& Co., Savannah, Ga., alleging that the product had been shipped on or about April 29, 1912, by B. B. Miller & Son, Lowville, N. Y., and transported from the State of New York into the State of Georgia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: (On containers) "Swift & Company—Savannah, Ga.—High Market." (On cheeses) "NY 1912.—Whole Milk Cheese."

Adulteration and misbranding of the product were alleged in the libel for the reason that into each of the said cheeses had been added and packed an excessive amount of additional water so as to make them contain an excessive proportion of water, to wit, exceeding 45.31 per cent, and that said cheeses were, by said excessive water, lowered, reduced, and injuriously affected in their quality and strength, and for the further reason that, for the contents of each of the cheeses, another substance, to wit, water, had been substituted in part for the milk and other normal constituents of said cheeses.

On August 29, 1912, said Swift & Co., claimant, having admitted the allegations in the libel and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released and delivered to said claimant upon payment of all costs of the proceedings and execution of bond in the sum of $250 conditioned that the product should be relabeled in conformity with law and any statement as to the composition and constituents of the cheese should be wholly omitted therefrom in conformity with section 10 of the act.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 10, 1914.*

2859. Adulteration of frozen eggs. U. S. v. 13 Crates of Frozen Eggs. Tried to a jury. Verdict in favor of the Government by direction of the court. Decree of condemnation, forfeiture, and destruction. (F. & D. No. 4012. S. No. 1390.)

On May 18, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 13 crates, each containing 2 cans of frozen eggs, remaining unsold in the original unbroken packages and in possession of Armour & Co., New York, N. Y., alleging that the product had been shipped on or about May 10, 1912, by Armour & Co., Chicago, Ill., and transported from the State of Illinois into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the libel for the reason that each of the 13 crates contained an article of food, to wit, frozen eggs, which being animal substance was in whole or in part filthy, putrid, and decomposed, contrary to the provisions of subdivision 6 of section 7 of the act of June 30, 1906.

On October 20, 1913, the case having regularly come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the following direction to return a verdict in favor of the government was delivered to the jury on November 24, 1913, by the court:

RAY, *Judge.* The claimant, Armour and Company, of Chicago, Ill., having a plant and place of business there, is a purchaser of and dealer in eggs and other food products, not a producer. At Chicago, Ill., it purchased and had on hand these eggs in question and others like them. They were released from the shells and frozen, but by reason of decay had so far decomposed that they were not fit for human food or consumption as such. As unfit for human consumption these with others had been selected and segregated by claimant at Chicago, Ill., from their other eggs. It is conceded that these eggs had reached such a stage of decomposition as to come within the definition and description of "adulterated" articles of food if handled, shipped or sold, or intended to be shipped and sold as an article of food. Eggs in this condition may be sold and used as an article of food, or for tanning purposes, that is for use in the tanning of leather, and claimant had sold eggs of this description, selected and segregated at the same time as these, to a tannery or tanning firm located and doing business at a point not far distant from Chicago for tanning purposes. It had not shipped

or sold any of its eggs of this description to be used and consumed as an article of food and did not contemplate doing so.

The thirteen crates of frozen eggs seized and sought to be condemned in this proceeding were shipped by the claimant, Armour and Company, in interstate commerce from Chicago, Ill., to New York City, N. Y., where that corporation had and has a warehouse and place of business and had been received there, but had not been sold or disposed of or offered for sale when the seizure was made. There are tanneries in the vicinity of New York and, in fact, the intention of the claimant in so transporting these eggs in question from Chicago to New York was to offer them for sale and dispose of them if possible at New York for use in tanning and not for use or consumption as food. This intention or purpose of the claimant had not been disclosed in any way or manner to any person or by any labeling or branding. The eggs in question had not been denatured or subjected to any chemical or other process. They were rotten, decayed eggs, unfit for human food and came within the definition "adulterated" for the reason they consisted in whole or in part of a filthy and decomposed or putrid animal or vegetable substance. (See subdivision sixth, section 7, of the Food and Drugs Act of June 30, 1906, as amended August 23, 1912.)

By section 6 of the act it is provided that "The term food as used herein shall include all articles *used for food* * * * * * whether simple, mixed or compound." By section 2 "the introduction into one State from another State * * * * * of any article of food * * * * * which is adulterated * * * * * within the meaning of this act, is hereby prohibited." Section 10 provides for the seizure and condemnation of "any article of food * * * * that is adulterated * * * within the meaning of this act" and which having been transported in interstate commerce remains unsold &c.

The contention of the United States is that eggs are an article of food and that they remain such if not denatured or subjected to some chemical process which *destroys* them as an article of food and that when they become decomposed and therefore unfit for food they are within the meaning of the act (section 7, subdivision sixth), an *adulterated* article of food and subject to the condemnation of the act. The contention of the claimant is that while the eggs prior to decomposition were an article of food, when decomposed they have lost their character as an article of food if the owner does not *intend* to use, transport or sell them as an article of food but does intend to transport them and sell them for tanning purposes only, and transports them for that purpose only. The contention is that an undisclosed intent to transport in interstate commerce and sell decomposed eggs, which are actually unfit for food, for use in tanning only takes the same out of the category of "adulterated article of food."

The difficulty with this contention is that these eggs, or eggs of this character, not denatured, come squarely within the definition of an *adulterated article of food.* The character of the thing does not depend on the intent or purpose of the owner in transporting it or selling it, or the purpose the owner may have in selling it. It seems to me clear that the purpose of Congress was to prohibit the transportation of articles in interstate commerce which come within the definition given in the statute and make them subject to seizure and condemnation if so transported. If such is not the purpose then interstate commerce may be flooded with eggs of this character and the Government will be compelled to prove that the intent of the one transporting the article was to use or sell same as an article of food. Even if the burden is not shifted and the presumption is that it was intended to use or sell such an article as food or as an article of food, still the owner so transporting the article will escape the operation of the statute by swearing to an undisclosed intent which the Government will be unable to disprove, unless the article has been actually put on sale or sold as an article of food. If these eggs had been denatured so as to destroy them as an article of food, that is, take them outside the statutory definition of "adulterated" article of food the case would be entirely different. It is no hardship to give a construction to this pure food and drugs act which will make it effective and accomplish the purpose intended so long as it is not made oppressive. In all cases of the transportation of frozen eggs so far decayed as to render them unfit for human food the owner may denature them before shipping or perhaps label them, but in any event so long as the statute stands as it does the transportation in interstate commerce of frozen eggs, or eggs not frozen but so far decayed or decomposed that it may be said they consist "in whole or in part of a filthy, decomposed or putrid animal or vegetable substance" is prohibited as eggs, whether the contents of the shell be therein, or removed and in cans or other receptacles and frozen or unfrozen, are an article generally and almost universally used and dealt in as and for food and are adulterated when they consist of a "decomposed animal or vegetable substance." Eggs are either an animal or a vegetable substance. Clearly they are not a mineral substance. The title of this Food and Drugs Act declares it to be "An act to prevent the manufacture, sale or *transportation of adulterated,* or mis-

branded, or poisonous, or deleterious foods, drugs, medicines and liquors, and for regulating traffic therein, and for other purposes." Would it be an answer to the seizure and attempted condemnation of a car load of partly decomposed beef being transported from Chicago to New York, for the owner to say "I did not intend it to be used or sold in New York for food, but as soap grease or a fertilizer," such purpose not having been in any manner disclosed? Philadelphia Pickling Co. *v.* U. S., (C. C. A. 3rd Circuit) 202 Fed. R. 150, while not on "all fours" with this case in *all* its facts, is, it seems to me, on "all fours" in principle, unless it can be said that inasmuch as partially decayed eggs, a decomposed article of food, having become unfit for food, are no longer an adulterated article of food, but an article for use in tanning leather and hence not within the act at all as they may be and sometimes are used for that purpose. This contention can not be sustained. If decomposed eggs were incapable of being used for food, as in making cakes and the like, the case would be different. The construction of this Pure Food and Drugs Act contended for by this claimant would open the door to the unrestrained transportation in interstate commerce of partially decomposed eggs, as the owner and dealer would, it might be honestly, transport them for sale in another State for use in tanning and actually, so far as he is concerned, sell them for that purpose or to some one claiming to purchase them for such purpose, when in fact the purchaser was intending to use them as an article of food, or to dispose of them to some one to mix with flour &c. and use as an ingredient in an article of food, such as cake &c.

In Hipolite Egg Company *v.* United States, 220 U. S. 45, the object of this Pure Food and Drug Act is declared to be "to keep adulterated articles out of the channels of interstate commerce, or if they enter such commerce to condemn them while in transit, or in original or unbroken packages after reaching destination; and the provisions of section 10 of the act apply not only to articles for sale *but also to articles to be used as raw material in the manufacture of some other* product." In that case the "other product" was an article of food as the eggs were to be used for baking purposes, but I do not see that such fact affects the force of the decisions as to the purpose of the act, which is to prevent the transportation in interstate commerce of adulterated articles which these eggs, within the definition of the law making body, are conceded to have been.

Eggs released from the shell, and frozen or unfrozen, are an "article of food," and if adulterated their transportation in interstate commerce is prohibited, and the act says, (sec. 7,) "That for the purpose of this act an article shall be deemed to be adulterated * * * in the case of food, * * * Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not," &c. The fact that decomposed eggs *ought not* to be used for food or as an ingredient of some food article does not remove them from the category of adulterated article of food, they being within the statutory definition, nor does the fact that they may be used for tanning purposes. If the statute is to be construed so as to make it effective to prevent the interstate transportation of eggs, decomposed or partly decomposed, and hence unfit for human consumption, and thus carry out the intent and purpose of Congress, the eggs in question must be held to be within the operation of the act and subject to condemnation.

There will be an entry directing a verdict of condemnation and a judgment accordingly.

Thereafter a verdict having been duly rendered pursuant to said direction, upon motion of the United States Attorney, a judgment of condemnation and forfeiture was entered on December 1, 1913, and it was ordered by the court that the product should be destroyed by the United States marshal and that the costs of the proceedings, assessed at $69.03, be adjudged against the said Armour & Co., claimant.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 10, 1914.*

2860. Adulteration and misbranding of coloring matter for confectionery. U. S. v. Henry H. Ottens Manufacturing Co. Plea of non vult contendere. Fine, $50 and costs. (F. & D. No. 4015. I. S. No. 19151-c.)

On December 8, 1913, the United States Attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Henry H. Ottens Manufacturing Co., a corporation, Philadelphia, Pa., alleging shipment by said company, in violation of the Food and Drugs Act, on or about November 2, 1910, from the