case has been brought is to protect the consumer public from adulterated and misbranded foods. We are here only concerned with foods, although the Act deals with other things. Underlying that protection is, of course, the basic idea of the promotion and preservation of health, through production and distribution of food which is not deleterious, but healthy. This, of course, presupposes that the public shall be protected from deception as to the true character of the food that is being shipped in interstate commerce. Certainly, the Government is the proper agency to surround the public with the safeguards that are necessary in order to prevent adulterated and misbranded food, but this Court believes that any regulation passed in furtherance of these basic principles exceeds the legitimate bounds of administrative regulation if it does not operate fairly and reasonably with respect to the producers or distributors of the articles involved, as well as with respect to the consumer public. It is true the Administrator is vested with broad, discretionary authority. It is also true that, for this reason, his findings are to be accepted as conclusive if supported by substantial evidence, *provided always, however, they are within statutory and constitutional limitations.* Security Adm'r vs. Quaker Oats Co., 318 U. S. 218. In the present case, we find they are not within either limitation.

"Barring cases of inherently dangerous products, as for example, poisons and habit-forming drugs with respect to which of course very stringent regulations must control, when, as here, we are dealing with one of the commonest vegetables—one of the commonest foods that all of us partake of from day to day not only in season but out (thanks to the canning industry), the rights of the grower and canner of peas must be correlated to the rights of the consumer public, so that *all* are protected in a fair and reasonable manner.

"In the present case it follows from what has been said that the Court finds the Administrator in promulgating that part of Regulation 51.001 here involved, fixing the alcohol-insoluble solids content of Alaska peas at not more than 23.5%, has overemphasized the factor of consumer taste, and thereby has been so rigid in the regulation, in order to meet the consumer taste, that he has acted in undue derogation of the rights of the growers and canners of such peas in this general area. Whether this finding is actually supported by the weight of the credible testimony at the hearing which led up to the promulgation of the Regulation, we do not purport to determine. It is not necessary to do so, because, as heretofore explained, defendant is not controlled by what was proved or decided by that hearing, but has a right to have this Court decide the question of the Regulation's validity upon the evidence produced before it.

"The Administrator does not have *unlimited power* with respect to promulgating food regulations. He has *only* such power as is expressly given him or reasonably implied by the terms of the Act, so that the intent of the Act may be effectively carried out. Each case must be heard and decided upon its own facts. The Court is conscious of the fact that recently several canners appeared in this Court under similar charges, pleaded guilty and the Court imposed fines, but the legality of the Regulation was not raised in those cases. Of course, had it been raised, and had all the features of the issues been presented as fully as in the present case, the Court would have been disposed to reach the same conclusion in those cases that it has reached in the present case. There is no res adjudicata as respects the present defendant by reason of what occurred in previous cases. No defendant in a criminal case is precluded, unless by some express statutory provision or unless he has himself waived the right, from testing the validity of any statute or regulation passed pursuant thereto, when prosecuted for an alleged violation of same.

"Judgment will be signed in accordance with this opinion."

8940. Misbranding of canned peas. U. S. v. Meyer Levy (Colorado Brokerage Co.). Plea of nolo contendere. Fine, $250. (F. D. C. No. 15501. Sample No. 57975–F.)

INFORMATION FILED: April 24, 1945, District of Colorado, against Meyer Levy, trading as the Colorado Brokerage Co., Denver, Colo.; charging that the defendant labeled a quantity of substandard canned peas with standard labels while they were held for sale after shipment in interstate commerce, which act resulted in the misbranding of the product. The peas had been shipped to the defendant from Fremont, Nebr., between the approximate dates of August 24 and 28, 1943, and were unlabeled when shipped.

LABEL, IN PART: (After shipment) "Myrna * * * Early June Peas," or Harvester Brand Early June Peas."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the product was below standard.

DISPOSITION: May 4, 1945. The defendant having entered a plea of nolo contendere, the court imposed a fine of $250.

8941. Misbranding of canned peas. U. S. v. 590 Cases of Canned Peas. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 15217. Sample No. 22613–H.)

LIBEL FILED: February 6, 1945, Southern District of Iowa.

ALLEGED SHIPMENT: On or about September 21, 1944, by the Lakeside Packing Co., from Sheboygan, Wis.

PRODUCT: 590 cases, each containing 24 cans, of peas at Des Moines, Iowa.

LABEL, IN PART: "Sea Gem Brand Early Peas Size 4 Net Wt. 1 Lb. 4 Oz."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the product was substandard.

DISPOSITION: March 19, 1945. The Lakeside Packing Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond for relabeling under the supervision of the Food and Drug Administration.

8942. Misbranding of canned peas. U. S. v. 360 Cases of Canned Peas. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. D. C. No. 14454. Sample No. 97610–F.)

LIBEL FILED: November 10, 1944, District of Minnesota.

ALLEGED SHIPMENT: On or about September 17, 18, and 24, 1943, by the Hancock-Nelson Mercantile Co., from Stanley, Wis.

PRODUCT: 360 cases, each containing 24 20-ounce cans, of peas at Saint Paul, Minn.

LABEL, IN PART: "Fawn June Peas * * * Packed by Chippewa Canneries, Chippewa Falls, Wisconsin."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the article was substandard.

DISPOSITION: November 13, 1944. No claimant having appeared, judgment of condemation was entered and the product was ordered delivered to a charitable institution. On June 27, the decree was amended to authorize distribution of the product to several other institutions of similar nature.

8943. Misbranding of canned peas. U. S. v. 145 Cases of Canned Peas. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. D. C. No. 15446. Sample No. 10011–H.)

LIBEL FILED: February 27, 1945, Western District of Pennsylvania.

ALLEGED SHIPMENT: On or about January 15, 1945, by A. W. Feeser & Co., Inc., from Taneytown, Md.

PRODUCT: 145 cases, each containing 24 cans, of peas at Johnstown, Pa.

LABEL, IN PART: "Keymar Early June Peas."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the product was below standard.

DISPOSITION: April 3, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to charitable institutions.

8944. Misbranding of canned peas. U. S. v. 136 Cases of Canned Peas. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 15187. Sample No. 18313–H.)

LIBEL FILED: February 2, 1945, Northern District of Iowa.

ALLEGED SHIPMENT: On or about October 28, 1944, by the Mineral Point Cooperative Packers, from Mineral Point, Wis.

PRODUCT: 136 cases, each containing 24 cans, of peas at Laurens, Iowa.

LABEL, IN PART: "Good Meal Brand Wisconsin Early June Peas Contents 1 Lb. 4 Oz."

NATURE OF CHARGE: Misbranding, Section 403 (h) (1), the product was substandard.