

On December 15, 1930, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 249 cases, each containing 24 jars, and 58 cases, each containing 48 jars of pimientos at Cincinnati, Ohio, consigned by the Pomona Products Co., Griffin, Ga., alleging that the article had been shipped on or about September 10, 1930, in interstate commerce from Griffin, Ga., into the State of Ohio, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: "Georgia Belle Pimientos * * * Grown & Packed by Pomona Products Co., Griffin, Ga." The remainder of the said article was labeled in part: "Sunshine Brand * * * Pimientos Pomona Products Co. Griffin, Ga."

It was alleged in the libel that the article was adulterated in that it consisted partly of a decomposed vegetable substance.

On February 24, 1931, the Pomona Products Co., Griffin, Ga., claimant, having admitted the 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 to be salvaged under the supervision of this department, upon payment of costs and the execution of a bond in the sum of \$750, conditioned in part that it should not be disposed of contrary to law.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18233. Alleged adulteration and misbranding of butter. U. S. v. South Peacham Creamery Co. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 25689. E. S. No. 027430.)

Samples of butter from the shipment herein described having been found to contain less than 80 per cent of milk fat, the standard prescribed by act of Congress, the Secretary of Agriculture reported the matter to the United States attorney for the District of Vermont.

On November 28, 1930, the United States attorney filed in the District Court aforesaid an information against the South Peacham Creamery Co., a corporation, South Peacham, Vt., alleging shipment by said company, in violation of the food and drugs act, on or about May 27, 1930, from the State of Vermont into the State of Massachusetts of a quantity of butter, which was charged to be adulterated and misbranded.

It was alleged in the information that the article was adulterated in that a substance containing less than 80 per cent by weight of milk fat had been substituted for butter, a product which must contain not less than 80 per centum by weight of milk fat as defined and required by the act of Congress of March 4, 1923, which the article purported to be.

Misbranding was alleged for the reason that the statement "Butter," borne on the cartons containing the article, was false and misleading in that the said statement represented that the article was butter, a product which should contain not less than 80 per cent by weight of milk fat; and for the further reason that it was labeled butter, so as to deceive and mislead the purchaser into the belief that it contained not less than 80 per cent of milk fat; whereas the information alleged that the article contained less than 80 per cent of milk fat.

On May 18, 1931, the case came on for trial before the court and a jury, and evidence was introduced on behalf of the Government and the defendant. On May, 19, 1931, the taking of testimony was completed and arguments were made by counsel for the Government and defendant, upon the completion of which the court delivered the following charge to the jury (Howe, J.):

"Gentlemen of the jury: The first count in this information is the only one submitted to you. There are two charges in it for violations of the pure food and drug law, but there is only evidence as to one, that is the first count or charge. There is only one principal question of fact in the case for you to decide, that is, whether the South Peacham Creamery, on the 27th day of May, shipped butter into Massachusetts which contained less than 80 per cent of milk fat—on the 27th day of May. If the creamery company shipped into Massachusetts from Vermont a quantity of butter which contained less than 80 per cent of milk fat, if you are satisfied beyond a reasonable doubt that they did ship butter on the 27th day of May from Vermont into Massachusetts, and you are satisfied beyond a reasonable doubt that it contained less than 80 per cent milk fat, you will find the defendant guilty. Your verdict, Mr. Foreman, will be oral and will be guilty or not guilty.

"There has been no evidence in the case what the effect of time, if any, has on the percentages of milk fat. Of course, in order to find the defendant

guilty, you must be satisfied that on the 27th day of May this butter contained less than 80 per cent of milk fat. The defendant, under the law, is not required to guarantee that it continued to contain more than 80 per cent of milk fat after the shipment is completed.

"The burden of proof, in this case, is on the Government. To begin with, gentlemen, the defendant is presumed to be innocent. This is a criminal case. If your verdict is guilty, the defendant will be obliged to pay a fine—can't send the defendant to jail because it is a corporation. In a criminal case the only punishment that can be dealt out to a corporation is to make them pay a fine. What is the presumption of innocence in a criminal case? What does it mean? It means that the jury start in the trial of a case and continue the trial of a case with the thought and the belief uppermost in their minds that the defendant did not ship in interstate commerce butter containing less than 80 per cent milk fat. You should have that uppermost in your minds, verily believe that, and continue to believe that throughout the trial until the Government has introduced sufficient evidence to convince you that the defendant did ship butter containing less than 80 per cent milk fat beyond a reasonable doubt—convince you of that fact beyond a reasonable doubt—that's the presumption of innocence. It's a very old law and a very sound law. It is, in fact, evidence in the defendant's favor which protects the defendant throughout the trial until sufficient evidence has been introduced to prove that the defendant is guilty beyond a reasonable doubt.

"And then, the next question you want to know is what is a reasonable doubt? A reasonable doubt does not mean beyond all doubt, but it means beyond such a doubt as a reasonable man would have after considering all the evidence in the case. Beyond a doubt based on reason, beyond a doubt for which you can not give a good reason. If, after an impartial consideration of all the evidence in the case, you can candidly say that you are not satisfied with the defendant's guilt, you have a reasonable doubt and you should find the defendant not guilty. If you can candidly say that you are not really and truly satisfied with the defendant's guilt, you should find the defendant not guilty. But, if after such impartial consideration of all the evidence, you have an abiding conviction of the defendant's guilt, and that abiding conviction is so strong that you would be willing to act upon it in deciding a very important matter relating to your own affairs, such as the welfare of your family, your daughter, your son, a very important matter relating to your own affairs, if you are sure of the defendant's guilt to that extent, then you have no reasonable doubt and you should find the defendant guilty.

"The mere fact that the Government has instituted this case, commenced this prosecution; you shouldn't infer from that fact that the defendant is guilty or draw any unfavorable inference whatever against the defendant because it is being prosecuted here.

"If you can reconcile the testimony on any reasonable basis consistent with the defendant's innocence you must do so and in that case find the defendant not guilty. This is a very old law and a very sound law and it means that if there are two or more theories in the case—in a criminal case—two or more theories, and they are each equally reasonable, one theory leads to guilt, and the other theory leads to innocence, the jury must adopt the theory leading to innocence instead of the theory leading to guilt, because it is safer and better to believe good of a person rather than to believe evil of him—believe good of a corporation rather than to believe evil of it, believe good of a company or association instead of believing evil of it, if you can do so on a basis consistent with reason and which is reasonable in view of all the evidence in the case.

"As to the credibility of the witnesses and the weight to be given to their testimony, the law is that you are not bound to give the same credit or the same weight or have the same faith in the testimony of each witness, but you should give their testimony just such weight, give it just such credit, have just such faith in it, as you think it is fairly entitled to receive. Consider their appearance upon the stand, their candor or lack of candor, their feelings or bias, if any, their interest in the result of the prosecution, if any, and the reasonableness of the testimony which they give, and believe as much or as little of the testimony of each witness as you think you ought to.

"If you are satisfied beyond a reasonable doubt that the butter that was analyzed was butter made by this defendant, the South Peacham Creamery, and that when it was shipped in interstate commerce on the 27th day of May, it contained less than 80 per cent of butterfat, if you are satisfied of those facts,

beyond a reasonable doubt, as defined, your verdict should be guilty. If you are not satisfied of those facts beyond a reasonable doubt, if you are not satisfied with the identity of the butter, if you are not satisfied that it contained less than 80 per cent milk fat on the 27th of May, the date it was shipped and delivered at Boston, if you are not satisfied of those facts beyond a reasonable doubt, then your verdict will be not guilty. You won't need the complaint because there is just one charge."

The jury retired and after deliberating for several hours returned a verdict of not guilty.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18234. Adulteration of canned prunes. U. S. v. 100 Cases, et al., of Canned Prunes. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 25777, 25897. I. S. Nos. 12182, 12209. S. Nos. 3994, 4094.)

Samples of canned prunes from the shipments herein described having been found to be decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the District of Colorado.

On or about January 24 and February 17, 1931, the United States attorney filed in the United States District Court aforesaid libels praying seizure and condemnation of 471 cases of canned prunes, remaining in the original unbroken packages in part at Pueblo, Colo., and in part at Lamar, Colo., consigned by the Ray-Maling Co., Hillsboro, Oreg., alleging that the article had been shipped in interstate commerce into the State of Colorado, a portion having been shipped from Hillsboro, Oreg., on or about October 8, 1930, and the remainder from Woodburn, Oreg., on or about October 11, 1930, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: (Cans) "Jordan Brand Italian Prunes, * * * Packed for J. S. Brown Mercantile Co." The remainder of the said article was labeled in part: (Case) "Bar-B-Q Brand Prunes Packed for the Jett and Wood Mercantile Co. Wichita and Hutchison, Kans."

Adulteration was alleged in the libel filed with respect to a portion of the product for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance. Adulteration was alleged with respect to the remainder of the article for the reason that it consisted in part of a decomposed vegetable substance.

On April 20, 1931, 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.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18235. Misbranding of tomato paste. U. S. v. 235 Cases, et al., of Tomato Paste. Decree adjudging product misbranded, and ordering its release under bond. (F. & D. No. 25805. I. S. Nos. 17506, 17507. S. No. 4039.)

Samples of canned tomato paste having been found to be short weight, the Secretary of Agriculture reported the matter to the United States attorney for the Southern District of Texas.

On January 27, 1931, the United States attorney filed in the District Court aforesaid a libel praying seizure and condemnation of 385 cases of tomato paste, remaining in the original packages at Houston, Tex., alleging that the article had been shipped by F. G. Favaloro (Inc.), from Harrington, Del., on or about October 11, 1930, and had been transported from the State of Delaware into the State of Texas, and charging misbranding in violation of the food and drugs act as amended. Seizure was effected of a portion of the article labeled in part: (Can) "Carmela Brand Tomato Paste * * * Net Weight Five Ounces Packed by F. G. Favaloro Sons, Inc., New Orleans La. Contenuto Netto Five Once."

It was alleged in the libel that the article was misbranded in that the statements on the labels of the containers were false and misleading as to the weight of the contents of said containers. Misbranding was alleged for the further reason that statements on the labels were false and misleading and deceived and misled the purchaser, since the container was falsely branded as to the State in which the article was manufactured and produced. Misbranding was alleged for the further reason that the article was in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.