

**7808. Alleged adulteration of strained peaches. U. S. v. Gerber Products Co. Plea of not guilty. Tried to the court and jury. Verdict of not guilty.**  
(F. D. C. No. 8830. Sample Nos. 7957-F, 14923-F.)

**INFORMATION FILED:** May 3, 1943, Western District of Michigan, against the Gerber Products Co., a corporation, Fremont, Mich.

**ALLEGED SHIPMENT:** On or about September 12, 1942, and January 2, 1943, from the state of Michigan into the states of Minnesota and California.

**LABEL, IN PART:** "Gerber's New Strained Peaches."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3).

**DISPOSITION:** On November 16, 1944, a plea of not guilty having been entered on behalf of the defendant, the case came for trial before a jury. The taking of the testimony was concluded on November 20, 1944, on which date the court charged the jury as follows:

*RAYMOND, District Judge:* "Members of the Jury, the information, which is the formal complaint upon which the respondent is on trial in this case, contains two counts. This means that the respondent, the Gerber Products Company, is here on trial before you upon two separate and distinct charges, and, as I shall later instruct you, it will be within your province, as you may view the evidence, to find the respondent guilty upon both counts of the information, or not guilty upon both counts of the information, or guilty upon one count and not guilty upon the other.

"The information is based upon Sec. 331 (a) and Sec. 342 of Title XXI of the United States Code. Sec. 331 (a) prohibits the introduction or delivery for introduction into interstate commerce of any food that is adulterated. Sec. 342 provides that food shall be deemed to be adulterated if it consists in whole or in part of any filthy, putrid or decomposed substance, or if it is otherwise unfit for food. This section, enacted in the interests of the public health, clearly prohibits shipment in interstate commerce of any food which contains filthy, putrid or decomposed matter.

"The information filed in this case charges in Count 1 substantially as follows: That the Gerber Products Company, a corporation, of Fremont, Michigan, did on or about January 2nd, 1943, in violation of the Federal Food, Drug and Cosmetic Act, unlawfully introduce and deliver for introduction into interstate commerce from Fremont, Michigan, to St. Paul, Minnesota, consigned to Gerber Products Company, a certain consignment, to-wit, a number of cans, each can containing a food within the meaning of the Federal Food, Drug and Cosmetic Act; and that said food when introduced and delivered for introduction into interstate commerce was then and there adulterated within the meaning of the Act of Congress, in that it consisted in whole or in part of a filthy and decomposed substance, by reason of the presence in said food of moldy peach pulp, worm fragments and insect fragments.

"Count 2 charges that this same respondent did on or about the 12th day of September, in the year 1942, in violation of this same act, unlawfully introduce and deliver for introduction into interstate commerce, from Fremont, Michigan, to Los Angeles, California, consigned to Gerber Products Company, a certain consignment, to-wit, a number of cans, each can containing a food, and that said food when introduced and delivered for introduction into interstate commerce was then and there adulterated within the meaning of the Act of Congress, in that it consisted in whole or in part of a filthy or decomposed substance, by reason of the presence in said food of moldy peach pulp, worm fragments and insect fragments. Those are the two charges upon which this respondent is charged with guilt.

"Now the law presumes this respondent to be innocent of the offenses charged against it in the information, and throws around it the protection of that presumption; and the burden rests upon the government to establish by evidence and beyond a reasonable doubt each and every essential element of the offenses charged, and to negative each and every reasonable hypothesis of respondent's innocence. This burden remains upon the government throughout the case, and there is no burden resting upon the respondent to establish its innocence. It will be your duty therefore, as jurors, to commence your deliberations with the presumption of its innocence uppermost in your minds, and to continue your deliberations with that presumption uppermost in your minds until you and each of you has become convinced of the respondent's guilt by the evidence in the case, and beyond a reasonable doubt.

"By a reasonable doubt is meant exactly what the term implies, namely, a doubt for which there is a reason. The reasonable doubt which will prevent a juror from voting for conviction is and it must be a real and a substantial doubt, as distinguished from a merely possible or imaginary one; it must be a fair and an honest doubt, as distinguished from a merely captious or capricious one. It must be a doubt which grows out of the evidence which has been offered and received in the case, and one that is based upon reason and common sense, and not a doubt which grows out of or is based upon bias, or prejudice, or sympathy.

"If any juror has such a reasonable doubt as to the guilt of the respondent, you will have no right to vote for conviction. On the other hand, no juror has the right arbitrarily and without reason to say that he has a doubt, and thereupon refuse to convict. If you have such a reasonable doubt as to the guilt of respondent, it will be your duty to acquit it. On the other hand, if you have no such reasonable doubt, it will be equally your duty to convict the respondent.

"Now, during the course of this charge I shall state to you in substance and in a general way the principal claims of the government and of the respondent. I do not intend to state all of their claims, but only the substance thereof, so that you may know generally what the matters are that are principally in dispute. It will be for you to remember the claims and all of them, from the testimony and from the statements and arguments of counsel, and you will understand that in stating them, the Court does not intend to state them as the Court's own views of what the testimony shows, because that is a matter for you, the jury, exclusively to determine. You are the sole judges of the credibility of the witnesses, and of the weight which should be given to the testimony upon any point in issue, and it is for you and you alone to determine finally what the facts in this case are, entirely uncontrolled by any comment which the Court may make, and to apply to those facts the law as the Court will give it to you in these instructions.

"There are one or two issues that have been eliminated from the case by agreement and stipulations of counsel. It has been agreed between the government and the respondent that the contents of the shipments to St. Paul and to Los Angeles are properly classed as food within the meaning of the statute, and that the shipments were made by the respondent from Fremont, Michigan to those cities as alleged in the information. These goods were, therefore, introduced into interstate commerce by the respondent.

"The principal question for your consideration and determination is whether or not the shipments of strained peaches which were made from Fremont to St. Paul and to Los Angeles on January 2nd, 1943 and on September 12th, 1942 respectively, contained strained peaches which were adulterated within the meaning of the statute. Now I shall not attempt to define the word 'adulterated' to you, for the reason that the definition is contained within the Act of Congress in the following language: 'Food shall be deemed to be adulterated if it consists in whole or in part of any filthy, putrid or decomposed substance, or if it is otherwise unfit for food.' The language is clear.

"You are instructed that the words 'filthy, putrid and decomposed' as used in the Act of Congress are to be construed and applied by you to the evidence in this case in their usual and ordinary meanings. They are not confined to any scientific or medical definitions. You are instructed that the element of criminal intent which is present in many cases is in no way involved in this case. Even the unintentional introduction of adulterated foods into interstate commerce is forbidden by this statute which I have read to you.

"You are instructed that to warrant a verdict of guilty the government must prove beyond a reasonable doubt that the strained peaches in these shipments contained filthy, putrid or decomposed substances in substantial amounts. The respondent urges that it is impossible in practice in the production and canning of strained peaches to entirely eliminate all such contamination at all times. The government claims, however, that these objectionable elements were present in the shipments here involved in such substantial quantities that it was entirely within the power of the respondent by the exercise of reasonable care to have eliminated these foreign substances entirely, and that respondent does, in fact, when it exercises proper care, accomplish that result.

"You are instructed, however, that it was not the intention of Congress to include as a criminal offense the presence of filthy, putrid or decomposed matter in such infinitesimal and inconsequential quantities as even the highest degree

of care could not eliminate. You are instructed, however, that the presence of worm heads, worm legs, portions of worm bodies, fragments, fly eggs, mites and rotted peach tissue with mold in such a substantial quantity that such contamination should have been discovered and eliminated would constitute adulteration within the definition of the statute.

"If you do find beyond a reasonable doubt that the food in question was filthy or putrid, or that it contained decomposed substances within the usual and ordinary meaning of those words, you are instructed that it is not essential to a verdict of guilty that you shall also find that the contents of the cans were poisonous or were deleterious to health or were otherwise unfit for food. It is for you to determine from the evidence in the case what the facts are with reference to the condition of the food in question at the time it was introduced into interstate commerce, and having determined those facts to reach your conclusion as to whether or not the food was adulterated within the meaning of that word as defined in the statute.

"Of course, if you believe from the evidence that it was practically impossible in actual practice to free the strained peaches entirely and at all times from the presence of rotten peach tissue, mold, worm heads, worm legs, portions of worm bodies, fragments, fly eggs and mites, and that such contamination was present in the shipments here under consideration in such infinitesimal and microscopic quantities that you do not regard it as filthy, putrid or decomposed in the usual, natural and practical sense of those words, then your verdict should be for the respondent of 'Not guilty.' On the other hand, if you find beyond a reasonable doubt, as I have defined that term, that the strained peaches here involved contained substantial amounts of these foreign substances, then your verdict should be 'guilty as charged.'

"You are the sole judges of the credibility of the witnesses. It is for you and you alone to determine who has told the truth and where the truth lies. You will give to the testimony of each and every witness such weight and credence as you believe it is entitled to, and in weighing and measuring the testimony of each witness you have the right to take into consideration his appearance upon the witness stand, the reasonableness or unreasonableness of the story which he has told. You have a right to take into consideration any motive which he may have had for testifying falsely. You have a right to take into consideration any interest which he may have in this prosecution or its outcome. You have no right for trivial reasons to find that any witness has testified falsely, and it will be your duty if possible to harmonize and reconcile the testimony of the witnesses in this case upon the theory and basis that each and every witness has attempted to tell the truth. If you are unable to do so, it will then be your duty to determine the testimony which is true and that which is untrue, and when you have made that determination, you will discard and disregard the testimony which you find to be untrue and reach a verdict based upon all the evidence in the case which under all the circumstances you believe to be true.

"Now this case is important. All criminal cases, of course, are important. It is important that no innocent respondent should be convicted. It is important that due process of law should be at all times observed and that no one shall be convicted by a jury until that jury, after a fair, candid and impartial scrutiny of the testimony has reached the conclusion therefrom under the law as I have given it to you that the respondent is guilty beyond a reasonable doubt. Upon having reached that conclusion, however, if you do so, then the interest of the public intervenes, and it is of the utmost importance that the law should be vindicated, and that offenders against the majesty of the law should be made to answer for their crimes. In the performance of that duty there is no place for prejudice, passion or sympathy. You should go forward to your duty, so that you will see nothing except the law, the evidence, and your duty, and you should enter upon the consideration of this case with those facts uppermost in your minds.

"As I have indicated, you may convict the respondent upon both counts of the information. You may convict it upon one count and acquit upon the other; or you may acquit it upon both counts. If you find from all the evidence and beyond a reasonable doubt, as I have defined it, that the food was adulterated within the definition contained in the statute at the time each of the shipments were introduced into interstate commerce, then your verdict should be 'Guilty as charged.' If you find that it was not so adulterated, then your verdict should be 'We find the respondent not guilty.' If you find that there

was adulteration as to one of the shipments and not as to the other, you will indicate by your verdict the count upon which you acquit and the count upon which you convict, bearing in mind that the first count sets forth the shipment of January 2nd, 1943, from Fremont to St. Paul, and that the second count sets forth the shipment from Fremont to Los Angeles, on September 12th, 1942."

On November 20, 1944, the jury, after due deliberation, returned a verdict of not guilty.

**7809. Adulteration of dried, unpitted apricots. U. S. v. 95 Cases of Dried Unpitted Apricots. Decree ordering that the product be released under bond. (F. D. C. No. 14936. Sample No. 73027-F.)**

**LIBEL FILED:** January 3, 1945, Northern District of California.

**ALLEGED SHIPMENT:** On or about December 8, 1944, by the Callahan Supply Co., from Seattle, Wash.

**PRODUCT:** 95 25-pound cases of dried, unpitted apricots at San Francisco, Calif.

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of filthy and decomposed substances by reason of the presence of larvae, insect excreta, and moldy apricots.

**DISPOSITION:** January 31, 1945. The Albert Asher Co., San Francisco, Calif., having appeared as claimant, judgment was entered ordering that the product be released under bond to be brought into compliance with the law, under the direction of the Food and Drug Administration.

**7810. Adulteration of prunes. U. S. v. 135 Boxes of Prunes. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 14836. Sample No. 89980-F.)**

**LIBEL FILED:** January 2, 1945, Eastern District of Missouri.

**ALLEGED SHIPMENT:** On or about December 22, 1942, by the Rosenberg Bros. Co., from Myrtle Creek, Oreg.

**PRODUCT:** 135 25-pound boxes of prunes at St. Louis, Mo.

**LABEL, IN PART:** "Atlas Brand Prunes."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of insect fragments and rodent hair fragments.

**DISPOSITION:** February 12, 1945. The Bohn-Lenartz Co., a corporation, claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond, conditioned that it be brought into conformity with the law, and that such portions as should not be passed as fit for food by the Food & Drug Administration be destroyed.

**7811. Adulteration of raisins. U. S. v. 179 Cases of Raisins. Default decree of condemnation and destruction. (F. D. C. No. 14991. Sample No. 74740-F.)**

**LIBEL FILED:** On or about January 19, 1945, District of Oregon.

**ALLEGED SHIPMENT:** On or about June 23, 1944, by the Puccinelli Packing Co., from Turlock, Calif.

**PRODUCT:** 179 30-pound cases of raisins at Portland, Oreg.

**LABEL, IN PART:** "Alma Brand Thompson Seedless Raisins."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of beetles and larvae.

**DISPOSITION:** February 28, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

**7812. Adulteration of raisins. U. S. v. 215 Cases of Raisins. Default decree of condemnation and destruction. (F. D. C. No. 15005. Sample No. 74741-F.)**

**LIBEL FILED:** January 22, 1945, District of Oregon.

**ALLEGED SHIPMENT:** On or about July 22, 1944, by the Central California Packing Co., from Del Rey, Calif.

**PRODUCT:** 215 30-pound cases of raisins, at Portland, Oreg.

**LABEL, IN PART:** "Del Cara Brand Thompson Seedless Raisins."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of beetles, larvae, and insect excreta.