

4811. Alleged adulteration and misbranding of mustard. U. S. v. Thomson & Taylor Spice Co., a corporation. Demurrers to information sustained. (F. & D. Nos. 4481, 4774, 4775, 5014. I. S. Nos. 19310-d, 19559-d, 17095-d, 942-e.)

On November 14, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district four informations against Thomson & Taylor Spice Co., a corporation, Chicago, Ill., alleging:

(1) The sale by said defendant company, on February 19, 1912, under a guaranty that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act, of a quantity of mustard which was alleged to be an adulterated and misbranded article of food within the meaning of said act, and which said article, without having been altered in any manner, was shipped by the purchaser thereof, on March 9, 1912, from the State of Illinois into the State of Iowa. This article was labeled: (Principal label) "Guaranteed Absolutely Pure Mustard Packed Expressly for Harper Bros. & Co. Chicago." (Reverse label) "16 Ounces to the Pound The Guaranteed Label Brand of Spices put up under our signature are Absolutely Pure and ground from the best spices grown. All goods packed under this brand are positively guaranteed. Pure and full weight. Established 1874. Packed Expressly for Harper Bros. & Co., Wholesale Grocers Chicago."

(2) The shipment by said company, on April 5, 1912, from the State of Illinois into the State of Wisconsin, of a quantity of mustard which was alleged to be adulterated and misbranded. This article was labeled: "4 ounces Net Weight Juneau Brand Strictly Pure Mustard. Packed for John Hoffmann & Sons Co. Milwaukee, Wis."

(3) The shipment by said company, on May 21, 1912, from the State of Illinois into the State of Wisconsin, of a quantity of mustard which was alleged to be adulterated and misbranded. This article was labeled: "Pere Marquette Spices Mustard P & N Packed for Plumb & Nelson Co., Wholesale Grocers. Manitowoc, Wis. Warranted Absolutely Pure and to conform to Pure Food Laws of any State. 6 Lbs. Net Weight Guarantee Guaranteed to comply with the U. S. Food and Drug Act, June 30, 1906, and all state Pure Food Laws. Mustard."

(4) The shipment by said company, on September 5, 1912, from the State of Illinois into the State of Ohio, of a quantity of mustard which was alleged to be adulterated and misbranded. This article was labeled: (On original carton) "Red Bird Brand Strictly Pure Mustard" (Device, red bird) "Quality Guaranteed." (On side) "Packed for The Midland Grocery Co. of Ohio." (On end) "Two ounces net weight."

Examination of samples from each of the shipments by the Bureau of Chemistry of this department showed that each contained a large amount of charlock, or wild mustard.

Adulteration of the article in each of the consignments was alleged in the informations for the reason that, when it was shipped as aforesaid, another substance, to wit, wild mustard, had been substituted wholly for pure mustard; for the further reason that another substance, to wit, wild mustard, had been substituted in part for pure mustard; for the further reason that another substance, to wit, charlock, had been substituted wholly for pure mustard; and for the further reason that another substance, to wit, charlock, had been substituted in part for pure mustard. Adulteration of the article in the shipments of April 5, 1912, May 21, 1912, and September 5, 1912, was alleged in three of the informations for the further reason that another substance, to wit, charlock, had been mixed and packed with pure mustard in such a manner as to reduce, lower, and injuriously affect the quality and strength of pure

mustard aforesaid, which the article purported to be; and for the further reason that another substance, to wit, wild mustard, had been mixed and packed with pure mustard in such a manner as to reduce, lower, and injuriously affect the quality and strength of pure mustard, which the article of food purported to be.

Misbranding of the article in all four of the shipments was alleged in the informations for the reason that the articles in each shipment were labeled, respectively, as aforesaid, which said statement on the label appearing on each of the cans was false and misleading in that the statement on the label, "Pure Mustard" (or "Mustard. Warranted absolutely pure," as the case might be) represented to the purchaser that the article of food was pure mustard; and for the further reason that said statement on the label misled and deceived the purchaser in that the statement "Pure Mustard" (or "Mustard. Warranted absolutely pure," as the case might be) represented to the purchaser that the article was pure mustard, whereas, in truth and in fact, it was not pure mustard, but a mixture of mustard and charlock. Misbranding of the article contained in the shipments of April 5, 1912, May 21, 1912, and September 5, 1912, was alleged for the further reason that the articles were labeled respectively as aforesaid, which said statement on the labels appearing on the packages was false and misleading in that the statement on the label, "Pure Mustard," represented to the purchaser that the article of food was pure mustard; and for the further reason that said statement on the label deceived and misled the purchaser in that the statement, "Pure Mustard," represented to the purchaser that the article of food was pure mustard, whereas, in truth and in fact, it was not pure mustard, but was a mixture of mustard and wild mustard.

On October 22, 1915, the defendant company filed demurrers to the informations, and on December 3, 1915, the cases having come on for hearing, the demurrers were sustained. During the progress of the hearing the following remarks in the course of argument by counsel were made by the court (Anderson, J.):

The COURT. The question is, whether or not wild mustard is pure mustard.

I must say that to charge that the labeling of it pure mustard, whereas in fact it is wild mustard, could hardly make a case, if wild mustard is mustard. Of course, there may be such a thing as pure wild mustard.

The charge that they violated the law in that they labeled it pure mustard, which you say may be white or black mustard, whereas in truth and in fact it is wild mustard, I don't believe that is good.

Wild mustard is mustard and nothing else. When you use the word "pure" you mean it is mustard and nothing else, has nothing in it but mustard. You have got to use common, ordinary sense when you come to define words. Now, you say he calls this pure mustard whereas in truth and in fact it is wild mustard. He calls it mustard, and nothing else, whereas in truth and in fact it is one kind of mustard. That doesn't make a case.

You could have made a case if they labeled it "pure" and if charlock or wild mustard is not pure mustard, then you have got a case. But any kind of mustard that is mustard, still is pure mustard. They told the truth when they said it is pure; that is, it is pure wild mustard.

I hold that mustard is mustard; that there are two kinds of mustard, wild mustard and mustard that is not wild. I hold that when they say a thing is mustard and it is wild mustard only that that is not a misbranding.

Suppose that a man canned blackberries and he canned wild blackberries and called them pure blackberries; wouldn't they be pure, just as much as if they had been cultivated? The word "pure" means simply without anything else.

I hold that there is such a thing as pure wild mustard.

If charlock means wild mustard, it is the same thing.

I will hold the counts which charge that they labeled it pure mustard, and put into the receptacles, whatever they were, wild mustard, I will hold those counts bad. All counts which charge that they labeled it pure mustard and put in charlock, I hold them bad. You have no difficulty in understanding what my ruling is.

CARL VROOMAN,
Acting Secretary of Agriculture.