

company failed to furnish plaintiff with monthly statements and to pay to the latter the amount coming to him; that the company greatly adulterated the dry green furnished by plaintiff with divers inferior materials which took away the brilliancy of the green and impaired its coloring power, and more especially had used in such adulteration sulphate of barytes and other inferior materials, and sold and delivered large quantities of said inferior green, and did put upon the same the trade mark of plaintiff; that by so doing the rights of plaintiff had been greatly interfered with, and he had suffered great loss. The conclusion of plaintiff was that the company be enjoined to cease using said trade mark upon any of said green so manufactured by the company; that the company be condemned to furnish to plaintiff a true account of all the sales made monthly by the company of said green, and to pay over to plaintiff the sum which might be found to be due to plaintiff, and that the company be condemned to pay to plaintiff damages, namely, \$5,000.

The company pleaded that ever since entering into said agreement they had ground pure and in the best refined linseed oil in the usual consistency of a blind green, the dry green furnished by plaintiff, and had fulfilled every part of said agreement on them binding, but that plaintiff had altogether failed to fulfil his part of the agreement, and instead of furnishing dry green as by said agreement he was bound to do, he directed the employees of the company to mix together certain ingredients by him named in certain proportions by him indicated, in view of producing the said dry green or an article similar thereto, which said directions of plaintiff had been minutely followed. That the company had never used the trade mark of plaintiff upon, or for the purpose of designating any other green than that furnished to the company by plaintiff, or that produced as aforesaid by the admixture of different ingredients under the direction of plaintiff. That moreover the company, on the 12th December, 1879, accounted to plaintiff for one cent per pound upon all the said green sold by the company to other parties, the amount of said account being for 7224 pounds of said green, to wit: the sum of \$72.24 which was placed to the credit of plaintiff who was in-

debted to the company in a greater sum, to wit: in the sum of \$110.52, balance due by plaintiff to defendant upon an account for the price and value of goods, wares and merchandizes by the company to plaintiff sold, and delivered at different times previous to the date of the institution of the action; that since the rendering of this account the company had not sold any of the said green; that in and by their protest the company notified the plaintiff that they had a certain quantity of said green still on hand, bearing the trade mark of plaintiff, and were ready to deliver the same to him on being reimbursed the cost price thereof, and the company prayed that the sum of \$72.24 be declared compensated by the said sum of \$110.52, and plaintiff's action dismissed.

PER CURIAM. On the issues raised between the parties, many witnesses have been examined, and I have no difficulty in finding that the dry green furnished by plaintiff was greatly adulterated. Mr. Woods, the manager of the company, says this was done by the express direction of the plaintiff. I have an insuperable difficulty in believing this, because it was destructive of the plaintiff's business, and plaintiff received from the company an inferior article of little value and was nevertheless charged the same price as if it were the pure article intended by the contract.

I call attention to the following evidence of the witness Woods on the adulteration of the dry green:—

"Q. Did you hear Dr. Girdwood and Mr. Logie and Mr. McArthur say that the one was worth about 18 cents and the other only from 4 to 6 cents per pound?

"A. I believe I did.

"Q. Did you consider yourself entitled to charge the fifteen and a-half cents mentioned in the contract for the brilliant body green for this adulterated green?

"A. We did, but we offered to make good to Mr. Martin any difference in quality on account of having done so.

"Q. Was it the quantity or the value which was reduced?

"A. The value.

"Q. But you continued to charge the fifteen and a-half cents mentioned in the contract?

"A. Yes."

Again at p. 12.