

from the State of Missouri into the State of Illinois, 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 decomposed, filthy, and putrid animal substance. Adulteration was alleged for the further reason that the article consisted of portions of animals unfit for food.

On January 11, 1932, 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.*

**19633. Adulteration of pecans. U. S. v. 480 Pounds of Pecans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27388. I. S. No. 45827. S. No. 5583.)**

Samples of pecans from the shipment herein described having been found to be partially moldy, rancid, and shriveled, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Louisiana.

On December 16, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 480 pounds of pecans at New Orleans, La., alleging that the article had been shipped in interstate commerce on or about December 10, 1931, by Joseph Cornello, New Orleans, La., from Mobile, Ala., and had been transported from the State of Alabama into the State of Louisiana, 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 filthy, decomposed, and putrid vegetable substance.

On January 19, 1932, 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.*

**19634. Adulteration of dried apples. U. S. v. 200 Boxes, et al., of Dried Apples. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27594. I. S. Nos. 47165, 47166. S. No. 5621.)**

Samples of dried apples from the shipment herein described having been found to be in part filthy, insect-infested, and moldy, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Louisiana.

On December 22, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 400 boxes of dried apples, remaining in the original unbroken packages at New Orleans, La., alleging that the article had been shipped by the Napa Fruit Co., Napa, Calif., on or about November 18, 1931, and had been transported from the State of California into the State of Louisiana, 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 filthy, decomposed, and putrid vegetable substance.

On January 19, 1932, 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.*

**19635. Adulteration of pecans. U. S. v. 780 Pounds of Pecans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 27593. I. S. No. 45829. S. No. 5627.)**

Samples of pecans from the shipment herein described having been found to be in part shriveled, moldy, rancid, and decomposed, the Secretary of Agriculture reported the matter to the United States attorney for the Eastern District of Louisiana.

On December 22, 1931, the United States attorney filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 780 pounds of pecans, remaining in the original unbroken packages at New Orleans, La., alleging that the article had been shipped by Michael St. Angelo, of New Orleans, La., from Gulfport, Miss., on or about December 11, 1931, that it had been transported from the State of Mississippi

into the State of Louisiana, and that it was adulterated 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 filthy, decomposed, and putrid vegetable substance.

On January 19, 1932, 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.*

**19636. Alleged misbranding of flour and corn meal. U. S. v. American Maid Flour Mills. Information quashed.** (F. & D. No. 26606. I. S. Nos. 026996, 026998, 026999, 027000, 029990, 029991, 029992, 029995.)

This action was based on interstate shipments of four lots of flour and corn meal in sacks that were represented to contain 24 pounds of the articles. Examination showed that a large number of the sacks contained less than 24 pounds net, and that the average net weight of all sacks was less than 24 pounds.

On September 26, 1931, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid an information against the American Maid Flour Mills, a corporation, Houston, Tex., charging shipment by said company, in violation of the food and drugs act as amended, on or about February 20, 1930, from the State of Texas into the State of Louisiana, of quantities of flour and corn meal that were alleged to be misbranded. The articles were labeled in part: "24 Lbs." or "24 Lbs. Net."

It was alleged in the information that the articles were misbranded in that the statements "24 Lbs." and "24 Lbs. Net," borne on the sacks, were false and misleading, and for the further reason that the articles were labeled as aforesaid so as to deceive and mislead the purchaser, since the sacks did not contain 24 pounds of the articles, but did contain in practically all of the said sacks less than 24 pounds. Misbranding was alleged for the reason that the articles were food in package form and the quantity of the contents not plainly and conspicuously marked on the outside of the packages, since practically all of the packages contained less than declared.

On November 5, 1931, a motion to quash the information and a demurrer were filed on behalf of the defendant company. On February 6, 1932, the defendant's motion to quash was granted, the court handing down the following opinion. (Kennerly, *D. J.*): "This is a criminal information filed by the United States District Attorney against the American Maid Flour Mills, charging in six counts, under sections 1 to 15, of title 21, U. S. C. A., and particularly under paragraph 3 of section 10 of such title, the misbranding of certain sacks of flour, meal, etc., shipped in interstate commerce. It is alleged that such sacks were branded as containing each twenty-four (24) pounds, when in truth and fact they contained less, etc.

"(1) Defendant moves to quash the information, upon the ground, among others, that the statute under which the prosecution is brought violates the fifth and sixth amendments of the Federal Constitution, in that such statute, and particularly the provision as to 'reasonable variations,' constitutes a fixing by Congress of an unascertainable standard of guilt, and is inadequate to inform persons accused of criminal violations thereof, of the nature and cause of the accusation against them. That such motion is in that respect well taken, I entertain no doubt. *United States v. Shreveport Grain*, 46 Fed. (2d) 354, and cases there cited, including *United States v. Cohen*, 255 U. S. 93. Counsel for the Government strongly press upon me that the line of decisions represented by *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86, is controlling. In disposing of this contention, I cannot do better than to point to the language of Chief Justice White in *United States v. Cohen*, *supra*, as follows:

"But decided cases are referred to which, it is insisted, sustain the contrary view. *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86, 53 L. Ed. 417, 29 Sup. Ct. Rep. 220; *Nash v. United States*, 229 U. S., 373, 57 L. Ed. 1232, 33 Sup. Ct. Rep. 780; *Fox v. Washington*, 236 U. S., 273; 59 L. Ed. 573, 35 Sup. Ct. Rep. 383; *Miller v. Strahl*, 239 U. S. 426, 60 L. Ed. 364, 36 Sup. Ct. Rep. 147; *Omaechevarria v. Idaho*, 246 U. S. 343, 62 L. Ed. 763, 38 Sup. Ct. Rep. 323. We need not stop to review them, however, first, because their inappositeness is necessarily demonstrated when it is observed that, if the contention as to their effect were true, it would result, in view of the text of the statute, that no standard whatever was required, no information as to the nature and cause of the