

Rankin free access to the invoices) that he would not have granted this access if he had not thought Rankin had a legal right to such access or if he had known that the information thereby gleaned might be used in subsequent libel proceedings. Permission to inspect the invoices was still voluntary and the Government was free to use this information in the proceedings for libel. See *Joong Sui Noon v. United States*, 76 F. (2d) 249, 251.

"We are not here dealing with a criminal proceeding within the 4th Amendment to the Constitution. *United States v. 935 Cases, etc.*, 136 F. (2d) 523 (C. C. A. 6, 1943), cert. denied, 320 U. S. 778. These libels for condemnation are proceedings *in rem*, and we agree with the Court below that there has been no violation of the 'search and seizure' clause of the 4th Amendment. *United States v. 935 Cases, etc., supra*. Public interest demands such a construction as will further the purposes of the Act. *United States v. Research Laboratories*, 126 F. (2d) 42, cert. denied, 63 S. Ct. 54.

"Claimant relies on *Boyd v. United States*, 116 U. S. 616, in support of its contentions. Several factors impel the view that the *Boyd case* has no application here. That case involved an unconstitutional demand for the production of records in a criminal proceeding. If the records were not produced (in the *Boyd case*) the allegations were to stand as admitted. No such question arises here. By a specific proviso in Section 373 of the Act such information received may not be used in a criminal prosecution of the person giving the information. Nor was the plate glass involved in the *Boyd case* an outlaw of interstate commerce. It was subject to forfeit only because of the illegal acts of its owner. Under the Act, condemned goods are subject to seizure and destruction irrespective of the intent of the manufacturer. *United States v. Buffalo Pharmacal Co.*, 131 F. (2d) 50 (C. C. A. 2, 1942).

"Claimant further contends that it was improper for the inspector to combine a factory inspection and an examination of the claimant's invoices. It can hardly be assumed that the activities of the Food and Drug Administration are of a pigeon-hole nature which demand canalized separation. The Administration operates as a unit in furtherance of its primary purpose—the protection of the public. It is not unreasonable to assume that packaged food in which filth is found, will be sold by the producer. Further, not only is it commensurate with the purpose of the Act to ascertain the interstate destination of the food in order to sample it for filth, should the factory inspection justify such action; but any other procedure would tend to frustrate the entire purpose of the Act. There was nothing wrongful in either the method of obtaining the information, or in the use of the information voluntarily granted. *Joong Sui Noon v. United States, supra*.

"There is no legal merit in the contention that the Administration must use other and more expensive and time consuming methods of investigation instead of using information voluntarily given. Nor do we find approval for claimant's position that had Rankin not received the information from its invoices, there would have been no means of tracing the adulterated food shipped in the purchaser's truck. The Administration is not indulging in a game of 'hide and seek.' Its efforts are expended in the protection of the public.

"Finally, claimant contends that the taking of samples by Rankin was illegal. This, we think, is also without merit. Section 372 (b) of the Act clearly contemplates the taking of samples.

"The judgment of the District Court is reversed and the cause is remanded to that Court for further proceedings consistent with this opinion."

On May 7, 1945, the Supreme Court of the United States denied claimant's petition for a writ of certiorari, and on May 11, 1945, judgment of condemnation was entered and the product was ordered destroyed.

8271. Adulteration of peanut butter. U. S. v. 75 Cases of Peanut Butter. Default decree of condemnation and destruction. (F. D. C. No. 16116. Sample No. 819-H.)

LIBEL FILED: May 8, 1945, Northern District of Georgia.

ALLEGED SHIPMENT: On or about March 23, 1945, by the Globe Grocery Co., from South Boston, Mass.

PRODUCT: 75 cases, each containing 12 2-pound jars, of peanut butter at Atlanta, Ga.

LABEL, IN PART: "Lynnhaven Brand Peanut Butter * * * Manufactured By Southgate Foods Norfolk, Va."

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 excreta, rodent hair fragments, and dirt.

DISPOSITION: July 9, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

8272. Adulteration of pecan meats. U. S. v. 5 Cases of Pecan Meats. Default decree of condemnation and destruction. (F. D. C. No. 16760. Sample No. 18249-H.)

LABEL FILED: On or about June 27, 1945, Southern District of Iowa.

ALLEGED SHIPMENT: On or about May 21, 1945, by the R. E. Funsten Co., from St. Louis, Mo.

PRODUCT: 5 cases, each containing 30 pounds, of pecan meats at Des Moines, Iowa.

LABEL IN PART: "Funsten's Amber Shelled Pecans Pieces."

VIOLATION CHARGED: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a decomposed substance by reason of the presence of rancid and decomposed pecan meats.

DISPOSITION: August 31, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

8273. Adulteration of shelled walnuts. U. S. v. 16 Cartons of Shelled Walnuts. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 15946. Sample No. 18988-H.)

LABEL FILED: April 23, 1945, District of Minnesota.

ALLEGED SHIPMENT: On or about December 5, 1944, by the Consolidated Nut Co., from Los Angeles, Calif.

PRODUCT: 16 25-pound cartons of shelled walnuts at Minneapolis, Minn.

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 moldy walnuts.

DISPOSITION: July 19, 1945. The Tew-Harper Co., Minneapolis, Minn., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Federal Security Agency.

8274. Adulteration of walnuts. U. S. v. 4 Cases and 84 Cases of Shelled Walnuts. Consent decree of condemnation. Product ordered released under bond. (F. D. C. Nos. 15920, 15921. Sample Nos. 28815-H, 28816-H.)

LABEL FILED: May 12, 1945, Western District of Washington.

ALLEGED SHIPMENT: On or about March 21, 1945, by the California Walnut Growers Association, Inc., from Los Angeles, Calif.

PRODUCT: 4 cases, each containing 6 5-pound packages, of shelled walnuts and 84 cases, each containing 25 pounds, of shelled walnuts at Seattle, Wash.

LABEL, IN PART: "Emerald Brand Shelled Walnuts."

VIOLATION CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of filthy and decomposed substances by reason of the presence of insect-damaged and moldy nuts.

DISPOSITION: May 17, 1945. The California Walnut Growers Association, Inc., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration.

8275. Adulteration of shelled walnuts. U. S. v. 50 Cases of Shelled Walnuts. Default decree ordering product disposed of for animal feed. (F. D. C. No. 16257. Sample No. 25537-H.)

LABEL FILED: May 29, 1945, District of Utah.

ALLEGED SHIPMENT: On or about June 20, 1944, by the Herman C. Fisher Co., from Orange, Calif.

PRODUCT: 50 25-pound cases of shelled walnuts at Salt Lake City, Utah.

LABEL, IN PART: "California Shelled Walnuts Excel."

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 insects, larvae, insect excreta, and webbing.