

## CHEESE

**10268. Action to enjoin and restrain the interstate shipment of cheese and cheese products. U. S. v. H. Phillips Wescott (the Wescott Cheese Co. and the Wescott Cheese Factory). Injunction granted. (Inj. No. 118.)**

**COMPLAINT FILED:** November 8, 1945, District of Vermont, against H. Phillips Wescott, trading as the Wescott Cheese Co. and the Wescott Cheese Factory, at East Poultney, Vt. The complaint charged that from on or about July 5, 1942, to the date upon which the complaint was filed, the defendant had been manufacturing and shipping in interstate commerce cheese and cheese products which were adulterated; that the products had been manufactured in a building which was dirty and out of repair and without sufficient drainage or adequate water supply; that the building was without adequate screening for the purpose of keeping out flies and insects; that the milk used by the defendant was dirty and unfit for human consumption and contained filthy and deleterious substances; that there were rodents in and about the building and equipment and in the cheese which was stored in the building; that there was a large amount of rodent excreta in the building and on the cheeses and raw material in the building; and that cheese and cheese products containing insects, flies, cow hairs, cat hairs, human hairs, rodent hairs, rodent filth, insect fragments, maggots, and other foul and filthy matter had been shipped in interstate commerce.

**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 prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth.

**PRAYER OF COMPLAINT:** That the defendant be restrained and enjoined during the pendency of the action and permanently from shipping adulterated food of his manufacture in interstate commerce.

**DISPOSITION:** On November 21, 1945, with the consent of the defendant, a preliminary injunction was issued. On March 6, 1946, the defendant having consented to the issuance of the permanent injunction, an order was entered permanently enjoining the defendant from the commission of the acts complained of.

**10269. Action to enjoin and restrain the interstate shipment of cheese products. U. S. v. Empire State Cheese Co., John A. Marino, and Carolyn M. Tarantine. Injunction granted. (Inj. No. 143.)**

**COMPLAINT FILED:** July 11, 1946, Western District of New York, against the Empire State Cheese Co., a partnership, Olean, N. Y., and John A. Marino and Carolyn M. Tarantine, partners. The complaint charged that since January 1, 1946, the defendants had been manufacturing, selling, and shipping in interstate commerce substantial amounts of cheese products which were adulterated; that prior to January 1, 1946, the business was conducted under the name of Olean Ice Cream Co., and that John A. Marino was one of the partners, but that Carolyn M. Tarantine was not a member of the firm; that in May and June of 1944, inspections of the plant showed that its manufacturing practices were highly insanitary; that the milk being used at the time contained a high percentage that was unfit for human consumption, and there was evidence of fly breeding and rodent infestation in the plant; and that on August 19, 1944, and September 14, 1945, inspections showed that the plant was still operating under deplorable insanitary conditions.

It was further alleged in the complaint that the firm was again inspected on April 10, 1946; and that the name of the firm had been changed to the Empire State Cheese Co., composed of the individuals named above. Tests were made at the time which showed that approximately 42 percent of the milk being used was unfit for human consumption. The plant was being operated under generally repulsive insanitary conditions, and rodent and insect infestation was rampant throughout the plant. Between March 26 and June 13, 1946, various samples were collected from shipments of cheese made by the firm. These samples were found to contain rodent hair fragments, mites, cheese skippers, pupae, rodent-gnawed areas, mold, insect parts, rodent excreta, and miscellaneous dirt.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the articles consisted in whole or in part of filthy substances; and, Section 402 (a) (4), they had been prepared and packed under insanitary conditions.

**PRAYER OF COMPLAINT:** That the defendants, together with their agents, servants, and employees, be restrained from shipping and causing to be shipped food or food products which had been manufactured or stored at the plant of the defendants, and which were in violation of the law.

**DISPOSITION:** August 8, 1946. The defendants having failed to answer or otherwise plead to the complaint, judgment was entered enjoining and restraining them from shipping in interstate commerce food products which were in violation of the law, as set forth in the complaint.

**10270. Action to restrain the interstate shipment of Cheddar cheese and process cheese. U. S. v. The Fisher Dairy & Cheese Co., Charles W. Fisher, Harold L. Fisher, and Max R. Christian. Complaint dismissed. (Inj. 121.)**

**COMPLAINT FILED:** November 14, 1945, Northern District of Ohio, against the Fisher Dairy & Cheese Co., a corporation, Wapakoneta, Ohio, and Charles W. Fisher, president and treasurer of the corporation, Harold L. Fisher, vice president and general manager, and Max R. Christian, secretary. The complaint charged that the shipment of adulterated Cheddar cheese and process cheese had been made in interstate commerce by the corporate defendant since October 7, 1942, and by the individual defendants for a substantial period of time. Factory inspections disclosed the presence of insects, rodent excreta, and other foreign matter, and filthy and unwholesome substances around the plant and places where the cheese was manufactured and packed, and in and around the raw materials used in their manufacture. The inspections further disclosed that the equipment of the plant was in a state of disrepair and lacked adequate cleaning to maintain it in a sanitary condition, thereby subjecting the articles to contamination by insects, rodents, and other filthy and foreign matter.

**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 from the commission of the acts complained of during the pendency of the action, and that, after hearing, the preliminary injunction be made permanent.

**DISPOSITION:** On December 21, 1945, a motion to make the complaint more definite and certain was filed on behalf of the defendants, together with the answer of Max R. Christian, one of the defendants, alleging that he had severed his connection with the corporate defendant as of December 7, 1945. On January 7, 1946, the court overruled the defendant's motion, and on January 21, 1946, it ordered that the complaint be dismissed with respect to Max R. Christian. On February 20, 1946, the other defendants in the case filed an answer admitting that in the past they had shipped quantities of cheese which may have been adulterated, but alleging that they had not violated any provisions of the law since August 16, 1945. The case came on for hearing before the court on May 16, 1946, and after consideration of the evidence and arguments of counsel, the court decided to retain the matter on its docket for several months to ascertain whether the defendants would continue to operate in compliance with the law. On October 23, 1946, the court having found that the corporate defendant was then operating in full compliance with the law, and that there was little probability that it would be in further violation, it was ordered that the complaint be dismissed without cost to that defendant, and with prejudice to a further action on the same state of facts.

**10271. Adulteration of Colby cheese. U. S. v. Leslie E. Chapin (Tampico Creamery). Plea of guilty. Fine of \$500 and costs and 6 months' imprisonment. Execution of jail sentence suspended and defendant placed on 1 year's probation. (F. D. C. No. 17807. Sample Nos. 22568-H, 22569-H.)**

**INFORMATION FILED:** On February 28, 1946, Northern District of Illinois, against Leslie E. Chapin, trading as the Tampico Creamery, Tampico, Ill. The defendant was charged with giving a false guaranty. The guaranty was given to