

On July 24, 1933, the United States attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the National Cottonseed Products Corporation, trading at Morrilton, Ark., alleging shipment by said company on or about June 12, 1932, in the name of the Morrilton Cotton Oil Co., and on or about June 22, 1932, in the name of the Morrilton Cotton Oil Mill, from the State of Arkansas into the State of Kansas, of quantities of cottonseed screenings that were misbranded. The article was labeled in part: (Tag) "Guaranteed Analysis Protein, not less than 43% \* \* \* Products of cottonseed only. Manufactured For Kansas City Cake & Meal Co. \* \* \* Kansas City, Mo."

It was alleged in the information that the article was misbranded in that the statement, "Guaranteed Analysis Protein, not less than 43%", borne on the tags attached to the sacks containing the article, was false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the article contained less than 43 percent of protein.

On October 4, 1933, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$25.

M. L. WILSON, *Acting Secretary of Agriculture.*

**21678. Adulteration of apple scrap. U. S. v. Washington Dehydrated Food Co. Tried to a jury. Verdict of guilty. Fine, \$50 and costs. (F. & D. no. 30208. I.S. no. 53935.)**

This case was based on a shipment of apple scrap that was found to contain lead and arsenic in amounts that might have rendered it injurious to health.

On July 3, 1933, the United States attorney for the Eastern District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Washington Dehydrated Food Co., Yakima, Wash., alleging shipment by said company in violation of the Food and Drugs Act, on or about September 17, 1931, from the State of Washington into the State of Missouri, of a quantity of apple scrap that was adulterated.

It was alleged in the information that the article was adulterated in that it contained added poisonous and deleterious ingredients, arsenic and lead, in an amount which might have rendered the article injurious to health.

On October 5, 1933, a plea of not guilty having been entered on behalf of the defendant company, the case came on for trial before a jury. On October 6, 1933, the trial was concluded, and the court submitted the case to the jury with the following instructions (Webster, *D.J.*):

"Gentlemen of the jury: Now that you have heard all of the evidence in this case, both that in behalf of the Government and that in behalf of the defendant, and have with commendable patience listened to it all, and to the arguments by counsel for the respective sides, it becomes the duty of the court to explain to you the essential elements of the charge set forth in the information in this case and to instruct you upon the applicable rules and principles of law by which you are to be guided in your deliberations, and it is your duty to accept these instructions as correct and, so far as the law in the case is concerned, to be guided by it.

"In this case the Government, the United States of America, has filed an information against the Washington Dehydrated Food Co., a corporation, wherein it seeks to recover a penalty against that company for an alleged violation of the National Pure Food and Drug law. The defendant company has filed an answer, which I will refer to later, and which will clearly cut the issue that you are to determine by your verdict in this case.

"This case is a criminal case in its characteristics, that is to say, the same presumptions attach as attach to a case where an individual is accused of violation of the law, and the same competent evidence is required in order to sustain as is required in the case of a criminal prosecution.

"The defendant in this case by its answer has put in issue the essential allegations of this charge set forth in the indictment, and the defendant is entitled to the same presumption of innocence that attaches to all persons accused of crime, and that presumption is one of the substantial and important rights of the defendant not to be ignored or lightly considered either by the court or by the jury, and is one of the safeguards that the law places upon

all persons, corporations, or concerns charged with violation of the law, and it continues with them and attaches to them throughout all stages of the trial, and throughout all stages of your deliberations until it has been met and overcome by the evidence in the case beyond all reasonable doubt, and by the expression, 'reasonable doubt', as used in these instructions, is meant just what those words in their ordinary and everyday use imply. They have no technical, mysterious legal meaning different from their ordinary meaning. A reasonable doubt is a doubt which is based upon reason or is a doubt which is not unreasonable. It is such a doubt as, if entertained by a person of ordinary prudence and decision and judgment, would allow it to have influence with him, or cause him to pause or hesitate before acting. It must be a real and substantial doubt, and it must arise out of an honest-minded, common sense, consideration, and application of the evidence in the case, or from the lack of evidence.

"If, after carefully considering, analyzing, and comparing all of the evidence in this case, you are able to say upon your oaths and consciences as jurors that from the evidence you have an abiding conviction of the defendants' guilt to a moral certainty, then you are convinced beyond all reasonable doubt, and should find a verdict of guilty; but, after considering, analyzing and comparing the evidence you are unable to say that you do have an abiding conviction of guilt but, on the contrary, there is in your mind a doubt for which you are able to assign a reason or a series of reasons satisfactory to yourselves as reasonable men, then there is a reasonable doubt, and any such doubt must be resolved in favor of the defendant company, and your verdict must be, 'not guilty.'

"You are the sole and exclusive judges of what is the evidence in the case, and of the weight and credit to be given to the testimony of each witness that testified before you. In discharging that duty you are at liberty to take into consideration the conduct, appearance, and demeanor of the witness while testifying, the apparent candor or frankness displayed by the witness, or want of those qualities, if any such want appears, the intelligence or lack of intelligence displayed by the witness, the opportunity or lack of opportunity on the part of any witness of knowing or being informed about the matters on which the witness testified, the interest or lack of interest the witness may have in the outcome of this case, the reasonableness of the story told by the witness, its probability or improbability measured by your experience in life—in short, all the circumstances attending the witness as disclosed from the witness stand, and, in the light of all those considerations, give to the testimony of each witness that fair and reasonable weight which in your practical judgments as men of commonsense it impresses you as justly entitled to receive at your hands, and no more.

"Ordinarily in the trial of cases in court, witnesses are confined to testifying to facts within their personal knowledge, and are not permitted to draw conclusions or to express opinions. That is the general rule, but to that rule there is an exception which is well established as a rule itself, and that exception is this: That where the points in issue arise out of a particular science or art concerning which there are trained minds who have special knowledge, learning or schooling in that particular field, such persons are called 'experts', and in their cases they are entitled to express opinions concerning the matters in issue. But, of course, you weigh and evaluate the testimony of experts precisely as you weigh the testimony of a nonexpert witness, taking into account its probability, the reasonableness of it, the schooling of the person giving it, the learning that he has in his profession, the breadth of his experience, and all of those things which go to give weight to or detract from the value of the testimony of the expert. It is not intended that the expert shall become a member of the jury and sit as one of your number in determining the case. His testimony is submitted for such consideration as it impresses you it is entitled to receive in order to enable you to decide the issues in the case.

"Now, as I have said, the information in the case is based upon the National Pure Food and Drugs Act, and, omitting the formal portions, it reads, 'That the Washington Dehydrated Food Co., a corporation organized and existing under the laws of the State of Washington and having its principal place of business in the City of Yakima, State of Washington, but within the southern division of the Eastern Judicial District of Washington and within the jurisdiction of this court, on or about the 17th day of September, in the year

1931, then and there in violation of the act of Congress of June 30, 1906, known as the Pure Food and Drugs Act, did unlawfully ship and deliver for shipment in railroad car REX-624, via Northern Pacific Railway Co., a corporation, a common carrier, and other connecting carriers, from the City of Yakima, State of Washington, to the City of St. Louis, State of Missouri, consigned to order of Washington Dehydrated Food Co., Notify Best Clymer Division Preserves and Honey, Inc., St. Louis, Mo., a certain consignment, to-wit, a number of unlabeled bags containing an article invoiced as 'scraps', and billed as 'evaporated apple scraps', and designed and intended to be used as an article of food, to-wit, apple pomace. That said article of food, when shipped and delivered for shipment as aforesaid, was then and there adulterated within the meaning of said act of Congress in that it contained added poisonous and deleterious ingredients, namely, arsenic and lead, in an amount which may have rendered said article injurious to health, contrary to the form of the statute in such case made and provided.'

"The defendant company filed a plea and answer in the case in which it says that it admits that it is a corporation organized under the laws of the State of Washington, with its principal place of business in Yakima, and at the time mentioned in the information shipped in railroad car REX-624, via Northern Pacific Railway Co. and other connecting carriers from Yakima, Wash., to St. Louis, Mo., consigned to its order, Notify Best Clymer Division Preserves and Honey, Inc., St. Louis, a consignment consisting of a number of unlabeled bags containing an article invoiced as 'scraps' and billed as 'evaporated apple scraps', and referred to and called 'apple pomace', but denies each and every other allegation and charge set forth in the information.

"Section 2 of the National Food and Drugs Act provides: 'The introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded within the meanings of this act, shall be punished as the statute prescribes.'

"You will notice that the offence consists of two elements, (1), that of shipping in interstate commerce a thing that this statute defines as adulterated food, product or commodity, and the nature of the adulteration alleged in the indictment in this case that it contained poisons, namely, arsenic and lead, to the extent that the substance in question was injurious to health.

"Now, the statute upon which this indictment is based defines food for the purposes of this act in this language: 'The term "food", as used in said sections (referring to the sections in question here), shall include all articles used for food, drink, confectionery by man or other animals, whether simple, mixed or compound.'

"Now, the burden is upon the Government in this case to establish that the apple pomace in question here was an adulterated food substance or commodity, and the statute defines a large number of classes of adulterated food, but the portion of the statute in violation in this case reads as follows: 'If it contains any added poisonous or other added deleterious ingredients which may render such article injurious to health, it is adulterated.' Now, you will notice that the definition of the word 'food' includes, 'articles used for food either by man or other animals', and in view of that fact, it becomes necessary for me to separate this case into its two branches and to instruct you upon the rules of law applicable to each because of the character of the substance with which we are dealing here.

"There is evidence in this case tending to show that apple pomace such as was shipped in this case is suitable for and is used as a food for animals, namely, dairy cow, and the question for you to determine in the aspect of whether it is injurious to health, of course, has to do with the health of the class of animals involved. In the case of the article being used by human beings and for human consumption, the standard of adulteration must be measured as human health, whereas if it is used for food for animals, it must be considered by the standard of health of the animals which use it or to which it is fed.

"Now, the pomace in the form in which it was shipped in this case is shown to have been used as food in the feeding of cows, and consequently, your question will have to do with this point: Was the pomace which was shipped in this case adulterated in that it had a sufficient quantity of arsenic and lead, or arsenic or lead to render it injurious to the health of animals of that character?

"Now, this substance, while it is not consumed by man in the state in which it was shipped in this case, but required to be used and processed and put in a modified form before it was used for human consumption, I instruct you, as a matter of law, that it was a human food within the meaning of this statute, and the question for you to determine in this case is this: Since the commodity as shipped is not used by human beings as food, but is converted into other substances that are concocted or extracted from it, the question is, was that substance in the form in which it would have to be placed to be fit for human consumption adulterated in the meaning of this statute? If the thing as shipped to St. Louis, if this substance, this apple pomace, in order to be rendered fit for use as human food had to be put through a process which was of a kind essentially and inherently to reduce in whole or in part the arsenic or lead, or arsenic and lead which was upon it to a point where it was not injurious to public health in the form in which it would be consumed by human beings, it would not be an adulterated product within the meaning of this statute. But if, after it had been processed, if after it had been placed in the form in which it was intended to be used and consumed by human beings it did contain arsenic and lead, or arsenic or lead, to the extent that its consumption by human beings would be injurious to human health, then it is an adulterated food within the meaning of this statute, and your verdict should be accordingly. Of course, in determining the standard of health in the case of the consumption of the thing by man, the standard is human health, and in considering the consumption of the food by animals, it is the standard of health of the kind of animals which consume it, and in determining that standard you must take into consideration the entire class involved, the old and the young, the weak and the strong, and the sick and the well, and look at it in that light, and if it is a substance which, if administered to animals or consumed by man renders it injurious to the health of either, then the substance is adulterated within the meaning of this statute, and its transportation in interstate commerce constitutes a violation of this law.

"It will require the concurrence of the entire jury in order to return a verdict. When you retire to your jury room you will select one of your number as foreman who will sign your verdict when it is agreed upon, and who will represent you as your spokesman in the further proceedings in this case.

"There has been prepared for your convenience a blank form of verdict, and wherever the word 'guilty' appears in this form, immediately preceding it there is a space underscored on the typewriter in which the word 'not' can be inserted in the event your verdict is 'not guilty'. You will, of course, understand that the form of this verdict is not intended to indicate anything as to what is expected of you in the decision of the case. It is prepared in this way only for a matter of convenience, it being easier to write in words than it is to erase them.

"Now, gentlemen of the jury, in considering this case, it is necessary to remind you that the laws of the United States are made to be enforced in cases where they are violated, and the outside and extraneous considerations that may enter into it have no place in the minds of honest jurors. The question in this case as a matter of law is the question as I have defined it for you, and the question of guilt or innocence in this case depends upon whether the proof brings this transaction within its legal principles. If it does, your verdict must be measured carefully, and leave the extraneous consequences of your verdict rest where they belong—upon the Government and the makers of the statute, but not substitute your judgment for the wisdom of the laws or lawmaking body and write them out of the books. By this I mean to say to you nothing about the merits of the case. If you believe beyond a reasonable doubt that the guilt of this defendant has been proven, no matter how serious the consequences of the violation may be, it is equally your duty to return a verdict of guilty. Let your verdict be what the name implies, a finding of the truth, and when finding it, declare it. If you are convinced beyond all reasonable doubt, just declare it. If you entertain a reasonable doubt of the guilt having been established, then, by the same token, declare that." (Bailiffs duly sworn and jury retired.)

The jury after deliberation returned a verdict of guilty with a recommendation that a nominal fine be imposed. On October 12, 1933, a motion for a new trial was denied, and the court imposed a fine of \$50 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*