LIBELED: 12–29–59, N. Dist. Ga.

CHARGE: 402(a)(3)—while held for sale, the article was unfit for food by reason of the presence therein of an unpleasant odor and unpalatable flavor; and 402(b)(2)—a substance containing an odor and flavor foreign to nonfat dry milk, as defined by law, had been substituted for nonfat dry milk.

DISPOSITION: 2–8–60. Default—destruction.

EGGS

26138. Frozen eggs. (F.D.C. No. 42544. S. No. 14–442 P.)

QUANTITY: 500 30-lb. cans at Chicago, Ill.

SHIPPED: 7–30–58, from Wilton, Wis., by Tillman Produce Co.

LABEL IN PART: "Whole Eggs Packed by Tillman Produce Co., Wilton, Wis."

LIBELED: 12–3–58, N. Dist. Ill.

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

DISPOSITION: 2–13–59. Consent—claimed by Tillman Produce Co. Segregated; 20 cans denatured.

26139. Frozen eggs. (F.D.C. No. 39960. S. No. 56–019 M.)

INFORMATION FILED: 4–5–57, M. Dist. Tenn., against Quality Egg Products, Inc., Nashville, Tenn., and Seymour M. Levin.

SHIPPED: 8–27–56, from Tennessee to Illinois.

LABEL IN PART: (Can) "Whole Egg Quality Egg Products Nashville, Tenn. 30 lbs. net Wt."

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

PLEA: Not guilty.

DISPOSITION: On 11–29–57, the case came on for trial before the court without a jury. The trial was concluded on the same day. The court found the defendants guilty and imposed a fine of $750 against Defendant Levin. No fine was imposed against the corporation since it was defunct.

The case was appealed to the United States Court of Appeals for the Sixth Circuit and on 10–21–58, the following opinion was handed down by that court:

MILLER, *Circuit Judge:*

"The United States by Criminal Information charged appellants with unlawfully introducing into interstate commerce a number of cans containing frozen whole eggs which were adulterated within the meaning of 21 U.S.C. 342(a)(3), in violation of the provisions of 21 U.S.C. 331 and 333. Following a trial before the District Judge, a trial by jury having been waived, the appellants were found guilty. Appellant Levin received a fine of $750.00.

"Whether the eggs were adulterated within the meaning of the statute was a factual issue, depending to a large extent upon conclusions to be drawn from the conditions under which they were transported and the condition of the eggs upon their arrival at their destination, about which there was some dispute. Appellants contend that the evidence did not prove beyond a reasonable doubt this factual issue decided against them.

"Viewing the evidence with inferences reasonably and justifiably to be drawn therefrom, most favorable to the Government, we are of the opinion that the finding of the District Judge is supported by substantial and competent evidence. *Batties v. United States*, 172 F(2)1, 4–5–. C.A. 6th, and, accordingly,

"IT IS ORDERED that the judgment be affirmed."