products superficially resembling each other. The court was unable to say that such standard of identity, designed to eliminate a source of confusion to purchasers, will not promote honesty and fair dealing within the meaning of the statute.

"Neither the decision nor its rationalization in the *Quaker Oats* case, can be escaped by a product that looks, tastes, and smells like catsup, which caters to the market for catsup, which dealers bought, sold, ordered, and invoiced as catsup, without reference to the preservative, and which substituted for catsup on the tables of low priced restaurants. The observation in the opinion that it was the purpose of the Congress to require informative labeling, 'where the food did not purport to comply with a standard' is not to be lifted out of its context, given a meaning repugnant to the decision, so as to limit 'purport' to what is disclosed by the label and to that alone.

"The contention that Congress did not intend to, and may not prohibit shipment of non-deleterious substances, is fully answered both in the *Quaker Oats* case and *U. S.* v. *Carolene Products Co.*, 304 U. S. 144, where the regulation is in the interest of consumers. *Libby, McNeill & Libby* v. *U. S.*, 210 Fed. 148 (C. C. A. 4). While the recent case in the Sixth Circuit, *U. S.* v. *2 Bags more or less of Poppy Seeds*, 147 Fed. 2nd 123, decided January 31, 1945, involved a libel under the adulteration section of the Act, § 402 (b) (3) and (4), it was there held that the appropriate inquiry is whether the ultimate purchaser will be misled. The contention of the appellant that transactions subsequent to the interstate movement of a food have no bearing upon whether the regulation or standard is avoided, and which is supported only by reference to the *Poppy Seed* case in the district court, 54 Fed. Supp. 706, now reversed, must be rejected. *Nolan* v. *Morgan*, 69 Fed. (2d) 471 (C. C. A. 7) and *U. S.* v. *Nesbitt Fruit Products Inc.*, 96 Fed. (2d) 972 (C. C. A. 5), did not involve standards of identity, and both cases were decided prior to the *Quaker Oats* case. The argument that an affirmance of the decision below will prevent the development of new foods and "lay a dead hand on progress" is one that may more appropriately be addressed to the Administrator or to Congress than to the courts.

"The order of condemnation is affirmed."

7164. Adulteration of dill tomato pickles. U. S. v. 114 Cases of Dill Tomato Pickles. Default decree of condemnation and destruction. (F. D. C. No. 12491. Sample No. 66796–F.)

LIBEL FILED: June 1, 1944, Western District of Oklahoma.

ALLEGED SHIPMENT: On or about October 18, 1943, by Bond Pickle Co., from Oconto, Wis.

PRODUCT: 114 cases, each containing 12 quart jars, of dill tomato pickles at Oklahoma City, Okla.

LABEL, IN PART: (Jars) "Bond's Dill Tomato Pickles"

VIOLATION CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: August 10, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

MEAT AND POULTRY

7165. Adulteration of poultry. U. S. v. 15 Barrels of Poultry. Default decree of condemnation and destruction. (F. D. C. No. 14068. Sample No. 45179–F.)

LIBEL FILED: October 24, 1944, Southern District of New York.

ALLEGED SHIPMENT: On or about July 27, 1944, by Litchfield Produce Co., from Melrose, Minn.

PRODUCT: 15 barrels, each containing approximately 35 to 40 Leghorn-type fowl, at New York, N. Y.

VIOLATION CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

DISPOSITION: December 7, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.