

**SHIPPED:** 12-7-54, from Sioux City, Iowa, by Robb Ross Co.  
**LABEL IN PART:** (Bag) "Robb Ross Pop Corn."  
**LIBELED:** 1-7-55, Dist. Colo.  
**CHARGE:** 402(a)(3)—contained rodent excreta when shipped.  
**DISPOSITION:** 3-7-55. Default—consumption by animals.

**22410. Unpopped popcorn.** (F. D. C. No. 37734. S. No. 8-413 M.)  
**QUANTITY:** 15 cases, 36 1-lb. pkgs. each, at Kansas City, Mo.  
**SHIPPED:** 12-27-54, from Coffeyville, Kans., by Kansas Wholesale Grocery Co.  
**LABEL IN PART:** (Pkg.) "Vogel's Pop Corn."  
**LIBELED:** On or about 1-5-55, W. Dist. Mo.  
**CHARGE:** 402(a)(3)—contained insects when shipped.  
**DISPOSITION:** 2-16-55. Default—destruction.

**22411. Wheat.** (F. D. C. No. 37488. S. No. 6-089 M.)  
**QUANTITY:** 120,000 lbs. at Louisville, Ky.  
**SHIPPED:** 11-30-54, from Indianapolis, Ind., by Indiana Grain Cooperative.  
**LIBELED:** 12-22-54, W. Dist. Ky.  
**CHARGE:** 402(a)(2)—contained when shipped an added poisonous and deleterious substance, a mercurial compound, which is unsafe within the meaning of the law since it is a substance not required in the production of the article and can be avoided by good manufacturing practice.  
**DISPOSITION:** 12-29-54; amended 2-7-56. Consent—claimed by Indiana Farm Bureau Cooperative Association, Inc., Indianapolis, Ind. After several attempts to recondition the article had proved unsuccessful, it was destroyed.

**22412. Wheat.** (F. D. C. No. 37764. S. Nos. 10-379/80 M.)  
**QUANTITY:** 88,200 lbs. at Minneapolis, Minn.  
**SHIPPED:** 1-13-55, from Kulm, N. Dak., by Gackle Bros. Grain Co.  
**LIBELED:** 1-25-55, Dist. Minn.  
**CHARGE:** 402(a)(3)—contained rodent excreta when shipped.  
**DISPOSITION:** 2-8-55. Consent—claimed by Gackle Bros. Grain Co. and reprocessed for use as animal feed.

## DAIRY PRODUCTS

### CHEESE

**22413. Washed curd cheese.** (F. D. C. No. 35738. S. Nos. 56-120/1 L.)  
**INFORMATION FILED:** 12-29-53, N. Dist. N. Y., against Colosse Cheese & Butter Co., Inc., Parish, N. Y., and John F. O'Mara, manager.  
**ALLEGED VIOLATION:** On 2-2-46, the defendants gave to a firm engaged in the business of shipping cheese in interstate commerce a guaranty to the effect that cheese shipped or sold by it under the guaranty would not be adulterated or misbranded.

Between 7-3-53 and 7-13-53, the defendants caused to be shipped to the holder of the guaranty, at Carthage, N. Y., quantities of washed curd cheese which were adulterated.

**CHARGE:** 402 (a) (3)—contained manure fragments and prepared from filth-contaminated milk; and, 402 (a) (4)—prepared under insanitary conditions.

**DISPOSITION:** Corporation and individual pleaded not guilty on 1-26-54. Thereafter on 1-11-55, the corporation changed its plea to guilty, and a motion was made by the individual to dismiss the information relating to him. On 4-28-55, the court, after considering the briefs and hearing the arguments of counsel, handed down the following opinion denying the motion:

BRENNAN, *District Judge*: "The individual defendant moves for the dismissal, as to him, of a two count information which charges violation of the Federal Food, Drug & Cosmetic Act (21 U. S. C. A. 331 (h)).

"The motion was made orally at the time the case was moved for trial. Oral argument was heard, briefs have been submitted and the motion is before the Court for decision.

"The facts briefly stated, as charged in the information and as disclosed in the argument and in the briefs, are as follows:

"The corporate defendant (who has entered a guilty plea) is engaged in the manufacture of milk products at Parish, N. Y. The individual defendant is the manager thereof and although the record does not disclose his position insofar as stock ownership is concerned, it is apparent he exercises control of the corporation. In February 1946, the information charges that a continuing guaranty was executed in the name of the corporate defendant by the individual defendant as manager. The guaranty was in the form provided in 21 U. S. C. A. 333 (c) (2) and in effect guarantees to the purchaser that the article shipped by the seller is not adulterated or misbranded within the meaning of the Federal Food, Drug & Cosmetic Act of the United States. The information further charges that on July 3, 1953, while the guaranty was in full force and effect, the defendants did ship to Armour's Creameries Inc., Carthage, N. Y., on the order of the purchaser a quantity of cheese which was adulterated within the meaning of the term as defined in 21 U. S. C. A. 342 (a) (3) and 342 (a) (4). In effect, the charge in the information is that the defendants thereupon violated the provisions of 21 U. S. C. A. 331 (h) in that the guaranty, above referred to, is false by reason of such shipment, the purchaser being engaged in the business of introducing cheese into interstate commerce.

"The second count of the information is similar in all respects to the first count which is described above, except that the shipment was on a different date—to wit—July 13, 1953.

"The moving party in effect contends that even assuming that the individual defendant by reason of his position of control of the corporation could be found guilty of introducing adulterated food into interstate commerce in violation of Sec. 331 (a), that no criminal responsibility rests upon him under the provisions of 331 (h) for the reason that he did not sign the guaranty except in his representative capacity as manager of the corporate defendant and therefore no criminal responsibility may be imposed upon him.

"From the facts before the Court on this motion, the defendant has construed his liability under the statute too narrowly. It seems to be settled that a continuing guaranty made in good faith and unrevoked may be made false by an adulteration of the product, in transactions occurring after its execution and delivery since it purports to cover a series of transactions rather than an individual sale. (*Barnes vs U. S.* 142 F. 2d 648.) It is also settled law that corporate agents may be individually criminally liable for acts done on behalf of the corporation. (*U. S. vs Bach* 151 F. 2d 177 at 179, *Barnes vs U. S.* 142 F. 2d 648, *U. S. v. Empire Packing Co.* 174 F. 2d 16). The case of *U. S. v. Dotterweich* 320 U. S. 277 construes and applies the provisions of the Federal Food, Drug & Cosmetics Act in a liberal manner in accordance with its manifest purpose. While it does not cover the precise point here, it in effect holds that individual liability under the criminal sanctions of the law may not be avoided by the fact that the act committed was in furtherance of the corporate business rather than in the individual personal business of the party charged. At page 281, there is pointed out that the historic conception of a 'misdemeanor' makes all those responsible for it equally guilty. The individual defendant was responsible for the guaranty here. His responsibility may not be avoided because he acted in the execution of the guaranty as a corporate agent. It cannot be

disputed that if the individual defendant was in such control of the corporation as to constitute same his alter ego that he could escape liability. (U. S. v. Dotterweich supra, p. 282). Equal responsibility however is not avoided as a matter of law even if his relationship to the corporation is something less. (U. S. v. Dotterweich, supra, p. 285.)

"From the facts now before the Court and from a review of the cases which have adopted the reasoning of the Dotterweich decision (United States v. Kaadt 171 F. 2d 600; United States v. Parfait Powder Puff Co. 163 F. 2d 1008; United States v. Walsh 331 U. S. 432; United States v. Bach, supra; Barnes v. United States, supra.), it follows that the motion on the present state of the record must be and is denied, and;

"It is SO ORDERED."

On 6-3-55, the individual changed his plea to guilty, and the court fined the corporation \$200 and the individual \$100.

**22414. Washed curd cheese.** (F. D. C. No. 36610. S. Nos. 45-812 L, 56-165 L.)  
INFORMATION FILED: 10-28-54, N. Dist. N. Y., against Leland Denesha, t/a Russell Village Cheese Factory, Russell, N. Y.

ALLEGED VIOLATION: On 7-16-52, the defendant gave to a firm engaged in the business of shipping cheese in interstate commerce a guaranty to the effect that cheese delivered by the defendant under the guaranty would not be adulterated or misbranded.

On 10-13-53 and 10-20-53, the defendant caused to be delivered to the holder of the guaranty, at Carthage, N. Y., a quantity of cheese that was adulterated.

CHARGE: 402 (a) (3)—contained insect fragments, cow hair fragments, rodent hair fragments, and manure fragments, and prepared from filth-contaminated milk.

PLEA: Guilty.

DISPOSITION: 1-17-55. \$200 fine.

## FISH AND SHELLFISH

**22415. Canned tuna (15 seizure actions).** (F. D. C. Nos. 37492, 37493, 37554, 37562, 37567, 37600, 37601, 37606, 37624, 37625, 37628, 37653, 37770, 37771, 37797. S. Nos. 821 M, 1-045 M, 1-237 M, 3-096 M, 3-098 M, 3-788 M, 3-809 M, 5-982 M, 12-507/8 M, 12-540 M, 13-019 M, 13-904 M, 14-100 M, 18-101 M.)

QUANTITY: 3,938 cases, 48 cans each, at Little Rock, Ark., Memphis, Tenn., New Haven and New London, Conn., Clementon and Perth Amboy, N. J., Jacksonville and Hialeah, Fla., Charlotte, N. C., Bronx, Buffalo, and New York, N. Y., and McConnelsville, Ohio.

Most cans were 6-oz. size, and the remainder were 6½-oz. or 7-oz. size.

SHIPPED: 198 cases were shipped from Batimore, Md., by Francis H. Leggett & Co., on or about 1-20-55, and the other cases were shipped from New Orleans, La., Mobile, Ala., and Ponce, P. R., by South Pacific Canning Co., between 11-15-54 and 12-31-54.

LIBELED: Between 12-27-54 and 2-23-55, E. Dist. Ark., W. Dist. Tenn., Dist. Conn., Dist. N. J., S. Dist. Fla., W. Dist. N. C., S. Dist. N. Y., W. Dist. N. Y., and S. Dist. Ohio.

CHARGE: 402 (a) (3)—alleged to contain decomposed fish when shipped.

DISPOSITION: South Pacific Canning Co., claimant, and the Government having consented, an order was entered on 3-21-55, in the United States District Court