

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.

Adulteration of the Emerald brand of the article was alleged in the information for the reason that a mixture which contained only a trace, if any, rolled barley or which contained sorghum seed or oat hulls or weed seeds or cottonseed hulls and oat hulls had been substituted for a product made in part from rolled barley, which the article purported to be. Adulteration was alleged with respect to certain shipments for the reason that sorghum seed or oat hulls or weed seeds or cottonseed hulls and oat hulls had been mixed and packed with the article so as to lower and reduce and injuriously affect its quality and strength.

Adulteration was alleged with respect to the Greenfield brand for the reason that oat hulls or ground oat hulls had been mixed and packed with the article so as to lower and reduce and injuriously affect its quality and strength and had been substituted in part for a product made from alfalfa meal and molasses, which the article purported to be.

Misbranding was alleged in substance with respect to the Emerald brand of the article for the reason that the statements, to wit, "Made From Rolled Oats, Cracked Corn, Rolled Barley, Alfalfa Meal and Molasses," and with respect to certain shipments, "Guaranteed Analysis Protein 9%, Crude Fibre 12%" or "Guaranteed Analysis Protein 9%," borne on the sacks containing various portions of the article, regarding the article and the ingredients and substances contained therein, were false and misleading in that the said statements represented that the article consisted wholly of rolled oats, cracked corn, rolled barley, alfalfa meal, and molasses, and that certain portions thereof contained not less than 9 per cent of protein and not more than 12 per cent of crude fiber, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it consisted wholly of rolled oats, cracked corn, rolled barley, alfalfa meal, and molasses, and that certain portions thereof contained not less than 9 per cent of protein and not more than 12 per cent of crude fiber, whereas, in truth and in fact, the said article did not consist wholly of the ingredients named on the respective labels, but did consist in part of a substance which contained only a trace or no rolled barley, and certain portions thereof contained sorghum seed or added oat hulls or weed seeds or cottonseed hulls and added oat hulls, and the said portions of the article contained less protein and more fiber than declared on the labels.

Misbranding was alleged in substance with respect to the Greenfield brand of the article for the reason that the statements, to wit, "Made From Alfalfa Meal and Molasses" and "Guaranteed Analysis Protein 9%," borne on the sacks containing the article, regarding the article and ingredients and substances contained therein, were false and misleading in that the said statements represented that the article consisted wholly of alfalfa meal and molasses and that it contained not less than 9 per cent of protein, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it consisted wholly of alfalfa meal and molasses and that it contained not less than 9 per cent of protein, whereas, in truth and in fact, the said article did not consist wholly of alfalfa meal and molasses but consisted in part of oat hulls and contained less than 9 per cent of protein.

Misbranding was alleged with respect to the Prairie State brand for the reason that the statement, to wit, "Guaranteed Analysis * * * Crude Fibre 8.5%," borne on the sacks containing the article, regarding the said article and the ingredients and substances contained therein, was false and misleading in that the said statement represented that the article contained not more than 8.5 per cent of crude fiber, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not more than 8.5 per cent of crude fiber, whereas, in truth and in fact, the two consignments of the article did contain more than 8.5 per cent of crude fiber, to wit, approximately 12.65 and 10.06 per cent, respectively, of crude fiber.

Misbranding of the product invoiced as crimped oats and cracked corn was alleged 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, pleas of guilty to the information were entered by the defendants, and the court imposed a fine of \$1,000.

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