

U. S. 500; Duplex Printing Press Co. v. Deering, 254 U. S. 443; Bowles, Adm. v. Carnegie-Illinois Steel Corp., 7 Cir., 149 F. 2d 545. The injunction here absolutely closes the door of the court on the defendant for an arbitrary period of two years regardless of what changes may be brought about during that time. Defendant cannot even ask the court to modify the injunction. This is true for a period of two years even though the grounds for which it was granted no longer exist by reason of a change in the controlling facts on which the injunction rested. The injunctive decree should be an ambulatory one. It is executory and continuing as to its purpose and should be subject to adaptation as events may change. This is not a case in which rights may be said fully to have accrued upon facts which are stable, permanent and impervious to change, but it involves the supervision of changing conduct or conditions. The denial of the right to apply to the court for a modification of the judgment within a period of two years is contrary to the genius of the jurisprudence of chancery. Under our system of government even the social outcast or the convicted criminal, though shunned by society, may have his day in court and seek for justice. We think too, the injunction is too broad in that it restrains the defendant from shipping any products processed at its Manchester plant regardless of what the grade of the processed products might be. As has been observed, the physical plant itself is in sanitary condition; it is competently managed. It has not apparently been able to secure raw material of the requisite grade. It is surely conceivable that with its present equipment and personnel, defendant could process products that are not, within the meaning of the statute, adulterated, and if so, it should be permitted to have such products transported in interstate commerce.

"The judgment appealed from should be modified so as to enjoin and restrain defendant, under the provisions of Section 332, Title 21 U. S. C. A., from introducing or delivering for introduction into interstate commerce, in violation of Section 331 and Section 342 (a) (3), Title 21 U. S. C. A., adulterated cheese or dairy products processed or manufactured, or to be processed or manufactured at its Manchester, Iowa, plant. The judgment should contain recital that jurisdiction of the cause is retained for the purpose of enforcing or modifying the judgment and for the purpose of granting such further relief as may hereafter appear appropriate. When so modified, the injunction can, of course, be enforced by contempt proceedings if necessary. The injunction should forbid only the acts which are prohibited by the statute. It should not prohibit the shipping or introducing of pure products into interstate commerce. As so modified the judgment will be affirmed."

On April 26, 1947, a mandate from the appellate court was filed in the United States district court, directing that the judgment of October 13, 1945, be modified, and in accordance therewith an order was entered on April 28, 1947, under which the defendant corporation was enjoined and restrained from introducing or delivering for introduction into interstate commerce adulterated cheese or dairy products processed or manufactured or to be processed or manufactured at its Manchester, Iowa, plant.

On June 11, 1947, a hearing was held on the application of the defendant corporation to dissolve the injunction, and on the basis of the evidence presented the court found that the conditions originally necessitating the issuance of the injunction had been so changed that an injunction was no longer necessary, and that the injunction had accomplished the purpose for which it was issued. Judgment was accordingly entered dissolving the injunction.

13265. Action to enjoin and restrain the interstate shipment of cheese and cheese curd. U. S. v. Delaware Valley Creamery Co., Inc. Default decree granting injunction. (Inj. No. 182.)

COMPLAINT FILED: November 6, 1947, Southern District of New York, against Delaware Valley Creamery Co., Inc., New York, N. Y.

NATURE OF CHARGE: That the defendant had been and was introducing and delivering for introduction in interstate commerce, at Cambridge Springs, Pa., cheese and cheese curd which were adulterated in the following respects: Section 402 (a) (3), they consisted in part of filthy substances, such as rodent hair, nondescript dirt, plant material, and insect fragments; and, Section 402 (a) (4), they had been and were being prepared and held under insanitary conditions at the Cambridge Springs, Pa., plant whereby they may have become contaminated with filth.

That the insanitary conditions in the plant arose out of the following conditions: The presence of rodents, rodent excreta, maggots, flies, and other insects in and around places in the plant where the cheese and cheese curd were being prepared and held and in and around the equipment used for preparing and holding the foods, thereby contaminating them and subjecting them to contamination by rodents and insects; the proximity of unprotected filthy toilet facilities to places in the plant where the foods were being prepared and held; and the existence of deposits of decomposed whey in proximity to places where cheese and cheese curd were being prepared and held.

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: November 14, 1947. The defendant having failed to appear, a temporary injunction was granted by the court. On April 19, 1948, judgment was entered by default, permanently enjoining and restraining the defendant from introducing and delivering for introduction into interstate commerce adulterated cheese and cheese curd foods.

13266. Adulteration of cheese and milk. U. S. v. Beauty Girl Non-Stock Cooperative. Plea of nolo contendere. Fine, \$50. (F. D. C. No. 24091. Sample Nos. 48372-H to 48374-H, incl., 62852-H, 62858-H, 72737-H.)

INFORMATION FILED: February 12, 1948, District of Nebraska, against the Beauty Girl Non-Stock Cooperative, a corporation, Gering, Nebr.

ALLEGED SHIPMENT: On or about September 11, 12, 13, and 23, 1946, and July 9, 1947, from the State of Nebraska into the States of Wyoming and California.

LABEL, IN PART: (Cheese) "Beauty Girl Cheddar Cheese."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the products consisted in part of filthy substances by reason of the presence of nondescript dirt, sand, plant tissue, metal particles, rust particles, rodent hair, feather barbules, insect fragments, cow hair, manure, insects, and cloth fibers; and, Section 402 (a) (4), the products had been prepared under insanitary conditions whereby they may have become contaminated with filth.

DISPOSITION: June 14, 1948. A plea of nolo contendere having been entered on behalf of the defendant, the court imposed a fine of \$10 on each count of the information, a total fine of \$50.

13267. Adulteration and misbranding of Cheddar cheese. U. S. v. Kraft Foods Co. Plea of nolo contendere. Fine, \$100. (F. D. C. No. 24529. Sample No. 87222-H.)

INFORMATION FILED: May 4, 1948, District of Vermont, against the Kraft Foods Co., a corporation, trading at Troy, Vt.

ALLEGED SHIPMENT: On or about June 10, 1947, from the State of Vermont into the State of Massachusetts.

NATURE OF CHARGE: Adulteration, Section 402 (b) (2), a product containing less than 50 percent of milk fat in its solids had been substituted for Cheddar cheese.

Misbranding, Section 403 (g) (1), the product failed to conform to the definition and standard of identity for Cheddar cheese, since it contained less than 50 percent of milk fat in its solids.

DISPOSITION: June 25, 1948. A plea of nolo contendere having been entered, a fine of \$100 was imposed.

13268. Adulteration of Cheddar cheese. U. S. v. 35 Cases * * *. (F. D. C. No. 23050. Sample No. 69947-H.)

LIBEL FILED: On or about June 18, 1947, Northern District of Illinois.

ALLEGED SHIPMENT: On or about April 30, 1947, by the Boswell Dairy Products Co., Inc., from Boswell, Ind.

PRODUCT: 35 cases of Cheddar cheese at Freeport, Ill.

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 manure fragments, insect fragments, and hairs resembling rodent hairs; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.