

seizure will be sold by the marshal after being properly branded. This will be done instead of destroying them, as the fruits are not deleterious.

But this order may be avoided under the statute if Godfrey & Son will pay the costs and give bond to properly brand the goods in accordance with this opinion, and sell them in all respects in conformity to law.

KANSAS CITY, MISSOURI, *October 23. 1908.*

The case grew out of the following facts:

On or about January 1, 1908, an inspector of the Department of Agriculture found in the possession of the Ridenour-Baker Grocery Company, Kansas City, Mo., 100 cases of canned apples, each can being labeled "Tepee Apples. Packed by C. H. Godfrey & Son, Watervliet and Benton Harbor, Michigan," and 242 cases of canned blackberries, each can being labeled "Tepee First Quality Blackberries. Packed by C. H. Godfrey & Son, Watervliet and Benton Harbor, Michigan." The fruit had been shipped to Ridenour-Baker Company by C. H. Godfrey & Son, from Springdale, Arkansas, during the month of September, 1907. The inspector having procured evidence showing that the fruits involved in this case were grown and packed in Arkansas, it was apparent that they were misbranded under section 8 of the Food and Drugs Act, and in consequence thereof, on January 24, 1908, the Secretary of Agriculture reported the facts to the United States attorney for the western district of Missouri, who duly filed a libel for seizure and condemnation of the goods under section 10 of the act, with the result hereinbefore set out.

H. W. WILEY,

F. L. DUNLAP,

GEO. P. McCABE,

*Board of Food and Drug Inspection.*

Approved:

JAMES WILSON,

*Secretary of Agriculture.*

WASHINGTON, D. C., *January 11, 1909.*

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(N. J. 37.)

#### ADULTERATION OF MILK (WATER).

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 of the judgment of the court in the case of the United States against Andreas Griebler lately pending in the district court of the United States for the eastern district of Illinois, wherein the said Griebler was charged with the violation of section 2 of the aforesaid act alleged to have been committed in the shipment and delivery for shipment of adulterated milk—that is to say, milk which contained an excess of water—from Illinois to Missouri.

The defendant having been arraigned and pleaded not guilty, the case was submitted to a jury upon the evidence and argument of counsel and the following instructions of the court:

WRIGHT, *D. J.*, charging the jury.

Gentlemen of the jury: In this case the Government charges the defendant that he shipped and delivered for shipment from Trenton, in the county of Clinton, in the State of Illinois, to Carlyle Dairy Company, at St. Louis, in the State of Missouri, an article of food, to wit, a certain quantity of milk which was then and there adulterated by having mixed and packed therewith water so as to reduce and lower and injuriously affect the quality and strength of said milk, contrary to the statute, etc.

There are two counts in this information, but it isn't necessary to specifically call your attention to more than one, because, as I understand the prosecution, they are not claiming that the statute was violated but the one time.

The act of Congress makes it unlawful for a person to ship an article of food from one State to another State, or to deliver such article for shipment from one State to another State, which, at the time of the delivery, or shipment, was, or had been, adulterated. The adulteration to be contrary to the statute must be, first, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; second, if any substance has been substituted wholly, or in part, for the article.

Before the Government can claim a conviction at your hands it must be proved by the evidence in the case beyond a reasonable doubt that the defendant is guilty as charged in the information. If, after a fair and impartial investigation, you have a reasonable doubt of his guilt, as charged in the information, then it would be your duty to acquit him. If, after the same investigation of all the evidence in the case, you have an abiding conviction of his guilt, then it would be your duty to convict him.

A reasonable doubt is not such a doubt as is engendered by imagination, or by an undue sensibility of the consequences of your verdict. Nor can you go outside of the evidence. A doubt must arise from a fair and impartial consideration of the evidence, and it is such a doubt as if interposed in the graver transactions of life it would cause a reasonable man to pause before acting upon it. Now, if you have such a doubt of the guilt of the defendant in this case as I have endeavored to define, you will acquit him. If you have an abiding conviction of the truth of this charge, then you will convict.

The real issue in this case is whether, under the evidence here, the milk, at the time it was shipped, or delivered for shipment, contained water. That is the charge in the information. It is not necessary for the Government to prove that the defendant actually put the water in himself, nor is it necessary to prove that he knew at that time there was water in the milk, if there was water in it. Under this statute, for the protection of the public, those who consume, a person who undertakes to ship food products must be held to know what it is he puts into commerce, must know at his own peril what it contains. It is sufficient if you believe he delivered the milk for shipment, or shipped it, and that there was water in it, and that the water was mixed therewith so as to reduce or lower or injuriously affect its quality or strength, and as to that question you know as much as any witness. It is not a matter for an expert. It is a matter of everyday knowledge as to whether water in the milk would reduce or lower its strength. Everybody knows that it does. So if you believe from the evidence that there was water in the milk you will convict the defendant. If you find there was no water in it you will acquit him.

And on November 30, 1908, the jury returned a verdict of not guilty, whereupon the said defendant was discharged from further custody.

The facts in the case were as follows:

On September 30, 1907, an inspector of the Department of Agriculture obtained samples of milk from a consignment of milk shipped by Andreas Griebler, from Trenton, Ill., to St. Louis, Mo. One of the samples was forthwith analyzed in the Bureau of Chemistry of said Department and the following results were obtained and stated:

Specific gravity at 15.5°/15.5° C	1.0259
Fat	per cent 4.67
Total solids	do 12.06
Solids not fat	do 7.39
Ash	do .63
Refraction at 20° C	37.1
Test for nitrates	Very strong.
Conclusions	Watered.

The standard for milk as defined in "Standards of Purity for Food Products," Circular No. 19, Office of the Secretary, United States Department of Agriculture, published under authority of the act of March 3, 1903, and as recognized by the larger body of reputable producers, is as follows:

Milk is the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and ten days after calving, and contains not less than eight and one-half (8.5) per cent of solids not fat, and not less than three and one-quarter (3.25) per cent of milk fat.

It seemed, therefore, that the sample in question was adulterated within the meaning of section 7 of the Food and Drugs Act of June 30, 1906, in that it appeared to contain an excessive amount of water, thereby reducing its quality and strength. On December 28, 1907, the Secretary of Agriculture accorded the said Griebler a hearing, but as there was nothing disclosed at the hearing tending to show any fault or error in the analysis of the Department, the Secretary, on April 30, 1908, reported the facts to the Attorney-General. These facts were duly referred to the United States attorney for the eastern district of Illinois, who filed an information against the said Griebler, with the result hereinbefore stated.

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

*Board of Food and Drug Inspection.*

Approved:

JAMES WILSON,  
*Secretary of Agriculture.*

WASHINGTON, D. C., January 11, 1909.