On January 7, 1941, the Freemont Canning Co. of Freemont, Mich., having filed a form of acceptance of service and authorization for taking of final decree, judgment of condemnation was entered and the product was ordered destroyed.

31150. Adulteration of dressed poultry. U. S. v. Clair F. Limbeck (Iowa Products Co.). Plea of guilty. Fine, $300 and costs. (F. & D. No. 42795. Sample Nos. 46703–D, 46705–D, 68198–D.)

This case was based on shipments of poultry into which water had been injected.

On June 9, 1940, the United States attorney for the Northern District of Iowa filed an information against Clair F. Limbeck, trading as the Iowa Products Co., Dubuque, Iowa, alleging shipment within the period from on or about October 7 to on or about December 24, 1938, from the State of Iowa into the States of New York and Illinois of quantities of poultry which was adulterated in that poultry, namely, dressed geese, dressed ducks, and dressed chickens, containing added water had been substituted wholly or in part for normal poultry, which it purported to be.

On June 9, 1941, the defendant entered a plea of guilty and the court imposed a fine of $300 and costs.

31151. Adulteration of Brazil nuts. U. S. v. Wm. A. Higgins & Co., Inc. Tried to the court. Judgment of guilty. Fine, $200. (F. & D. No. 42530. Sample Nos. 62597–C, 62598–C.)

This case involved Brazil nuts which were in part moldy, rancid, and decomposed.

On August 23, 1938, the United States attorney for the Southern District of New York filed an information against William A. Higgins & Co., Inc., New York, N. Y., alleging shipment by said defendant on or about October 26, 1937, from the State of New York into the State of Pennsylvania of a quantity of Brazil nuts which were adulterated in that they consisted in whole or in part of a decomposed substance, namely, Brazil nuts which were moldy, rancid, or decomposed. The article was labeled in part: "Tastbest * * * Brazils."

On July 8, 1939, the defendant having waived trial by jury and the case having been submitted to the court for determination, judgment of guilty was entered and a fine of $200 was imposed. In pronouncing judgment, the court handed down the following opinion:

KNOX, *District Judge.* "In this case, the United States filed an information against defendant charging it with having shipped in interstate commerce, from New York City to Philadelphia, Pa., upon October 26, 1937, a quantity of Brazil nuts, which being moldy, rancid, and decomposed, were adulterated within the provisions of the Food and Drugs Act of June 30, 1906 (21 U. S. C. A. 2 and 8). Defendant having entered a plea of not guilty the issues came on for trial before me upon June 26, 1939. When the case was called, the United States attorney and counsel for the defendant stipulated that the issues should be tried before the court, without intervention by a jury. Evidence having been taken, the case argued, and briefs submitted, the entry of a verdict must now be directed.

"Once before, upon December 7, 1931, defendant was alleged to have committed a similar offense. Upon that occasion, defendant entered a plea of guilty and was fined $100. In consequence thereof, defendant is here alleged to be a second offender.

"If, in order to bring about the conviction of defendant, it were required that as of the date of shipment its knowledge of the condition of the nuts be shown, I should quickly decide that a verdict of not guilty be entered. The statute, upon which the information is based, contains no such requirement. Immediately the nuts moved in interstate commerce, and provided they were adulterated, the offense charged became complete. Aside from the fact that, in imposing penalties, considerations of a shipper's knowledge of the condition of the goods and his intent in making the shipment might properly be taken into account, these features of the case are without relevancy here.

"Upon the trial, the evidence satisfactorily indicated that defendant had every intention and purpose in shipping sound and edible goods. Prior to their shipment, they were sampled by two concerns which make a practice of engaging in such work. On each occasion, the nuts were found to be well within the range of tolerance approved by the Department of Agriculture. Upon arrival at destination, the goods were again sampled by a representative of the consignee.