fruit juices * * * their fruit and grape juices * * * Grape Bricks," were false and misleading and deceived and misled the purchaser. It was further alleged in the libel that the article was misbranded in violation of paragraph 3, of section 8 of the act as amended, under drugs, in that the following statements regarding the curative and therapeutic effects of the said article were false and fraudulent, since it contained no ingredient or combination thereof capable of producing the effects claimed: "For Medicinal Purposes * * * the most effective mild cleansers of the digestive organs * * * remedy * * * digestive * * * Vino Sano Port or Malaga Juice in mild fermentation may be prescribed by doctors instead of other yeast treatments as well as in place of fermented milk treatments (Kefit, Hoghurt, Kumiss, Etc.) in accordance with the Professor Mechnikoff theory, to eliminate from the system the bacilli senili (old age germs)."

On February 22, 1929, Harry E. Friedman and Lionel E. Levy, copartners trading as the Grape Products Co., Miami, Fla., having appeared as claimants for the property 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 costs and the execution of a bond in the sum of $1,100, conditioned in part that it should not be used in violation of the law.

ARTHUR M. HYDE, *Secretary of Agriculture.*

16648. Misbranding and alleged adulteration of vinegar. U. S. v. 10 Barrels of Vinegar. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 22985. I. S. No. 01486. S. No. 1064.)

On August 16, 1928, the United States attorney for the Eastern District of Illinois, 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 10 barrels of vinegar at Metropolis, Ill., alleging that the article had been shipped by the Paducah Vinegar Works, from Paducah, Ky., on or about July 21, 1928, and transported from the State of Kentucky into the State of Illinois, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: "Paducah Vinegar Works Old Homestead Brand Pure Apple Vinegar Reduced to 4% Acid Strength, Paducah, Ky."

It was alleged in the libel that the article was adulterated in that a colored distilled vinegar had been mixed and packed with and substituted in part for the said article and had been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength.

Misbranding was alleged for the reason that the label bore the statement "Pure Apple Vinegar," which was false and misleading and deceived and misled the purchaser, and in that the article was an imitation of and offered for sale under the distinctive name of another article.

On May 6, 1929, no claimant having appeared for the property, judgment was entered finding the product misbranded, and it was ordered by the court that the said product be condemned, forfeited, and destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

16649. Alleged adulteration and misbranding of canned tomatoes. U. S. v. 1000 Cases, et al., of Tomatoes. Tried to a jury. Special verdict for claimant. Decrees entered ordering product released and cases dismissed. (F. & D. Nos. 21856, 21864, 21877. I. S. Nos. 14719-x, 14762-x, 14763-x, 14768-x. S. Nos. E-6071, E-6099, E-6110.)

On April 21, April 28, and May 5, 1927, respectively, the United States attorney for the District of Delaware, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying seizure and condemnation of 3,998 cases of canned tomatoes at Wilmington, Del., alleging that the article had been shipped by the Salem Packing Co., Salem, Md., in various consignments between the dates of September 18, 1926, and October 28, 1926, and had been transported from the State of Maryland into the State of Delaware, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: (Cans) "Salem Beauty (or "Dean's Special") Brand Tomatoes. Contents 1 Lb. 3 Oz. Packed by Salem Packing Co., Salem, Md."

It was alleged in the libels that the article was adulterated in that a substance, water, had been mixed and packed with the said article so as to reduce, lower, and injuriously affect its quality and strength. Adulteration was al-

leged with respect to a portion of the article for the further reason that a substance, water, had been substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the statement "Tomatoes," borne on the labels, and the cut of a red ripe tomato borne on a portion of the said labels, were false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article.

On June 19, 1928, the cases having been consolidated into one cause of action, and R. Elmer Dean, trading as the Salem Packing Co., Salem, Md., claimant, having filed answers to the libels denying the adulteration and misbranding of the product, the case came on for trial before the court and a jury. After the submission of evidence on behalf of the Government and the claimant the court delivered the following instructions to the jury (Morris, J.):

"Gentlemen of the Jury: After two days I suspect that you need very little instruction from me. However, I shall try to help you somewhat in the analysis of the testimony, but at the outset I want to say to you now that I have no views as to whether your verdict should be for the plaintiff or for the defendant. That is for you to determine. I have no views with respect to the weight to be given to one man's testimony as against another man's testimony. That is your province and not mine. I mention that now so that you will bear that fact in mind with respect to any facts that I may give to you or that have been given in evidence. The facts given to you by me will be merely illustrative in an attempt to help you see, if possible, how to get at and measure the evidence in this case, so as to enable you to return a right and proper verdict.

"In the first place, the Government contends, and the defendant concedes, that your verdict may be that the tomatoes in question were adulterated and were misbranded if you find that water was added thereto. Consequently, the only question of fact necessary for you to find is whether the Government has established to your satisfaction by a preponderance of evidence that water was added to any one or more of the four lots in question.

"There are two kinds of evidence before you upon which the Government relies to enable you to find a verdict in its favor. The most direct evidence is that given by its inspectors with respect to the trough leading from the bottom of the exhaust box, which is conceded. The Government says it led to the juice tank. The Government inspector said that the trough led to the juice tank. Mr. Cannon told you, and I think Mr. Morrell told you, that the trench from such trough would contain a substantial amount of water. If you are satisfied with that statement by Mr. Cannon and by Mr. Morrell, and you likewise find that the Government's evidence is the correct evidence, namely, that the exhaust—the condensation from the exhaust box was returned to the juice tank—and if you find that that exhaust, that condensation, was substantial in amount, then your finding may be that water was added to the tomatoes in question, and consequently your verdict may be that the tomatoes were adulterated and/or were misbranded. As to how you shall reconcile that conflicting testimony I can not help you. It is for you to reconcile it if you can. If you can not, you are to believe those persons that you deem most worthy of belief and disregard the testimony in whole or in part of those persons that you deem not so worthy of belief. In determining that question you may take into consideration the opportunity to know the facts and the frailties of human memory and arrive at a conclusion that is satisfactory to yourself.

"The other branch of the evidence upon which the Government relies to establish its contention that the goods in question were misbranded or adulterated and/or adulterated is circumstantial evidence as I understand evidence, and it may be that you understand it better than I do. In any event you are to be bound by your understanding of it. I am going over a portion of it merely to indicate to you how, it seems to me, you can expedite your work or better analyze that testimony.

"The Government used the refractometer method of ascertaining the content of the juice of the tomatoes which they examined. You have heard what several witnesses had to say about that method. Let us lay that aside for a moment and deem it for our immediate purposes a proper method. The use of that instrument results in a reading, which reading may be used directly or through the soluble solid content to determine what is the minimum soluble solid content of the material examined.

"We have from the testimony of Doctor Tiffany in this case, as I recall it—and whenever I say we have such testimony I am giving my recollection, because I have to use some facts to illustrate. You are not to be bound by my recollection but solely by yours. We have the testimony of Doctor Tiffany in this case that he found no content, solid content, by the refractometer method, as disclosed by the refractometer readings of the Government, less than 3.5 per cent. His maximum was 4.38 per cent of soluble solids, or an average of 4.02 per cent. Now, then, we have the testimony of one of the witnesses for the Government, who was recalled, who has used 5 per cent as the minimum content, and on his recall said that the 3.50 per cent was the minimum solid for Eastern Shore tomatoes. Consequently, as it seems to me, the Government's contention here is not that the tomatoes here in your charge fell below the minimum for Eastern Shore in soluble solid content for Eastern Shore tomatoes. Let me repeat that so that you may get it as I understand it. You are not bound by that understanding, but, as I understand the case, it is this: Unless you find from the readings of the refractometer, which will go before you—I don't know whether there is in the case a table from which you may convert these refractometer readings into soluble solid content or not—if not, you must take those readings. Doctor Tiffany tells us that those readings do not disclose a solid soluble content for any case of less than 3½ per cent. The Government witness tells us that the minimum solid content for Eastern Shore tomatoes is 3 per cent to 3½ per cent. Consequently the Government's contention, as I see it, is not that the soluble solid content of these tomatoes falls below 3½ per cent, but it is that the soluble solid content of these tomatoes falls below authentic samples at the particular district at about a particular time. Now, unfortunately I don't remember—you may remember—that there is in this case any translation of the refractometer readings of that so-called authentic sample by which you may determine what the solid content of that was. But there is in this case evidence that the Government chemist deduced from the facts before them that there had been added 10 per cent to 15 per cent of water. You can't base a verdict upon that deduction. You must base it upon the facts. You may be aided in making use of the facts by the expert testimony, but you can not take the opinion of another person alone and arrive at a finding of fact upon it that is honest. So that unless you recall some testimony which I do not, though you may, because I freely confess that I might overlook it, you have got to compare and interpret the readings of the refractometer of that sample—of that authentic sample—with the readings of these others, the goods now in your hands, to determine to what extent the solid content of the tomatoes—soluble solid content of the tomatoes now in your hands—is less than the solid soluble content of the authentic sample. If you find that it is any less, your work on the circumstantial part of the case is ended. If, however, you find that the solid soluble content by the refractometer readings of the tomatoes which are now in your charge is less than the solid soluble content of the authentic sample, then your work has probably just begun because then you must determine as to whether that soluble solid—whether that authentic sample—is a sound basis from which to measure the soluble solid content of these cases, or whether there is a reason to believe that it is not a foundation upon which may be predicated a verdict of adulteration or misbranding, even if the solid soluble content of the tomatoes in question is less than that of the sample.

"You may, if you find that the circumstances were identical, and that the probabilities—strong probabilities—are that the solid content of the tomatoes in question may be no less than that of the sample and you can find what the solid soluble content of the sample was, then you may make a finding of the additional water from such circumstantial evidence.

"In this case you are to be governed by the preponderance of the evidence. Your findings, as I said at the outset, must be predicated upon your recollection and not upon mine.

"The pure food act is not in question. It is an act that has been long in effect; and whether it is good or bad or indifferent, we have to take it as it is. The sole question for you is whether or not that act has been violated by these tomatoes by the addition of water which came from sources other than the tomato."

On June 20, 1928, the jury returned a special verdict that water had not been added to the product. On July 13, 1928, decrees were entered ordering that the

cases be dismissed, and that the product be discharged from the attachment and delivered to the claimant.

ARTHUR M. HYDE, *Secretary of Agriculture.*

16650. Misbranding of linseed oil meal. U. S. v. 200 Bags of Linseed Oil Meal. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 23619. I. S. No. 012408. S. No. 1856.)

On April 12, 1929, the United States attorney for the District of Maryland, 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 200 bags of linseed oil meal, remaining in the original unbroken packages at Baltimore, Md., alleging that the article had been shipped by Kelloggs & Miller (Inc.), from Amsterdam, N. Y., on or about March 15, 1929, and transported from the State of New York into the State of Maryland, and charging misbranding in violation of the food and drugs act. The article was labeled in part: "Pure Old Process Linseed Oil Meal Manufactured by Kelloggs & Miller (Inc.), Amsterdam, N. Y., Analysis Percentage of Protein 34%."

It was alleged in the libel that the article was misbranded in that the statement "Analysis Percentage of Protein 34%," borne on the label, was false and misleading and deceived and misled the purchaser when applied to an article containing a less amount of protein.

On April 15, 1929, Kelloggs & Miller (Inc.), Amsterdam, N. Y., having appeared as claimant for the property, 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 costs and the execution of a bond in the sum of $1,000, conditioned in part that it should not be sold or disposed of until relabeled to conform to the requirements of the Federal food and drugs act.

ARTHUR M. HYDE, *Secretary of Agriculture.*