it was stated in substance and effect on the label of the bottle containing the tablets that the acetanilid content of each tablet was 2½ grains of acetanilid, whereas in truth and in fact the acetanilid content of each tablet was not 2½ grains, but was, on the contrary, only 1.847 grains. Adulteration was alleged for the further reason that the strength of the product fell below the professed standard of strength under which it was sold in that it was stated in substance and effect on the label of the bottle containing the tablets that the sodium salicylate content of each tablet was 1 grain, whereas in truth and in fact the sodium salicylate content of each tablet was not 1 grain, but was, on the contrary, only 0.903 grain. Misbranding was alleged for the reason that it was stated on the label of the bottle containing the tablets, in substance and effect, that the acetanilid content of each tablet was 2½ grains and the sodium salicylate content of each tablet 1 grain, which said statements were false and misleading in that the acetanilid content of each tablet was but 1.847 grains and the sodium salicylate content of each tablet but 0.903 grain. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser in that it was stated upon the label of the bottle containing the tablets, in substance and effect, that the acetanilid content of each tablet was 2½ grains and the sodium salicylate content of each tablet 1 grain, whereas in truth and in fact the acetanilid content of each tablet was but 1.847 grains and the sodium salicylate content of each tablet but 0.903 grain.

On October 10, 1913, the defendant company entered a plea of guilty to the information and the court imposed a fine of $20.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1914.*

3004. Misbranding of Radam's Microbe Killer. U. S. v. 539 Wooden Boxes and 322 Pasteboard Cartons of Wm. Radam's Microbe Killer. Tried to the court and a jury. Verdict for the United States. Decree of condemnation, forfeiture, and destruction. (F. & D. No. 4910. S. No. 1628.)

On December 23, 1912, 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 said district a libel, and thereafter an amended libel, for the seizure and condemnation of 539 wooden boxes and 322 pasteboard cartons of Wm. Radam's Microbe Killer, remaining unsold in the original unbroken packages, and in possession of D. W. Ham, Minneapolis, Minn., alleging that the product had been shipped prior to October 29, 1912, and subsequent to August 23, 1912, by the Wm. Radam Microbe Killer Co., New York, N. Y., and transported from the State of New York into the State of Minnesota, and charging misbranding in violation of the Food and Drugs Act, as amended by the act of August 23, 1912. Nine of the wooden boxes were labeled: "½ Doz. Bottles No. 1. Drink Wm. Radam's Microbe Killer It Cures & Prevents Disease. Office 121 Prince St. New York, N. Y. Guaranteed Food & Drugs Act—No. 793." Three hundred and forty-one of the wooden boxes bore a label and brand similar to the brand set forth above except that the figure "2" was substituted where the figure "1" appeared on the foregoing label and brand; 21 of the wooden boxes bore a label and brand similar to that set forth above except that the figure "3" was substituted where the figure "1" appeared on the foregoing label. Thirty-eight of the wooden boxes were labeled: "Six Bottles No. 1. Wm. Radam's Microbe Killer Blood Purifier—Digestive Antiseptic—Tonic. (Shield—Registered Trade Mark) Guaranteed Food and Drugs Act. No. 793. 121 Prince St., New York, N. Y." Thirteen wooden boxes of the product bore a label and brand similar to the label and brand last set forth above except that the figure "2" was substituted where the figure "1" appeared on the label and brand last set forth above; 23 wooden boxes of the product bore a label and brand similar to the label and brand last above set

forth except that the figure "3" was substituted where the figure "1" appeared on the label and brand last above set forth. Twenty-two wooden boxes, each containing two stone jugs of the product, bore the following label and brand: "Jugs No. 1 Drink The Water of Life (Shield—Registered Trade Mark) Wm. Radam's Microbe Killer. Guaranteed Food and Drugs Act No. 793. 121 Prince St., New York, N. Y." Seven wooden boxes, each containing two stone jugs of the product, bore a label and brand similar to the label and brand last above set forth except that the figure "2" was substituted where the figure "1" appeared on the label and brand last above set forth; and 21 wooden boxes, each containing two stone jugs of the product, bore a label and brand similar to the label and brand last above set forth except that the figure "3" was substituted where the figure "1" appeared on the label and brand last set forth above. Twenty-three wooden boxes, each containing two stone jugs of the product, were branded: "Jugs No. 1. Wm. Radam's Microbe Killer The Great Enemy of Disease You Drink It. Laboratory No. three New York, N. Y., U. S. A. Guaranteed Food & Drugs Act No. 793." Twelve wooden boxes, each containing two stone jugs of the product, bore a label and brand similar to that last above set forth except that the figure "2" was substituted where the figure "1" appeared on the label and brand last above set forth; 9 wooden boxes, each containing two glass jugs of the product, bore a label and brand similar to that last set forth above except that the figure "3" was substituted where the figure "1" appeared on the label and brand last set forth above. One hundred and forty-six pasteboard cartons, each containing six bottles of the product, bore the following label and brand: (On one side) "Six bottles No. 2 Wm. Radam's Microbe Killer Digestive—Antiseptic Blood Purifier—Tonic. (Shield—Registered Trade Mark) Guaranteed Food and Drugs Act No. 793. 121 Prince St., New York, N. Y." (On other side) "Living Microbes Cause Disease and death. Dead Microbes Create New Life and Growth. Wm: Radam's Microbe Killer (Shield—Registered Trade Mark) Digestive—Antiseptic Blood Purifier—Tonic." One hundred and seventy-six pasteboard cartons, each containing two glass jars of the product, bore a label and brand similar to that last above set forth except that the words and figure "Glass Jar No. 2" were substituted where the words and figures "Six Bottles No. 2" appeared on the brand last set forth above. All the bottles, stone jugs, and glass jugs of the product bore the following label and brand: "Wm. Radam's Microbe Killer (No. 1, 2 or 3) (Registered Trade Mark—Shield with pictorial device of skeleton and man with raised club) Guaranteed by The Wm. Radam Microbe Killer Co. under the Food and Drugs Act, June 30, 1906. Serial No. 793. The genuineness of every bottle is secured by Trade Mark as above and my name must be written on each label. Wm. Radam." The label on the retail packages in each case or carton bearing the figure "1," "2," or "3" after the letters "No.," according to and corresponding with the number set forth on the label of the case or carton containing such retail package. Accompanying said shipment were printed circulars, descriptive of said product.

Misbranding of the product was alleged in the libel for the reason that the following statements regarding the curative and therapeutic effect of said product, "Wm. Radam's Microbe Killer," appear in the said printed circular accompanying said shipment:

On cover: "The Great Digestive Blood Purifier and Tonic Sane—Safe—Sure."

On page 2: "Radam's Microbe Killer drunk in glassful doses destroys the microbes without injury to the system and thereby prevents and eradicates disease."

On page 3: "Through ignorance, indulgence or indiscretion, we create within ourselves the fermentation that microbes seek for food. Increasing very rapidly they cause congestion of the blood that brings pain, fever, inflammation, etc.—in other words, makes us sick. To get well we must relieve this congestion, get rid of the microbes. Wm. Radam's Microbe Killer never fails to do this if taken in time and used as directed."

On page 4: "Likewise Microbe Killer disinfects the whole system when its gases are released by the heat of the stomach. When microbes vanish disease disappears."

On page 8: "The 'Microbe Killer' can be used in combination with doctors' prescriptions (taken one hour before) as it thoroughly overcomes the fermentative changes in the alimentary tract so often found in disease, thereby giving the drugs a better chance to be quickly absorbed and exert their effects, and in this way preventing prolonged convalescences."

On page 9: "In families where Consumption, Cancer, Syphilis and other hereditary diseases are known to exist, Microbe Killer should be taken as a preventive, in wineglassful doses, three times a day regularly for at least six months, thus preventing the disease from becoming active."

On page 11: "Radam's Microbe Killer cures every disease."

On page 15: "Mary Ewers of No. 242 Wyckoff St., Brooklyn, N. Y., had cancer and asthma, and after taking Radam's Microbe Killer got better * * * asthma left her, the cancer got smaller and smaller and then disappeared."

On a strip label over neck of bottle appeared the statement: "A blood purifier, antiseptic and tonic," and under directions on the label of each and every retail package appeared the following:

"Drink one wineglassful after meals and at bed time, also at other times as desired. Reduced quantity for children and infants. Apply externally wherever there is pain, inflammation or ulceration."

"No. 1.—For Headache, Neuralgia, Croup, Mumps, Measles, Whooping Cough, Worms, Diphtheria, Tonsilitis and Throat Complaints. Also for Asthma, Bronchitis and Consumption."

"No. 2.—For Dyspepsia, Indigestion, Gastritis, Colds, Coughs, Malaria, Grippe, Catarrh, Rheumatism, Tumors, Cancer, Blood, Kidney, Bladder, Stomach and Liver Complaints also for the Skin, Hair and Scalp."

"No. 3.—Pure or diluted for external use, injections, gargles, etc. Drink pure for contagious diseases, as Yellow Fever, Leprosy, Small Pox, etc., also for Constipation and very stubborn, acute and chronic cases of disease where No. 2 fails to produce results. Use for 10 days at a time only, then resume with No. 2."

And upon the sides of each and all retail packages the labels read, "Being harmless it can be used without fear as directed. Microbe Killer can be added to drinking waters as a safeguard against disease * * * It is unequaled as a digestive and for throat and stomach troubles * * * " and on a pasteboard cover inclosing each and every bottle of said product appeared the following statements: "Digestive—Antiseptic—Blood Purifier—Tonic * * * Harmless as water—* * * Added to milk makes food for the blood * * * For Consumption, Cancer, Catarrh, Rheumatism, Dyspepsia, Kidney, Stomach, Liver, Throat, Blood, etc. * * * Radam's Microbe Killer kills microbes and protects the blood from their attacks, thereby prolonging life," all of which said statements, so appearing on the various labels as above set forth, regarding the curative and therapeutic effect of said product, "Wm. Radam's Microbe Killer," were false and fraudulent in this: That said product would not destroy microbes in the human system, was not harmless, was not a tonic, antiseptic, or digestive, was not "food for the blood," and was not effective for the treatment of consumption, cancer, catarrh, yellow fever, leprosy, diphtheria, or smallpox, and the designation of said product as "Microbe Killer," as appeared on each and every package of said product, was false and fraudulent, in that by said name said product falsely and fraudulently purported to have the power of destroying and killing microbes within the body, when such was not the case; and said statements were so falsely and fraudulently made, and said name, "Microbe Killer," so falsely and fraudulently applied to said product, with the intention to create the impression that said product was efficacious for the treatment of the diseases specified and the killing and destroying of microbes within the body.

On June 10, 1913, D. W. Ham, claimant, filed his answer to the amended libel denying the allegations.

On October 11, 1913, the case having come on for trial of the issues before the court and a jury, after the submission of evidence and argument by counsel, the following charge was delivered to the jury by the court (Willard, *J.*):

Gentlemen of the Jury: The statutes of the United States prohibit the transportation in interstate commerce of any food or drug that is adulterated or misbranded, and by interstate commerce is meant a shipment from one State of the United States to another State of the United States. For a violation of this statute the law provides two remedies. Section 2 of the Food and Drugs Act of 1906 declares that any person who ships any adulterated or misbranded article in violation of the law in interstate commerce, upon conviction shall be punished by a fine, and upon conviction the second time shall be punished by imprisonment. That you will observe is a prosecution against the individual. Section 10 of the same act declares that when such adulterated or misbranded food or drugs is shipped in interstate commerce in violation of law the Government may proceed directly against the article so shipped, and not require any process or proceeding against any individual. The case which we now have in hand is brought under section 10 of the act and not under section 2. There is no criminal prosecution whatever involved in this proceeding. The claimant, Ham, is not being proceeded against for a violation of law. He is not in this proceeding subject to any fine or to any imprisonment. This is what is called a proceeding against the property itself.

If you look at the libel or complaint you will see that it is entitled "The United States against 539 Wooden Boxes and 322 Cartons." The procedure in a case of this kind (and I call your attention to this matter because it is almost unknown in the State courts), while it is more frequent in the United States courts, it is not as frequent as the ordinary suit between man and man or between the Government and individuals—the procedure in a case like this is the presentation of what is called the complaint or libel by the Government which is filed in this court. Thereupon the court orders the marshal of the United States for this district to seize the property described in the complaint. It is then the duty of the marshal to seize it, and it is also his duty to publish a notice in the newspapers of this seizure, warning any one who has any interest or may have any interest in the property to appear in court, present his claim and support it. That was done in this case. A libel was filed, the marshal went to the residence of this claimant, seized this product and carried it away. A notice was published, and in pursuance of that notice Mr. Ham appeared in court voluntarily and set up a claim to this property. That is the position in which Ham stands in this suit as a claimant of the property. The procedure in such a case after a claimant does appear is to have a trial of the question as to whether the product is adulterated or misbranded. If it is not adulterated or misbranded, then it is turned over to the claimant. If it is adulterated or misbranded the subsequent proceedings depend upon which one of these two things is proven. If the property is found to be adulterated and injurious to health, then it is destroyed by order of the court. If after investigation it is shown to be misbranded only, where the property is not injurious to health, then the law provides that it may be turned over to the claimant upon his paying the costs of the proceeding and giving a bond that he will not sell or dispose of the property in violation of any law of the United States or of any State. It would mean in this case, if misbranded only, that he would have to change the label and change the wording on the cartons and cases so that it will not violate the law. This case on trial is for misbranding only; it is not a case of adulteration. There has been more or less testimony in the case as to injurious results which might follow the use of this article. That is a question which is not important in this case. It is not necessary in order for the Government to prevail here that it proved to you that this article is injurious in any respect. You would not be justified in finding a verdict for the claimant on the theory that it was harmless. That is not the question for you to try; the question for you to try is whether this article is misbranded or not; whether the label, as I shall later explain to you, is false or fraudulent; and whether the statements contained in this label are false or fraudulent. That being the nature of this prosecution, in order that the Government may recover it is necessary for it to prove two things. It must prove that the articles seized by it in this proceeding, or some part of them, were shipped in interstate commerce—that is, shipped from one State to another—after the 23d of August, 1912. The second thing which the Government must prove is that these articles or these packages so shipped were misbranded, in violation of the laws of the United States. Upon the first proposition, as to whether there was a shipment of this product after the 23d of August, 1912, in interstate commerce, I apprehend you

will find no difficulty. The testimony, as well as of the claimant as of the Government I think will satisfy you that there was a carload of this preparation shipped from New York to Minneapolis in the month of October, 1912. It will also satisfy you, I think, that the carload was taken to the residence of the claimant Ham. It will also satisfy you, I think, that a part of this carload so shipped in October, 1912, was seized in this proceeding. So that upon the first of these propositions I apprehend that you will have no difficulty. The next question is, Was the product so seized by the Government, if you find that it was shipped in interstate commerce after the 23d day of August, 1912, misbranded? To know whether it was misbranded or not you must be referred to the law upon the subject of misbranding. Reference has been repeatedly made during the trial to the Sherley amendment. The origin of that amendment was this: Prior to August, 1912, a case had reached the Supreme Court of the United States in which a person was prosecuted under the law, as it stood originally, for making false and fraudulent statements upon the labels of a patent medicine (I think in that case the statements were that the medicine would cure cancer); the Supreme Court of the United States held that the law as it then stood did not reach false statements in regard to the curative properties of a medicine. After that decision Congress, on the 23d of August, 1912, passed an amendment to the original act, and that amendment is as follows: "That that part of section eight of the Food and Drugs Act of June thirtieth, nineteen hundred and six, defining what shall be misbranding in the case of drugs, be, and the same is hereby, amended by adding thereto a third paragraph, to read as follows:" This is the paragraph under which the present proceeding is had. "If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent." So that the second question for you to determine in this case is whether any of the statements contained upon the label placed upon these bottles or upon the packages, or found in this little pamphlet which was contained in each package, and which representations are referred to in the libel and relied upon therein, are false and fraudulent. The testimony of the Government as to the character of this preparation is based, so far as the scientific witnesses are concerned, and by scientific witnesses I refer to the chemists and representatives of the Bureau of Chemistry, upon an analysis of the contents of these bottles which were bought by Lynch from Ham on the 4th day of December. If, as a matter of fact, these bottles did not come from a shipment made after the 23d of August, 1912, but came from a shipment made some time before that, then the entire case of the Government falls right there, and your verdict will necessarily be for the claimant, because the testimony of all these witnesses would then relate to an article which was not shipped until after August 23. So when you come to the question of misbranding that will be the first thing which you will take up. Were these bottles which have been produced, which were bought by Lynch on the 4th day of December a part of this October, 1912, shipment, or were they bottles which Ham had received prior to the month of August, 1912? You will remember the evidence upon that point, and it is not necessary for me to refer to it, except to say this: As a part of the evidence upon which the Government relies, it has presented three receipts signed by Ham, in which it is definitely stated, as I understand it, that these bottles did come from the shipment of October, 1912. Ham now says that he did not read the receipts when he signed them, did not know what they contained, and that that statement is false. If this document which he signed contained any agreement or obligation on his part he would not be permitted, at least in this court under the rules prevailing in the United States courts in this circuit, to make any such claim. When a man signs a contract by which he agrees to do certain things it is his business to read the paper and to know what he is signing. In this court he is not permitted to come in and say that he did not read the contract before he signed it; he is not permitted to do that. However, these documents are not contracts; they are simply receipts and do not bind Ham to do anything, and the law in that case does permit him to give evidence such as has been given here. So it will be for you to say whether the statements made by Ham in those receipts or the statements made in these receipts signed by Ham are true, or whether they are false; whether what was then said over his signature is true, or whether what he says now is true. That will be for you to determine. If you believe that these bottles did not come from the October, 1912, shipment, but came from some shipment made prior to that time, then it will be your duty to find a verdict for the claimant. If, however, you determine that these bottles did come from the October, 1912, shipment, then you will pass to the further consideration of whether the packages were misbranded. In determining that you are not entitled to take into consideration all of the statements made in this pamphlet or upon the bottles or upon these cartons or boxes, but only such statements as are set forth in the libel which you will have before you, and you can consider it.

It is not necessary for you to find that all of the statements and representations made upon the packages or in this pamphlet are false and fraudulent. It is sufficient if you find that any one of them, any single one of them, is false and fraudulent within the meaning of the law. There has been testimony offered of a witness who was presented on the part of the Government that this preparation might kill germs in the mouth, and I think some of them testified that it might kill germs in the stomach. The fact that it might under certain circumstances be therefore a germ killer or a microbe killer does not justify you in finding a verdict for the claimant in this case. Before you can do that you must find that each and all of the representations as to the curative properties of this medicine found upon the packages are true, or are not false and fraudulent. As an illustration of what I mean, I will call your attention to the directions on the bottle of No. 3 where it says, "Pure or diluted for external use, injections, gargles, etc. Drink pure for contagious diseases, as yellow fever, leprosy, smallpox, etc." That, I charge you, amounts to a statement or representation that this preparation will be beneficial in a case of leprosy. If you find that the preparation is absolutely worthless in a case of leprosy, or absolutely worthless in a case of yellow fever, and that the manufacturer must have known that it was worthless, then having found the other facts which are necessary to find, it would be your duty to return a verdict for the Government in this case. In other words, it would be your duty to find that the representations were false and fraudulent, and it is not necessary for the Government to show that the representations with regard to coughs or colds, catarrh, or dyspepsia were also false and fraudulent. I think you understand what I mean. The Government does not have to prove that this product is entirely worthless for what it is said to be beneficial. It is sufficient to prove that it is false and fraudulent as to any one of these statements.

The question now arises as to what is the meaning of the words false and fraudulent. If the question as to whether a statement or a representation is true or not is a matter of opinion, so that reasonable men might differ upon that question, some men might think one way and some men think another, then such representations can not for the purposes of this case be said to be false or fraudulent. A verdict for the Government must stand not upon any question of opinion, but upon the proposition that the remedy is absolutely worthless; the label must be shown to be demonstratively false. If the truth of the statements upon these labels as a matter of fact is a matter of opinion, no verdict for the Government can be based on the falsity of such statements. No verdict on the ground of false statements can lawfully be based upon matters of mere opinion. By way of illustration, I might refer to the matter of vaccination. While it is generally believed that vaccination is a preventive of smallpox, yet there are many people, quite a number of them, who think that it is not. That is a matter of opinion. It is for you to determine, gentlemen, from all the evidence in the case whether these statements or any one of them upon these labels are false and fraudulent within the rule which I have given you. If you believe that this remedy is so absolutely worthless, for example, for leprosy or for catarrh or for consumption or for diphtheria, that the manufacturer must have known that, then you would be justified in finding that the statements made with reference to these diseases upon the labels are false and fraudulent.

I shall not attempt to go over the evidence in the case at all. The evidence of the witnesses for the Government as to the contents of these preparations is undisputed. The evidence as to what becomes of the acids in these preparations after they enter the human body is also undisputed. The effect of the acid when it was transformed, as declared by their testimony, is also undisputed. That testimony can not be called a matter of opinion. They are testifying to what they claim to be facts. The testimony of the physicians who have been examined by the Government is undisputed, and is contradicted by the testimony of no physician on the part of the claimant. The claimant has limited his testimony to the evidence of persons who say that they have been benefited in their cases by the use of this preparation. The nature of the troubles with which they were then afflicted does not appear any further than you gathered from the testimony which they gave with regard to their symptoms. No doctor has been presented who claims to know what the diseases were from which these witnesses were then suffering, with the exception of the witness Jones, and as to her the Government has presented some medical testimony.

If you find that this product was shipped in interstate commerce after the 23d of August, 1912, and that it was misbranded in violation of the law, then you will pass to the consideration of how much of the carload was received or seized by the Government. The claim of the Government is that all of the packages which it seized were contained in this carload of October 12. If you find from the evidence that that claim is substantiated, then your verdict should be for the condemnation of the product. It is said by the claimant, however, that a part of the packages seized by the

Government was received by him prior to August, 1912. He said about half of it. There has been some testimony as to 40 cases which were seized and were delivered afterwards by the Government to the claimant. The return of the marshal who seized this property shows, as I compute it, a seizure of 920 packages; the number of packages set out in the libel is 861. That would show a surrender of more than 40 packages. In any event, your verdict would be limited to the number of packages stated in the libel, which is 861. If you find that all of these 861 packages came from the shipment of October 12, then you will find a general verdict for the Government, if you find the other facts in favor of the Government. If, however, you are of the opinion that some of the 861 packages were packages which were received prior to August, 1912, then it will be your duty to determine how many of the 861 packages were received prior to August, 1912, and render a verdict for the Government for the difference, indicating that in your verdict.

The claimant has requested me to charge you as follows, and I do so: In order that your verdict may be for the United States of America in this case, the Government must show that the samples taken and analyzed were actually taken from goods transported in interstate commerce subsequent to August 3, 1912. He also requests me to charge you as follows, which I do: In order that your verdict may be for the United States of America, it is necessary for the Government to show that the goods described in the libel herein were the goods actually seized by the Government.

Counsel for the claimant also requests me to call your attention to certain newspaper articles, and one in particular in the Minneapolis Tribune of October 10, with reference to this trial. I say to you that you are bound by your oaths to try this case upon the testimony given here in court, and that you ought not and should not be influenced in any way by anything which the newspapers say about this case, or by anything which any of the witnesses may have said to newspaper reporters, which was published in the newspapers, regarding this case. If any of you read this article, you will lay it aside entirely and determine this case from the evidence which you heard in this court room and not upon anything that you may have heard outside.

In this case the burden of proof is upon the Government and not upon the claimant. The Government must satisfy you by a preponderance of the evidence that its claim upon each one of these different elements which go to make up this claim is true. If you are in doubt as to what the fact may be upon any particular point which it is necessary for the Government to maintain, then your verdict must be for the claimant. You are the exclusive judges of the facts. You are bound to take the law from the court, but upon all questions of fact you are the sole judges, uninfluenced by any opinion which the court may have unintentionally expressed as to what it thinks itself of the case.

The clerk will give you two forms of verdict. One is a verdict for the claimant, and the other is a verdict for the United States Government. If you find for the Government on all of the issues, find that all of the 861 packages seized were in the shipment of October 12, 1912, then you will sign this verdict. If you find that there was only a part of that shipment, or if you find that only a part of the goods seized were in that shipment, then you will indicate the number of packages in your verdict, and find for the claimant as to a certain number of packages.

After due deliberation, the jury returned into court with a verdict in favor of the United States, and on November 28, 1913, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1914.*

3005. Adulteration of nuts. U. S. v. 50 Boxes and 18 Boxes Mixed Nuts. Decree of condemnation by default. Product ordered destroyed. (F. & D. No. 4911. S. No. 1629.)

On December 23, 1912, and March 4, 1913, the United States attorney for the district of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district courts of the United States for said district libels for the seizure and condemnation of 50 boxes and 18 boxes, respectively, of nuts, remaining unsold in the original unbroken packages, at Boston, Mass., alleging that the product had been shipped by Birdsong Brothers, New York, N. Y., and transported from the State of New York into the State of Massachusetts, and charging adulteration, in violation of the Food and Drugs Act. The product was labeled, "Elk Brand—Foreign—Domestic—Assorted