

As the average gross weight of each can was found to be less than 1 pound 8 ounces, and the claim was made on the label that each can weighed 2 pounds, the goods were misbranded. The United States attorney for the western district of Oklahoma filed an information against J. W. Ogburn for the aforesaid offense, with the result hereinbefore stated.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. MCCABE,

Board of Food and Drug Inspection.

Approved:

W. M. HAYS,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *November 2, 1908.*

(N. J. 27.)

MISBRANDING OF CANNED BLACKBERRIES.

(UNDERWEIGHT.)

In accordance with the provisions of section 4 of the food and drugs act of June 30, 1906, and of regulation 6 of the rules and regulations for the enforcement of the act, notice is given that on the 11th day of September, 1908, in the District Court of the United States for the Western District of Oklahoma, in a proceeding of libel for condemnation of 800 cases of canned blackberries, misbranded as to weight, wherein the United States was libelant and J. S. Ogburn & Company of Lindale, Tex., were claimants, the said claimants having filed their answer, and the cause having come on for a hearing, a decree of forfeiture and condemnation was rendered in substance and in form as follows:

In the District Court of the United States for the Western District of Oklahoma.

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| THE UNITED STATES, <i>Libelant,</i> | } | No. 38. |
| <i>vs.</i> | | |
| EIGHT HUNDRED CASES OF BLACKBERRIES. | | Decree of condemnation. |

Now, to wit, on the 11th day of September, 1908, at a term of said court, at Enid, in said district, said cause came on for trial, and it appearing to the court that upon the libel filed herein monition and warrant of arrest was duly issued and served on the 28th day of July, 1908, and that by virtue of said warrant the marshal has seized and now holds eight hundred cases of blackberries of the approximate value of \$1,000, containing two dozen cans to the case, the said eight hundred cases of blackberries with contents having been seized within the premises and in the possession of the Ridenour-Baker Mercantile Company, a corporation of Oklahoma City, within said district, and now being stored in the custody of the said marshal, and it appearing that J. S. Ogburn & Company, of Lindale, Tex., a copartnership composed of J. S. and J. W. Ogburn, the respondent herein, the owners of said eight hundred cases of blackberries, were duly warned to appear herein on the 7th day of September, 1908, and that due and legal notice and proclamation were given to all persons having or claiming to have any claim, right, or interest therein, or in or to said property, to appear

on the same date and answer the said libel, and the said J. S. Ogburn & Company having so appeared by J. W. Ogburn, one of the partners, and filed their answer to the said libel and the libelant appearing by John Embry, United States attorney for the western district of Oklahoma, and the said J. S. Ogburn & Company appearing by the said J. W. Ogburn, a member of the partnership, in person, and by McKeever & Walker, its attorneys, a jury is waived and the said cause is tried to the court; the libelant and respondent each making a statement to the court of their evidence and agreeing in open court as to what the facts are in this case, and upon said agreement in open court submit the same to the court, and the court now being fully advised in the premises finds for the libelant, and finds that the contents of the said eight hundred cases contain blackberries of two dozen cans each, an article of food, and that the said cases are misbranded within the meaning of the act of Congress of June 30, 1906, entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, liquors, and for regulating traffic therein, and for other purposes," and that the same has been transported as blackberries in interstate commerce from the city of Lindale, in the State of Texas, to Oklahoma City, in the State of Oklahoma, consigned to the Ridenour-Baker Mercantile Company, a corporation, of Oklahoma City, Okla., being all of such consignment found in original, unbroken packages; that is, the court finds that said articles of food are misbranded and are in violation of said act of Congress in that said cases and each of them contain less in weight than the amount as shown by the brands thereon; and that the said articles of food were so transported in interstate commerce and consigned and delivered to the Ridenour-Baker Mercantile Company, aforesaid, wholesale dealers.

The court further finds that the article of food contained in the said eight hundred cases is not adulterated, poisonous, or deleterious, but that the violation of said act of Congress is in the misbranding of said cases as to the quantity contained in each case and that the same were consigned only to a wholesale dealer and not sold to the public for consumption.

Wherefore, it is ordered, adjudged, and decreed by the court that the said eight hundred cases of blackberries with the contents as aforesaid be, and they hereby are, declared to be misbranded in violation of the act of June 30, 1906, as charged in said libel, and it is further ordered that the said eight hundred cases of blackberries with the contents as aforesaid be, and they hereby are, condemned and forfeited, as provided for in the said act of June 30, 1906. It is provided, however, that upon the payment of all the costs in the proceeding herein, including all court, clerks, and marshal costs and costs of hauling, storage, watchmen, and all other costs incident to or contracted in this proceeding, and the execution and delivery by the said J. S. Ogburn & Company, a co-partnership, to the libelant of a good and sufficient bond in the penalty of five hundred dollars, conditioned that the said eight hundred cases of blackberries with the contents as aforesaid shall not be sold or otherwise disposed of contrary to the provisions of the said act of June 30, 1906, or to the laws of any State, Territory, district or insular possession, that said marshal shall redeliver the said eight hundred cases of blackberries with such of their contents as they now contain, or may contain at the time of such redelivery, to the J. S. Ogburn & Company, a co-partnership, in lieu of the retention and destruction thereof, the said bond to be filed herein, if at all, on or before the first day of October, 1908, and that the libelant receive from the said J. S. Ogburn & Company, a co-partnership, its costs herein, taxed at \$—, for which execution shall issue if the costs are not paid as hereinbefore provided.

JOHN H. COTTERAL, *Judge*.

The facts in the case are as follows :

On or about July 24, 1908, an inspector of the Department of Agriculture found in the possession of the Ridenour-Baker Mercantile Company of Oklahoma City, Oklahoma, 800 cases, each containing 24 cans of blackberries, labeled "Lindale Brand, 2 lb. Blackberries, Packed by J. S. Ogburn & Company, Lindale, Texas." No statement of weight appeared on any of the cans. A number of the cans was weighed and the gross weight varied from 1 pound 5 ounces to 1 pound 13 ounces.

On July 25, 1908, the facts were reported by the Secretary of Agriculture to the United States attorney for the western district of Oklahoma, and libel for seizure and condemnation was duly filed, with the result hereinbefore stated.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCABE,

Board of Food and Drug Inspection.

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W. M. HAYS,
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