

Once more they were found to be of satisfactory quality. Upon this finding, the consignee, a reputable merchandising company catering to high class trade, paid the purchase price of \$1,800 or \$1,900.

"Notwithstanding all this, 18 days following shipment, when inspectors of the Department sampled the nuts, the unsound and deteriorated nuts were found to comprise from 17.3 to 18.8 percent of the shipment, the range of tolerance being but 10 percent.

"Thereafter, the Government libeled the nuts and defendants making claim to them, admitted their deteriorated condition as alleged in the libel. Thereupon, the claimant was permitted to recondition the nuts. When defendant was asked for a reconciliation of such admission with the present plea of 'not guilty,' it was said that, inasmuch as the admission was necessary in order to obtain possession of the goods for reconditioning, such action was justifiable while, for the purpose of avoiding reflection upon the defendant's reputation, a defense which was believed to be complete should be interposed.

"Although it may be that the admission of the allegations contained in the libel of condemnation is not *res adjudicata* of the issues represented by the information, it is, nevertheless, some evidence that here may properly be taken into account. This is so, particularly, for the reason that, upon the trial, there was no evidence that the reconditioning process disclosed proof which indicated that, in sampling the goods, the Government inspectors had done so wrongfully, or made a mistake. Its absence justifies an inference that such proof was non-existent and that the Government's sampling was properly and fairly done. This, I think, disposes of defendant's argument to the effect that the sampling of the United States was not representative of the entire shipment.

"If, then, defendant's samplings made before shipment and that which was taken upon arrival of the nuts at destination, were accurately done, and the examinations carefully made, the only way to account for an increase of deterioration percentage from 7.7 to 18.8 in one case, and from 7.6 to 17.3 in the other, and within a period of 18 days, is that the nuts were possessed of some inherent vice which led to their rapid decay. Were this the fact, it would have been revealed, I assume, by the reconditioning process. But, here again, there was no proof.

"Furthermore, it was testified by representatives of both consignor and consignee that sound nuts, if properly cured, will show no such deterioration within 18 days as, it is argued, here occurred. Much as I should like to direct the acquittal of defendant, the facts and the law compel me to adjudge it guilty of the offense set forth in the information.

"Believing that the offense was not wilfully committed, I shall not impose the maximum penalty. I feel, nevertheless, that the Government should recover some portion of the expenses of prosecution, which I find to have been justified, and will fine defendant the sum of \$200. Judgment may be entered accordingly."

31152. Adulteration and misbranding of olive oil. U. S. v. John Russo, alias F. Alfonso, alias P. Santo. Plea of guilty. Fine, \$500. (F. & D. No. 42519. Sample Nos. 56827-C to 56829-C, incl., 65439-C, 71195-C.)

This product was found to consist essentially of cottonseed oil, the greater portion of which was artificially colored and artificially flavored, and to contain little or no olive oil.

On August 19, 1938, the United States attorney for the Southern District of New York filed an information against John Russo, alias F. Alfonso, alias P. Santo, New York, N. Y., alleging shipment in interstate commerce on or about October 26 and November 15 and 17, 1937, from the State of New York into the States of New Jersey and Pennsylvania of quantities of olive oil which was adulterated and portions of which were also misbranded. The article was labeled in part: "Marca Gioiosa Olio Puro D'Oliva"; "Olio Finissimo La Gustosa Brand"; or "Sublime Olive Oil Superfine Brand Lucca."

The Gioiosa and the Sublime brands were alleged to be adulterated in that artificially flavored and colored cottonseed oil (1) had been mixed and packed therewith so as to lower or reduce their quality or strength; (2) had been substituted wholly or in part therefor; and (3) had been mixed with the article in a manner whereby inferiority was concealed. The La Gustosa brand was alleged to be adulterated in that a mixture of cottonseed oil and corn oil had been substituted in whole or in part for olive oil, which it purported to be.

The Gioiosa and the Superfine brands were alleged to be misbranded (1) in that they were offered for sale under the distinctive name of another article, namely,

pure olive oil; (2) in that the article purported to be a foreign product, olive oil, when not so; and (3) in that the following statements in the labeling, (Gioiosa brand) "Imported Product Pure Olive Oil. We Guarantee This Olive Oil To Be Absolutely Pure Under Chemical Analysis. Imported Pure Olive Oil [similar statements in Italian and the design of olive branches bearing olives]," and (Superfine brand) "Italian Product Virgin Olive Oil Superfine Brand Lucca—Italia. The purity of this olive oil is Guaranteed Under Chemical Analysis Imported From Italy [similar statements in Italian and design of olive branches bearing olives]," were false and misleading and were borne on the label so as to deceive and mislead the purchaser, since they represented that the article was pure olive oil produced in a foreign country; whereas it was not pure olive oil produced in a foreign country, but consisted in part of domestic cottonseed oil.

On May 31, 1941, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of \$500.

31153. Adulteration and misbranding of olive oil. U. S. v. 15 Cases of Olive oil (and 6 other seizure actions against olive oil). Consolidated consent decree of condemnation. Product ordered released under bond for re-labeling for export for domestic sale or for use for industrial purposes. (F. & D. Nos. 37399, 37405, 37406, 37419, 37431, 37433, 37495. Sample Nos. 60919-B, 60920-B, 61219-B, 61226-B to 61228-B, incl., 61776-B, 61787-B, 67372-B.)

Samples of this product were found to contain tea-seed oil. Certain lots were also short of the declared volume.

Between March 20 and March 30, 1936, the United States attorney for the District of New Jersey filed libels against 40 cases of half-pint cans, 22 cases of pint cans, 23 gallon cans and 23 half-gallon cans of olive oil at Jersey City; 180 cases of half-pint cans, 140 cases of pint cans, 35 cartons of quart cans, 35 cartons of half-gallon cans, 60 cartons of gallon cans, and 30 gallon cans of olive oil at Newark; and 8 cartons of half-pint cans of olive oil at Atlantic City, N. J., alleging that the article had been shipped in interstate commerce by the Agash Refining Corporation from Brooklyn, N. Y., within the period from on or about September 26, 1935, to on or about March 6, 1936; and charging that it was adulterated and misbranded. It was labeled in part "Agash Brand."

The article was alleged to be adulterated in that tea-seed oil had been mixed and packed therewith so as to reduce or lower its quality or strength; and had been substituted in whole or in part for olive oil, which it purported to be.

It was alleged to be misbranded in that it was offered for sale under the distinctive name of another article, namely, olive oil. It was alleged to be misbranded further in that the following or similar statements and designs appearing on the label were false and misleading and tended to deceive and mislead the purchaser when applied to a product containing tea-seed oil: "[Designs of olive branches, an olive tree, a crown, the Italian Flag, and shield] Italian Product Pure Olive Oil * * * Italy * * * The Olive Oil contained in this can is pressed from fresh picked high grown fruit in Italy. It is specially adapted for medicinal and table use and guaranteed to be absolutely pure * * * Prodotti Italiana Olio d'Olive Pure * * * Italia * * * L'olio d'oliva contenuto in questa latta e stato spremuto da olive fresche raccolte in Italia. Especialmente raccomandato per tavola, medicinale ed e garantito assolutamente puro."

A portion of the 1-gallon, ¼-gallon, and ½-pint cans of the product were alleged to be misbranded further in that the statements, "Net contents one full gallon", "Net contents ¼ gallon," and "Net contents ½ pint," were false and misleading as applied to a product which was short volume. The article in said gallon, ¼-gallon, and ½-pint cans was alleged to be misbranded further in that it was food in package form and the statement of contents was not conspicuously marked on the labels of said packages.

On February 10, 1941, the Agash Refining Corporation, claimant, having withdrawn its answers and having admitted for the purpose of these actions only, the allegations of the libels and the cases having been consolidated, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be examined for rancidity and the edible oil dumped and thoroughly mixed and packed in 50-gallon drums properly labeled for export or that the edible oil be dumped thoroughly, mixed, and packed in consumer-sized packages not larger than 1 gallon and labeled to show its identity as olive oil and tea-seed oil, and that it might be mixed with other oils if properly labeled; but in either disposition the inedible oil was to be disposed of for industrial