conform to such definition and standard since it contained less than 8.5 percent of milk fat.

On March 27, 1942, the Southern Pacific Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be brought into compliance with the law under the supervision of the Food and Drug Administration.

EGGS

3505. Adulteration and misbranding of dried egg yolk. U. S. v. Rogol Distributors, Inc., John T. Robertson, and Charles Gogel. Pleas of guilty. Fine of $200 against the defendant corporation. Fine of $100 against the defendant Robertson. Fine of $50 against the defendant Gogel. (F. D. C. No. 6496. Sample No. 69060-E.)

This product was found to consist of approximately 50 percent of soybean flour with added carotin.

On or about June 1, 1942, the United States attorney for the Eastern District of New York filed an information against Rogol Distributors, Inc., John T. Robertson, and Charles Gogel, Brooklyn, N. Y., alleging shipment on or about April 10, 1941, from the State of New York into the State of New Jersey of a quantity of dried egg yolk which was adulterated and misbranded. It was labeled in part: "Spray Hen Egg Yolk."

The article was alleged to be adulterated in that a substance, namely, a mixture of dried egg yolk and soybean flour containing added carotin had been substituted wholly or in part for dried egg yolk, which it purported to be; in that it was inferior to dried egg yolk since that it consisted of a mixture of dried egg yolk and soybean flour and had been colored with carotin to simulate a product consisting entirely of dried egg yolk in a manner whereby its inferiority to dried egg yolk was concealed; and in that soybean flour had been added thereto or mixed or packed therewith so as to reduce its quality and in that carotin had been added thereto or mixed or packed therewith so as to make it appear better or of greater value than it was.

It was alleged to be misbranded in that the statements, "Spray Hen Egg Yolk" and "Egg Yolk," borne in the cases, were false and misleading since they represented and suggested that it consisted entirely of dried egg yolk; whereas it did not consist entirely of dried egg yolk, but did consist of a mixture of egg yolk and soybean flour containing added carotin; in that it consisted of a mixture of egg yolk and soybean flour containing added carotin and was offered for sale under the name of another food, namely, "Spray Hen Egg Yolk" and "Egg Yolk"; in that it was fabricated from two or more ingredients and its label did not bear the common or usual name of each ingredient; in that it was in package form and did not bear a label containing the name and place of business of the manufacturer, packer, or distributor; in that it contained artificial coloring and did not bear labeling stating that fact; and in that it purported to be dried egg yolks a food for which a definition and standard of identiy had been prescribed by law, but did not conform to such definition and standard of identity.

On June 20, 1942, pleas of guilty having been entered on behalf of all three defendants, the court imposed fines as follows: $200 against the corporation, $100 against defendant Robertson, and $50 against defendant Gogel.

3506. Adulteration of spray dried whole eggs. U. S. v. 1 Barrel and 3 Barrels of Dried Whole Eggs. Default decrees of condemnation and destruction. (F. D. C. Nos. 7162, 7174. Sample Nos. 57459-E, 71421-E.)

Examination showed that this product was decomposed.

On April 6 and 9, 1942, the United States attorney for the Eastern District of Missouri filed libels against 4 barrels of dried whole eggs at St. Louis, Mo., alleging that the article had been shipped in interstate commerce on or about February 27 and March 2, 1942, by F. M. Stamper Co. from Murray, Ky.; and charging that it was adulterated in that it consisted in whole or in part of a decomposed substance.

On May 8, 1942, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

3507. Adulteration of frozen whole eggs. U. S. v. Marvin Belzer (Belzer Egg Products Co.). Plea of nolo contendere. Fine, $100. (F. D. C. No. 6444. Sample No. 56906-E.)

Samples of this product were found to be decomposed and to have a phenolic or disinfectant odor.

On March 26, 1942, the United States attorney for the Western District of Missouri filed an information against Marvin Belzer, trading as Belzer Egg Products Co., Kansas City, Mo., alleging shipment on or about April 25, 1941, from the State of Missouri into the State of New York, of a quantity of frozen eggs which were adulterated in that they consisted in whole or in part of a putrid and decomposed substance and were otherwise unfit for food.

On May 23, 1942, the defendant having entered a plea of nolo contendere, the court imposed a fine of $100.

3508. Alleged adulteration of frozen eggs. U. S. v. Commercial Creamery Co. Plea of not guilty. Tried to the court. Judgment of acquittal. (F. D. C. No. 5530. Sample Nos. 55765–E, 55766–E.)

On December 31, 1941, the United States attorney for the Eastern District of Washington filed an information against Commercial Creamery Co., a corporation, Spokane, Wash., charging shipment on or about January 13 and 27, 1941, from the State of Washington into the State of Oregon, of quantities of frozen eggs which were alleged to be adulterated in that they consisted in whole or in part of a decomposed substance.

On March 12, 1942, the defendant having pleaded not guilty, the case was tried to the court and a judgment of acquittal was entered, the court handing down the following opinion:

SCHWELLENBACH, *District Judge.* "By information defendant is charged with introducing into interstate commerce in Spokane, Wash., for shipment to Portland, Oreg., two shipments of frozen eggs which consisted in whole or in part of a decomposed substance in violation of the Federal Food, Drug and Cosmetic Act. The pertinent portions of the statute, grouped together for continuity purposes, read as follows (Title 21, U. S. C. A.): Section 331, 'The following acts and the causing thereof are prohibited: (a) The introduction or delivery for introduction into interstate commerce of any food * * * that is adulterated * * *.' Section 333, '(a) Any person who violates any of the provisions of section 331 shall be guilty of a misdemeanor.' Section 342, 'A food shall be deemed to be adulterated—(a) (3) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.' To the information a plea of not guilty was entered. By stipulation, a jury was waived and the case presented to the court. By stipulation, the interstate character of the shipments and their identity was admitted by defendant.

"Defendant contends that the failure to afford to the defendant an opportunity to present its views as provided in the act (21 U. S. C. A. section 335) prevents this prosecution. This contention is without foundation. The notice and hearing required in Section 335 is administrative and not jurisdictional. *U. S.* v. *Morgan*, 222 U. S. 274; *U. S.* v. *American Laboratories*, 222 Fed. 104.

"Defendant contends that the statute is too indefinite and that neither it nor the regulations promulgated under it establish standards sufficiently definite to enable the defendant to know of the crime with which it is charged and that any reasonable doubt as to the meaning of the statute must be construed in favor of the defendant. It is true that this is a criminal proceeding in which the burden of proving the allegations of the information beyond a reasonable doubt rests upon the Government and the defendant is entitled to its recognized presumption of innocence. *U. S.* v. *Mayfield*, 177 Fed. 765; *Von Bremen* v. *United States*, 192 Fed. 904; *U. S.* v. *American Laboratories*, supra; *U. S.* v. *Newton Tea & Spice Co*, 275 Fed. 394. But the rule of strict construction as to the statute itself has little or no application to the Federal Food, Drug and Cosmetic Act designed, as it is, to prevent injury to the public health. *A. O. Anderson & Co.*, v. *United States*, 284 Fed. 542; *U. S.* v. *48 Dozen Packages, More or Less, of Gauze Bandage Labeled in Part Sterilized*, 94 Fed. (2) 641; *U. S.* v. *Research Laboratories, Inc.*, 9th Circuit, No. 9898, decided February 24, 1942, 126 Fed. (2) 42. Furthermore, the statute is not indefinite or ambiguous. It makes illegal the introduction into interstate commerce of food which 'consists *in whole or in part* of any filthy, putrid, or decomposed substance.' (Emphasis mine). This statute is all inclusive and prevents the shipment in interstate commerce of any food which contains any decomposed matter. Defendant urges that such a construction of the statute would result in unreasonable regulation and would prevent the shipment in interstate commerce of many foods not harmful to public health. If such a contention is sound, the argument in support thereof should be made to the Congress and not to the courts. The act was passed by Congress, under its authority to exclude from interstate commerce impure and adulterated foods and to prevent the facilities of commerce being used to enable such articles to be