

the court would have the formal charge thereof before it when it comes to fix the punishment. Moreover, a question of the identity of the defendant upon trial with the person formerly convicted might well arise and become an issue in the case.

"Whatever ill effect might accrue to the defendant upon the trial by reason of the recital in the indictment of a former conviction, could, if necessary, be obviated by a proper charge as to the lack of probative effect of the averments of the indictment. For these reasons, as well as others that might be mentioned, it occurs to me that the ills which might accrue to defendant, if charged in the indictment with the fact of former conviction, are more than offset by the harm which would accrue to the Government from the fact that such charge was not contained in the indictment. All these considerations induce me to take the view upon a question which seems to be of first impression under this statute, that the demurrer herein is not well taken. Let it be overruled."

C. F. MARVIN, *Acting Secretary of Agriculture.*

11431. Misbranding of cottonseed meal. U. S. v. Hayes Grain & Commission Co., Inc., a Corporation. Plea of guilty. Fine, \$50. (F. & D. No. 14921. I. S. No. 11928-t.)

On January 25, 1922, 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 an information against the Hayes Grain & Commission Co., Inc., of Illinois, a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about September 10, 1920, from the State of Illinois into the State of Michigan, of a quantity of cottonseed meal in sacks which was misbranded.

Misbranding of the article was alleged in the libel for the reason that it was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On April 17, 1923, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$50.

C. F. MARVIN, *Acting Secretary of Agriculture.*

11432. Adulteration and misbranding of feed. U. S. v. Thomas W. Keelin and John J. Keelin (Prairie State Milling Co.). Pleas of guilty. Fine, \$1,000. (F. & D. No. 15257. I. S. Nos. 5834-t, 5835-t, 5836-t, 5837-t, 5838-t, 5839-t, 5816-t, 8270-t, 8271-t, 8282-t, 8283-t, 8284-t, 8796-t, 8797-t, 11563-t, 11564-t, 11565-t, 11566-t, 11567-t, 11568-t, 12423-t.)

On January 14, 1922, 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 an information against Thomas W. Keelin and John J. Keelin, copartners, trading as Prairie State Milling Co., Chicago, Ill., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, between the dates of December 2, 1920, and January 15, 1921, from the State of Illinois, in various consignments, namely, into the States of Pennsylvania, West Virginia, Virginia, Indiana, New York, and Ohio, respectively, of quantities of feed, the greater portion of which was adulterated and misbranded and the remainder of which was misbranded. The articles were labeled in part: "Emerald Brand Horse Feed Made From Rolled Oats, Cracked Corn, Rolled Barley, Alfalfa Meal and Molasses Guaranteed Analysis Protein 9%" (or "8%") "Crude Fibre 12% * * * Manufactured By Prairie State Milling Co. Chicago, Ill.;" "Greenfield Brand Made From Alfalfa Meal and Molasses Guaranteed Analysis Protein 9% * * * Manufactured by the Prairie State Milling Co. Chicago, Ill.;" "Prairie State Stock Feed * * * Guaranteed Analysis * * * Crude Fibre 8.5% * * * Manufactured By Prairie State Milling Co. Chicago, Ills." One consignment was invoiced "Crimped Oats and Cracked Corn."

Examination of samples of the Emerald brand by the Bureau of Chemistry of this department showed only a trace, if any, rolled barley. Most of the shipments contained oat hulls. One shipment contained sorghum seed, one shipment weed seed, and one shipment cottonseed hulls and oat hulls. Certain shipments of the Emerald brand were also deficient in protein and contained excessive crude fiber. Examination of samples of the Greenfield brand by said bureau showed that it contained oat hulls and was deficient in protein. Examination of samples of the Prairie State brand by said bureau showed that it contained excessive crude fiber.