

Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1049.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF TWO DRUG PRODUCTS—"RADIO-SULPHO " AND " RADIO-SULPHO BREW."

At the November term of the District Court of the United States for the District of Colorado the grand jury of the United States, upon presentation by the United States Attorney, pursuant to the report to him by the Secretary of Agriculture, found an indictment against Philip Schuch, jr., alleging shipment by him, on April 1, 1910, in violation of the Food and Drugs Act of June 30, 1906, from the State of Colorado into the District of Columbia, of quantities of two drug products labeled, respectively, as follows:

"The Radio-Sulpho Co. Offices 210-211 Mack Bldg., Denver, Colo. Radio-Sulpho Remedy for Rheumatism, diseases of the Skin, Ulcers, Running Sores, Putrid Wounds, Pus, Gan-green, Bloody Flux and Chronic Dysentery. A Delightful Bath for the Healthy as well as for the Sick. Radio-Sulpho Remedy for certain forms of Cancers. Syphilis in any form. Dissolves and removes poisons absorbed into the skin of Printers, Painters, Artists, and Metal Workers." Notice the Radio-Sulpho Remedies do not contain any Poisonous or Injurious Chemicals. Guaranteed by The Radio-Sulpho Co., in accordance with the Pure Food and Drugs Acts, June 30, 1906. Guarantee No. 6743. Radio-Sulpho Trade-Mark Remedy for Rheumatism Skin Diseases, Ulcers, Running Sores, Uric Acid and Blood Poisons. Guaranteed by The Radio-Sulpho Co., in accordance with the Pure Food and Drugs Act, June 30th, 1906. Guarantee No. 6743. Price, \$1.00."

"Radio-Sulpho Brew Trade Mark Blood Purifier and Tonic for Indigestion, Constipation, Catarrh, Nervousness, Bloating, Turbid

Liver and Kidney Disorders, is a Laxitive and Prevents Appendicitis. Special Sour Wine Brew 1910. This great remedy is highly beneficial for sufferers with Asthma and Consumption, for it rids the system of all obnoxious substances. Contains Alcohol 2 per cent. Directions—A small wineglassful before meals three times a day; reduce the dose to suit your condition after bowels move freely. It is necessary to take a small dose each day in order to thoroughly cleanse the bowels; entirely removes the catarrhal conditions from the mucuous linings of the stomach, kidneys, intestines and bladder. Invigorates the blood and can be taken by children in reduced doses. Keep in a cool place. Keep well corked. Price \$1.00. In accordance with the National Pure Food and Drug Law of June, 1906. Guarantee Number 6743. Compounded by The Radio Sulpho Co., Mfg. Chemists Denver, Colo.”

Analysis by the Bureau of Chemistry of the United States Department of Agriculture showed the so-called “Radio-Sulpho” to be a solution of sulphur and sodium hydroxide in water, and the “Radio-Sulpho Brew” to be a solution of magnesium sulphate, together with a small amount of some vegetable material.

Misbranding of the “Radio-Sulpho” was alleged because it bore the statements above set forth, which said statements were false and misleading, in that the word “radio,” which constitutes a part of the name of the product, would lead the purchaser to believe that the said article contained radium or radio active properties, and in that said statement represented the article to be a remedy for rheumatism, skin diseases, ulcers, running sores, uric acid, blood poison, cancers, and syphilis in any form; that the said article would dissolve and remove poisons absorbed into the skin of printers, painters, artists, and metal workers; that the said article was a remedy for putrid wounds, pus, gangrene, bloody flux, and chronic dysentery, whereas, in truth and in fact, said article was not a remedy for cancers, syphilis, or rheumatism, ulcers, running sores, uric acid, putrid wounds, or gangrene, nor did it possess any power to dissolve or remove poisons absorbed into the skin of printers, painters, artists, and metal workers.

Misbranding of the “Radio-Sulpho Brew” was charged because it bore the statements above quoted, which said statements were false and misleading, because the product did not contain any radio-sulpho or radio active properties whatsoever, and because said “Radio-Sulpho Brew” would not prevent appendicitis; was not a remedy highly beneficial for sufferers with asthma or consumption, would not rid the system of all obnoxious substances, and was worthless and ineffective as a remedy for asthma and consumption.

In due course, a jury was impaneled, and after hearing the evidence on the part of both parties, and after argument by counsel, the court instructed the jury as follows:

UNITED STATES OF AMERICA, }
District of Colorado. } ss.

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT
 OF COLORADO, SITTING AT DENVER.

No. 2405.

THE UNITED STATES OF AMERICA, *Plaintiff,* }
vs. }
 PHILIP SCHUCH, JR., *Defendant.* }

GENTLEMEN OF THE JURY: The defendant, Philip Schuch, Junior, is on trial under an indictment which charges him with the commission of two separate criminal offenses. These offenses charged in the indictment are in violation of the act known as the Food and Drugs Act, passed by Congress in 1906. That act, among other things, provides that the introduction into any state or territory, or the District of Columbia, from any other state or territory, of any article of food or drugs which is misbranded, within the meaning of this act, is prohibited, and any person who shall ship, or deliver for shipment, from any state or territory or the District of Columbia to any other state or territory or the District of Columbia, any such misbranded drugs shall be guilty of a criminal offense. That act further provides that the term drug, as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. It also provides that the term "misbranded," as used in the act, shall apply to all drugs, the package or label of which shall bear any statement regarding such article which shall be false or misleading in any particular.

The indictment, in its first count, charges that the defendant knowingly and unlawfully did sell and ship, and deliver for shipment, for Inter-state carriage from the City and County of Denver, in the District and State of Colorado, to and into the District of Columbia, an article and preparation of drugs called Radio-Sulpho, which article was misbranded in that the labels on the package containing said Radio-Sulpho had thereon the following, "Radio-Sulpho, Remedy for Rheumatism, Diseases of the Skin, Ulcers, Running Sores, Putrid Wounds, Pus, Gangrene, Bloody Flux and Chronic Dysentery." "Radio-Sulpho, a Remedy for certain forms of Cancer, Syphilis in any form; dissolves and removes Poisons absorbed into the Skin of Printers, Painters, Artists, and Metal-workers. A Remedy for Rheumatism, Skin Diseases, Ulcers, Running Sores, Uric Acid and Blood Poisons." And it charges that the defendant, Philip Schuch, Junior, then and there well knew that the said statements were false and misleading, and that the said packages, in the particulars just referred to, were misbranded.

The charge in the second count of the indictment is similar in the respects noted, in that the defendant is charged with knowingly and unlawfully selling and shipping, and delivering to be shipped, the preparation offered in evidence called Radio-Sulpho Brew from the State of Colorado to the District of Co-

lumbia, and that said package containing Radio-Sulpho Brew was misbranded, in that it contained the following inscriptions, "Radio-Sulpho Brew, Blood Purifier and Tonic for Indigestion, Constipation, Catarrh, Nervousness, Bloating, Turbid Liver and Kidney Disorders. Is a Laxative, and prevents Appendicitis. This great Remedy is Highly Beneficial for Sufferers with Asthma and Consumption, for it rids the System of all Obnoxious Substances." And the charge is also contained in this count of the indictment to the effect that the defendant, when he so sold, shipped and delivered for shipment the two packages of Radio-Sulpho Brew offered in evidence well knew that said bottles containing the same were misbranded.

Now the question for the determination of the jury in each count of this indictment is whether or not the defendant did, as is charged in these counts, ship from the State of Colorado to the District of Columbia the Radio-Sulpho and the Radio-Sulpho Brew, and whether or not both, or either, of these preparations were misbranded in the particulars mentioned as to the inscriptions contained on the packages of these preparations, in that they made false representations as to their curative properties, and that the defendant, at the time he so shipped the same, did not know that they were curatives for those purposes.

These are criminal charges, and the rule applicable in all criminal cases for the guidance of the jury is, of course, applicable here to the effect that a defendant in a criminal case is not called upon to prove his innocence; the presumption of law is that he is not guilty, and this presumption abides with him throughout the case until it is overcome and his guilt has been established by the testimony; and it must be established, before you can find him guilty on either count, by the testimony to your reasonable satisfaction, beyond a reasonable doubt. A reasonable doubt, however, does not mean a mere possibility of innocence; it means a substantial doubt, founded on the evidence in the case, or the lack of evidence. If, after you have considered all the testimony in this case you cannot say to yourselves that you are convinced of the defendant's guilt, then you have a reasonable doubt and you must acquit him; but if, on the other hand, after carefully considering all the testimony in the case, you can say to yourselves, under your oaths, that you have an abiding conviction that the defendant is guilty as charged in the indictment, then you have no doubt and you must return, in that event, a verdict of guilty.

Now you are the sole judges as to what the facts are; you determine the facts in the case, the Court determines and tells you what the law applicable to the facts in the case is. You take that testimony and applying it to the rules of law given you by the Court you thereon render your verdict. You are also the judges, and the sole judges, of the weight of the evidence and of the credibility that you will give to the testimony of each witness; the Court has nothing to do with determining the credibility of the witnesses who testified before you, or the weight to be given to the testimony of those different witnesses. You might discover, or might think you discover, that the Court was of a certain opinion about the facts, or about the credibility of some particular witness, and yet if what you thought the Court believed in that respect did not correspond with your belief about it you ought to follow your own convictions, and not permit what you might think the Court thought about it to influence you in any wise. The law vests with you the sole duty and the sole power of determining what the facts are in the case. As a principle of law, however, the Court tells you that if you should believe that any witness has knowingly and wilfully testified falsely to any material fact you are at liberty to disregard all of the testimony of such witness, except in so far as it may be corroborated by other

facts and circumstances in the case; and in determining what weight you will give to the testimony of each witness you should consider the apparent disposition of that witness to tell the truth, his familiarity with the facts about which he attempts to speak to you, his intelligence, his candor, his fairness, his interest, if any, in the case and the result of this trial, and then, with those as guides, give to the testimony of each witness such weight, and to him such credibility, as you, in your good judgment, believe it entitled to receive.

Now, I shall consider and comment upon some of the evidence in this case, having you clearly understand that I do not do so for the purpose of indicating what the impression of the Court is as to what the facts are, but simply, after having heard a trial continued over some four or five days, of briefly calling attention to the prominent facts that you will necessarily have to take into consideration, and calling attention, perhaps, to some conflicting testimony in the case, for the purpose of having you consider these conflicts when you retire to determine what the facts are and what your verdict shall be. Some of these inscriptions on the package containing the Radio-Sulpho represent it to be a remedy for certain diseases. Those representations must be taken in their popular sense, because the evident purpose of the representations on those different packages were representations to the public and not simply to professional men who are schooled in chemistry and physics, and the word remedy, in its ordinary sense, means that which cures a disease—any medicine or application which puts an end to disease and restores health.

Now we come to notice the inscriptions first on the Radio-Sulpho; it is said to be a remedy for rheumatism; several witnesses testified that they had taken it for rheumatism and in their belief they had been cured. The weight of that testimony, when considered in the sense in which it was represented on the package as being a remedy for rheumatism, cannot, of course, be properly determined until we know in a given case whether or not first the patient actually had rheumatism. These witnesses were permitted to testify that they had rheumatism, it is for you to determine whether or not in fact they did have rheumatism; if you believe that that ailment is of such common prevalence, and has reached such common knowledge among men, that any man, and especially these witnesses who came before you and testified that they did have rheumatism, that they were able to diagnose and correctly tell you that their ailment at the time was rheumatism, then you have established that fact, and the only other fact for your consideration in reference to that ailment would be the inquiry as to whether or not the use of Radio-Sulpho, or Radio-Sulpho in connection with Radio-Sulpho Brew, effected the cure. If you so found that would go far to sustain a finding on your part that Radio-Sulpho is a remedy for rheumatism.

It also represents that it is a remedy for diseases of the skin, ulcers, running sores, bloody flux and chronic dysentery. There were one or two witnesses who testified to having some sort of affection of the skin; I believe one witness yesterday, the old gentleman, said he had eczema for many years and that Radio-Sulpho cured him almost instantly. The same rule, the same suggestions, that I have made in reference to rheumatism, of course, apply to each of these others, first, the inquiry as to whether or not he had a disease of the skin; secondly, whether or not there is evidence in this case that Radio-Sulpho will cure such a disease. Now, as against this testimony of these witnesses who told you that they had had some of these ailments and had been cured by taking these remedies, you have the positive testimony of men who have been schooled in the profession of medicine and in chemistry, and they tell you that the analysis made by Dr. Kimberly and Dr. Hill does not disclose anything

that could possibly be a remedy, or cure, or help in any respect for any of the diseases mentioned on the bottles offered in evidence. You cannot weigh the testimony and reach a correct determination as to rheumatism by considering the testimony alone of the witnesses who came before you and said that they had rheumatism and were cured of it, without considering with it the testimony of these gentlemen who have made it a life study, who have pursued at schools instituted for that purpose the different effects of the different drugs, and compounds of the different drugs, that may possibly be any aid in the kind of diseases mentioned on these packages. Men may be mistaken about as simple a disease as rheumatism. I do not say they were mistaken; it is for you to consider whether or not, in connection with the testimony of the witnesses on the part of the government, their statements that they had rheumatism and that these remedies cured that rheumatism are convincing to that effect.

It is also claimed on those packages that this Radio-Sulpho is a remedy for certain forms of cancer. A great deal of evidence has been devoted in describing to you what cancer is. Mr. Schuch was permitted to testify that he was competent to diagnose cancer, and his competency, as disclosed, was obtained, as he said, by studying that particular disease under eminent specialists who had made it their life work, and among others Dr. W. T. Bull of New York. You will recall what he said about that, what Dr. Bull did—gave him private lectures or instructions and took him with him to see his patients. It was contended on the part of the government, and some evidence was offered for the purpose of showing that the defendant did not know Dr. Bull, couldn't possibly have been with him, because, as counsel for the government say, he was described by the defendant in appearance a different man than the description given of him by Dr. Powers, who was his associate and partner for some eleven years. And that you must determine. It was also claimed by the defendant that he studied this same disease at Chicago under some two or three physicians who had made it a specialty, and in connection somewhat with Doctor Harper. Some testimony was given as to the profession and the life work of Doctor Harper, and that it was wholly devoted to biblical investigations, and while at Chicago, during the time the defendant says he met him and associated with him and paid him \$350 to introduce him to these other physicians and give him some special instructions, he was then president of Chicago University. That is questioned by the government. It is for you to determine the weight that you will give to the conflicting evidence, if it be conflicting, upon that question. I mention this to you for the purpose of indicating that Mr. Schuch was permitted to testify that he could diagnose cancer because he had studied under specialists in the treatment of cancer. If you should find that he did not investigate this disease under men who were competent to instruct him in that respect, it would only go to affect the question as to whether or not he knows cancer when he sees and examines a case of cancer. He also testified that he studied chemistry under other specialists, and I do not recall that there is any contradiction of that. And he also says that he studied it on independent investigations made by himself.

Now witnesses have testified that they had cancer, or were treated for cancer, and were cured by the use of these remedies; they were permitted to say that because the defendant had already testified, qualifying himself in the particulars just referred to, that they had cancer; but if he were unable to determine whether or not they had cancer, none of those witnesses testifying that they knew anything about cancer, there wouldn't be much left on which you could base a finding that any of these witnesses who testified that they had cancer and had been cured by the use of these remedies, did in fact have cancer.

And as against that, and to be considered along with it in determining whether or not these remedies have ever been used successfully in a case of cancer, we have the testimony of, I think, practically all of the witnesses offered by the government, physicians and surgeons of many years practice, who say that the only possible way to diagnose cancer is with the microscope, which was not the way adopted, as I recall the testimony, in any of the cases treated by the defendant. And it has been questioned whether or not some of the cases which were claimed to have been treated by the defendant had cancer, and in the case of the witnesses who testified whether or not it was cancer at all. You will recall that counsel read extracts from the standard authorities defining cancer, and the kinds of cancer, and the instances in which a case may be properly considered a cancer or not a cancer at all. Witnesses for the government also testified, some of them, if not all of them; that science has not yet disclosed a remedy for cancer unless it be the use of the knife. I believe the witness offered by the defendant, Dr. Smolenski, said that there was no known remedy. Therefore, gentlemen of the jury, if you find and believe from the testimony that these preparations were put into Inter-state commerce by shipment by express from Colorado to the District of Columbia, and that the one called Radio-Sulpho had on it the representation that it was a remedy for certain forms of cancer, which was false, and that it was not, and is not, a remedy or cure for any kind of cancer, then it will be your duty to find the defendant guilty, even if you find all of the other inscriptions on these packages were true representations as to the curative properties in controversy.

A further inscription was that it was a remedy for syphilis in any form. I do not recall any specific evidence that Radio-Sulpho would cure syphilis in any form; it may be that the defendant, in his testimony that these compounds had contents not disclosed by the analyses, which he did not describe to us, had certain elements which, in his belief, which in his knowledge, as he claims, so operated upon the system in a case of that disease that it would cure it; but it is for you to search your memories and determine whether or not there is any evidence in the case that Radio-Sulpho is a remedy for syphilis in any form. And if there be such evidence, then to consider with it the evidence offered by the government, its witnesses testifying that there was nothing in either of these compounds, or in this Radio-Sulpho, that was a cure or remedy for syphilis in any form.

You understand, gentlemen of the jury, that the testimony of the physicians, such men as Dr. Freeman, and Dr. Hall and Dr. Bergtold, and perhaps one or two others, to the effect that these preparations were not cures for any of these diseases, was based upon the analyses made by Dr. Kimberly and Dr. Hill. These physicians, of course, have not analyzed these medicines; they are separate professions; they act, as they told you, upon the analyses furnished by the chemists, and having technical knowledge as to the effect of each drug and taking the analyses made by the chemists and each drug that they may see fit to use, they accept what he says about its contents, and then apply their knowledge as to the effect of each element in the compound. So that, if you should find and believe from the testimony, beyond a reasonable doubt, that that is not a remedy for syphilis in any form, and that it was so represented upon this package, then that is a misbranding within the sense of the Food and Drugs Act, and the defendant is guilty, and you should so state in your verdict.

Congress, of course, has no power to control the use of these drugs and preparations, under this act, except when they become introduced into Inter-state commerce, that is, shipment from one state to another. The Constitu-

tion of the United States vests Congress with the power to regulate Inter-state commerce, and in that manner it can reach the question; but if they are kept out of Inter-state commerce it is a matter purely for the several states. It can say, it has the power to say, under the Constitution, and it has said, that when drugs or foods are introduced into Inter-State commerce they shall be truly labeled so that the public will not be deceived—they must not be misbranded—that is what it did by this act.

This Radio-Sulpho, as already said, also is branded to the effect that it will dissolve and remove poisons absorbed into the skin of Printers, Painters, Artists and Metal-workers. It represents that it is a remedy for Rheumatism, Skin Diseases, Ulcers, Running Sores, Uric Acid and Blood Poison. We are not concerned, gentlemen of the jury, with any other kinds of patent medicines; we are not to determine the issues in this case, as to this defendant, in any sense by our prejudices in favor of or against patent medicines. We are to consider the facts in this case alone, and the law applicable to it, and decide it in accordance with the facts and the law in this case.

We pass to the second count. The first count is a charge as to the Radio-Sulpho, the second count as to the Radio-Sulpho Brew. The fore part of the inscription as to the Radio-Sulpho Brew is not as broad in its representations as that with reference to Radio-Sulpho. The fore part does not specifically claim that it is a remedy or cure for the diseases which I now mention, but says that it is a Blood Purifier and Tonic for Indigestion, Constipation, Catarrh, Nervousness, Bloating, Turbid Liver and Kidney Disorders, and is a Laxative. The testimony shows that the Radio-Sulpho Brew, as I recall it, contains five per cent epsom salts, and I believe the testimony fairly indicates that epsom salts is a recognized remedy for constipation. I do not recall whether or not the testimony shows that it is used for indigestion or not, outside of the claim of the defendant that he used it for that purpose. But that same part of the inscription on that package then continues and says "and prevents Appendicitis." I will not attempt to review, even in a general way, the testimony of the physicians who told us what science, as they understand it, has disclosed up to the present time about appendicitis, but leave it to you to determine, under all the facts in this case, whether or not Radio-Sulpho Brew will prevent appendicitis. If you find from the testimony, beyond a reasonable doubt, that it will not prevent appendicitis then that was a misbranding, in violation of the act, and you will find the defendant guilty on that count, otherwise he is not guilty as to that particular part of the inscription.

That package containing Radio-Sulpho Brew, as charged in the indictment, also contained this inscription, "This great Remedy is Highly Beneficial for Sufferers with Asthma and Consumption, for it rids the System of all Obnoxious Substances." I believe we had one witness on the part of the defense who testified that he had had consumption in a very advanced stage, and took this Radio-Sulpho Brew and he believed he had been cured. We must recur again to the inquiry as to whether or not he had consumption, and if you so find, then the inquiry whether or not he has been cured; and then again the inquiry, even if he did have it and has been cured whether or not he was cured by the use of Radio-Sulpho Brew. If not, then there is but slight, if any, evidence, as I recall it, you may recall some, to the effect that Radio-Sulpho Brew will prevent consumption, not prevent it but is highly beneficial for consumption in any stage. The testimony on the part of the government was to the effect that there was nothing in Radio-Sulpho Brew, according to the analyses made by Dr. Hill and Dr. Kimberly, that would be in any particular beneficial or helpful or at all affect the disease known as consumption. So that, if you

should find and believe from the testimony that this Radio-Sulpho Brew, as testified by Dr. Morgan, and I believe also so stated by the defendant, was shipped from Colorado by express to Dr. Morgan in the District of Columbia, thereby becoming an article of Inter-state commerce, and that one of the inscriptions on it was that it was a remedy highly beneficial for sufferers with consumption, and you should further find and believe from the evidence, beyond a reasonable doubt, that it was not highly beneficial for sufferers with consumption, then it was misbranded in that particular; although you might find that it was not misbranded in any other particular, yet if misbranded in this particular the defendant is guilty of having violated this Pure Food and Drugs Act in this shipment, and you must return a verdict of guilty.

This same part of the label, in this same sentence, also represents "This Great Remedy is Highly Beneficial for Sufferers with Asthma." You will recall and apply the testimony in the case as to the effect, if any, Radio-Sulpho Brew might have on asthma. Of course, gentlemen of the jury, as contended by the defendant's counsel, every honest man is hopeful that some remedy will be discovered for the cure of cancer, and perhaps it may not be of great weight in considering whether or not a remedy may be discovered to-day that one had not been discovered before to-day, but simply because a man says he has a remedy, and in his opinion it will cure, that he has tried it on cases that he thought were cancer and in his opinion it cured those cases, isn't any evidence that there are any such properties in that so-called remedy unless and until he has shown himself capable of diagnosing cancer, the remedy has been tried sufficiently to demonstrate that it effected the cure, and that the cure was not effected from some other cause.

The defendant declined to disclose other contents which he said could be found in these packages; he declined to tell us because, he said, it was a great secret that belonged to the Radio-Sulpho Company. I do not say to you that that is a sufficient reason why he should not have told you, I leave that to you. I can understand that from a financial point of view that would be a very powerful incentive for a man, where he knew that he had a remedy unknown to any one else, because in the case of any of these diseases it would necessarily afford a marvelous income. You must determine whether or not that was a sufficient reason, and whether or not his mere word that there are other ingredients in it which he has failed to disclose, is such testimony as will convince you that there are other ingredients in it. He says that it takes him forty days to make the Radio-Sulpho and thirty days to make the Brew. According to the analyses of the chemists the contents are simple, the analysis was not difficult, and they apparently speak with confidence when they say that they found all there was in it, except they do say that there was a small amount of solids which they said were inert or inactive for anything.

You will be given, gentlemen of the jury, two forms of verdict on each count; one on the first count, which relates to the Radio-Sulpho alone, of guilty and one of not guilty. You will use one of those forms of verdict, and when you have agreed on your verdict on that count your foreman, whom you will select, will sign it. You will also be given two like forms of verdict on the second count, and your foreman will also sign your verdict on that count, and when you have reached a verdict on each count you will return them into court.

Mr. WARD. May it please your Honor, I would like to suggest that your Honor at this time instruct the jury as to the legal effect of the use by Dr. Morgan of the name Joy for use in getting this medicine.

The COURT. I think that is hardly necessary. Gentlemen of the jury, the District Attorney asks that I call the attention of the jury to the fact that

the shipment of the two bottles of Radio-Sulpho and Radio-Sulpho Brew were obtained by Dr. Morgan under a false name; that, gentlemen of the jury, is utterly immaterial. Congress passed this law and it is the duty of the officers in every capacity, who have anything to do with the prosecution of crime or with the enforcement of the different acts of Congress, to use whatever means they think may be most successful in enforcing the act and suppressing what Congress intended should be suppressed; therefore the fact that Dr. Morgan wrote under an assumed name, the fact that he stated in his letters things that perhaps were not true, is not to be considered by the jury at all in arriving at a verdict. The sole question in the case is whether or not the defendant introduced these articles into Inter-state commerce, as charged, and whether or not they were misbranded, as provided in the Pure Food and Drugs Act; if he did he is guilty, if he did not he is not guilty.

After due deliberation, the jury found the defendant guilty as charged in the above indictment. Thereupon defendant filed his motion for a new trial, which is pending.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 8, 1911.*

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