demnation of two-quart hampers. Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses." The judgment sustaining the demurrers was sustained.

Under the ruling in the above case I am of the opinion that the facts alleged in Counts I and III do not constitute adulteration, therefore the Motion to Quash as to Counts I and III will be allowed.

I now come to Counts II and IV which charge misbranding.

Section 8 of the Food and Drugs Act (Sec. 9 Title 21 USCA) provides: "That the term 'misbranded' as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular. * * *"

In *United States* vs. *Lexington Mill & Elevator Company*, 232 U. S., 399, the court said: "The statute upon its face shows that the primary purpose of Congress was to prevent injury to the public by the sale and transportation in interstate commerce of misbranded and adulterated foods. The legislation against misbranding intended to make it possible that the consumer should know that an article purchased was what it purported to be; that it might be bought for what it really was, and not upon misrepresentations as to character and quality."

The Food and Drugs Act was passed for the purpose of protecting the general public, to preserve their health and to prevent their being deceived by label or brand as to the real character of the article offered for sale. *United States* vs. *95 Barrels of Vinegar*, 265 U. S. 438.

Again in the case of *United States* vs. *95 Barrels of Vinegar, supra*, the court said: "The statute is plain and direct. Its comprehensive terms condenmn every statement, design, and device which may mislead or deceive. Deception may result from the use of statements not technically false or which may be literally true. The aim of the statute is to prevent that resulting from indirection and ambiguity, as well as from statements which are false. It is not difficult to choose statements, designs, and devices which will not deceive. Those which are ambiguous and liable to mislead should be read favorably to the accomplishment of the purpose of the Act. * * * If an article is not the identical thing that the brand indicates it to be, it is misbranded."

It is agreed that the tablets here in question contain thyroid, a more or less powerful drug used in the treatment of certain diseases. These tablets are susceptible of analysis to determine just what ingredients and how much of each they do contain, in order that they may be accurately labeled.

I am of the opinion that a drug being here involved, the Act requires a correct statement thereof on the label.

The Motion to Quash as to Counts II and IV is denied, and defendant is given ten days in which to plead.

On February 25, 1937, a plea of nolo contendere was entered on behalf of the defendant corporation and the court imposed a fine of $25 and costs.

HARRY L. BROWN,
Acting Secretary of Agriculture.

27131. Adulteration and misbranding of tincture nux vomica U. S. P. U. S. v. Endo Products, Inc. Plea of guilty. Fine, $100. (F. & D. no. 37925. Sample no. 50523–B.)

This product differed from the standard prescribed for nux vomica in the United States Pharmacopoeia and contained a smaller proportion of the aklaloids of mux vomica than that represented on the label.

On March 1, 1937, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Endo Products Co., Inc., New York, N. Y., charging shipment by said corporation in violation of the Food and Drugs Act, on or about December 5, 1935, from the State of New York into the State of New Jersey of a quantity of an article, labeled "Tincture Nux Vomica U. S. P.", which was adulterated and misbranded.

It was alleged to be adulterated in that it was sold under and by a name recognized in the United States Pharmacopoeia, and differed from the standard of strength, quality, and purity as determined by the test laid down in said pharmacopoeia in that it yielded less than 0.237 gram, to wit, not more than

0.196 gram, of the alkaloids of nux vomica per 100 cubic centimeters; whereas said pharmacopoeia provided that tincture of nux vomica should yield not less than 0.237 gram of the alkaloids of nux vomica per 100 cubic centimeters, and the standard of strength, quality, and purity of the article was not declared on the container thereof. The article was alleged to be adulterated further in that its strength and purity fell below the professed standard and quality under which it was sold in that it was represented to be tincture of nux vomica that conformed to the standard laid down in the United States Pharmacopoeia; whereas in fact it was not tincture of nux vomica that conformed to the standard laid down in said pharmacopoeia.

The article was alleged to be misbranded in that the statement, "Tincture Nux Vomica U. S. P. * * * Standard–100 mils. contains 0.237–0.263 gm. Alkaloids", borne on the bottle labels, was false and misleading in that it represented that 100 cubic centimeters of the article contained 0.237 gram of the alkaloids of nux vomica, and that the article was tincture of nux vomica that conformed to the standard laid down in the United States Pharmacopoeia; whereas in fact 100 cubic centimeters of the article contained the alkaloids of nux vomica in a quantity less than 0.237 gram, and the article was not tincture of nux vomica which conformed to the standard laid down in said pharmacopoeia.

On March 15, 1937, a plea of guilty was entered by the defendant corporation and the court imposed a fine of $100.

HARRY L. BROWN,
Acting Secretary of Agriculture.

27132. Adulteration and misbranding of Compressed Tablets Ac-Ne-O. U. S. v. Latimer H. Studebaker. Plea of nolo contendere. Fine, $5 and costs. (F. & D. no. 37955. Sample nos. 23859–B, 52077–B.)

This product contained a smaller quantity of arsenous acid than that stated on the label.

On October 20, 1936, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Latimer H. Studebaker, Erie, Pa., charging shipment by said defendant in violation of the Food and Drugs Act, on or about June 24 and December 24, 1935, from the State of Pennsylvania into the State of New York of quantities of Compressed Tablets Ac-Ne-O that were adulterated and misbranded.

The article was alleged to be adulterated in that its strength and purity fell below the professed standard and quality under which it was sold, in that each of the tablets was represented to contain 1/50 of a grain of arsenous acid; whereas in fact each of the tablets contained not more than 1/100 of a grain of arsenous acid.

It was alleged to be misbranded in that the statement "Tablets * * * Ac. Arsenous 1–50 gr.", borne on the label, was false and misleading in that it represented that each of the tablets contained 1/50 of a grain of arsenous acid; whereas in fact each of the tablets contained less than 1/50 of a grain of arsenous acid.

On March 15, 1937, the defendant entered a plea of nolo contendere and the court imposed a fine of $5 and costs.

HARRY L. BROWN,
Acting Secretary of Agriculture.

27133. Adulteration and misbranding of Per-Gum Pyorrhea Prescription. U. S. v. Charles B. McFerrin (Dr. Charles B. McFerrin). Plea of nolo contendere. Fine, $25. (F. & D. no. 37995. Sample no. 49270–B.)

The label of this article bore fraudulent representations regarding its curative and therapeutic effects, and misrepresentations regarding its germicidal and antiseptic properties.

On December 17, 1936, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Charles B. McFerrin, trading as Dr. Charles B. McFerrin, Orlando, Fla., charging shipment by said defendant in violation of the Food and Drugs Act as amended, on or about June 15, 1935, from the State of Florida into the State of Oklahoma of a quantity of Per-Gum Pyorrhea Prescription that was adulterated and misbranded.

Analysis of the article showed that it was a pinkish, slightly fluorescent petroleum oil containing small quantities of salicylic acid and methyl salicylate.