

14762. Adulteration of flour. U. S. v. 21 Bags \* \* \*. (F. D. C. No. 26546. Sample Nos. 5788-K, 5789-K.)

**LIBEL FILED:** February 21, 1949, District of Vermont.

**ALLEGED SHIPMENT:** On or about November 23, 1948, from Buffalo, N. Y.

**PRODUCT:** 21 100-pound bags of flour at Montpelier, Vt., in possession of Cross Baking Co., Inc.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent urine; and, Section 402 (a) (4), it had been held under insanitary conditions whereby it may have become contaminated with filth. The product was adulterated while held for sale after shipment in interstate commerce.

**DISPOSITION:** May 20, 1949. Default decree of forfeiture and destruction.

14763. Adulteration and misbranding of enriched flour. U. S. v. Dearborn Mills. Plea of guilty. Fine, \$100. (F. D. C. No. 25616. Sample Nos. 44005-K, 44088-K, 44089-K.)

**INFORMATION FILED:** March 16, 1949, Southern District of Indiana, against the Dearborn Mills, a corporation, Aurora, Ind.

**ALLEGED SHIPMENT:** Between the approximate dates of May 4 and July 20, 1948, from the State of Indiana into the State of Kentucky.

**LABEL, IN PART:** "Can't Be Beat Vitamin and Iron Enriched \* \* \* Bleached Phosphated Flour."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (1), a valuable constituent, thiamine (vitamin B<sub>1</sub>), had been in part omitted from the article.

Misbranding, Section 403 (g) (1), the article failed to conform to the definition and standard of identity for enriched flour since it contained per pound less than 2.0 milligrams of thiamine (vitamin B<sub>1</sub>).

Further misbranding, Section 403 (a), the label statements "Vitamin \* \* \* Enriched 8 oz. contains not less than the following proportions of the minimum daily requirement of vitamin B<sub>1</sub> 100%" were false and misleading. The statements represented and suggested that the article contained per pound not less than 2.0 milligrams of thiamine (vitamin B<sub>1</sub>), as required by the standard of identity for enriched flour, and that 8 ounces of the article contained not less than 100 percent of the minimum daily requirements of the body for thiamine (vitamin B<sub>1</sub>). The article contained less thiamine (vitamin B<sub>1</sub>) than represented.

**DISPOSITION:** April 6, 1949. A plea of guilty having been entered, the court imposed a fine of \$100.

## CHOCOLATE AND CONFECTIONERY

14764. Adulteration of chocolate. U. S. v. 34 Bales, etc. (F. D. C. Nos. 25889, 25890. Sample Nos. 45438-K, 45439-K.)

**LIBEL FILED:** October 29, 1948, Western District of Wisconsin.

**ALLEGED SHIPMENT:** On or about July 31, 1947, and April 13, 1948, from Elsdon, Ill., and Philadelphia, Pa.

**PRODUCT:** Chocolate. 34 200-pound bales at Beloit, Wis., and 3,694 pounds in unlabeled bags or second-hand boxes at Beloit, Wis.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of insects. The article was adulterated while held for sale after shipment in interstate commerce.

**DISPOSITION:** December 7, 1948. The Wright & Wagner Dairy Co., Beloit, Wis., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be salvaged for human consumption, under the supervision of the Federal Security Agency.

Following fumigation, the chocolate was reworked by removing the infestation with steel scrapers. The broken edges were scraped deeply and any holes made by insects were gouged out. Of the 10,547 pounds seized, 3,052 pounds were rejected and burned at the completion of the salvaging operations on December 30, 1948.

**14765. Action to enjoin and restrain the interstate shipment of confectionery and bakery products. U. S. v. Runkle Co., William J. Malone, and Eilene Finnell. Tried to the court. Injunction granted. (Inj. No. 47.)**

**COMPLAINT FILED:** February 20, 1946, Northern District of Ohio, against the Runkle Co., a partnership, Kenton, Ohio, and William J. Malone and Eilene Finnell, members of the partnership. The complaint alleged that the defendants had been shipping in interstate commerce, for the past several years, quantities of confectionery and bakery products which were adulterated, and that factory inspection, at various times, of defendants' plant disclosed the presence of insects, rodents, rodent excreta, and foreign matter in and around places in the plant where the articles were manufactured and packed and in and around the raw materials and equipment used in manufacturing the articles. Examination of samples from interstate shipments of the articles disclosed the presence of insect fragments, wood fragments, rodent hair fragments, and mouse pellets.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the products consisted in whole or in part of filthy substances; and, Section 402 (a) (4), they had been and were being 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 during the pendency of the action from commission of the acts complained of; and that after hearing, the preliminary injunction be made permanent.

**DISPOSITION:** On April 3, 1946, the Runkle Co., William J. Malone, and Eilene Finnell filed a joint answer denying that the products were adulterated. Thereafter, on May 23, 1946, with the consent of the defendants, a preliminary injunction was entered temporarily enjoining the defendants from further introduction into interstate commerce of food adulterated under Sections 402 (a) (3) and (4).

On September 9 and 10, 1946, the trial was held on the question of granting a permanent injunction; and at the conclusion of the trial, the matter was taken under advisement by the court. On December 16, 1946, the court handed down a written opinion, which reads in part as follows:

**KLOEB, District Judge:** "It is the position of the defendants, as argued in their brief filed September 18, 1946, that the present injunction is as good as a permanent injunction, and that the public interest will be as fully served by continuing this case under a temporary injunction as it will be by entering a perpetual injunction; that the temporary injunction be continued, and that the hearing of the case be continued until some further reasonable time, during which the defendants can show the Court that no one can justly complain of the condition of the plant or its products.