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

accusation was essential and that it was competent to delegate legislative power, in the very teeth of the settled significance of the fifth and sixth amendments and of other plainly applicable provisions of the Constitution; and second, because the cases relied upon all rested upon the conclusion that, for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded. Indeed, the distinction beween the cases relied upon and those establishing the general principle to which we have referred, and which we now apply and uphold as a matter of reason and authority, is so clearly pointed out in decided cases that we deem it only necessary to cite them. International Harvester Co. *v.* Kentucky, 234 U. S. 216, 221; Collins *v.* Kentucky, 234 U. S. 634, 637; American Seeding Machine Co. *v.* Kentucky, 236 U. S. 660, 662; and see United States *v.* Pennsylvania R. R. Co., 242 U. S. 208, 237–238.

"(2) Defendant, in like manner, attacks the information because of the provisions of paragraph 3 of section 10, permitting the fixing of tolerances and exemptions (and possibly of variations) by rules and regulations promulgated by the Secretaries of the Treasury, Agriculture, and Commerce under section 3 of title 21. There is no allegation in the information of the promulgation of, nor the violation by defendant of, any such rules and regulations. The only charge is a violation of the statute. Defendant, therefore, cannot raise this point on motion to quash.

"(3) Defendant also demurs to the information, upon the ground that it is vague, indefinite, insufficient and fails to state an offense under the laws of the United States. I think if the statute in question is valid, the information is sufficient. If defendant desired more detailed information regarding the offense with which it is charged, its remedy was to call for bill of particulars.

"It seems unnecessary to discuss the other questions raised. The motion to quash will, for the reason stated, be granted."

The information was dismissed in accordance with the above opinion.

ARTHUR M. HYDE, Secretary of Agriculture.

19637. Adulteration of salmon. U. S. v. 40 Cases, et al., of Canned Salmon. Consent decrees of condemnation. Product released under bond. (F. & D. Nos. 27398, 27633, 27634, 27635. I. S. Nos. 42914, 42918, 42919, 42920. S. Nos. 5601, 5675, 5676, 5677.)

Samples of canned salmon taken from the interstate shipments involved in these actions were found to be tainted or stale.

On December 19, 1931, and January 4, 1932, the United States attorney for the Middle District of Pennsylvania, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid libels praying seizure and condemnation of 164 cases of canned salmon, remaining in the original unbroken packages in part at Nanticoke, Pa., and in part at Scranton, Pa., alleging that the article had been shipped by Libby, McNeill & Libby, from Seattle, Wash., on or about September 26 and October 15, 1931, and had been transported from the State of Washington into the State of Pennsylvania and charging adulteration in violation of the food and drugs act. The article was labeled in part: (Can) "Happy-Vale Brand Pink Salmon * * * Packed for Emery Food Co., Chicago."

It was alleged in the libels that the article was adulterated in that it consisted in part of a decomposed animal substance.

The Emery Food Co., Chicago, Ill., entered an appearance and claim admitting the material allegations of the libels and consenting to the entry of a decree. On February 5, 1932, judgment of condemnation was entered and it was ordered by the court that the product be delivered to the claimant, upon the execution of bonds totaling $840. The decrees further ordered that the claimant make a separation of the good and bad salmon; that the portion segregated as good be submitted to this department for final determination and that all salmon so determined to be good might be released unconditionally; that the portion determined by this department to be bad should be disposed of in manner not contrary to the provisions of the food and drugs act; and that claimant pay all costs. On May 26, 1932, the decrees were amended to permit shipment of the goods to Seattle, Wash., there to be segregated in accordance with the terms of the decrees.

ARTHUR M. HYDE, *Secretary of Agriculture.*