

tigation here, on being broken were accumulated and permitted to remain in the breaking room at high temperatures for unreasonable lengths of time before refrigeration. The proof shows also that frozen eggs, from which the eggs in this case were dried, were taken from a warehouse lot which contained a substantial quantity of sour, decomposed eggs.

## XII

"From all of the tests made in this case, and from all the facts and circumstances, the Court finds the eggs herein to be sour and, therefore, to contain a decomposed substance, which renders them unfit for food in any manner.

## CONCLUSIONS OF LAW

### I

"The eggs herein are adulterated within the meaning of the Federal Food, Drug and Cosmetic Act (Title 21 United States Code Annotated, Section 342 (a) (3)), in that same consist wholly or in part of a decomposed substance rendering them unfit for food in any manner.

### II

"The United States of America is entitled to a decree of condemnation as prayed, with costs."

On August 7, 1943, a decree was entered condemning the product and ordering it destroyed. A notice of appeal to the Circuit Court of Appeals for the Sixth Circuit was filed by the claimant on September 7, 1943. On May 27, 1944, the claimant, alleging that it had not perfected its appeal and that the matter thus still remained within the jurisdiction of the district court, filed a petition in the district court for the segregation and release under bond of any fit portion of the product to the claimant. The claimant also submitted a motion to the circuit court of appeals to dismiss the appeal, and on June 13, 1944, the Government having consented to the dismissal, the circuit court ordered the appeal dismissed and the cause remanded to the district court. On June 19, 1944, the claimant's petition for release of any fit portion of the product was denied, and on November 2, 1944, an amendment to the original decree of condemnation was filed, ordering that the product be delivered to a public institution, for use as animal feed.

**7784. Adulteration of dried whole eggs. U. S. v. The Blue Sea Fish Co., Inc., Walter Ebbighausen, and Arthur Barretta. Pleas of guilty. Corporation fined \$250, and individual defendants each fined \$500. (F. D. C. No. 12536. Sample No. 66196-F.)**

**INFORMATION FILED:** August 7, 1944, District of New Jersey, against the Blue Sea Fish Co., Inc., a corporation, Teaneck, N. J., and Walter Ebbighausen and Arthur Barretta, president and secretary-treasurer, respectively.

**ALLEGED SHIPMENT:** Between the approximate dates of June 21 and July 6, 1943, from the State of New Jersey into the State of New York.

**LABEL, IN PART:** "Egg Grade A \* \* \* Advance Foods Corp. Centerville Ind.," or "Spray Whole Egg \* \* \* Marshall Kirby & Co Inc Terre Haute Ind."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent hair fragments, vegetable fibers, pieces of wood, cinders, and dirt.

**DISPOSITION:** December 15, 1944. Pleas of guilty having been entered on behalf of the corporation and by the individual defendants, fines of \$250 against the corporation and \$500 against each individual defendant were imposed.

**7785. Adulteration of spray-dried whole eggs. U. S. v. 18 Barrels of Spray-Dried Whole Eggs. Default decree of condemnation and destruction. (F. D. C. No. 14772. Sample Nos. 92366-F, 92367-F.)**

**LIBEL FILED:** December 15, 1944, Western District of New York; amended libel filed December 23, 1944.

**ALLEGED SHIPMENT:** On or about March 22 and 25, 1944, by Horace A. Gioia, from Jersey City, N. J.