on appeal, except the statement, 'Almost any diet can be nutritionally improved by the use of DEXTRA Fortified Cane Sugar in place of sweetening agents containing only "empty" calories—calories unaccompanied by nutrients.'

"The Government based its entire case here on the proposition that proof below showed that the average American diet is adequate without the need to be 'nutritionally improved.' Therefore, it is argued, it is false to say that 'almost any [person's] diet can be nutritionally improved by the use of' dextra fortified cane sugar or anything else. The appeal also complains that the trial court erred in admitting certain evidence in the nature of studies and articles which were offered without an opportunity for cross-examination of the authors of the articles, and the Government also complained of the introduction into evidence of subsequent statements placed on packages later adopted by the owner of the seized product and proof that other products on the American market contained somewhat similar statements.

"In light of the fact that any purchaser of food products could elect to maintain his present 'average' diet with sufficient nutrients in it, or, if he wished, change to a different diet and substitute dextra fortified cane sugar for some other item, we conclude that the trial court was not in error in finding as a fact that the challenged statement was not false and misleading.

"We conclude that the alleged errors with respect to the admission of evidence are insubstantial and do not bear upon the correctness of the finding of fact which was dispositive of the case.

"The judgment of the trial court is, therefore,

AFFIRMED."

29729. Sorghum sirup. (F.D.C. No. 49819. S. Nos. 33-410/11 A.)

QUANTITY: 96 cases, each containing 12 cans, and 12 cases, each containing 24 cans, at Fayetteville, Tenn.

SHIPPED: Between 9-28-63 and 10-17-63, from Fayette, Ala., by B. E. Cobb.

LABEL IN PART: (Can) "Cobb's—Country Sorghum—Guaranteed Good No Additives—Net Wt. 3 Pt., 4 Fluid Oz. or [12 Case Lot "Net Contents 12 Fluid Oz."] B. E. Cobb * * * Fayette, Ala."

RESULTS OF INVESTIGATION: Examination showed that the article was approximately (96-case lot) 6.81 percent, and (12-case lot) 12.67 percent, short volume.

LIBELED: 3-9-64, E. Dist. Tenn.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of quantity of contents since the label statement "Net Wt. 3 Pt. 4 Fluid Oz." [or 12-case lot "Net Contents 12 Fluid Oz."] was inaccurate.

DISPOSITION: 7-31-64. Consent—claimed by B. E. Cobb for relabeling.

29730. Sorghum sirup. (F.D.C. No. 50293. S. No. 59-240 A.)

QUANTITY: 128 4½-lb. cans at Overland Park, Kans.

SHIPPED: 11-29-63, from Kansas City, Mo., by Glen Broyles.

LABEL IN PART: (Can) "Country Sorghum * * * Made From Cane Juice Made For Glen Broyles, Distr. * * * Kansas City 18, Mo."

LIBELED: 6-17-64, Dist. Kans.

CHARGE: 402(b)(2)—when shipped, a mixture of sorghum and a sugar sirup had been substituted in whole or in part for sorghum sirup; and 403(a)—the label statement "Sorghum" was false and misleading as applied to a product consisting of a mixture of sorghum with a sugar sirup.

DISPOSITION: 9-21-64. Default—delivered to a Government institution.

29731. Malt-flavored sirups. (F.D.C. No. 49670. S. Nos. 78-326/28 X.)