

"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.

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

On August 31, 1923, the John L. Brink Co., Chicago, Ill., claimant, having admitted the material allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that it be candled under the supervision of this department, the bad portion destroyed, and the good portion released to the claimant.

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

12223. Adulteration of shell eggs. U. S. v. 115 Cases of Eggs. Consent decree of condemnation and forfeiture. Product released under bond to be candled. (F. & D. No. 17755. I. S. No. 4246-v. S. No. C-4086.)

On August 2, 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 115 cases of eggs, remaining in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped by the S. W. Mahan Produce Co., from Sigourney, Iowa, July 20, 1923, and transported from the State of Iowa into the State of Illinois, and charging adulteration in violation of the food and drugs act.

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

On August 14, 1923, the John L. Brink Co., claimant, having admitted the material allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that it be candled under the supervision of this department, the bad portion destroyed, and the good portion released to the claimant.

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

12224. Adulteration of catsup. U. S. v. 418 Cases and 400 Cases of Catsup. Consent decree of condemnation and forfeiture. Product released under bond. (F & D. No. 18379. I. S. Nos. 17615-v, 17616-v. S. No. C-4283.)

On February 13, 1924, 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 818 cases of catsup remaining in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped by the Brooks Tomato Products Co., from Shirley, Ind., in part October 24 and in part November 5, 1923, and transported from the State of Indiana into the State of Illinois, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Bottle) "Contents 8 Pounds Kenmore Brand Tomato Catsup."

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

On March 26, 1924, the Brooks Tomato Products Co., Shirley, Ind., claimant, having admitted the material allegations of the libel and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that it be sorted under the supervision of this department, the bad portion destroyed and the good portion released.

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