

DISPOSITION: June 25, 1945. The Lanesville Creamery Co. having appeared as claimant, judgments of condemnation were entered and the product was ordered released under bond, conditioned that it be reworked and brought into compliance with the law, under the supervision of the Food and Drug Administration.

9718. Misbranding of butter. U. S. v. 439 Cartons and 290 Cartons (23,328 pounds) of Butter. Consent decrees of condemnation. Products ordered released under bond. (F. D. C. Nos. 15779, 15780. Sample Nos. 5665-H, 5714-H.)

LIBEL FILED: On or about March 13, 1945, District of New Jersey.

ALLEGED SHIPMENT: On or about February 23 and 24, 1945, by the American Dairy Co., Scranton, Pa., from New York, N. Y.

PRODUCT: 729 cartons, each containing 32 1-pound prints, of butter at Jersey City, N. J. The product was short-weight.

LABEL, IN PART: "One Pound Net Creamery Butter Packed by Ben Goldenberg, Inc., New York, N. Y."

NATURE OF CHARGE: Misbranding, Section 403 (e) (2), the article failed to bear a label containing an accurate statement of the quantity of the contents.

DISPOSITION: March 14, 1945. Philip H. Bricker, trading as the American Dairy Products Co., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the butter was ordered released under bond for reprinting to the correct weight, under the supervision of the Food and Drug Administration.

CHEESE

9719. Action to enjoin and restrain the interstate shipment of adulterated cheese and cheese products. U. S. v. Conestoga Cream and Cheese Manufacturing Corporation and Snier Sam Silberman, also known as Sam Silberman. Tried to the court. Injunction granted. (Inj. No. 81.)

COMPLAINT FILED: March 21, 1945, Northern District of Ohio, against the Conestoga Cream and Cheese Manufacturing Corporation, Lima, Ohio, and Snier Sam Silberman, also known as Sam Silberman, plant manager.

NATURE OF CHARGE: That for several years, and particularly since October 6, 1942, the defendants had been preparing, packing, processing, and manufacturing, and offering for interstate shipment and shipping in interstate commerce, cheese and cheese products; that numerous investigations had been made by the Food and Drug Administration which disclosed the existence of insanitary conditions in the plant of the defendants by reason of the presence of insects, rodent excreta, and other foreign matter, and filthy and unwholesome substances in and around places in the plant where the foods were manufactured, in and around raw materials and substances from which the foods were manufactured, in and around places in the plant where the foods were packed, in and around machinery and equipment for manufacturing the foods and containers for the foods, and in and around the finished foods; that the investigations disclosed further that the buildings where the foods were prepared, packed, and held, were in a state of disrepair and dilapidation, and that the windows were unscreened, subjecting the foods prepared in the plant to contamination by insects, rodents, and other sources.

The complaint alleged further that the products prepared and packed under the aforesaid conditions were adulterated as follows: Section 402 (a) (3), they consisted in whole or in part of filthy substances; and, Section 402 (a) (4), they had been prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth.

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: June 6, 1945. The case having come on for hearing, and having been submitted to the court on the pleadings, statements of counsel, and stipulation of facts, the court made the following findings of fact and conclusions of law:

KLOEB, District Judge:

FINDINGS OF FACT

"Upon statement of counsel, Marcus L. Friedman, Assistant United States Attorney for the Northern District of Ohio, Western Division, and Eugene Farber, of Farber and Cochrane, attorneys for the defendants, the Court makes the following findings of fact:

"1. That the said Conestoga Cream and Cheese Manufacturing Corporation is a corporation organized and existing under the laws of the State of New York, and has a place of business at Lima, Ohio.

"2. That Snier Sam Silberman, also known as Sam Silberman, an individual, is Manager of the said place of business at Lima, Ohio.

"3. Between October, 1942 and June 6, 1945, the Lima, Ohio branch of Conestoga Cream and Cheese Manufacturing Corporation was engaged in the manufacture of cheese, a majority of which was shipped in interstate commerce.

"4. During the said period, the said defendants shipped in interstate commerce, cheese products which contained foreign and adulterated matter.

"5. That the plant was in an insanitary condition.

"6. That such cheese products as were manufactured by the cheese company at its plant at Lima, Ohio, were unfit for food.

CONCLUSIONS OF LAW

"1. The Court has jurisdiction of the parties and the subject matter in this case.

"2. That Congress intended that the word, 'filthy' as used in the Act should be construed to have its usual and ordinary meaning.

"3. That the products manufactured by the Conestoga Cream and Cheese Manufacturing Corporation contained foreign and adulterated substances, and were shipped in interstate commerce, contrary to the Act; and within the meaning of Title 21, U. S. C. A., Section 332 (a), in that it consisted in part of filthy and decomposed substances and was unfit for food.

"4. That the relief prayed for in the Complaint should be granted."

The court thereupon announced that the defendants would be given until June 30, 1945, to correct the conditions complained of, or otherwise an injunction would be issued.

On June 28, 1945, the court entered an order permanently enjoining the defendants from shipping in interstate commerce, adulterated cheese products made in their Lima, Ohio, plant.

On July 25, 1945, the defendants filed an application to vacate the injunction. The application was denied by the court on January 7, 1946.

9720. Action to enjoin and restrain the interstate shipment of adulterated cheese and cheese products. U. S. v. Leo Williams, trading as Leo Williams, L. W. Williams, Lakeside Creamery, and Lakeside Cheese Co. Tried to the court. Consent decree ordering permanent injunction. (Inj. No. 125.)

COMPLAINT FILED: November 8, 1945, District of Vermont, against Leo Williams, Craftsbury, Vt., trading under the above names.

NATURE OF CHARGE: That since July 26, 1945, the defendant had been preparing, packing, and offering for interstate shipment and shipping in interstate commerce, cheese or milk curd under insanitary conditions; that the product so prepared, packed, and shipped, was adulterated in violation of Section 402 (a) (3), in that it consisted in whole or in part of a filthy substance which was unfit for food; and, Section 402 (a) (4), it had been prepared and packed under insanitary conditions whereby it became contaminated with filth. The complaint also charged the existence, among other conditions, of the following: The plant of the defendant was insanitary and was fly- and rodent-infested. Milk accepted and used in the manufacture of cheese contained sand, manure fragments, rodent hair fragments, cow hair fragments, and similar filth. The defendant had been accepting and using whole milk that had been rejected by fluid milk receiving stations of the area. Flies breeding in manure and in a nearby pig lot had free access to the plant.

The complaint alleged also that several seizures had been made of the defendant's products which had been shipped in interstate commerce and which were found to contain one or more of the following: Rodent, cat, and cow hairs, and insect fragments and whole insects.