

Olive Oil", and the design of an Italian flag, the Italian coat of arms, olive trees, and women gathering olives; (Caruso brand) "Imported Pure Olive Oil Olio d' Oliva Puro Importato [designs of olive branches] Pure Olive Oil This Olive Oil is guaranteed to be absolutely pure under chemical analysis. Quest olio e garantito assolutamente puro sotto analisi chimica * * * [design of Italian coat of arms and of Italian flag] Marca Caruso Medaglia D'Oro Croce D'Onore Diploma Esposizione Industriale Roma 1923 Olio d'Oliva Importato Qualita Sopraffina Caruso Brand Above All Others"; (La Rosa brand) "Superfine Quality * * * Pure Olive Oil Imported [on portion "Pure Olive Oil Imported From Italy"] * * * Qualita Sopraffino * * * Puro Olio d'Oliva Importato. This Olive Oil is guaranteed to be absolutely pure and is highly recommended for table and medicinal purposes * * * Questo Olio D'Oliva e garantito assolutamente puro ed e raccomandato per uso tavola e medicinale * * * Imported Olive Oil", and the designs of olive branches and olives, (Davide brand) "Prodotto Italiano Puro Olio D'Oliva Davide Brand, Choicest Quality * * * Italian Product Pure Olive Oil Davide Brand [design of olive branches] This olive oil is guaranteed to be absolutely pure and is highly recommended for table and medicinal purposes. Questo Olio D'Oliva e per uso tavola e medicinale [design of olive branch] * * * Imported Olive Oil"; (Elena brand) "Superfine Quality Elena * * * Pure Olive Oil Imported from Italy * * * Qualita Sopraffino Elena * * * Puro Olio d'Oliva Importato Dall'Italia [design of olive branch]. This Olive Oil is guaranteed to be absolutely pure and is highly recommended * * * Questo Olio d'Oliva e garantito assolutamente puro ed e raccomandato per uso tavola e medicinale * * * Imported Olive Oil"; (Sparviero brand) "Lucca Italy Toscana Virgin Guaranteed Pure Olive Oil Imported from Italy. This olive oil is guaranteed to be absolutely pure Recommended for medicinal and Table Use * * * Imported Olive Oil", and designs of olive branches with olives.

On March 22, 1937, pleas of guilty were entered on behalf of the defendants and the court imposed a fine of \$200 against each defendant on each of the 30 counts of the information and ordered that fines on all counts but the first be remitted. Subsequently the fine on the first count was reduced to \$100 as to each defendant.

M. L. WILSON, *Acting Secretary of Agriculture.*

27409. Adulteration and misbranding of assorted jellies and assorted jams. U. S. v. 816 Jars of Assorted Jams and 247 Jars of Assorted Jellies. Consolidated and tried to the court. Judgment of condemnation. Products delivered to public or charitable agencies. (F. & D. nos. 38104, 38150. Samples nos. 69210-B, 3608-C.)

These products all contained less fruit and more sugar than standard jams and jellies should contain. In addition, the jellies and 6 of the 10 varieties of jams contained water, which should have been removed in the process of manufacture; and they also contained pectin or acid, or both pectin and acid.

On August 3 and August 18, 1936, the United States attorney for the District of Nevada, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 816 jars of assorted jams and 247 jars of assorted jellies at Reno, Nev., alleging that they had been shipped in interstate commerce on or about March 7, 1936, by the Kopper Kettle Syrup Co. from Sacramento, Calif., and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part: "Made by J. D. Armstrong, Los Angeles."

The adulteration and misbranding charges in the libels are set out in detail in the findings of fact by the court.

On March 10, 1937, the above-entitled causes came on for trial before the court sitting without a jury, a trial by jury having been waived. J. D. Armstrong and B. D. Topf, copartners, doing business under the name and style of Kopper Kettle Syrup Co., had entered an appearance in each of the two cases as claimants of the libeled jams and jellies, through their attorney, but were not represented in court by counsel at the trial of the cases. Upon motion of counsel for plaintiff, the court entered its order consolidating the causes for trial. Evidence was introduced on behalf of plaintiff, and the court being fully advised in the premises, on said date entered its order that decree be entered in favor of plaintiff, and further ordered that counsel for plaintiff prepare and submit findings. On April 19, 1937, the court signed the following Findings of Fact:

NORCROSS, *District Judge*: 1. That on or about the 7th day of March, 1936, Kopper Kettle Syrup Co. shipped from Sacramento, California, to and into the City of Reno, State and District of Nevada, via United Motor Transport Lines, Inc., and consigned to Conant Bros. Inc., Reno, Washoe County, Nevada, articles of food products, to-wit: eight hundred and sixteen jars, more or less, of assorted jams, made by J. D. Armstrong, Los Angeles, California, including among others, wild blackberry, black currant, gooseberry, black raspberry, red raspberry, youngberry, loganberry, strawberry, peach, and grape, and each of said jars containing the above-described product is labeled in part as follows:

"Armstrong's Pure Wild Blackberry [or "Black Currant" or "Gooseberry" or "Black Raspberry" or "Red Raspberry" or "Youngberry" or "Loganberry" or "Strawberry" or "Peach" or "Grape"] Jam made by J. D. Armstrong, Los Angeles Net Wt. 7 Oz.;"

and 247 jars, more or less, of assorted jellies, made by J. D. Armstrong, Los Angeles, California, including among others, grape, blackberry, plum, and red raspberry, and each of said jars containing the above described products is labeled in part as follows:

"Armstrong's Pure Grape [or "Blackberry" or "Plum" or "Red Raspberry"] Jelly Made by J. D. Armstrong, Los Angeles. Net Wt. 7 Oz."

2. That all of said above-described food products were libeled and seized for violations of the Food and Drugs Act; that definitions and standards, issued by the United States Department of Agriculture, are used as a basis for determining the compliance with the Food and Drugs Act of so-called jams and jellies; that the standards so used are those promulgated by the Food Standards Committee; that said Food Standards Committee is comprised of a total membership of nine, with representation thereon, as follows: Three members from the United States Department of Agriculture; three members from the membership of the Association of Official Agricultural Chemists, and three members from the membership of the National Association of State Food Officials; that before said standards were adopted, public hearings were conducted to enable the committee to devise definitions and standards for various food products which represent the understanding of the average consumer or purchaser as to the identity of the particular product named; that at said public hearings so conducted, persons interested in the standards were accorded opportunities to present any criticisms, comments, or suggestions; that the definitions and standards thereafter and so devised by the Committee, represent the understanding of the average consumer or purchaser so far as said understanding is susceptible of ascertainment, as to the identity of the product named; that the definition and standards so adopted by the Committee for fruit jams and jellies were adopted by the Department of Agriculture as representing the consumers' understanding of such products; that the particular standards in question appear in Department of Agriculture Publication SRA, FD No. 2, Rev. 5, issued in November 1936, and entitled, "Definitions and Standards for Food Products for Use in Enforcing the Food and Drugs Act", page 9, items 8 and 9 under the general heading, "Fruit and Fruit Products", subheading "Preserves, Jams, Jellies," and read as follows:

"8. Preserve, Fruit Preserve, Jam, Fruit Jam. The product made by cooking to a suitable consistence properly prepared fresh fruit, cold-pack fruit, canned fruit, or a mixture of two or all of these, with sugar or with sugar and dextrose, with or without water. In its preparation not less than 45 pounds of fruit are used to each 55 pounds of sugar or of sugar and dextrose. A product in which the fruit is whole or in relatively large pieces is customarily designated a "preserve" rather than a "jam."

9. JELLY, FRUIT JELLY. The semisolid, gelatinous product made by concentrating to a suitable consistence the strained juice or the strained water extract from fresh fruit, from cold pack fruit, from canned fruit, or from a mixture of two or of all of these, with sugar or with sugar and dextrose."

That the standards for jams and jellies, as printed in the said November 1936, publication were unchanged from the form in which the same were printed in the previous Rev. 4 of the Department of Agriculture issued in August 1933, and were the definitions and standards in force and effect at the time of the violations alleged in the libels filed herein; that the said present standard for jam is essentially similar to that adopted some thirty years ago, and shortly after the enactment of the Food and Drugs Act; that the present standard for jellies is of many years standing; that the majority of the preserve manu-

facturers recognize, and have recognized, the appropriateness of the said standards employed by the Department of Agriculture; that on November 11, 1936, the Federal Trade Commission issued Trade Practice Rules for the preserve industry; that said Rules had been established by said Commission as a result of a request by the National Preservers' Association, and after public hearings; that said Trade Practice Rules included definitions and standards for preserves and jellies; that the standards included in said Trade Practice Rules, in essential particulars, are similar to the said definitions and standards employed by the Food and Drug Administration as representative of consumers' understanding.

3. That it is common practice, in making jams and jellies in the home, to use, roughly, equal amounts of fruit and sugar; that is, the common household formula is one cup of fruit to each cup of sugar; that the said standard for jam expresses, roughly, this proportion; that the said standard for jelly does not make a numerical requirement as to the amount of fruit juices to be used, recognizing that the amount which is necessary to produce a jelly varies considerably with different varieties of fruits, and different maturity of fruits, because of the natural variation in pectin content; that it is difficult to make jellies from certain fruits, because of deficiency in pectin, and that the Department has not objected to the addition of pectin to make up for deficiencies in the natural pectin content of such fruits, provided that in such cases at least fifty (50) pounds of fruit juices are employed for each fifty (50) pounds of sugar in the original batch; that said standard for jelly represents the consumers' understanding of this product, as the same has been determined as hereinabove found; that is to say, that jelly consists of a mixture of fruit juices and sugar concentrated somewhat to form a semi-solid, jelly-like product; that the requirement that fifty (50) pounds of fruit be employed for each fifty (50) pounds of sugar, where added pectin is used, is made to insure a reasonable effort to produce a jelly from fruit and sugar alone; that is, if the use of substantial amounts of fruit juices in the order of fifty (50%) per cent of the original batch will not produce a "jell" then the addition of appropriate amounts of pectin is without objection; that pectin is the natural ingredient in fruits which is responsible for the jelling properties; that pectin is manufactured in considerable amounts, commercially, from citrus fruits and from apples; that it has a legitimate use in the preserve and jelly industry in the manufacture of jams and jellies, to make up for deficiencies in this substance in the fruits employed, or for use in making substandard products labeled as imitations; that jam-like or jelly-like products can be made by using commercial pectin, sugar, water, and fruit acids, with only very small amounts of actual fruit or fruit juice; that such products are not entitled, under the standards and definitions of the Department of Agriculture, to be represented as jams or jellies, but, in fact, should be represented as imitation jams or jellies, and labels further should bear appropriate statements indicating the nature of the products, or wherein they are imitations; that the jams and jellies here libeled are not jams and jellies, but are, in fact, imitation products and should be labeled and designated as imitations.

4. That the composition, and particularly the fruit content of a fruit jam or jelly, can be ascertained by chemical analysis; that such analysis includes determinations of various fruit constituents, such as ash, phosphoric acid, and other factors; that such constituents in jams and jellies are derived largely from the fruit used, and hence are indices of the amount of fruit when compared with the average figures for such constituents in natural fruits, a large number of authentic samples of which the Department has analyzed over a period of years; that such authentic analyses have been tabulated and are available to the chemists of the Department of Agriculture; that the United States Food and Drug Administration has made comprehensive studies of the composition of various fruits over a period of years, and has compiled data on these fruits from analyses of a great number of samples of each variety; that the composition of a jam or jelly is determined by chemical analysis for certain constituents which are relatively constant for each variety of fruit; that a comparison of the amount of fruit constituents in a jam or jelly, with the amount of the constituents found in the natural fruits or fruit juices, permit the calculation of the amount of fruit or fruit juices used in making the jams or jellies; that samples of the jams and jellies seized in the above cases were so chemically analyzed, and calculations of the amount of fruit and fruit juices used in making the said jams and jellies then calculated; that samples

of said products were analyzed for soluble solids; that such analysis determined the sugar content of the said jam and jellies, respectively; that samples of the said products were also analyzed for insoluble solids, ash, phosphoric anhydride, total acidity, and alcohol precipitate; that the relative amount of alcohol precipitate is a measure of the pectin present in the fruit or fruit product.

5. That said analyses of the eight (8) different flavors of the so-called jams herein libeled, disclosed that approximately the following indicated amounts of fruit were used to each fifty-five (55) pounds of sugar in their manufacture:

| | | | |
|----------------------|-----------|--------------------|-----------|
| Youngberry----- | 23.3 lbs. | Red Raspberry----- | 23.4 lbs. |
| Gooseberry----- | 25.8 " | Grape----- | 25.8 " |
| Black Raspberry----- | 19.3 " | Black Currant----- | 17.2 " |
| Wild Blackberry----- | 18.1 " | Loganberry----- | 30 " |
| Strawberry----- | 24.7 " | Peach----- | 26 " |

6. That said analyses of samples of the so-called jellies herein libeled, disclosed that to each fifty (50) pounds of sugar in the original batches of the same, approximately the following amounts of fruit were used in the indicated flavors:

| | |
|--------------------|-----------|
| Grape----- | 10.5 lbs. |
| Blackberry----- | 13.4 " |
| Plum----- | 20.4 " |
| Red Raspberry----- | 10.7 " |

7. That said analyses shows that said jams and jellies herein libeled, are misbranded and adulterated under the Federal Food and Drugs Act as charged in said libels, in that they are materially deficient in fruit; that the fruit deficiencies have been made up by the substitution for fruit of sugar, or sugar and pectin, and/or acid and water.

8. In Case No. 2702, and on count one thereof, the court finds that the contents of each of said eight hundred and sixteen jars, more or less, of assorted jams, made by J. D. Armstrong, Los Angeles, California, including among others, wild blackberry, black currant, gooseberry, black raspberry, red raspberry, youngberry, loganberry, strawberry, peach, and grape, labeled as hereinabove alleged, are misbranded in violation of the Food and Drugs Act, Section 8, as follows:

General Paragraph, Paragraph Second, and Paragraph Fourth, in the case of food, in that the statements "Pure Wild Blackberry [or "Black Currant" or "Gooseberry" or "Black Raspberry" or "Red Raspberry" or "Youngberry" or "Loganberry" or "Strawberry" or "Peach" or "Grape"] Jam" are false and misleading and tend to deceive and mislead the purchaser as applied to an article resembling a jam but [which] is not a jam;

Paragraph First, in the case of food, in that they are imitations of and offered for sale under the distinctive names of other articles.

9. In case No. 2702, and with reference to the second count thereof, the court finds that the contents of each of said eight hundred and sixteen jars, more or less, of assorted jams, in count one of said libel hereinabove described, are adulterated in violation of the Food and Drugs Act, Section 7, as follows:

Paragraph First, in the case of food, wild blackberry, black currant, gooseberry, and black raspberry, in that sugar has been mixed and packed with the article so as to reduce or lower its quality; red raspberry, youngberry, loganberry, and strawberry, in that sugar, pectin, and water have been mixed and packed with the article so as to reduce or lower its quality; peach, in that sugar, acid, and water have been mixed and packed with the article so as to reduce or lower its quality; grape, in that sugar, acid, pectin, and water have been mixed and packed with the article so as to reduce or lower its quality;

Paragraph Second, in the case of food, wild blackberry, black currant, gooseberry, and black raspberry, in that a mixture of fruit and sugar containing less fruit and more sugar than jam, has been substituted for jam, which the article purports to be; red raspberry, youngberry, loganberry, and strawberry, in that a mixture of fruit, sugar, pectin, and water containing less fruit and more sugar than jam, has been substituted for jam, which the article purports to be; peach, in that a mixture of fruit, sugar, acid, and water containing less fruit and more sugar than jam, has been substituted for jam, which the article purports to be; grape, in that a mixture of fruit, sugar, acid, pectin, and water containing less fruit and more sugar than jam, has been substituted for jam, which the article purports to be;

Paragraph Fourth, in the case of food, wild blackberry, black currant, gooseberry, and black raspberry, in that sugar has been mixed with the article in a manner whereby inferiority is concealed; red raspberry, youngberry, loganberry, and strawberry, in that sugar, pectin, and water have been mixed with the article in a manner whereby inferiority is concealed; peach, in that sugar, acid, and water have been mixed with the article in a manner whereby inferiority is concealed; grape, in that sugar, acid, pectin, and water have been mixed with the article in a manner whereby inferiority is concealed.

10. That the jars of said assorted jams, described as aforesaid, are in the possession of Conant Bros., Inc., Reno, Washoe County, Nevada, and within the jurisdiction of this Court.

11. In Case No. 2704, and with reference to count one thereof, the court finds that the contents of each of said two hundred and forty seven jars, more or less, of assorted jellies, made by J. D. Armstrong, Los Angeles, California, including among others, grape, blackberry, plum, and red raspberry, labeled as hereinabove alleged, is misbranded in violation of the Food and Drugs Act, Section 8, as follows:

General Paragraph, Paragraph Second, and Paragraph Fourth, in the case of food, in that the statements "Pure Grape [or "Blackberry" or "Plum" or "Red Raspberry"] Jelly" are false and misleading and tend to deceive and mislead the purchaser as applied to a product resembling a jelly, but which is not jelly;

Paragraph First, in the case of food, in that they are imitations of and offered for sale under the distinctive names of other articles, namely, jelly.

12. In Case No. 2704, and with reference to the second count thereof, the court finds that the contents of each of said two hundred and forty-seven jars, more or less, of said assorted jellies, in count one of said libel hereinabove described, are adulterated in violation of the Food and Drugs Act, Section 7, as follows:

Paragraph First, in the case of food, red raspberry, grape, and blackberry, in that sugar, acid, water, and pectin have been mixed and packed with the article so as to reduce or lower its quality; plum, in that sugar, water, and pectin have been mixed and packed with the article so as to reduce or lower its quality;

Paragraph Second, in the case of food, red raspberry, grape, and blackberry, in that a mixture of fruits, sugar, acid, water, and pectin, containing less fruit and more sugar than jelly, has been substituted for jelly, which the article purports to be; plum, in that a mixture of fruit, sugar, water, and pectin containing less fruit and more sugar than jelly has been substituted for jelly, which the article purports to be;

Paragraph Fourth, in the case of food, red raspberry, grape, and blackberry, in that sugar, acid, water, and pectin have been mixed with the article in a manner whereby inferiority is concealed; plum, in that sugar, water, and pectin have been mixed with the article in a manner whereby inferiority is concealed.

13. That the jars of said assorted jellies, described as aforesaid, are in the possession of Conant Bros., Inc., Reno, Washoe County, Nevada, and within the jurisdiction of this Court.

14. That it does not appear that either said jams or said jellies herein libeled, are dangerous or deleterious to health, or that the same are decomposed or filthy, or otherwise unsuitable for consumption.

CONCLUSIONS OF LAW

The Court concludes as matters of law,

1. That said jams and jellies should be condemned, declared forfeited to the United States, and destroyed, or otherwise disposed of as the decree herein directs.

On April 23, 1937, judgment was entered condemning the products and ordering that they be delivered to a public or charitable institution or agency.

M. L. WILSON, *Acting Secretary of Agriculture.*

27410. Adulteration and misbranding of grapefruit juice. U. S. v. 880 Cases of Grapefruit Juice. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. no. 38291. Sample no. 16773-C.)

This case involved grapefruit juice that contained added water.

On September 14, 1936, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 880 cases of grape-