted for normal salmon of good commercial quality.

On February 11, 1924, the two libels having been consolidated into one cause of action, 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 charge to the jury (Bean, *D. J.*):

"GENTLEMEN OF THE JURY: These are actions—there are two of them—brought by the Government to condemn certain lots of canned salmon on the ground that it is adulterated within the meaning of the pure food and drugs act. It is charged in each of the libels that this salmon was adulterated because it consisted in whole or in part of filthy, decomposed, and putrid animal substances. The respondent or owner of the property has filed an answer denying the allegations of the bill. It has been stipulated by counsel, however, that the salmon in question was in fact shipped in interstate commerce and that the samples taken by agents and representatives of the Government, or used by the representatives of the Government in their tests, were taken from this lot of salmon, so that the question for you to determine in this case and the contested question is whether or not this salmon was adulterated within the meaning of this statute.

"As I said to you a moment ago, the statute provides that for the purpose of this act an article shall be deemed adulterated, in the case of food, if it consists in whole or in part of filthy, decomposed, or putrid animal substances. Now, the word 'filthy' in that connection simply means dirty, nasty, unwholesome; 'decay' means decomposed, rotten, spoiled; and 'putrid' means being in a state of putrefaction, tainted, or in such a state of decomposition that the odor therefrom is offensive to the smell. And if you believe from the preponderance of the evidence in this case that the salmon in question was either filthy, decayed, or putrid, it will be your duty to find in favor of the Government. If, on the other hand, you do not so believe, then it will be your duty to find in favor of the claimant in this case.

"Now this is a civil action and a proceeding under the pure food and drugs act. That law is a wholesome law. It is a law that is designed and intended by Congress to protect the public by prohibiting the shipment in interstate commerce of unwholesome or deleterious food, and it should be enforced by courts and juries with that object in view.

"Now the statute does not define what shall be considered filthy, decayed, or putrid within the meaning of the statute, so that each case must depend upon its own facts, and if it appears that this salmon—if you believe that this salmon was of such a character on account of its condition that it was not up to the standard required or ordinarily required in the commercial world—then it would be adulterated within the meaning of the statute.

"It is not necessary, however, for the Government to show that the eating of the salmon would be injurious to the health of the individual. That is not the question in the case, but the question is whether unwholesome to such an extent that it would not satisfy the ordinary requirements of the commercial world. If it is, then it ought to be condemned; if it is not, then your findings should be in favor of the defendant.

"The word 'decomposed' as used throughout this trial does not, of course, mean 'beginning to decompose' because decomposition sets in whenever life is extinct, and therefore there must be some state after a fish is taken out of the water and before it is put in the can when it can not be said that it is decomposed or putrid or filthy or decayed, but if a canner keeps a fish out of the water before canning for such a length of time that it becomes putrid or decayed or filthy, then puts it in cans for the purpose of sale, he is violating the statute under which this proceeding is had.

"Now the question in this case is a question of fact: Do you believe from the evidence that this salmon in question is either filthy, decayed, or putrid? If you do, then, as I said, you, of course, must find for the Government; if you do not, then you must find for the defendant. Now, that is a question for you to determine from the testimony in this case. You are the exclusive judges of it, and you are the exclusive judges of the credibility of the witnesses. Every witness is presumed to speak the truth. This, however, may be overcome by the manner in which a witness testifies, by his appearance upon the witness stand, and by contradictory testimony, and in weighing the testimony of any witness you should keep in mind the interest he may have in the result of this trial, if any such interest has been manifest or shown in this case.

"Now there have been a good many witnesses testify here as experts, that is, men who have shown from their testimony that they are skilled in the particular business in which they are engaged and about which they testified here. You are to consider their testimony for whatever you may think it worth. They are entitled to testify. The only way a court or jury oftentimes can arrive at the facts in a case is through the testimony of men skilled in the particular case, and for that reason these gentlemen have testified to their experiments, to their experience and study and other things in that respect, and you should weigh all their testimony and from that determine where you think the truth lies.

"Now the burden of proof is on the Government in this case to satisfy you by a preponderance of the evidence that the charge made in the libel is true, and by a preponderance of the evidence I simply mean it must make out the best case upon the evidence. I do not mean that it must prove the charge beyond a reasonable doubt but simply that if the evidence is evenly balanced—you believe the evidence is evenly balanced—then it has not satisfied the law by requiring it to prove its case by a preponderance of the evidence.

"Now there has been something said in this case about other salmon having been condemned, other salmon packed on the Columbia River having been condemned in suit filed by the Government. If that is true it, of course, has no bearing upon the merits of this particular case, that is, it would not be evidence either that this salmon was subject to condemnation or was not. It only became important and was developed during the trial as affecting the credibility and reliability of some of the witnesses who testified on the trial.

"Now I don't know of any other questions of law involved in the case. It is a question of fact for you to determine. Do you believe from the testimony, from a preponderance of the evidence, that this salmon was filthy, decayed, or putrid? If so, find for the Government. If you do not, find for the defendant. I understand there are two cases consolidated for trial."

The jury then retired and after due deliberation returned on February 12, 1924, a verdict for the Government. On April 9, 1924, decrees of condemnation and forfeiture were entered, and it was ordered by the court that the product be delivered to the claimant, Jeldness Bros. & Co., upon payment of the costs of the proceedings and the execution of bonds in the aggregate sum of \$2,000, in conformity with section 10 of the act, conditioned in part that it be sold as food for salmon fry to the Fish Commission of the State of Oregon.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

12222. Adulteration of shell eggs. U. S. v. 20 Cases of Eggs. Consent decree of condemnation and forfeiture. Product released under bond to be candled. (F. & D. No. 17822. I. S. No. 17829-v. S. No. C-4106.)

On August 15, 1923, 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 the seizure and condemnation of 20 cases of shell eggs, remaining in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped by the Boos Produce Co. from West Bend, Iowa, August 10, 1923, and transported from the State of Iowa into the State of Illinois, and charging adulteration in violation of the food and drugs act.