

(N. J. 77.)

**MISBRANDING OF CANNED TOMATOES.**

(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 of the judgment of the court in case of the United States *v.* 135 cases of canned tomatoes, a proceeding of libel for seizure and condemnation of said goods under section 10 of the aforesaid act, lately pending in the district court of the United States for the district of Colorado, wherein the Ridenour-Baker-Bragdon Mercantile Company, a corporation of Pueblo, Colo., was claimant. The tomatoes had been packed by the Syracuse Canning Company, Syracuse, Utah, and were misbranded in that the cases were labeled and branded "2½ Lbs. Syracuse Standard Tomatoes, Syracuse Canning Company, Syracuse, Utah," whereas the gross weight of each can contained in the cases was  $2\frac{3}{8}$  pounds. The said claimant having admitted the allegations of the libel and the case having come on for a hearing on March 5, 1909, the court adjudged the goods misbranded and rendered its decree in substance and in form as follows:

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT  
OF COLORADO.

THE UNITED STATES OF AMERICA, <i>Libellant,</i>	} No. 2234.
<i>vs.</i>	
ONE HUNDRED AND THIRTY-SEVEN CASES OF CANNED TOMATOES.	

**ORDER.**

In this cause, it appearing to the court that (the said United States of America, by Thomas Ward, jr., United States attorney for the district of Colorado, and the Ridenour-Baker-Bragdon Mercantile Company, a corporation, the claimants and owners of the property seized herein, by C. J. Haines, its vice-president, consenting thereto), under the process issued in this cause, one hundred and thirty-six cases of canned tomatoes were seized by the United States marshal at the city of Pueblo, in the county of Pueblo, State of Colorado, and that the same were subject to seizure and confiscation by the United States for the causes set forth in the libel herein, that is to say, for the reason that the said cases were misbranded, in this, that the said cases purported to contain two dozen cans of tomatoes, each can containing two and one-half pounds of tomatoes; whereas, in truth and in fact, the said cans in said case did not contain to exceed thirty-one and eleven-sixteenths ounces of tomatoes, and the said brands upon the said cases were, therefore, misleading and calculated to deceive purchasers;

And it further appearing, by like consent, that said the Ridenour-Baker-Bragdon Mercantile Company has agreed that an order may be entered at once, condemning and confiscating said property to the United States, for the reason that the same are misbranded as charged in the libel herein;

It is therefore ordered, adjudged, and decreed that the said property above described, now in the possession of the marshal of the court, be, and the same is hereby, declared to be forfeited and confiscated to the United States;

It is further ordered, however, that upon payment by said the Ridenour-Baker-Bragdon Mercantile Company of the costs of this proceeding and the execution and delivery of a good and sufficient bond in the sum of one thousand dollars, to be filed with the clerk in this cause, conditioned that this property shall not be sold or otherwise disposed of contrary to the provisions of the act (ch. 3915, 59th Congress, 34 Stat. L., 768), commonly known as the "Pure Food and Drugs Act" (act of June 30, 1906), or contrary to the laws of the State of Colorado, then the marshal of this court is hereby directed to deliver said property to said the Ridenour-Baker-Bragdon Mercantile Company, or its agents.

By the court.

ROBERT E. LEWIS, *Judge.*

It is hereby stipulated and agreed that the foregoing order may be entered of record in the above-entitled cause.

THOMAS WARD, jr.,

*United States Attorney for the District of Colorado.*

THE RIDENOUR-BAKER-BRAGDON MER. CO.,

By C. J. HAINES, *Vice Prest.*

The facts in the case were as follows:

On or about February 3, 1909, an inspector of the Department of Agriculture located in the possession of the Ridenour-Baker-Bragdon Mercantile Company, Pueblo, Colo., 137 cases of canned tomatoes, containing 24 cans each, labeled "2½ lbs. Syracuse Standard Tomatoes. Syracuse Canning Co., Syracuse, Utah." The goods had been packed and shipped on August 29, 1908, to the Ridenour-Baker-Bragdon Mercantile Company by the Syracuse Canning Company, Syracuse, Utah. A number of the cans were weighed by the inspector, who found the average gross weight of each can to be 35 ounces. The goods were, therefore, misbranded within the meaning of section 8 of the act, and on February 5, 1909, the facts were reported by the Secretary of Agriculture to the United States attorney for the district of Colorado, and libel for seizure and condemnation was duly filed, with the result hereinbefore stated.

GEO. P. McCABE,

F. L. DUNLAP,

*Board of Food and Drug Inspection.*

Approved:

JAMES WILSON,

*Secretary of Agriculture.*

WASHINGTON, D. C., June 16, 1909.