

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1172.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF FRUIT JELLY.

On July 7, 1911, the United States Attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 500 pails of imitation fruit jelly, in the possession of J. S. Brown Mercantile Co., Denver, Colo. The product was labeled: "10 lbs. Gross" "D. B. Scully Syrup Company, Chicago—Imitation Fruit Jelly—Compound; 60% Corn Syrup, 35% Apple Trimmings Juice, 5% Sugar—Contains added Phosphate."

Before the product was delivered by the common carrier to the consignee the inspector and chief of the Denver Laboratory of the United States Department of Agriculture weighed and checked 142 pails of the shipment, and reported a total shortage of 5.5 per cent. The libel alleged that the said jelly after transportation from the State of Illinois into the State of Colorado remained in the original unbroken packages, and was misbranded in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure for confiscation. Misbranding was alleged for the following reasons:

(a) That all said wooden pails were and are misbranded and mislabeled within the meaning of the aforesaid act in that the statement of the weight and measure of the said wooden pails was and is not printed, either on or immediately above or below the principal label as hereinbefore set forth and of the size of 8-point (brevier) capitals; but instead it was and is true that the statement of the weight of said wooden pails, to wit, "10 lbs. Gross," was and is printed on the lids of the said pails as aforesaid, and not on or immediately above or below the principal label as required by regulation 29 for the enforcement of the Food and Drugs Act, as adopted by the Departments of Agriculture, Treasury, and Commerce and Labor.

(b) That all said wooden pails were and are misbranded and mislabeled within the meaning of the aforesaid act in that the statements on the lids of the said pails as aforesaid, to wit, "10 lbs. Gross," were and are not statements of the average net weight or volume of the weight and measure of the food or article of food contained in said pails, but instead, it was and is true that said labels "10 lbs. Gross," were and are statements of the gross weight of both pail and contents and not the net weight of the food contained within said pails, as required by regulation 29 for the enforcement of the Food and Drugs Act, as adopted by the Departments of Agriculture, Treasury, and Commerce and Labor.

(c) That all said wooden pails were and are misbranded and mislabeled within the meaning of the aforesaid Pure Food Act in that the labels on the lids of the said pails as aforesaid, to wit, "10 lbs. Gross," did and do not state correctly and truly the gross weight of the said packages; and the labels, to wit, "10 lbs. Gross," on each and every of said wooden pails were and are false and misleading and so worded as to deceive and mislead purchasers into believing that said wooden pails and contents as aforesaid, and each of them, contained 10 pounds gross weight, whereas, in truth and in fact, said packages and each of them did and do not contain 10 pounds gross weight, but instead, contain a very much smaller amount, to wit, an average of five and forty-eight hundredths per cent (5.48 per cent) less than 10 pounds gross, as so stated on the lids of said wooden pails.

On July 22, 1911, the case coming on for hearing, the D. B. Scully Syrup Co. appeared as claimants and owners of said product, and admitted that the same was misbranded, as alleged in the libel, and prayed that the product be released to them upon their payment of costs, and giving a bond conditioned that said product should not again be sold contrary to law. Whereupon the court entered a decree condemning and forfeiting the product to the United States, but with the proviso that upon the payment of the costs of the proceedings and the giving of a sufficient bond in the sum of \$1,000 by claimants conditioned that the said goods should not be again sold contrary to law, that they should be released to claimants. The claimants paid the costs and gave bond in the sum of \$1,000, and the product was restored to them.

W. M. HAYS,

Acting Secretary of Agriculture.

WASHINGTON, D. C., *October 20, 1911.*