

7999. Adulteration and misbranding of maple sirup. U. S. v. 39 Cases of Maple Sirup. Default decree of condemnation. Product ordered delivered to a charitable institution. (F. D. C. No. 13271. Sample No. 70885-F.)

LABEL FILED: August 23, 1944, Western District of Washington.

ALLEGED SHIPMENT: On or about June 28, 1944, by the American Roland Food Co., from New York, N. Y.

PRODUCT: 39 cases, each containing 24 6-ounce bottles, of sirup at Seattle, Wash.

LABEL, IN PART: "Roland 100% Grade A Pure Vermont Maple Syrup."

VIOLATIONS CHARGED: Adulteration, Section 402 (b) (1), a valuable constituent, maple sugar or maple sirup, had been in whole or in part omitted from the product; and, Section 402 (b) (2), sugar sirup, containing little or no maple sugar or maple sirup, had been substituted in whole or in part for maple sirup, which the product purported and was represented to be.

Misbranding, Section 403 (a), the label statement, "100% Grade A Pure Vermont Maple Syrup," was false and misleading as applied to a sirup containing little or no true maple sugar or maple sirup; Section 403 (c), the product was an imitation of another food, maple sirup, and its label failed to bear, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; and, Section 403 (i) (2), it was fabricated from two or more ingredients and its label failed to bear the common or usual name of each such ingredient.

DISPOSITION: May 31, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a charitable institution.

8000. Misbranding of sirup. U. S. v. 127 Cases of Sirup. Default decree of condemnation. Product ordered delivered to public or charitable institutions. (F. D. C. No. 12278. Sample No. 51840-F.)

LABEL FILED: April 29, 1944, District of Maine.

ALLEGED SHIPMENT: On or about January 28, 1944, by Quality Incorporated, from Boston, Mass.

PRODUCT: 127 cases, each containing 24 12-ounce bottles, of sirup at Portland, Maine.

LABEL, IN PART: (Bottles) "Qualy-Maple brand Syrup for Pancakes and Waffles Contains: Cane Sugar Syrup, Wheat Sugar Syrup, Water, Imitation Maple Flavor, and 1/10 of 1% Benzoate of Soda."

VIOLATIONS CHARGED: Misbranding, Section 403 (a), the statement "Qualy-Maple brand Syrup," with the words "Qualy," "Maple," and "Syrup" conspicuously displayed on the bottle label, was false and misleading as applied to a dark brown, sirupy liquid containing little or no maple sugar or maple sirup, with more water than is contained in maple sirup, and with a flavor simulating that of maple; Section 403 (b), the product was offered for sale under the name of another food, maple sirup; Section 403 (c), it was an imitation of maple sirup and its label failed to bear, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; and, Section 403 (f), the statement of the quantity of the contents, required by law to appear on the label, was not prominently placed thereon with such conspicuousness, as compared with other words, designs, or devices in the labeling, as to render it likely to be read by the ordinary individual under customary conditions of purchase and use, since it was in such small type as to be practically illegible.

DISPOSITION: March 22, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to public or charitable institutions.

DAIRY PRODUCTS

BUTTER

8001. Action to enjoin and restrain the interstate shipment of adulterated butter. U. S. v. Swift & Co., a corporation, and H. N. Bates. Tried to the court. Injunction granted. (Inj. No. 43.)

COMPLAINT FILED: December 19, 1942; amended April 8, 1943, Middle District of Georgia.

NATURE OF CHARGE: From on or about October 10, 1940, to the time the complaint was filed the defendant had been manufacturing, preparing, packing, shipping, and delivering for shipment, and had caused to be prepared, packed, shipped and delivered for shipment in interstate commerce, quantities of butter that was adulterated in the following manner: Section 402 (a) (3), (1) the product consisted in whole or in part of a decomposed substance by reason of the use in its manufacture of decomposed and putrid cream; (2) it consisted in whole or in part of a filthy substance by reason of the presence of mold, rodent hair fragments, maggots, feather parts, mites, insects, and such insect parts as fly fragments and larva fragments; and, Section 402 (a) (4), it had been manufactured and prepared under insanitary conditions whereby it may have become contaminated with filth, since in its manufacture the clean and fresh cream was mixed with the filthy, decomposed, and putrid cream, with cream that contained mold, rodent hair fragments, maggots, flies, feather parts, mites, and other insects and insect parts, all of which was run through the same filter and through the same churn; and in the cold storage room the product was accessible to rodents, which gnawed the boxes in which the butter was packed for shipment.

PRAYER OF COMPLAINT: That a preliminary injunction issue restraining the defendants from commission of the acts complained of and that, after due proceedings, the preliminary injunction be made permanent.

DISPOSITION: December 19, 1942. The defendants were ordered to show cause why a preliminary injunction should not issue as prayed. They filed a motion to strike and a motion for a more definite statement or bill of particulars. On April 8, 1943, an amended complaint was filed, setting out the allegations of adulteration with greater particularity. The defendants having filed an answer denying the adulteration charges, the case came on for trial before the court on December 13, 1943. The court, after hearing the evidence and arguments of counsel, took the case under advisement, and on December 31, 1943, made the following findings of fact and conclusions of law:

DEAVER, *District Judge:*

FINDINGS OF FACT

1.

"Swift & Company is a corporation with an office, agency, and place of business in Macon, Bibb County, Georgia.

2.

"Between October 10, 1940 and December 19, 1942, the Macon, Georgia, branch of Swift & Company was engaged in manufacturing butter, some of which was shipped in interstate commerce.

3.

"During said period Swift & Company shipped in interstate commerce butter manufactured from cream, some of which at times had in it rodent hair, feather parts, flies, maggots, and other such filth, and some of which was decomposed and contained mold.

4.

"The pure and clean cream in the process of manufacture was mixed with the decomposed cream and the cream which contained mold, rodent hair, feather parts, flies, maggots, and other such insect filth, and all passed together through the filters, was then pasteurized through the same pasteurizer, held in the same storage vats, and churned together in the same churn.

5.

"The plant itself is sanitary and the equipment is standard and satisfactory.

6.

"Some of the butter manufactured from said cream, in spite of filtration through standard filters, contained insect fragments and, in minute quantities, substances which came from broken or partially dissolved insects, and materials

which had been a part of the decomposed cream, and mold in such quantities that in ten instances out of fourteen, where the butter was microscopically examined for mold, 100% of the microscopic fields examined by the Wildman Method were found to contain mold.

7.

'There is a general correlation between the microscopic mold parts found in butter and the quality of the cream from which the butter is produced. The presence of microscopic mold in butter in excessive quantities may be accepted as an indication that the cream from which the butter was made either contained filth or was to an extent decomposed. Mold in butter, therefore, is relevant evidence to be considered along with all the other evidence as to the condition of the cream, but it is not necessary in this case to find just what weight should be given to such evidence.

8.

"Such butter so produced by Swift & Company at its Macon Plant was filthy and unfit for food.

9.

"Swift & Company, for a number of years, has engaged in a nation-wide program of cream quality improvement and has advocated quality improvement in its dairy products.

10.

"H. N. Bates, the Macon Manager of Swift & Company during most of 1942, failed to carry out fully the instructions of the management of Swift & Company with regard to the cream quality improvement program in the State of Georgia and the making of mold tests upon the cream from which butter was made at the Macon plant.

11.

"In October, 1942, partially as a result of requests on the part of Swift & Company, the newly organized Dairy Department of Georgia Agricultural College began to interest itself in a cream quality program within the State of Georgia, and in the latter part of that year, also partially through the efforts of Swift & Company, the Georgia Butter Manufacturers' Association was organized and began to participate in a general program of cream quality improvement within the State.

12.

"After the inception of such program, experts and other representatives of Swift & Company's Cream Improvement Department did active field work in furtherance of cream quality improvement in Georgia.

13.

"As a result of all of these efforts, the quality of cream being received at the Macon plant of Swift & Company in the latter part of 1943 and the butter produced during that period showed a marked improvement over that produced at the times referred to in the complaint. The butter now scores 89 and 89½.

14.

"W. W. Joyner, the present Manager of the Macon plant of Swift & Company, has actively participated in this field work and in the Georgia cream quality improvement program.

15.

"With a continuation of the work being done by the University of Georgia and the members of the Butter Industry of Georgia, continued improvement in cream quality should result and a higher quality of commercial butter be produced in the State of Georgia, especially if they had the cooperation of

the State Agricultural Department. However, it does not appear from the evidence that the State Agricultural Department is taking any active part in the Georgia cream quality program.

16.

"Cream used at Swift's Macon plant is produced in the main by small producers scattered over a wide area. It is held generally for about a week before it is delivered to the plant. The conditions under which it is produced and held are such that almost inevitably a large part of it will contain insects and become to some extent decomposed. Without the full cooperation of the State Agricultural Department, it is not likely that sufficient pure, clean cream can be had from which to make butter in commercial quantities lawful to be shipped in interstate commerce. If all the cream in the state went to interstate shippers of butter, they could require the production of clean cream simply by rejecting all bad cream. But as long as bad cream subject to be rejected by interstate manufacturers can be sold to intrastate manufacturers, the cream situation will probably remain bad. At such time as state law, strictly enforced, may require a high standard for cream, no bad cream can be sold in the state and then conditions of production and manufacture will change. Until that time arrives Swift & Company cannot force the production of clean cream by any amount of good faith or effort and, while the cream quality program, if continued, will no doubt improve cream conditions, it will not likely cure them. These findings are made only as touching the necessity for an injunction and as a basis for the exercise of a discretion in granting or denying an injunction.

CONCLUSIONS OF LAW

1.

"This Court has jurisdiction of the parties and of the subject matter of this case.

2.

"Congress intended that the word 'Filthy', as used in the Act, should be construed to have its usual and ordinary meaning, and should not be confined to any scientific or medical definition.

3.

"It is not necessary, in this case, to adjudicate the legal effect of mold alone in butter.

4.

"In spite of the improvement which has been shown in the quality of cream produced in Georgia and of the butter now being manufactured at the Macon plant of Swift & Company, it does not appear from the evidence that, under the present conditions existing in the Georgia Cream Industry, other and further adulterations can adequately be prevented by the defendant, Swift & Company. Particularly may that be true so long as the State Agricultural Department takes no part in the program.

5.

"The butter referred to in the findings of fact was adulterated within the meaning of Title 21, Sec. 342 (a) (3), in that it consisted in part of a filthy and decomposed substance, and was unfit for food.

6.

"Plaintiff is entitled to an injunction as prayed."

On December 31, 1943, judgment was entered ordering that "the defendants, H. N. Bates and Swift and Company, a corporation, all of its officers, representatives, agents, employees and servants, and all persons acting or claiming to act on behalf of or under the defendants, be and they are perpetually

enjoined and restrained under the provisions of Sec. 332, U. S. Code, Title 21, from shipping in interstate commerce, in violation of Sec. 331 and Sec. 342 (a) (3), U. S. Code, Title 21, adulterated butter manufactured or to be manufactured in its Macon, Georgia, plant."

8002. Adulteration and misbranding of butter. U. S. v. Harold A. Hamilton (Eldorado Creamery Co.). Plea of guilty. Fine, \$600. (F. D. C. No. 12549. Sample Nos. 49323-F, 49324-F, 49329-F.)

INFORMATION FILED: August 21, 1944, Southern District of Ohio, against Harold A. Hamilton, trading as the Eldorado Creamery Co., Eldorado, Ohio.

ALLEGED SHIPMENT: On or about February 5 and 9, 1944, from the State of Ohio into the State of Indiana.

LABEL, IN PART: (Wrappers, portions) "½ Lb. Net Wayne County Farm Bureau Produce Ass'n Distributors Richmond, Indiana Creamery Butter," or "Eldorado Creamery Butter Made By Eldorado Creamery Co. Eldorado, O."

VIOLATIONS CHARGED: Adulteration (all lots), Section 402 (b) (1), a valuable constituent, milk fat, had been in part omitted from the article; and, Section 402 (b) (2), a product containing less than 80 percent by weight of milk fat had been substituted for butter.

Misbranding (portion), Section 403 (a), the statement on the wrappers, "½ Lb. Net," was false and misleading as applied to the article, which was short-weight; and, Section 403 (e) (2), the article was in package form and its label failed to bear an accurate statement of the quantity of the contents.

DISPOSITION: November 30, 1944. A plea of guilty having been entered, the defendant was fined \$150 on each of 4 counts, a total fine of \$600.

8003. Adulteration and misbranding of butter. U. S. v. Martin M. Nielsen (Clinton Pure Butter Co.). Plea of guilty. Fine, \$100 and costs. (F. D. C. No. 12612. Sample No. 46921-F.)

INFORMATION FILED: January 6, 1945, Southern District of Iowa, against Martin M. Nielsen, trading as the Clinton Pure Butter Co., Clinton, Iowa.

ALLEGED SHIPMENT: On or about March 1, 1944, from the State of Iowa into the State of Illinois.

LABEL, IN PART: (Cartons) "Nielsen's Quality One Pound Butter."

VIOLATIONS CHARGED: Adulteration, Section 402 (b) (1), a valuable constituent, milk fat, had been in part omitted from the article; and, Section 402 (b) (2), a product containing less than 80 percent by weight of milk fat had been substituted for butter.

Misbranding, Section 403 (e) (2), the product failed to bear a label containing an accurate statement of the quantity of the contents in that the label statement "One Pound" was inaccurate since the cartons contained less than 1 pound of butter.

DISPOSITION: April 3, 1945. A plea of guilty having been entered, the defendant was fined \$50 on each of 2 counts, a total of \$100 and costs.

8004. Adulteration and misbranding of butter. U. S. v. Beaty Grocery Co. Plea of nolo contendere. Fine, \$45. (F. D. C. No. 12584. Sample Nos. 66720-F, 66815-F.)

INFORMATION FILED: October 25, 1944, Western District of Missouri, against the Beaty Grocery Co., a corporation, St. Joseph, Mo.

ALLEGED SHIPMENT: On or about February 22 and April 10, 1944, from the State of Missouri into the State of Kansas.

LABEL, IN PART: (Cartons) "One Pound Net Hy-Klas Brand Butter."

VIOLATIONS CHARGED: Adulteration, Section 402 (b) (1), a valuable constituent of the article, milk fat, had been in part omitted therefrom; and, Section 402 (b) (2), a product containing less than 80 percent by weight of milk fat had been substituted for butter.

Misbranding (portion), Section 403 (e) (2), the article was in package form, and it failed to bear a label containing an accurate statement of the quantity of the contents, since the cartons bore the statement "One Pound Net," whereas they contained less than 1 pound of butter.

DISPOSITION: November 10, 1944. A plea of nolo contendere having been entered on behalf of the defendant, a fine of \$15 on each of 3 counts, a total of \$45, was imposed.