

the Government's contention when applied to that, that it would not pour from the can but had to be spooned out, and nothing else was tomato paste but that, and the thin stuff was not tomato paste and was so understood in the trade, so that the buyer of the commodity when he bought a can labeled tomato paste would expect not to get the thin article but only the thick article, then that would be a misbranding, because that would be the use of a distinctive name for an article different from that requiring the distinctive name. Tomato paste would be the thick stuff in that event, and if they shipped the thin stuff for tomato paste that would be the use under the law of a distinctive name for an article when the article contained under the label was a different one altogether. Now, that is what you have to determine from the evidence.

"If you believe both the thick and the thin required the name of tomato paste so the buying public would understand when they got a can with tomato paste on it, they were buying either thick or thin, the word 'tomato paste' covered both the thick and thin, then there would be no misbranding.

"On the other hand, if the Government's contention and your conception of the evidence is borne out that tomato paste means only thick and not to pour out, then that would be a misbranding, and in that event you would find for the Government and condemn the cases to it under the libel.

"If you find for the Government, which is the plaintiff in the case, your verdict would be: 'We, the jury, find for the plaintiff.' If you find for the claimant, Mr. Glorioso, who has intervened as claimant for the 469 cases, then your verdict would be: 'We, the jury, find for the claimant.'"

On February 1, 1933, the jury returned a verdict for the claimant and in accordance therewith the court ordered that the libel be dismissed and the product returned to the claimant.

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R. G. TUGWELL, *Acting Secretary of Agriculture.*

20616. Adulteration of dressed poultry. U. S. v. Fred M. Priest, Leo M. Priest, and Claude M. Priest (F. M. Priest & Sons). Plea of guilty. Fine, \$75. (F. & D. no. 29406. I. S. no. 53008.)

This action was based on the interstate shipment of dressed poultry, some of which was diseased and otherwise unfit for food.

On January 17, 1933, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid, an information against Fred M. Priest, Leo M. Priest, and Claude M. Priest, copartners, trading as F. M. Priest & Sons, St. James, Minn., alleging that the said defendants had delivered to a firm at Butterfield, Minn., on February 16, 1932, for shipment from Butterfield, Minn., to Chicago, Ill., one barrel of dressed poultry that was adulterated in violation of the Food and Drugs Act. The article was invoiced as dressed poultry.

It was alleged in the information that the article was adulterated in that it consisted in part of filthy and decomposed animal substances; in that it consisted of portions of animals unfit for food; and in that it was a product composed in part of diseased animals.

On January 18, 1933, a plea of guilty was entered to the information, and the court imposed a fine of \$75.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20617. Adulteration of canned salmon. U. S. v. 648 Cases of Canned Salmon. Decree of condemnation. Product released under bond for separation and destruction of unfit portion. (F. & D. no. 29162. I. S. no. 16756-A.)

This action was based on the interstate shipment of canned salmon, samples of which were found to be decomposed.

On November 3, 1932, the United States attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 648 cases of canned salmon, remaining in the original unbroken packages at Austin, Tex., alleging that the article had been shipped in interstate commerce on or about September 11, 1932, by McGovern & McGovern, from Seattle, Wash., to Austin, Tex., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "McGovern's Best Brand Pink Alaska Salmon * * * Distributed by McGovern & McGovern, Seattle, U. S. A."