

urine. The article was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: April 6, 1954. The United Wholesale Grocery, Cherokee, Iowa, claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for segregation and conversion of the unfit portion into animal feed, under the supervision of the Department of Health, Education, and Welfare. 95 bags of the product were found unfit and were denatured for use as animal feed.

21460. Adulteration of potato flour. U. S. v. 131 Bags * * *. (F. D. C. No. 36323. Sample No. 42826-L.)

LIBEL FILED: February 19, 1954, Northern District of California.

ALLEGED SHIPMENT: On or about December 31, 1953, from Idaho Falls, Idaho.

PRODUCT: 131 100-pound bags of potato flour at West Sacramento, Calif., in possession of the Roush Products Co.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of rodent urine and rodent excreta; and, Section 402 (a) (4), the article had been held under insanitary conditions whereby it may have become contaminated with filth. The article was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: April 2, 1954. The Roush Products Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for cleaning and reprocessing under the supervision of the Department of Health, Education, and Welfare. The product subsequently was reconditioned, with the result that 545 pounds were found unfit and were destroyed.

21461. Adulteration of flour. U. S. v. 62 Bags * * *. (F. D. C. No. 36420. Sample No. 52144-L.)

LIBEL FILED: March 3, 1954, Eastern District of New York.

ALLEGED SHIPMENT: On or about November 9, 1953, from Omaha, Nebr.

PRODUCT: 62 100-pound bags of flour at Brooklyn, N. Y., in possession of Buck Trucking Co., Inc.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of rodent urine; and, Section 402 (a) (4), the article had been held under insanitary conditions whereby it may have become contaminated with filth. The article was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: April 6, 1954. Raymond F. Kilthau, New York, N. Y., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released for conversion into dog food under the supervision of the Department of Health, Education, and Welfare.

21462. Adulteration of flour. U. S. v. 11 Bags * * *. (F. D. C. No. 36314. Sample No. 19754-L.)

LIBEL FILED: February 9, 1954, Western District of Wisconsin.

ALLEGED SHIPMENT: On or about November 13, 1953, from Hastings, Minn.

PRODUCT: 11 100-pound bags of flour at Fort Atkinson, Wis., in possession of Arndt's Tastee Bakery.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of rodent urine; and, Section 402 (a) (4), the article had been held under insanitary conditions whereby it may have become contaminated with filth. The article was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: March 11, 1954. Default decree of condemnation. The court ordered that the product be destroyed or that it be sold or otherwise disposed of for some purpose other than for human consumption.

MACARONI AND NOODLE PRODUCTS

21463. Adulteration of egg noodles. U. S. v. Frank J. Steiner. Motion to suppress evidence denied in part. Plea of guilty. Fine, \$1,000. (F. D. C. No. 34320. Sample Nos. 36885-L to 36887-L, incl.)

INFORMATION FILED: April 20, 1953, against Frank J. Steiner, a partner in the partnership of Steiner & Co., New York, N. Y.

ALLEGED SHIPMENT: On or about September 11, 1952, from the State of New York into the State of New Jersey.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a filthy substance by reason of the presence of insect fragments and rodent hairs; and, Section 402 (a) (4), the article was prepared, packed, and held under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: The defendant filed a motion for a bill of particulars, which the court, on June 29, 1953, granted in part. Thereafter, the defendant filed a motion for an order to suppress certain evidence obtained by the Food and Drug Administration during inspections of the defendant's plant; and, on February 18, 1954, after consideration of the briefs and arguments of counsel, the court handed down the following opinion:

WEINFELD, District Judge: "Upon observation of the witnesses and their demeanor and a further careful review and analysis of the evidence upon the hearing, the conclusion is compelled that the defendant freely and knowingly consented to, and acquiesced in, the inspection of the premises and the taking of photographs on September 9th and September 23rd. The defendant's actions, conduct, and his assistance to Government agents during the course of the inspection fully establish such consent as if it had been formalized in a written document.

"Unless we are to interpret the inspection provision of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. § 374, to require that a ceremonial and formal request be made and that the consent be executed in like manner, the evidence overwhelmingly establishes that the requirements of the statute as to request and consent were fully met on both occasions when the defendant was present.¹ With respect to that part of the inspection on September 23rd, when the defendant was absent and when Exhibits 5A and 5B were taken, upon this record no authority has been shown in Weiner, an employee of the defendant, to grant consent on behalf of the defendant on that occasion, and none may be implied.

"The motion to quash is denied, except as to Exhibits 5A and 5B, and all evidence obtained during the inspection in the absence of Steiner, as to which it is granted."

¹ Cf. *United States v. Crescent-Kelvan Co.*, 3 Cir., 164 F. 2d 582; *Golden Grain Macaroni Company, Inc. v. United States*, 9 Cir., * * * F. 2d * * *, decided December 28th, 1953.