

"4. Organoleptic tests by use of the sense of smell are determinative of the presence of decomposed substances in frozen eggs, within the meaning of 21 U.S.C. 342(a) (3), when the odor of decomposition is present. Decomposition can exist, however, within the meaning of 21 U.S.C. 342(a) (3) even when no odor is obtained but this decomposition will be detected by bacteriological and chemical analyses.

"5. The presence of bacteria in frozen whole egg in an amount in excess of 5,000,000 per gram of egg by direct microscopic count is determinative of the presence of decomposed substances in the eggs within the meaning of 21 U.S.C. 342(a) (3).

"6. The presence of acetic, formic, or succinic acid in any measurable quantity in frozen whole egg is determinative of the presence of decomposed substances in the eggs within the meaning of 21 U.S.C. 342(a) (3).

"7. The presence of lactic acid in excess of 7 milligrams per 100 grams of egg in combination with a direct microscopic bacteria count of 5,000,000 or more is determinative of the presence of decomposed substances in frozen eggs within the meaning of 21 U.S.C. 342(a) (3).

"8. By reason of the presence therein of decomposed eggs, a part of each of the articles here involved was adulterated when introduced into and while in interstate commerce within the meaning of 21 U.S.C. 334(a) and 342(a) (3).

"9. If a part of an article of food is adulterated within the meaning of 21 U.S.C. 342, the entire article must be condemned.

"10. The said articles of food seized herein are subject to forfeiture and condemnation to the United States.

"11. The Government is entitled to a decree of condemnation and forfeiture, pursuant to 21 U.S.C. 334(a), and to its cost pursuant to 21 U.S.C. 334(e)."

Pursuant to such findings and conclusions the court entered a decree on 1-28-59, providing for condemnation of the eggs and their release under bond for denaturing for use as animal feed.

**26477. Incubator reject eggs. (Inj. No. 342).**

**COMPLAINT FOR INJUNCTION FILED:** About 12-5-58, N. Dist. Ga., against Technical Egg Products, Inc., Gainesville, Ga., and Curtis Parks, Jr., manager of the Gainesville plant.

**CHARGE:** The complaint alleged that the defendants were engaged at Gainesville, Ga., in the business of purchasing, receiving, candling, and packing a product known in the trade as incubator reject shell eggs, and had been and were introducing and causing to be introduced into interstate commerce, incubator reject eggs which were adulterated within the meaning of 402(a) (3) by reason of the presence of decomposed egg material and eggs otherwise unfit for food because they were incubator reject eggs.

It was alleged further that defendants employed a method of operation whereby defendants purchased incubator reject eggs from about 74 chicken hatcheries within the States of Georgia; that defendants arranged with several hatcheries to have the incubator reject eggs put into cases of thirty dozen capacity and set aside until picked up by defendants; that defendants paid the hatcheries about \$2.00 per case for the eggs and then transported them to the plant at Gainesville, Ga.; that upon receipt of the eggs at the Gainesville plant, the incubator reject eggs containing black rots, sour rots, mixed rots, embryos, and eggs ranging in other degrees of decomposition were unloaded and stacked for various and prolonged periods inside the plant without refrigeration; that the incubator reject eggs were then subjected to candling, the only operation performed at the Gainesville plant, which candling separated the grossly decomposed incubator reject eggs from the unfit-for-food incubator reject eggs; that defendants then shipped the candled incubator reject eggs to their plant at

Nashville, Tenn., without denaturing the eggs so as to preclude their use in human food products.

The complaint alleged further that the defendants were well aware that their acts were violative of the law; that various inspections had been made of the defendants plant by representatives of the Food and Drug Administration at which times the defendants were warned that their practices were violative of the law; that defendants had consented to several decrees of condemnation involving seizures of incubator reject eggs; and that defendant, Technical Egg Products, Inc., and its president, were convicted 11-29-57, of shipping decomposed frozen whole eggs in interstate commerce; and that despite these warnings, defendants continued to ship adulterated eggs into interstate commerce.

It was alleged also that the defendants had on hand at the Gainesville plant, stocks of incubator reject shell eggs which would in the usual and ordinary course of business be shipped in interstate commerce, and that such article constituted a menace to interstate commerce in that it was adulterated as described above.

DISPOSITION: The court heard the Government's motion for a temporary restraining order on 1-30-59, after affidavits had been filed by witnesses for the Government and the defendants. On 2-2-59, the court issued the following findings and conclusions of law:

SLOAN, *District Judge*:

#### FINDINGS

"1. Incubator reject shell eggs are shell eggs that have been placed in incubators and kept under a constant temperature of 98 degrees fahrenheit for varying numbers of days up to 20, but resemble in external appearance shell eggs as commercially marketed and are a food within the meaning of § 201(f) of the Act [21 U.S.C., § 321(f) (2)].

"2. A large percentage of the incubator reject eggs are inedible and fall within the classification of inedible eggs, i.e. mixed rots, black rots, blood rings, and dead embryos and are therefore adulterated within the meaning of the Federal Food, Drug and Cosmetic Act, § 402(a) (3) [21 U.S.C., § 342(a) (3)].

"3. The defendants are introducing and causing to be introduced and delivered for introduction into interstate commerce, incubator reject eggs which are adulterated.

"4. The Court finds that there is danger of such adulterated food being diverted to food use by breaking out and otherwise removing the egg from the shell and mixing the egg with magma and freezing in cans for distribution to bakeries and similar food industries that customarily use frozen eggs as a raw material.

#### CONCLUSIONS OF LAW

"This Court has jurisdiction of the case by virtue of the provisions of Title 21, § 332, U.S.C.

"§ 331 of Title 21, U.S.C. prohibits the introduction into interstate commerce of adulterated foods and § 342(a) (3) provides 'food shall be deemed to be adulterated—(3) if it consists in whole in in part of any filthy, putrid or decomposed substance or if it is otherwise unfit for food.' [Emphasis supplied.]

"The affidavit of the defendant, Curtis Parks, Jr., states as follows:

That he is manager and resident agent of the Georgia Branch of Technical Egg Products, Inc., a Tennessee corporation. That the said corporation is in the inedible egg business and that from these infertile inedible eggs various technical products are produced, such as tanner's yolk and technical albumen, and that none of said products which are produced by Technical Egg Products, Inc., go into human food channels.

"The term 'food' as used in the Federal Food, Drug and Cosmetic Act must be read in such a way that it includes, but is not limited to items which are

unfit to be consumed. The test for determining whether an item is a food under the Act can not be one of intended use. *United States v. 52 Drums Maple Syrup*, 110 F. 2d 914. It must of necessity be one which regards items as food which are generally so regarded when sold in a food form. Thus a rotten egg is one differing only in degree rather than kind from a sound egg. Eggs being sound or rotten are food under the statutory definition. If a dealer in inedible eggs, such as the defendants here, desires to utilize the channels of interstate commerce, with immunity from the provisions of the Federal Food, Drug and Cosmetic Act, it is necessary that he change the very nature of the product in which he deals. So long as the product retains a semblance of the identity it possessed as a food, the product must be considered as a food. *United States v. Thirteen Crates of Frozen Eggs*, 208 F. 950, affirmed, 215 F. 584.

"The plaintiff is entitled to an injunction by virtue of the provisions of § 332 of Title 21, U.S.C. Let the temporary restraining order be prepared and presented and let it be specific in its terms enjoining the defendants herein, their agents, attorneys and servants until the further order of the Court from shipping or causing to be shipped in interstate or foreign commerce the incubator reject eggs unless they are first denatured so as to render them incapable of being used for food."

Pursuant to the findings and conclusions of law, the court on 2-5-59, entered a temporary restraining order enjoining the defendants, until further order of the court, from introducing into interstate commerce:

(a) incubator reject shell eggs which consist in part of a decomposed substance by reason of the presence in the eggs of decomposed material and which are otherwise unfit for food because they are incubator reject eggs, unless and until the incubator reject eggs are completely denatured so as to preclude their use in human food products; and

(b) any of the stocks of incubator reject shell eggs now on hand at the defendants' Gainesville plant, or incubator reject shell eggs elsewhere, unless and until all such eggs are completely denatured so as to preclude their use in human food products, and thus brought into compliance with the law.

26478. Frozen eggs. (F.D.C. No. 43998. S. Nos. 71-261 P, 71-266 P.)

QUANTITY: 60 30-lb. cans at Collegedale, Tenn.

SHIPPED: 9-23-59, from Forest Park, Ga., by Superior Eggs, Inc.

LABEL IN PART: "Superior \* \* \* Whole Eggs \* \* \* Packed by Superior Eggs, Inc. Forest Park, Ga. \* \* \* 869T 16251."

LIBELED: 12-18-59, E. Dist. Tenn.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 3-21-60. Consent—claimed by Superior Eggs, Inc. Segregated; 21 cans destroyed.

26479. Frozen eggs (2 seizure actions). (F.D.C. Nos. 43606, 43607. S. No. 63-989 P.)

QUANTITY: 28 30-lb. cans at Lynn, Mass., and 119 30-lb. cans at Danvers, Mass.

SHIPPED: The article was shipped in the form of shell eggs from various producers in Massachusetts, Connecticut, Vermont, Maine, and New Hampshire, sometime prior to 7-2-59, to Lynn, Mass., where the article was packed in the form of frozen eggs.

LIBELED: 10-19-59, Dist. Mass.

CHARGE: 402(a) (3)—contained decomposed eggs while held for sale.

DISPOSITION: 2-11-60. Tobin's Egg Store, Lynn, Mass., having appeared as claimant and the libel actions having been consolidated, judgment of con-