pink card shipped with one lot, were false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since it did not consist essentially of yeast but did consist in large part of corn meal, which does not represent the utmost in feeding value for livestock and poultry and it was not a pure, unadulterated bacteria product free from any foreign materials or ingredients. Misbranding was further alleged under the provisions of the law applicable to foods, in that the article was composed in large part of corn meal prepared in imitation of a product composed essentially of yeast, and was offered for sale, and sold under the distinctive name of another article, namely, yeast and stock yeast.

Further misbranding was charged under the provisions of the law applicable to drugs, in that certain statements, designs, and devices regarding its therapeutic and curative effects, appearing on a white card shipped with one lot, falsely and fraudulently represented that the article was effective as a treatment, remedy, and cure for white diarrhea, coccidiosis in poultry, and necro and scours in swine.

On December 3, 1935, the defendant entered a plea of guilty and the court imposed a fine of $10 and costs.

W. R. Gregg, *Acting Secretary of Agriculture.*

25535. Misbranding of jellies and preserves. U. S. v. Wooster Preserving Co., a corporation. Plea of nolo contendere. Fine, $400 and costs. (F. & D. no. 31527. Sample nos. 4605–A, 32808–A, 32809–A, 32810–A, 32811–A, 32813–A, 32814–A, 32815–A, 32816–A, 32817–A.)

The containers of these articles bore labels that erroneously represented the weight of their contents.

On June 21, 1934, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Wooster Preserving Co., a corporation, Wooster, Ohio, alleging shipment by it, in violation of the Food and Drugs Act, as amended, in the period from September 20, 1932, to February 18, 1933, from Wooster, Ohio, to Fort Wayne, Ind., and Pittsburgh, Pa., of quantities of jellies and preserves that were misbranded. The articles were labeled, severally, in part: (Jar) "Apple & Strawberry Net Weight 8 Oz. Avd. Pure Sugar Jelly Packed By The Wooster Preserving Co. Wooster, Ohio."; (can) "Red Raspbry-Preserves * * * 8½ Lbs.-W"; (can) "Strawbry Preserves * * * Contents 8½ Lbs.-W"; (can) "Peach Preserves * * * Contents 8½ Lbs.-W"; (can) "Apricot Preserves * * * Contents 8½ Lbs.-W"; (can) "Apple-Currant Jelly * * * Contents 8½ Lbs."; (can) "Apple-Strawberry Jelly * * * Contents 8½ Lbs."; (can) "Apple-Grape Jelly * * * Contents 8½ Lbs."; (can) "Apple-Raspberry Jelly * * * Contents 8½ Lbs."

Misbranding of the apple and strawberry jelly was charged (a) under the allegations that the labels on the jars bore the statement, to wit, "Net Weight 8 Oz.", that each of the jars contained an amount less than 8 ounces, and that the said statement was false and misleading; (b) under the allegation that the article was labeled as aforesaid so as to deceive and mislead the purchaser; (c) under the allegation that the article was in package form and that the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

Misbranding of each of the nine other articles was severally charged (a) under the allegations that the labels on the cans bore the statement, to wit, "8½ Lbs.", that each of the cans contained an amount less than 8½ pounds, that the said statement was false and misleading; (b) under the allegation that the article was labeled as aforesaid so as to deceive and mislead the purchaser; (c) under the allegation that the article was in package form and that the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On March 21, 1936, a plea of nolo contendere having been entered, a fine of $400 was imposed, with costs.

W. R. Gregg, *Acting Secretary of Agriculture.*

25536. Alleged adulteration of cold-pack strawberries. U. S. v. 359 Barrels of Cold-Pack Strawberries. Libel dismissed. (F. & D. no. 31565. Sample no. 49993–A.)

Decomposed fruit was alleged to be present in this product.

On November 9, 1933, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 359 barrels of

cold-pack strawberries at Erie, Pa., alleging that the article had been shipped in interstate commerce in June 1933, by the Brocton Preserving Co., from Brocton, N. Y., to Erie, Pa., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (Stenciled on barrel) "C. P. Strawberries Three and one [or Two and one] Four hundred lbs. net [or Four hundred fifty lbs. net] Seven Three two one."

Adulteration of the product was charged under the allegation that it consisted in whole or in part of a decomposed vegetable substance.

Goldmeyer & Arnold, Inc., New York, N. Y., appeared as claimant and answered the libel, annexing to the answer 14 interrogatories propounded to the libelant. The Government moved to strike the interrogatories. On December 18, 1934, an order striking them was entered, pursuant to a memorandum by the court which contained a paragraph as follows: "Upon consideration of the matter we are of opinion that Admiralty Rule No. 31 is not applicable to libels under the Food and Drugs Act. 443 Cans of Egg Product v. United States, 226 U. S., 173."

On November 25, 1935, a decree dismissing the libel was entered pursuant to findings and conclusions by the court, as follows:

GIBSON, *District Judge:* The court makes the following Finding of Facts. 1. The 359 barrels of Cold Pack Strawberries, seized pursuant to libel, did not consist wholly or in part of decomposed vegetable substance.

Conclusions of Law. 1. The 359 barrels of Cold Pack Strawberries, seized pursuant to the libel, were not adulterated as contemplated by Section 7 of the Food and Drugs Act, Paragraph 6.

2. The libel must be dismissed.

No appeal.

W. R. GREGG, *Acting Secretary of Agriculture.*

25537. Misbranding of preserves. U. S. v. Goodwin Preserving Co., Inc. Tried to the court; judgment of guilty. Fine, $200 and costs. (F. & D. no. 32109. Sample nos. 15490–A, 15491–A, 15493–A, 15494–A.)

This case was based on an interstate shipment of preserves which were short of the weight declared on the label.

On June 12, 1934, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Goodwin Preserving Co., Inc., alleging shipment by said company in violation of the Food and Drugs Act, as amended, on or about February 10, 1933, from the State of Kentucky into the State of Indiana of quantities of preserves which were misbranded. The article was labeled in part: "Perry's Verified Food Products, Contents 15 oz. Apricot [etc.] Preserves Distributed by J. C. Perry & Company, Indianapolis, Ind."

On September 7, 1934, the defendant having filed a motion to dismiss the information, the court made the following ruling:

DAWSON, *Judge:* This case came on to be heard on the defendant's motion to dismiss this cause on the grounds that the "Bill of Complaint" (Information) does not constitute a cause of action against the defendant and is wholly insufficient at law.

Said Motion was argued by counsel for the defendant who contended that no cause of action is stated because the Food & Drugs Act is unconstitutional.

The Court treats the Motion to Dismiss as a General Demurrer to the Information, and after considering same, being advised,

It is Ordered by the Court that said Demurrer insofar as it attacks the constitutionality or validity of the Act of Congress of June 30, 1906, known as the Food & Drugs Act, be and it is hereby overruled.

It is Further Ordered by the Court that the demurrer be and it is hereby sustained in this: that the Information is not sufficient by reason of the fact that it fails to show that the alleged discrepancies between the actual weight and the branded weight were in excess of the tolerance and variation authorized by the Rules and Regulations of the Department of Agriculture.

The plaintiff is permitted to amend the Information in this respect.

The United States, by counsel, excepts to the foregoing ruling insofar as it sustains the Demurrer in part as aforesaid.

On September 7, 1934, the information was amended.

It was charged in the information, as amended, that the article was misbranded in that the statement "Contents 15 Oz.", borne on the label, was false and misleading, and in that it was labeled so as to deceive and mislead the purchaser, since the jars contained less than 15 ounces of the article.