into the State of New York, and charging adulteration in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, putrid, and decomposed vegetable substance.

On December 12, 1924, Joseph S. Rodovsky and Abraham S. Rodovsky, copartners, trading as the Universal Importing Co., New York, N. Y., claimants, 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 claimants, upon payment of the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act, conditioned in part that the good portion be separated from the bad portion under the supervision of this department, and the bad portion destroyed or denatured.

W. M. JARDINE, *Secretary of Agriculture.*

12917. Adulteration of walnuts in shell. U. S. v. 38 Sacks of Walnuts in Shell. Consent decree of condemnation and forfeiture. Product released under bond to be sorted. (F. & D. No. 19052. I. S. No. 14011–v. S. No. E–4973.)

On October 15, 1924, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 38 sacks of walnuts in shell, remaining in the original unbroken packages at New York, N. Y., alleging that the article had been shipped by Philippe Vergnaud, from Bordeaux, France, on or about November 7, 1923, and transported from a foreign country into the State of New York, and charging adulteration in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On December 4, 1924, James W. McGlone, New York, N. Y., 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 upon payment of the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act, conditioned in part that the bad portion be separated from the good portion under the supervision of this department, and the bad portion destroyed or denatured.

W. M. JARDINE, *Secretary of Agriculture.*

12918. Adulteration of chestnuts. U. S. v. 10 Cases of Chestnuts. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 19169. I. S. No. 13306–v. S. No. E–5015.)

On November 17, 1924, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 10 cases of chestnuts, remaining in the original unbroken packages at New York, N. Y., alleging that the article had been shipped by Guiseppe Vitolo, from Naples, Italy, on or about November 17, 1923, and transported from a foreign country into the State of New York, and charging adulteration in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, putrid, and decomposed vegetable substance.

On December 8, 1924, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

W. M. JARDINE, *Secretary of Agriculture.*

12919. Adulteration and misbranding of powdered colocynth apple. U. S. v. McIlvaine Bros., a Corporation. Tried to the court and a jury. Verdict of guilty. Fine, $100 and costs. (F. & D. No. 18361. I. S. No. 473–v.)

On June 6, 1924, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against McIlvaine Bros., a corporation, Philadelphia, Pa., alleging shipment by said company, in violation of the food and drugs act, on or about June 8, 1923, from the State of Pennsylvania into the State of New York, of quantities of powdered colocynth apple which was adulterated and misbranded. The article

was labeled in part: "Powdered Colocynth Apple McIlvaine Brothers * * * Philadelphia, Penn., 25 lbs."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained approximately 25 per cent of seeds and that it yielded 11.39 per cent of fixed oil.

Adulteration of the article was alleged in the information for the reason that it was sold under a name recognized in the United States Pharmacopœia, and differed from the standard of strength, quality, and purity as determined by the tests laid down in the said pharmacopœia, official at the time of investigation, in that it contained 25 per cent of seeds, and upon extraction with purified petroleum benzine yielded 11.39 per cent of fixed oil, whereas the said pharmacopœia provided that colocynth apple should contain not more than 5 per cent of seeds, and upon extraction with purified petroleum benzine should yield not more than 2 per cent of fixed oil, and the standard of the strength, quality, and purity of the article was not declared on the container thereof.

Misbranding was alleged for the reason that the statement, to wit, "Colocynth Apple," borne on the label attached to the package containing the said article, was false and misleading, in that it represented that the article consisted wholly of colocynth apple, to wit, a product that contained not more than 5 per cent of seeds and yielded not more than 2 per cent of fixed oil, whereas, in truth and in fact, it did not so consist but did consist of a product which contained 25 per cent of seeds and yielded 11.39 per cent of fixed oil. Misbranding was alleged for the further reason that the article was an imitation of colocynth apple and was offered for sale and sold under the name of another article, to wit, colocynth apple.

On June 20, 1924, the case having come on for trial before the court and a jury, a verdict of guilty was returned by the jury, and the court delivered the following opinion (Dickenson, *D. J.*):

"A statement of the cause of action and of the defense out of which the question to be decided arises may begin with the act of Congress directed against adulterations and misbranding of drugs. There is a product known to the trade as powdered colocynth. This has recognition in the United State Pharmacopœia and to it is applied a pharmacopœial standard of strength, quality, and purity. As the trade name indicates, this product is sold to druggists in a powdered form. What may be called the raw product goes to the manufacturer in a form which gives it, because of this form, the name of apple, and makes it known to the trade as 'colocynth apples.' In the raw product form these apples contain seeds. If these apple seeds and all are reduced to powder it will contain about 25 per cent of seed. In the standard powdered colocynth the percentage of seed ingredient should not exceed 5 per cent. The defendants sold the product of which complaint is made, which was branded and invoiced as 'powdered colocynth apple.' The seed ingredient exceeded the 5 per cent limit and reached approximately 25 per cent. If this had been branded and sold as powdered colocynth, a finding of misbranding and adulteration would not be opposed. The question raised is whether the addition of the word apple relieves the defendants of the charge of misbranding and of adulteration. The real test is to be found in the effects and consequences. To the general public, such a branding without a doubt would be misleading, and from the same viewpoint would be an adulteration because the significance of the addition of the word apple would be lost upon them. Inasmuch, however, as the dealings of the defendants are with the trade, the purchasers would be expected and presumed to know what difference in the product the difference in the label indicated. An administrative ruling would call for the decision that there was a misbranding because anything should be condemned which might mislead. The defendants themselves accept this view and have changed the descriptive branding so as to make the difference between 'powdered colocynth' and 'powdered colocynth apple' clear.

"The question before us is the narrower question of whether there should be a judicial determination that the defendants have incurred the penalty of the act. In view of the fact that the defendants have changed the markings of the product so as to make it clear that there is no pretense that it is the powdered colocynth described in the United States Pharmacopœia, and that it complies with the standard of quality officially established for that product but is something different therefrom, the present ruling is reduced to the more or less formal one of whether the original branding adopted by

the defendants was a violation of the statute. The result of most importance is that manufacturers should be enabled to know definitely what is and what is not a compliance with the statute. An administrative ruling, if followed by a manufacturer, protects him from further criticism but does not necessarily give him the protection, to which he is entitled, against his trade rivals making use of the branding which he has voluntarily abandoned. Nothing short of a judicial ruling will do this. This defendant thus becomes as much concerned with a ruling condemning the branding first adopted as are those who are concerned with the administration and enforcement of the act. Fortunately, the Supreme Court of the United States in the apple cider vinegar case (265 U. S. 439) has charted the course to be followed. The general rule is that the act of Congress should be so read as to further the accomplishment of its purposes, and that not only any branding which is misleading or liable to mislead but also any which is ambiguous should be visited with the condemnation of the act.

"Following the course thus indicated, we encounter the fact finding now made that the branding first given this product has the vice of ambiguity, in that, although it is not expressly stated that the product is what is known to the trade as powdered colocynth and it is stated that it is powdered colocynth apple, yet it is none the less true that the difference in the product is not so stated as to command attention to the fact that there is a difference but is so stated that the difference may be overlooked and the purchaser be buying one product with the thought in his mind that he is buying another.

"As we interpret the spirit and true meaning of the ruling cited, it is that a branding which is misleading because of its ambiguity is as much within the inhibition of the statute as if it was misleading in statement.

"This leads to a finding in favor of the plaintiff and against the defendants, with costs. Following the usual rule no formal judgment or decree is now entered, but the parties have leave to submit a form of decree or judgment in accordance with this opinion."

On October 10, 1924, the court imposed a fine of $100 and costs against the defendant company.

W. M. JARDINE, *Secretary of Agriculture.*

12920. Adulteration and misbranding of butter. U. S. v. 17 Tubs of Butter. Consent decree of condemnation and forfeiture. Product released under bond to be reworked. (F. & D. No. 19210. I. S. No. 13378-v. S. No. E-5020.)

On November 17, 1924, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 17 tubs of butter, remaining in the original unbroken packages at New York, N. Y., alleging that the article had been shipped by Schlosser Bros., from Frankfort, Ind., on or about November 6, 1924, and transported from the State of Indiana into the State of New York, and charging adulteration and misbranding in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that a substance deficient in butterfat and containing excessive moisture had been mixed and packed therewith so as to reduce, lower, or injuriously affect its quality or strength and had been substituted in whole or in part for the said article. Adulteration was alleged for the further reason that a valuable constituent of the article, butterfat, had been in whole or in part abstracted.

Misbranding was alleged for the reason that the article was offered for sale under the distinctive name of another article.

On December 4, 1924, the Schlosser Bros., Inc., Frankfort, Ind., 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 upon payment of the costs of the proceedings and the execution of a bond in the sum of $250, or the deposit of collateral in like amount, conditioned in part that the product be reworked under the supervision of this department.

W. M. JARDINE, *Secretary of Agriculture.*

12921. Adulteration of chestnuts. U. S. v. 20 Barrels of Chestnuts. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 19138. I. S. No. 16888-v. S. No. E.-5007.)

On November 11, 1924, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the