

question as to the fact of previous conviction. And it cannot be contended, that in proceeding by information instead of by indictment there is any violation of the requirement of due process of law. (pp. 626-627)

"There is no direction, implied or expressed, in Section 330 (a) of Title 21 USCA that requires the allegation of a previous conviction in the indictment. In view of the fact that Congress in the National Prohibition Act directed such a prior conviction to be pleaded, this would clearly indicate that Congress did not intend to require such a procedure as that sought by the defendant in this case. Section 333 (a) clearly deals only with punishment.

"It, therefore, appears from the foregoing that:

"(1) There is no requirement under the Federal Rules of Criminal Procedure that the previous conviction be set forth in the indictment;

"(2) The Federal Food, Drug, and Cosmetic Act does not require the use of such procedure;

"(3) Such a practice is prejudicial to the defendant;

"(4) The present trend is toward the method used here by the United States Attorney;

"(5) Due process has been fully observed;

"(6) Modern criminal procedure should permit and does permit the use of the practice here followed where there is no authority that forbids.

"For the reasons as herein set forth, defendant's motion to limit the sentence imposed upon it to that of a first offender was denied."

The corporation made a motion on 8-2-56 for a reduction of the fine. On 8-3-56 the motion was denied.

23352. Pretzels. (F. D. C. No. 39173. S. No. 31-083 M.)

QUANTITY: 230 cartons, 24 bags each, at Columbus, Ohio.

SHIPPED: 6-18-56, from Williamsport, Pa., by Buckeye Pretzel Co.

LABEL IN PART: (Bag) "Buckeye 29¢ Old Fashioned Hard Pretzels."

LIBELED: 7-26-56, S. Dist. Ohio.

CHARGE: 402 (a) (3)—contained insect and rodent hair fragments; and 402 (a) (4)—prepared under insanitary conditions.

DISPOSITION: 8-27-56. Default—destruction.

FLOUR*

23353. Flour. (F. D. C. No. 39157. S. No. 42-644 M.)

QUANTITY: 300 100-lb. bags at Idaho Falls, Idaho, in possession of Midland Elevators.

SHIPPED: 1-9-56, from Salt Lake City, Utah.

LIBELED: 7-9-56, Dist. Idaho; amended 7-25-56.

CHARGE: 402 (a) (3)—contained rodent urine; and 402 (a) (4)—held under insanitary conditions.

DISPOSITION: 10-3-56. Consent—claimed by Colorado Milling & Elevator Co., trading as Midland Elevators. Segregated, 58 bags denatured for use as animal feed; 20 bags, found stained with an insecticide, destroyed.

MISCELLANEOUS CEREALS

23354. Rice. (F. D. C. No. 39161. S. No. 40-845 M.)

QUANTITY: 11 100-lb. bags at Rapid City, S. Dak.

*See also No. 23390.

SHIPPED: 2-25-55, from Memphis, Tenn.

LIBELED: 7-17-56, Dist. S. Dak.

CHARGE: 402 (a) (3)—contained insects while held for sale.

DISPOSITION: 8-16-56. Default—destruction.

23355. Wheat. (F. D. C. No. 39175. S. No. 40-663 M.)

QUANTITY: 118,990 lbs. at Minneapolis, Minn.

SHIPPED: 7-12-56, from Geneseo, N. Dak., by Farmers Union Grain Terminal Association.

LIBELED: 7-28-56, Dist. Minn.

CHARGE: 402 (a) (3)—contained rodent excreta when shipped.

DISPOSITION: 9-10-56. Consent—claimed by Farmers Union Grain Terminal Association, St. Paul, Minn. Segregated, 4,720 lbs. to be used for animal feed.

23356. Wheat. (F. D. C. No. 39183. S. No. 41-058 M.)

QUANTITY: 102,000 lbs. at Minneapolis, Minn.

SHIPPED: 7-18-56, from Strasburg, N. Dak., by Farmers Union Grain Terminal Association.

LIBELED: 8-2-56, Dist. Minn.

CHARGE: 402 (a) (3)—contained rodent excreta when shipped.

DISPOSITION: 8-16-56. Consent—claimed by Farmers Union Grain Terminal Association, St. Paul, Minn. Segregated, 11,120 lbs. to be used for animal feed.

23357. Wheat. (F. D. C. No. 39171. S. No. 41-052 M.)

QUANTITY: 80,450 lbs. at Minneapolis, Minn.

SHIPPED: 7-5-56, from Lidgerwood, N. Dak., by Farmers Union Grain Terminal Association.

LIBELED: 7-25-56, Dist. Minn.

CHARGE: 402 (a) (3)—contained rodent excreta when shipped.

DISPOSITION: 8-3-56. Consent—claimed by Farmers Union Grain Terminal Association, St. Paul, Minn. Segregated, 12,370 lbs. denatured for use as animal feed.

23358. Wheat. (F. D. C. No. 39151. S. No. 40-940 M.)

QUANTITY: 77,850 lbs. at Minneapolis, Minn.

SHIPPED: 6-7-56, from Osnabrock, N. Dak., by Rasmussen Grain Co.

LIBELED: 6-21-56, Dist. Minn.

CHARGE: 402 (a) (3)—contained rodent excreta when shipped.

DISPOSITION: 6-27-56. Consent—claimed by Marvin Rasmussen, Osnabrock, N. Dak., and denatured for use as animal feed.

CHOCOLATE, SUGAR, AND RELATED PRODUCTS

CHOCOLATE AND COCOA

23359. Unsweetened chocolate. (F. D. C. No. 39687. S. No. 48-351 M.)

QUANTITY: 68 cartons, 6 11-lb. slabs each, at Newark, N. J.

SHIPPED: 10-16-56, from New York, N. Y., by General Cocoa Co., Inc.