olive oil than it actually did contain. The added squalene deceived the enforcement officials as to the actual olive oil content and brought such adulteration squarely within the scope of the statute.

"I would affirm the judgment."

16739. Alleged misbranding of oil. U. S. v. Antonio Corrao. Plea of not guilty. Tried to a jury; verdict of guilty. Jury verdict set aside and new trial ordered; defendant retried by court and acquitted. (F. D. C. No. 14255. Sample Nos. 50970–F, 57263–F to 57265–F, incl., 76113–F, 76117–F, 76119–F, 76482–F, 76483–F, 77830–F.)

INFORMATION FILED: June 2, 1945, against Antonio Corrao, Brooklyn, N. Y.

ALLEGED SHIPMENT: Between the approximate dates of August 4, 1943, and February 7, 1944, from the State of New York into the States of Pennsylvania, New Jersey, and Connecticut.

LABEL, IN PART: "Figlia Mia Brand * * * Composed of 80% Cottonseed & Peanut Oils 20% Pure Olive Oil Packed By Universal Salad Oil Co. Brooklyn, N. Y." or "La Sposa Brand * * * Composed of 80% Cottonseed & Peanut Oils 20% Imported Olive Oil * * * Packed By Universal Salad Oil Co. Brooklyn, N. Y."

NATURE OF CHARGE: Misbranding, Section 403 (a), the label statements "Composed of 80% Cottonseed & Peanut Oils 20% Pure [or "Imported"] Olive Oil" were false and misleading since the product was composed essentially of cottonseed oil and contained very little olive oil, and four lots, in addition, contained little or no peanut oil; and (portion of product), Section 403 (f), certain information required by the law to appear on the label did not appear in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use since the label on the cans bore representations in a foreign language, Italian, and the common or usual name of each ingredient did not appear on the label in Italian.

DISPOSITION: A plea of not guilty having been entered, the defendant filed a motion for a bill of particulars on August 10, 1945, which motion was granted. In April 1946, the case came on for trial before the jury. At the conclusion of the trial, the defendant's attorney filed a motion to dismiss, which motion the court reserved decision on. The case was sent to the jury, which found the defendant guilty. Defendant then filed a motion to set aside the verdict as contrary to the weight of evidence, and on August 15, 1946, the court handed down the following memorandum opinion setting aside the jury verdict and ordering a new trial:

ABRUZZO, *District Judge:* "There was a motion made at the end of the case after the jury had returned a verdict of conviction, and I reserved decision on that motion. I wish at this time to set forth the reasons for the action which I am about to take. Under the pleas of not guilty the defendant was convicted on counts 2, 4, 6, 8, 10, 12, 15, 17, and 20. Under these counts the proof showed that the cans of olive oil had the following words on them: 20% olive oil, 80% cottonseed and peanut oil. There were other counts wherein the charge was that the oil was adulterated, but I dismissed all of those counts, as they seemed to be a duplication of the counts charging misbranding. There were other misbranding counts which I dismissed because there were not contained on the can the words, '20% olive oil and 80% cottonseed and peanut oil.'

"Tests were made of the cans of olive oil which were intercepted by the Government in interstate commerce, and these tests were the subject of the testimony before the jury upon which the conviction was based. The olive oil that went in these cans which I have seen was tested by the Government and they depended in their tests on breaking down the contents of the olive

oil and then performing what is known as a squalene test, which was evolved by Dr. Fitelson, a Government witness employed by the Government, and as a result of these tests and the testimony given by him the jury convicted this defendant. This squalene test has never been officially adopted by the Association of Official Agricultural Chemists, and I understand the time for them to determine whether to adopt this as a permanent test or not is to be in November, and action will be taken at that time to determine whether they will adopt this as the test for the detection of olive oil, and as I recall the testimony, Dr. Fitelson testified that he adopted a certain formula based upon his examination of many oils, and adopting that particular formula he came to the conclusion that there was 1 to 2 percent olive oil in each of the cans pertaining to the counts which were left to the jury, but he testified, however, that had he adopted any other formula but the one he did—and it is quite evident that no expert could foresee the formula that he saw fit to adopt—he would get a greater content of olive oil.

"Under the circumstances, I do not think a verdict of guilty is justified, and on the weight of the evidence I am going to set the verdict aside under each count. I do this because perhaps the Government can strengthen its proof by the time a new trial is on, and it should be given the opportunity to do so. It might call other experts or other tests might be made which would have greater probative value in court and before a jury. I am not unmindful of the fact that it is important that if this man is guilty he should be punished. On the other hand I am not unmindful of the fact that in the present state of the proof I cannot conscientiously allow the verdict to stand.

"For these reasons I grant the motion to set aside the verdict, and only upon the grounds which I have set forth in this opinion, and I direct that the case be placed on the calendar for retrial in the early part of November."

The case was retried before a judge without a jury, and in January 1949 a verdict of acquittal was entered.

16740. Adulteration and misbranding of oil. U. S. v. 22 Cases * * * (and 4 other seizure actions). Cases consolidated for trial. Claimant's motion for discovery denied. Case tried to a jury; verdict returned for Government; decree of condemnation entered. Judgment of district court affirmed by circuit court of appeals. Certiorari to United States Supreme Court denied. Claimant's motion to retax costs granted in part and denied in part. (F. D. C. Nos. 25075 to 25078, incl., 25092. Sample Nos. 8143–K, 8146–K to 8149–K, incl., 8151–K, 8152–K.)

LIBELS FILED: July 14, 1948, District of Connecticut; amended January 26, 1949.

ALLEGED SHIPMENT: On or about June 9, 14, 15, and 16, 1948, by the Antonio Corrao Corp., from Brooklyn, N. Y.

PRODUCT: Oil. 22 cases at New Haven, Conn., 15 cases at Waterbury, Conn., 15 cases at Bristol, Conn., and 5 cases at Torrington, Conn. Each case contained 6 1-gallon cans.

LABEL, IN PART: (Can) "Figlia Mia Brand a blend consisting of 90% vegetable oils, choice cottonseed, corn and peanut oils, plus 10% pure olive oil" or "Pace O Mio Dio Brand 80% choice peanut oil and 20% pure olive oil."

NATURE OF CHARGE: Adulteration, Section 402 (b) (1), a valuable constituent olive oil, had been in whole or in part omitted; and Section 402 (b) (4), artificial flavoring had been added to the product and mixed and packed with it so as to make it appear to be better or to contain substantial amounts of olive oil, which is better and of greater value than the product was. Squalene had been added to the product and mixed and packed with it so as to make