

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 825, FOOD AND DRUGS ACT.

ADULTERATION OF A FROZEN EGG PRODUCT.

On or about February 11, 1910, F. E. Rosebrock & Co., a corporation, New York City, shipped from the State of New York into the State of New Jersey a consignment of frozen egg product. Samples from this shipment were procured, and analysis by the Bureau of Chemistry, United States Department of Agriculture, showed it to contain formaldehyde; that it was a very poor product made from spotted eggs; contained large pieces ($\frac{1}{2}$ by 1 inch) filled with mold, several blood clots, some eggshells, the heads of two chick embryos, and an excessive number of organisms, including the B-coli group. As it appeared from the above analysis and report thereon that the product was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the said F. E. Rosebrock & Co., Incorporated, and the party from whom the samples were procured opportunities for hearings. As it appeared after hearings held that the shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the Circuit Court of the United States for the Southern District of New York against the said F. E. Rosebrock & Co., Incorporated, charging the above shipment and alleging that the product so shipped was adulterated in that it contained formaldehyde and in that it consisted of a filthy, decomposed, and putrid animal or vegetable substance. Upon arraignment the defendant entered a plea of not guilty to the above information, and the case coming on for hearing, the issues were tried to a

jury, and the evidence and arguments of counsel on the part of both parties having been heard, the court instructed the jury as follows:

The COURT (HOUGH, J.): Gentlemen, the Act of Congress under which this information is brought, and about which so much is heard nowadays, not only in the court room but in the public print, is (in its application to this particular transaction,) as follows: The introduction into any State from another State of any article of food which is adulterated is prohibited, and the person who ships such article of food from one State to another, (and person means corporation also,) shall be guilty of a misdemeanor,

Now the word "adulterated" is of course one of very wide, or rather uncertain meaning, and therefore for the purpose of this act it is defined with great particularity as meaning in the case of food, two things, which are relevant to this trial: An article of food is adulterated if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health. It is also for the purpose of this act deemed adulterated (although the word cannot be used in that sense ordinarily,) if it consists in whole or in any part of a filthy, decomposed or putrid animal or vegetable substance.

The act then continues, although the rest of this section does not I think relate to this case, but it shows the general scope of the act, "or if it consists of any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that had died otherwise than by slaughter." I have read that merely to show the general scope of the legislation in this regard.

What is charged in this information and what is therefore on trial before you, is composed of two parts, that is, the charge is of two parts. The first is, that these eggs which are the subject of investigation contained formaldehyde, and it is said that formaldehyde is a deleterious ingredient which may render an article injurious to health; and it is also charged, irrespective of the formaldehyde, that the eggs themselves were filthy, decomposed or putrid. Now, probably there is nothing so difficult in the world as a definition; sometime when you have an opportunity, try to make an accurate full complete definition of anything, say a coat, and you will find it very hard; but from dictionaries and from the questions put to witnesses, and the study I have given the matter; I charge you that the meaning of the word "putrid" is, that a putrid substance is in such a state of decay as to be fetid or stinking from rottenness; an article which is decomposed is an organic body, (as are eggs) reduced or being reduced to a state of dissolution by the processes of a natural decay, and an article which is filthy or dirty, noisome or nasty.

Take up the last word first; after some consideration I have concluded and so instruct you that inasmuch as it is a matter of common knowledge that an egg is not of itself dirty, such an article, namely, an egg, may become putrid or decomposed by the simple process of decay and the resultant or natural causes, but it will not become filthy, unless something be added thereto which renders it dirty, noisome, or nasty.

There is no evidence in this case that the eggs which are the subject of this investigation, had become filthy in that sense; therefore you will divide your consideration of this case into two parts: The first inquiry is, was there formaldehyde added to these eggs, and if there was formaldehyde added to these eggs, what is the nature of formaldehyde, both of which are questions of fact. On the other hand, you have the statement of defendant's president, that he is the manager of the business, and that in that business, the defendant so far as he knew, never bought any formaldehyde since it was in operation. On the other hand, you have the statement of the chemist who testified that formaldehyde by well-known scientific tests was found to be present in the product when it was examined in Washington, and that, just like every other question of fact, is for your consideration alone.

If you find there was formaldehyde in this substance, then it appears to me you would be justified in inferring from the evidence on both sides that formaldehyde is what is known as an irritant, that is, it produces such a condition of irritation of the soft linings of the digestive tracts that if taken in sufficient quantity, it is injurious to human health. If, therefore, on the first branch of the case, you should be of the opinion that these eggs, no matter how bad they were, or how good they were, did contain formaldehyde, and you should be sure of the opinion that formaldehyde has a discoverable odor and was an ingredient so deleterious, that it might render the eggs injurious to health, then the Government has maintained that branch of the proposition.

But entirely irrespective, as I have said, of the presence or absence of formaldehyde, the Government's contention is that the eggs were putrid and decomposed. But there was no smell discernible, so you have to come to the formaldehyde proposition, because it is said that formaldehyde disguises smell. But you have further to determine (irrespective of formaldehyde, and irrespective of putridity,) whether the decomposition of these eggs had progressed so far that the eggs were in common parlance rotten.

Now, to approach this question, as in an every day business manner; it is perfectly fair to ascertain what is it, that you would have asked for, if you wanted to buy the article that Worischek bought? The trade name by all the evidence appears to be frozen eggs. What are frozen eggs? In the first place, they are broken. Naturally, the inquiry arises why are they broken? In the next place, the contents of the egg shell are strained through a sieve-like article; and the inquiry is perfectly natural; why are they strained? In the next place, the whites and yolks are mixed. Again the inquiry, why? When this product, strained and mixed, was collected, in the month of February, 1910, the trade price at which those articles were sold, was 18 cents per pound, which according to the witnesses who averaged nine eggs to the pound, makes 24 cents per dozen; and tanners' eggs are worth four cents per pound. Why was all this done; what is the effect of the freezing, and what is the effect of the preservative formaldehyde, if there was a necessity for a preservative, and if there was in fact formaldehyde present?

It appears to me, that by all the testimony, the action of both cold and preservative, if there was any, was to arrest decay; further, I think it is perfectly fair to assume by all the testimony, leaving however the question of fact to you, that eggs are frozen, and the commercial article of frozen eggs exists for the purpose of arresting decay in the eggs so frozen.

Now, it is to be remembered that this is an article of food, and if an article of food be in such a state that it be deemed desirable to arrest decay by cold or preservatives or both, then it follows that in that article, (as testified to by both sides and all of the scientific experts here,) when the cold is removed, and the action of the preservative exhausted, decomposition will reassert itself, and progress even more rapidly than before.

The question, therefore, would seem to be perfectly fair, can a person who deals in frozen eggs, or other articles that may be preserved by cold or otherwise from the process of decay, such preservation being temporary only, rely upon instant use? What is reasonably to be expected, if an article is sent forth in trade for sale and distribution; and in the particular case of frozen eggs, what is to be expected in the distribution and sale thereof to bakers, for insertion into such articles of their product as may require eggs?

So, according to my understanding, when those eggs got to Washington on February 12th or two days after they were sold, you are asked to believe by the prosecution that the eggs were then in such condition as would reasonably be expected by any person who put them forth for food consumption, unless they were to be eaten, absolutely frozen.

Now, so far as the scientific knowledge which has been exposed to us, I am frank to say that a great deal of it falls off me, and I strongly suspect that a great deal falls off you, very much like the proverbial water off a duck's back; but I think that this result may be taken to have been shown by the scientists on both sides: There may be bacteria or bacilli without decomposition, but there cannot be decomposition without the presence of bacilli or bacteria. Decomposition when carried far enough will usually result in organic bodies in putrefaction, which is an advanced stage of decomposition, with a fetid odor; the odor of putrefaction can be temporarily concealed by certain chemicals, of which formaldehyde is one.

Now, says the government, from the quantity and kind of bacteria discernible in this particular shipment of eggs,—it is for you to say whether at a time, and in a condition that might reasonably have been expected as the time and condition of consumption,—do the eggs show such an advanced stage of decomposition as to bring them under the condemnation of the act? which I interpret, to the best of my knowledge to mean that those eggs were in common parlance rotten eggs.

This, gentlemen, I believe to be the whole case. Returning again to the two propositions, which I have before indicated; if you are of the opinion that formaldehyde was present in the shipment in question, if you are further of the opinion that formaldehyde is a deleterious ingredient, that may render the article containing it injurious to human health, that alone is sufficient to warrant a verdict of guilty. If you are of the opinion that there was no formaldehyde in that article, but if you are of the further opinion that the eggs were decomposed, in the sense of being in common parlance, rotten, that fact is sufficient to warrant a finding of guilty. If you are of the opinion that there was no formaldehyde, and if you are further of the opinion that the eggs were not in such a stage of decomposition as to entitle them to be termed rotten, then you should bring in a verdict of not guilty.

In this case, no matter whether the person or party proceeded against is a corporation or not, this being a criminal case, it is just as necessary to find the result to which you arrive in favor of the prosecution beyond a reasonable doubt, as in any other case. During other trials in which you jurors of the present panel have been sitting, I have had occasion to define the meaning of the words reasonable doubt; I do not think it is necessary to repeat it. I assume I am talking to intelligent men.

The jury rendered its verdict in due form, finding the defendant guilty as charged in the above information, whereupon the court entered its judgment in accordance with said verdict and imposed a fine of \$200.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. L. MOORE,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *March 29, 1911.*