

**13252. Action to enjoin and restrain the interstate shipment of butter. U. S. v. Harold H. Sherwood and Everett H. Burley (Randolph Creamery). Consent decree granting injunction. (Inj. No. 155.)**

**COMPLAINT FILED:** November 5, 1947, District of Nebraska, against Harold H. Sherwood and Everett H. Burley, trading as the Randolph Creamery, a partnership, Randolph, Nebr.

**NATURE OF CHARGE:** That the defendants were engaged in the business of processing cream in the manufacture of butter, buttermilk, and ice cream. Approximately 90 percent of the butter was shipped in interstate commerce. On November 16, 1945, an inspection of the defendants' plant at Randolph, Nebr., revealed that practically all of the cream received at the plant was dirty and filthy by reason of the presence of insect, rodent, and other filth; that the incoming cream was used in the manufacture of butter without first screening or filtering it; and that the plant did not use a recording thermometer in attempting to pasteurize the cream, and the cream was not being completely pasteurized. The plant was found to be manufacturing the products under filthy conditions, in that the floor was covered with dirt, trash, dead insects, and roach and rodent excreta, and a large number of roaches and flies were noted in the cream receiving room and on the cream vats.

Sampling of interstate shipments of the butter showed that it was adulterated as follows: Section 402 (a) (3), it consisted in whole or in part of a filthy substance by reason of contamination with insects, insect fragments, rodent hair fragments, and other foreign matter; and, Section 402 (a) (4), it had been manufactured under insanitary conditions whereby it may have become contaminated with filth.

A reinspection of the plant on August 1, 1946, disclosed no improvement in plant conditions. All cream received was being used in the manufacture of butter, without grading or rejecting any of it because of its filthy condition. Samples of cream were found to contain flies, nondescript dirt, and rodent hair fragments.

The complaint alleged further that the filthy conditions disclosed by inspections had been called to the attention of the defendants, but that they continued and would continue the acts complained of unless restrained.

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

**DISPOSITION:** November 5, 1947. The defendants having consented to the entry of a decree, the court issued an order perpetually restraining and enjoining the defendants from shipping butter in interstate commerce which was adulterated in that it consisted in part of a filthy substance and had been prepared under insanitary conditions whereby it had become contaminated with filth.

**13253. Action to enjoin and restrain the interstate shipment of butter. U. S. v. South Mountain Dairies, Inc. Consent decree granting injunction. (Inj. No. 188.)**

**COMPLAINT FILED:** February 10, 1948, District of Maryland, against South Mountain Dairies, Inc., Middletown, Md.

**NATURE OF CHARGE:** That the defendant had been and was at the time shipping in interstate commerce, butter which was adulterated as follows: Section 402 (a) (3), it consisted in part of filthy substances by reason of the presence of rodent hairs, rodent hair fragments, insect fragments, feather fragments, mold, and other filth, and by reason of the use of filthy cream in the manufacture of the butter; and, Section 402 (a) (4), it had been prepared, packed, or held under insanitary conditions at the defendant's Middletown plant, whereby it may have become contaminated with filth.

The complaint alleged further that the insanitary conditions in the plant where the butter had been and was being prepared, packed, and held, resulted from and consisted of the presence of rodents, rodent excreta, bird excreta, and insects in and around places in the plant where butter had been and was being prepared, packed, and held, and in and around equipment and raw materials used for preparing, packing, and holding of butter, thereby contaminating the butter and subjecting it to contamination by rodents, birds, insects and their excreta, and other filth; that the defendant continued to ship in interstate commerce adulterated butter and would continue to ship such butter in interstate commerce, unless enjoined from so doing.

**PRAYER OF COMPLAINT:** That the defendants be perpetually enjoined from commission of the acts complained of, and that a preliminary injunction be granted during the pendency of the action.

**DISPOSITION:** June 15, 1948. The defendant having filed an answer denying the manufacture and interstate shipment of adulterated butter but having consented to the entry of a decree without contest and before any testimony had been taken, the court issued an order perpetually enjoining the defendant and its officers, agents, and employees from shipping in interstate commerce any adulterated food products, specifically butter, which they had manufactured or prepared for shipment or would manufacture and prepare for shipment.

**13254. Adulteration of butter. U. S. v. 24 Cans \* \* \* (and 4 other seizure actions).** (F. D. C. Nos. 2394, 3014, 3255, 3256, 3406. Sample Nos. 9003-E, 9019-E, 35357-E to 35359-E, incl.)

**LIBELS FILED:** On or about July 2 and 22 and October 9, 10, and 24, 1940, Northern District of Alabama.

**ALLEGED SHIPMENT:** On or about June 20, July 18, and October 2, 3, and 9, 1940, from the States of Georgia and Tennessee, by the Cloverleaf Butter Co., Inc.

**PRODUCT:** 24 cans containing a total of 1,833 pounds of ladled butter; 1 370-pound drum, 2 drums containing a total of 205 pounds, 4 cans containing a total of 50 pounds, 1 209-pound barrel, 7 tubs containing a total of 308 pounds, 5 drums containing a total of 1,781 pounds, and 16 tubs containing a total of 655 pounds, of packing stock butter at Birmingham, Ala. Analyses disclosed that the butter contained maggots, rodent hairs, flies, insects, insect fragments, insect eggs, mold, human hairs, and feather fragments.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the butter consisted in whole or in part of a filthy or decomposed animal substance.

**DISPOSITION:** The Cloverleaf Butter Co., Inc., Birmingham, Ala., having appeared as claimant and the seizure actions against the butter having been consolidated, the court, on February 17, 1942, over objections of the Government, ordered that the butter be delivered to the claimant for renovation; that a representative of the Food and Drug Administration be allowed to take a sample of the butter before and after renovation and to be present during the period of renovation; and that claimant's possession of the butter for purpose of renovation was to be as an agent of the court.

On March 31, 1942, a motion was filed on behalf of the Government to have the order of February 17, 1942, vacated and set aside, and on April 18, 1942, a further motion was filed to stay and suspend the effectiveness of such order pending determination of the motion to vacate. On October 4, 1943, after a number of continuances, the court overruled the Government's motions and entered a decree that the provisions of the order of February 17, 1942, should be carried out, on the basis that the shortage of butter due to wartime conditions warranted the renovation of the butter as provided for by such order. A motion to set aside the decree of October 4, 1943, was filed on October 14, and on October 19, 1943, was denied. Thereafter, a petition for a writ of mandamus was filed in the United States Circuit Court of Appeals for the Fifth Circuit, and on December 16, 1943, the following decision was handed down by that court:

*SIBLEY, Circuit Judge:* "The United States in 1940 brought five libels under the Federal Food and Drug and Cosmetic Act of 1938, to condemn five lots of 'ladle butter' and 'packing stock butter' transported in interstate commerce to Cloverleaf Butter Co., because adulterated in that it 'consists in part of a filthy animal substance.' On seizure, Cloverleaf Butter Co. claimed the material, denied the adulteration, prayed for a more definite statement or bill of particulars as to what sort of matter was intended to be relied on as constituting the adulteration; and as to whether all the containers seized were claimed to be so adulterated; and if not, which ones. In February, 1942, the cases were consolidated for trial, but instead of passing on the motions for a more definite statement or otherwise trying the case, an order was made to allow the claimant to take possession of the butter and renovate it. The United States filed a motion to vacate this order and stop its execution. This motion was pending, a stay being granted, till Oct. 4, 1943, when it was overruled and a new order made that the Marshal deliver the butter to the claimant at its renovating plant in Birmingham, for renovation, the identity