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

It was alleged in the libel that the article was adulterated in that it consisted in part of a putrid animal substance.

On May 16, 1930, the Seaboard Terminal & Refrigeration Co., Jersey City, N. J., claimant, having admitted the allegations of the libel and having consented that judgment be entered condemning and forfeiting the product, a decree was entered ordering that the said product be released to the claimant upon payment of costs and the execution of a bond in the sum of $2,500, conditioned in part that it be salvaged, the good portion marked with a statement of the net weight, and the rejected portion denatured for nonfood use.

ARTHUR M. HYDE, *Secretary of Agriculture.*

17272. Adulteration of grapefruit. U. S. v. 130 Boxes of Grapefruit. Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 24815. I. S. No. 012966. S. No. 3020.)

On February 20, 1930, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 130 boxes of grapefruit, remaining in the original unbroken packages at Junction City, Kans., alleging that the article had been shipped by Burkhart & Williams, from McAllen, Tex., on or about February 5, 1930, and transported from the State of Texas into the State of Kansas, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated in that it was composed of filthy and decomposed vegetable matter.

On February 24, 1930, D. E. Bolman, Junction City, Kans., having entered an appearance and 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 destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

17273. Adulteration of canned asparagus. U. S. v. 48 Cases of Canned Asparagus. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 24487. I. S. No. 08103. S. No. 2775.)

On January 28, 1930, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Supreme Court of the district aforesaid, holding a District Court, a libel praying seizure and condemnation of 48 cases of canned asparagus, remaining in the original packages at Washington, D. C., alleging that the article had been shipped by Kemp, Day & Co., from New York, N. Y., on or about December 30, 1929, and transported from the State of New York into the District of Columbia, and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Cans) "Golden Rod Brand * * * Distributed by Kemp, Day & Co., New York."

It was alleged in the libel that the article was adulterated in that it consisted in whole or in part of a filthy, decomposed, or putrid vegetable substance.

On May 21, 1930, 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.

ARTHUR M. HYDE, *Secretary of Agriculture.*

17274. Adulteration of apples. U. S. v. 630 Baskets of Apples. Tried to the court and a jury. Verdict for the Government. Motion for new trial sustained. Decree of condemnation entered. (F. & D. No. 21338. I. S. No. 12526–x. S. No. C–3041.)

On or about October 23, 1926, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 630 baskets of apples at Hutchinson, Kans., alleging that the article had been shipped by F. L. Martin from Clifton, Colo., on or about October 15, 1926, and transported from the State of Colorado into the State of Kansas, and charging adulteration in violation of the food and drugs act. On December 7, 1926, an amendment to the said libel was filed.

It was alleged in the libel, as amended, that the article was adulterated in that it contained an added poisonous ingredient, to wit, a compound of arsenic and lead, which might have rendered it injurious to health.

On March 21, 1927, F. L. Martin, Hutchinson, Kans., having appeared as claimant for the property and having filed an answer to the libel denying the adulteration of the product, the case came on for trial before the court and a jury. The defendant and the Government introduced testimony, and counsel presented arguments to the court. The court summed up the case with the following charge to the jury (Pollock, *J.*):

"Gentlemen of the Jury: This case has now proceeded to that point at which it becomes the duty of the court to charge you as to the law that will govern you upon your deliberations upon a verdict in this case. You understand, in our courts of justice in this country, where matters are heard and determined as this case is being tried, the responsibility for the due and proper administration of justice under the law is equally divided between the two bodies. While that responsibility is equal, it is different in kind. It is the duty of the court to declare the law and the duty of the jury to take the law precisely as declared by the court, and the jury does and must trust the court to correctly declare the law. If any mistake is made in a matter of law, that is the mistake of the court for which the jury is not responsible. On the other hand, the jury and the jury alone is the sole judge of the weight of the evidence, the credibility of the witnesses and what facts are proven in the trial of the case from the evidence that is offered and received in evidence. And, so long as in our courts of justice, the jury takes the law as declared by the court, and takes and finds the true facts in the case and unite the same in their verdict returned, just so long do we have a proper administration of justice under the law.

"Again, it is the duty of the court to define the issue or issues in a case being tried. By that I mean to state so clearly that no juror can fail to understand precisely what it is that is to be determined by the verdict when rendered in the case. Now, what is this case? The Government here is proceeding under what is known as the pure food and drug act enacted by the Congress of the United States, and enacted, like so many laws are, in pursuance of what is known as the Commerce Clause of our Constitution. That is, Congress has taken to itself, or, was really given by the States in constitutional convention the power to regulate commerce among the States and with the Indian tribes. Now the Government contends in this case that the defendant, Judge Martin, shipped from Colorado a certain carload of apples which he had raised out there in his orchard, in interstate commerce into Kansas from the State of Colorado, and that these apples had been by addition thereto of arsenic [arsenate] of lead, I understand a poison, that these apples had been adulterated in such manner that they might be deleterious to human health if consumed as found. Now this proceeding is what is known under the pure food and drugs law as a libel. Suit is brought for the purpose of determining whether these apples shall be condemned and destroyed as a food product.

"It is under section 10 of this act, as follows: That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any District Court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation.' And that is what we will inquire into here. These apples were found in the jurisdiction of this court and by the Government were libeled for the purpose of having them condemned. Now, the object and purpose of Congress in the enactment of this pure food and drugs act was the preservation of the health of people, and a very right kind of an act. The defendant in this case admits that he raised these apples in the State of Colorado; that in that climate the apple trees—bearing trees—must be sprayed with some poisonous solution in order that apples may be grown that are fit for use at all. He admits that he did use the material, a liquid compound that is used in that section of the country, sold and used for the purpose of bringing these apples on the trees to maturity, and that he did after these apples had matured on the trees, up until picking time, that he picked them, caused them to be picked, and shipped them to himself in Hutchinson, Kans., to his warehouse there, and he contends that at that time they were not ready for use as apples. That those apples which he did ship for use or sale that he caused them to be

wiped or washed, washing all possible part of this poisonous solution of arsenate of lead off of them so there could be no question in that regard. Now, you will note that the section under which we are proceeding here conditions that these shipments made in interstate commerce shall be for sale, and if there was sufficient poisonous material upon these apples when they were shipped in interstate commerce that it might become deleterious to human health in eating them, if they were shipped for sale or by the shipper intended for sale, or offered for sale, then they ought to be condemned and destroyed. However, there is a provision in regard to this act which has just as much application as the part which I have quoted, and that is what this adulteration is.

"Section 7 of the act provides: That for the purposes of this act an article shall be deemed to be adulterated: In case of drugs so and so; this is not drugs, not have to read that. In the case of confectionery, candy and so on, this has nothing to do with that; but in the case of food. First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. Second. If any substance has been substituted wholly or in part for the article. Third. If any valuable constituent of the article has been wholly or in part abstracted. Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed. Evidently it was not under those. But it is, I suppose, the Government proceeding on the idea it was adulterated as provided in the fifth. Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: Provided, That when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this act shall be construed as applying only when said products are ready for consumption.

"Now, it is the contention of Judge Martin, while admitting the spraying of these trees with this arsenate of lead, and the statement, that he was not shipping these apples to market, that they were not ready for food; but his contention is that he was shipping them to his own warehouse and to be there kept until they reached that condition when they could be put upon the market for food, and at which time the law, as he says, would apply, but they were not at this time ready for food as an edible.

"This is a very practical world. We have to live a practical life. And amidst all of these numerous regulations we have to still live a practical life. If Judge Martin did anything in this case with these apples whereby the health of individuals might be deleteriously affected, then the apples ought to be condemned. But, while these apples were handled in interstate commerce, if they were so treated not as a food product or not with any intent of offering as a food product, if he kept them under his control so they could not go into the hands of others to be used, and affect them injuriously, then he had a right to deal with them in that practical way. For, suppose the Government should admit here that the purpose of shipping them—not only in interstate commerce—that they not only were shipped in that manner but suppose he were shipping them to feed his hogs; it was not hogs the Government was looking after when it enacted this law and the Government wouldn't have any concern whether they were good for individuals or not if they are shipped to and fed hogs, that would be the individual's business and not the Government's. But if anything is the matter, if it was not in good faith intended that these were not ready for the market and should not go on the market, then you would find the defendant guilty, if you believe the amount of poisonous products added in this case was deleterious to human health. So that is the way I am going to leave that question to you in this case, of which fact you are the sole and exclusive judges. You will take the matter and determine it in the light of the law as I have given it to you."

Mr. McFARLAND: "Your Honor, I would like to make one correction; I think the jury probably gets the wrong interpretation; as I understand, Judge Martin is not the defendant, but the claimant of the apples."

The COURT: "That is true; for all purposes he is the owner of the apples. This is a proceeding against the apples themselves. There is, I may say, a criminal provision of this law under which if the Government is correct, defendant Martin might have been prosecuted and punished as a criminal, but that is not relied on in this case."

Mr. McFARLAND: "I would like to save an exception on the instruction, if they were so treated as a food product and remained in the hands of Judge Martin, he would have the right to deal with them in a practical way. And I would like to request your Honor to give the instruction No. 10 mentioned in my request here."

The COURT: "I forgot to mention, there have been some requests to charge, but I have embodied what I deem to be the law in what I have given, and therefore have refused the requests made."

Mr. McFARLAND: "Your Honor refuses our requests in toto?"

The COURT. "Yes."

Mr. McFARLAND: "I want to save an exception on that. I think it should be shown to the jury in the event they do find these apples are adulterated, there is a proceeding where——"

The COURT: "The question now is, whether we are going to condemn the apples because adulterated and injurious to human health."

Mr. McFARLAND: "I thought Your Honor's instruction they might be destroyed might be prejudicial. I would like to save an exception on that."

On March 22, 1927, the jury returned a verdict finding that the apples were adulterated as alleged in the libel of information. The claimant thereupon filed motions for judgment notwithstanding the verdict and for a new trial. On January 31, 1928, the court overruled the motion for judgment notwithstanding the verdict and sustained the motion for a new trial. The case, however, was not retried.

On April 25, 1930, final decree was entered adjudging the product adulterated as alleged in the libel and ordering that it be condemned without costs to the claimant.

ARTHUR M. HYDE, *Secretary of Agriculture.*

17275. Supplement to Notice of Judgment No. 15735. Contempt proceedings in re U. S. v. 40 Barrels, et al., of Adulterated and Misbranded Buttermilk. Plea of guilty. Fine, $250. (F. & D. Nos. 22672, 22694. I. S. Nos. 17428–x, 17433–x. S. Nos. 705, 727.)

In January, 1930, actions were instituted by the United States attorney in the United States District Court for the District of Oregon, to forfeit the bonds executed by the Lactein Co., San Francisco, Calif., and the American Surety Co., New York, N. Y., to secure release of 43 barrels, 27 half barrels, fifty-five 10-gallon kegs and eighty-two 5-gallon kegs of super solid buttermilk, seized under libel proceedings instituted March 29, 1928, and April 5, 1928, for violation of the Federal food and drugs act.

The terms of the decrees entered in the cases on April 28, 1928, provided for release of the product upon the execution of bonds, conditioned that it should not be sold or disposed of until relabeled and reconditioned in a manner satisfactory to this department.

Subsequent to the entry of the said decrees 7 kegs of the released product, which had not been relabeled in accordance with the terms of the bonds, were sold to firms in Albany, Oreg. The Lactein Co. and the American Surety Co. were thereupon cited to show cause why the bonds should not be forfeited. On April 14, 1930, the date set for hearing, the actions on the bonds were dismissed. The Lactein Co. entered a plea of guilty to contempt of court and was fined $250.

ARTHUR M. HYDE, *Secretary of Agriculture.*