

LIBELED: 3-23-60, W. Dist. Wash.

CHARGE: 402(a)(2)—when shipped, the article contained added poisonous and deleterious substances, namely, DDE, DDT, and TDE, which are unsafe within the meaning of 406 since these substances are not required in the production of this food and can be avoided by good manufacturing practice.

DISPOSITION: 5-31-60. Default—destruction.

EGGS

26476. Frozen eggs (2 seizure actions). (F.D.C. Nos. 41916, 42184. S. Nos. 13-418/9 P, 13-424 P, 13-429 P.)

QUANTITY: 1,149 30-lb. cans and 272 30-lb. cans at Chicago, Ill.

SHIPPED: Between 5-21-58 and 7-28-58, from Nashville, Tenn., by Modern Egg Products, Inc.

LIBELED: 7-7-58 and 9-12-58, N. Dist. Ill.

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

DISPOSITION: Weinberg Bros. & Co., Chicago, Ill., claimant, having filed answers denying that the article was adulterated as alleged in the libels, and the libel actions having been consolidated, such actions came on for trial before the court without a jury. On 1-28-59, the court handed down the following findings of fact and conclusions of law:

IGOE, District Judge:

FINDINGS OF FACT

"1. On or about May 21, 1958, June 16, 1958, and July 28, 1958, Modern Egg Products, Inc., Nashville, Tennessee, shipped from Tennessee to Chicago, Ill., consigned to Weinberg Bros. and Co., articles of food consisting respectively of 610, 539, and 272 30-lb. cans, more or less, of frozen whole eggs.

"2. On July 7, 1958, the United States of America filed a Libel of Information in civil action No. 58 C 1230 charging that the articles of food shipped on May 21, 1958, and June 16, 1958, were adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342(a)(3), in that they consisted wholly or in part of a decomposed substance by reason of the presence therein of decomposed eggs.

"3. On September 12, 1958, the United States of America filed a Libel of Information in civil action No. 58 C 1694 charging that the article of food shipped on July 28, 1958, was adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342(a)(3), in that it consisted wholly or in part of a decomposed substance by reason of the presence therein of decomposed eggs.

"4. Weinberg Bros. and Co., Chicago, Ill., filed a claim of ownership and answer in each of the Libel proceedings and denied the allegation of adulteration.

"5. The two causes were ordered consolidated and set for trial by the Court, without a jury.

"6. It was stipulated that from the date of shipment from Nashville, Tennessee, and up to the present time, all of the cans of eggs have continuously been in hard frozen form and their quality and condition is the same as it was when introduced into interstate commerce.

"7. Organoleptic examination by smell was made by inspectors of the Food and Drug Administration of: 74 cans randomly sampled from the shipment of May 21, 1958, and 21 of these gave off the odor of decomposed eggs; 20 cans randomly sampled from the shipment of June 16, 1958, and 9 of these gave off the odor of decomposed eggs; 20 cans randomly sampled from the shipment of July 28, 1958, and 15 of these gave off the odor of decomposed eggs.

"8. The cans randomly selected and examined by inspectors of the Food and Drug Administration and physical samples taken therefrom by them for

bacteriological and chemical examination by scientists of the Food and Drug Administration were representative of the quality and condition of the shipments of which they were a part.

"9. At request of claimant, inspectors of the Department of Agriculture organoleptically examined by smell all of the cans from each of the shipments and determined that 4 cans of the May 21, 1958, shipment; 26 cans of the June 16, 1958, shipment; and 31 cans of the July 28, 1958, shipment smelled unsatisfactory.

"10. All of the cans of eggs which smelled decomposed to the Food and Drug inspectors or unsatisfactory to the Department of Agriculture inspectors consisted in whole or in part of decomposed substances.

"11. Some decomposed eggs do not have an odor and their presence in a can of frozen eggs cannot be determined by organoleptic examination but can be determined by bacteriological and chemical analyses.

"12. The aroma of odoriferous decomposed eggs in a can of frozen whole eggs can be diluted out but the presence of such eggs can be determined by bacteriological and chemical analyses.

"13. The physical samples collected by the Food and Drug inspectors were examined by an experienced bacteriologist of the United States Food and Drug Administration who found that the direct microscopic count of bacteria in the samples of the frozen eggs here involved was in the following range:

May 21, 1958 Shipment—61,000,000—over 350,000,000
 June 16, 1958 Shipment—33,000,000—78,000,000
 July 28, 1958 Shipment—51,000,000—123,000,000

"14. Physical samples collected by the Food and Drug inspectors were analyzed by an experienced Food and Drug Administration chemist whose chemical analyses of the samples of the frozen eggs here involved showed the presence of (in milligrams per 100 grams):

	<i>May 21</i>	<i>June 16</i>	<i>July 28</i>
acetic acid.....	4.4-19.3	7-9.8	7.1-9.4
lactic acid.....	44-64	35-47	45.1-49.2
formic acid.....	not tested for	0-4.0	not tested for
succinic acid.....	not tested for	0-3.9	not tested for

"15. The shipper of the eggs, Modern Egg Products, Inc., retained a private, independent, professional analyst who randomly sampled cans from each shipment and determined that every can sampled smelled decomposed upon organoleptic examination.

"16. The private food analyst retained by the shipper collected physical samples from each of the shipments and utilizing the same methods of analysis as did the Food and Drug Administration chemist found acetic and lactic acids in each of the samples.

"17. The bacteriological and chemical methods of analyses for detecting decomposition in frozen eggs which were developed by and used here by the Government scientists and the private food analyst have been published and are accepted by the frozen egg industry as a reliable method for detecting decomposition.

"18. All of the scientific evidence in the case, presented by employees of the Food and Drug Administration, employees of the Department of Agriculture, and the private, independent analyst retained by the shipper, shows that each of the shipments of frozen eggs here involved consists in part of decomposed substances by reason of the presence of decomposed eggs."

CONCLUSIONS OF LAW

"1. The articles of food here involved were shipped in interstate commerce from Nashville, Tennessee, to Chicago, Illinois, on the dates alleged in the Labels of Information.

"2. The articles were seized in the Northern District of Illinois and the Court has jurisdiction over these consolidated causes and the parties.

"3. That each of the shipments of frozen whole egg made by Modern Egg Products, Inc., on May 21, 1958, June 16, 1958, and July 28, 1958, constitutes an article for purposes of 21 U.S.C. 334.

"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