It was alleged in the information that the article was adulterated in that it consisted in whole and in part of a filthy, decomposed, and putrid vegetable substance.

On September 29, 1933, the defendant entered a plea of nolo contendere to the information, and on October 3, 1933, the court imposed a fine of $25 on each of the five counts. Execution of sentence was suspended on counts 2 to 5, inclusive, and defendant was placed on probation for one year as to the violations covered by said counts.

M. L. WILSON, *Acting Secretary of Agriculture.*

21361. Misbranding of corn meal. U. S. v. Shreveport Grain & Elevator Co. Motion to quash and demurrer to indictment filed. Motion and demurrer sustained by District Court. Appeal to Supreme Court. Judgment of District Court reversed. Plea of nolo contendere. Fine, $100. (F. & D. no. 23765. I.S. nos. 0930, 0931, 0932, 0933.)

This indictment was based on various shipments of corn meal made by the defendant company, which had been weighed by a representative of this Department and found to be short of the declared net weight.

On November 4, 1931, the grand jurors of the United States for the Western District of Louisiana, acting upon a report by the Secretary of Agriculture, presented an indictment against the Shreveport Grain & Elevator Co., a corporation, Shreveport, La., charging shipment by the defendant company on or about April 3, 4, and 5, 1929, from the State of Louisiana into the State of Mississippi, of quantities of corn meal which was misbranded. The article was labeled: (Sacks) "Red Head Fresh Ground Meal Shreveport Grain & Ele. Co. Shreveport, La. Fresh Ground Meal Net 96 [or "24" or "98"] Lbs."

It was charged in the indictment that the article was misbranded in that the statements of weight borne on the labels, to wit, "96 Lbs. Net", "24 Lbs. Net" and "98 Lbs. Net", were false and misleading; for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the sacks contained less than so labeled, the alleged 96-pound sacks containing not more than 94 pounds 12 ounces net, the alleged 24-pound sacks containing not more than 23 pounds net, and the alleged 98-pound sacks containing not more than 97 pounds net. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages.

On November 9, 1931, the defendant filed a demurrer and motion to quash the indictment, which were submitted to the court on briefs on November 24, 1931, and were sustained by the court in the following opinion handed down February 8, 1932 (Dawkins, *J.*):

"For the reasons given in memorandum opinion handed down in a similar prosecution by the Government against this defendant some months ago (U.S. *v.* Shreveport Grain & Elevator Co., no. 5542) (Notice of Judgment No. 18300) I think the demurrer and motion to quash should be sustained. Proper decree should be presented."

The Government filed a bill of exceptions and a petition for an order of appeal direct to the Supreme Court of the United States, which petition was granted on March 7, 1932. On November 7, 1932, the Supreme Court handed down the following opinion reversing the judgment of the district court:

"The defendant (appellee) was charged by indictment, returned in the court below, with misbranding certain sacks, containing corn meal, an article of food by labeling each of the sacks as containing a greater quantity by weight than in fact was contained therein, contrary to the provisions of the Food and Drugs Act of June 30, 1906, c. 3915, 34 Stat. 768, U.S.C., Title 21, § 2, which make it unlawful to ship in interstate or foreign commerce any article of food or drugs which is adulterated or misbranded, within the meaning of the act. The penalty prescribed is a fine of $200 for the first offense, and for each subsequent offense, not exceeding $300, or imprisonment not exceeding one year, or both, in the discretion of the court. Section 8, as amended by the act of March 3, 1913, c. 117, 37 Stat. 732, provides that an article of food shall be deemed to be misbranded—

"Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count; provided, however, That reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section three of this act.

"A motion to quash the indictment was interposed by the defendant upon the grounds that the act of Congress relied on is unconstitutional, because (1) the offense is not defined with certainty and therefore the act violates the due process clause of the Fifth Amendment, and the requirement of the Sixth Amendment that the accused shall enjoy the right 'to be informed of the nature and cause of the accusation'; and (2) it is in conflict with Articles I, II, and III of the Federal Constitution which separate the Government into legislative, executive, and judicial branches.

"The court below sustained the motion and dismissed the proceedings. The case comes here by appeal under the provisions of § 238 of the Judicial Code, as amended by the Act of February 13, 1925. U.S.C., Title 28, § 345; U.S.C., Title 18, § 682.

"First. The contention seems to be that the proviso makes it necessary to read § 8 as substantively prohibiting unreasonable variations in the weight, measure, or numerical count of the quantity and contents of any package from that marked on the outside of the package; and that the test thereby indicated is so indefinite and uncertain that it fails to fix any ascertainable standard of guilt, or afford a valid definition of a crime. In support of the contention United States *v.* Cohen Grocery Co., 255 U.S. 81, United States *v.* Brewer, 139 U.S. 278, Connally *v.* General Construction Co., 269 U.S. 385, and other decisions of this court are relied upon.

"We are of the opinion that the construction thus sought to be put upon the act cannot be sustained; and, therefore, other considerations aside, the cases cited do not apply. The substantive requirement is that the quantity of the contents shall be plainly and conspicuously marked in terms of weight, etc. We construe the proviso simply as giving administrative authority to the Secretaries of the Treasury, Agriculture, Commerce, and Labor to make rules and regulations permitting reasonable variations from the hard and fast rule of the act and establishing tolerances and exemptions as to small packages, in accordance with § 3 thereof.[1] This construction avoids the doubt which otherwise might arise as to the constitutional point, and, therefore, is to be adopted if reasonably possible. United States *v.* Standard Brewery, 251 U.S. 210, 220; United States *v.* La Franca, 282 U.S. 568, 574. We find nothing in the terms of the act to require a division of the proviso so that the power of regulation will apply to the establishment of tolerances and exemptions, but not to reasonable variations. We think both are included. As to this there would be no room for doubt if it were not for the presence of a comma after the word 'permitted', or the absence of one after the word 'established.' Inserting the latter, the proviso would read, 'That reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established, by rules and regulations . . .' Punctuation marks are no part of an act. To determine the intent of the law, the court, in construing a statute, will disregard the punctuation, or will repunctuate if that be necessary, in order to arrive at the natural meaning of the words employed. Hammock *v.* Loan & Trust Co., 105 U.S. 77, 84–85; United States *v.* Lacher, 134 U.S. 624, 628; United States *v.* Oregon & California R. Co., 164 U.S. 526, 541; Stephens *v.* Cherokee Nation, 174 U.S. 445, 480; Chicago, M. & St. P. Ry. Co. *v.* Voelker, 129 Fed. 522, 526–527.

"Our attention is called to the fact that the House Committee on Interstate and Foreign Commerce, in reporting the bill which afterwards became the act in question (H.R. 850, 62d Cong., 2d sess. pp. 2–4), agreed with the view that the authority to make rules and regulations was confined to the establishment of tolerances and exemptions; and that the Senate Committee on Manufactures (S.Rept. 1216, 62d Cong., 3d sess., pp. 2–4) reported to the same effect. In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. Wisconsin R.R. Comm. *v.* C., B. & Q. R. Co., 257 U.S. 563, 588–589; Penna. R. Co. *v.* International Coal Co., 230 U.S. 184, 199; Van Camp & Sons *v.* American Can Co., 278 U.S. 245, 253. Like other extrinsic aids to construction their use is 'to *solve*, but not to *create* an ambiguity.' Hamilton *v.* Rathbone, 175 U.S. 414, 421. Or, as stated in United States *v.* Hartwell, 6 Wall. 385, 396, 'If the language be clear it is conclusive. There can be no construction where there is nothing to construe.' The same rule is recognized by the English

[1] Sec. 3 provides that the Secretaries named "should make uniform rules and regulations for carrying out the provisions of this act. * * *"

courts. In King *v.* Commissioners, 5 A. & E. 804, 816, Lord Denman, applying the rule, said that the court was constrained to give the words of a private act then under consideration an effect which probably was 'never contemplated by those who obtained the act, and very probably not intended by the legislature which enacted it. But our duty is to look to the language employed, and construe it in its natural and obvious sense.' See also United States *v.* Lexington Mill Co., 232 U.S. 399, 409; Caminetti *v.* United States, 242 U.S. 470, 485.

"Moreover, the practical and long continued construction of the executive departments charged with the administration of the act and with the duty of making the rules and regulations therein provided for, has been in accordance with the view we have expressed as to the meaning of the section under consideration. The rules and regulations, as amended on May 11, 1914, deal with the entire subject in detail under the recital, '(i) The following tolerances and variations from the quantity of the contents marked on the package shall be allowed: . . .' Then follows an enumeration of discrepancies due to errors in weighing which occur in packing conducted in compliance with good commercial practice; due to differences in capacity of bottles and similar containers, resulting from unavoidable difficulties in manufacture, etc.; or in weight due to atmospheric differences in various places, etc. These regulations, which cover variations as well as tolerances and exemptions, have been in force for a period of more than eighteen years, with the silent acquiescence of Congress. If the meaning of the statutory words was doubtful, so as to call for a resort to extrinsic aid in an effort to reach a proper construction of them, we should hesitate to accept the committee reports in preference to this contemporaneous and long continued practical construction of the act on the part of those charged with its administration. Such a construction, in cases of doubtful meaning, is accepted unless there are cogent and persuasive reasons for rejecting it. See, for example, United States *v.* Johnston, 124 U.S. 236, 253.

"Second. The contention that the act contravenes the provisions of the Constitution with respect to the separation of the governmental powers is without merit. That the legislative power of Congress cannot be delegated is, of course, clear. But Congress may declare its will, and after fixing a primary standard, devolve upon administrative officers the 'power to fill up the details' by prescribing administrative rules and regulations. That the authority conferred by the act now under review in this respect does not transcend the power of Congress is not open to reasonable dispute. The effect of the provision assailed is to define an offense, but with directions to those charged with the administration of the act to make supplementary rules and regulations allowing reasonable variations, tolerances, and exemptions, which, because of their variety and need of detailed statement, it was impracticable for Congress to prescribe. The effect of the proviso is evident and legitimate, namely, to prevent the embarrassment and hardship which might result from a too literal and minute enforcement of the act, without at the same time offending against its purposes. The proviso does not delegate legislative power but confers administrative functions entirely valid within principles established by numerous decisions of this court, of which the following may be cited as examples. Buttfield *v.* Stranahan, 192 U.S. 470, 496; Plymouth Coal Co. *v.* Pennsylvania, 232 U.S. 531, 542; United States *v.* Grimaud, 220 U.S. 506, and authorities reviewed."

Judgment reversed.

On October 9, 1933, a plea of nolo contendere was entered on behalf of the defendant company, and the court imposed a fine of $100.

M. L. WILSON, *Acting Secretary of Agriculture.*

21362. Adulteration of blueberries. U. S. v. 9 Crates of Blueberries. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 30971. Sample no. 47077-A.)

This case involved an interstate shipment of blueberries which were found to contain maggots.

On August 7, 1933, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of nine crates of blueberries at Boston, Mass., consigned August 6, 1933, alleging that the article had been shipped in interstate commerce by Alfred Karlson, from Rockland, Maine, 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.