

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 794, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF COTTONSEED MEAL.

On or about March 23, 1909, the J. Lindsay Wells Company, a corporation, Memphis, Tenn., shipped from the State of Tennessee into the State of Indiana a consignment of cottonseed meal. Samples from this shipment were procured and examined by the Bureau of Chemistry, United States Department of Agriculture, and the product was found to be a mixture of cottonseed meal and cottonseed hulls. As it appeared from the above examination and report thereon that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the said J. Lindsay Wells Company, Incorporated, and the party from whom the samples were procured opportunities for hearings. As it appeared after hearings held that the shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Western District of Tennessee against the said J. Lindsay Wells Company, Incorporated, charging the above shipment and alleging that the product so shipped was adulterated in that a substance, to wit, cottonseed hulls, had been mixed and packed with the said cottonseed meal so as to reduce, lower, and injuriously affect its quality, and in that said cottonseed hulls had been substituted in part for the said cottonseed meal. The information also alleged that the product so shipped was misbranded, in that said article was offered for sale and sold upon the representation that the same was choice cottonseed meal, thereby causing the purchaser to believe the same to be pure cottonseed meal, whereas in truth and in fact the same was a mixture of cottonseed meal and cottonseed hulls, and that the statement that said article was cottonseed meal was false and untrue.

Whereupon the said J. Lindsay Wells Company, Incorporated, moved to quash the above information upon the ground that the same violated that part of the fifth amendment of the Constitution of the

United States which provides that no person shall be held to answer for a capital or otherwise infamous crime unless upon presentment or indictment of a grand jury.

The motion came on for hearing and the court, being fully informed in the premises, rendered its opinion in form and substance as follows:

This is an action brought by the United States against J. Lindsay Wells Company under section 2 of the Act of June 30, 1906, on the charge of shipping from Memphis in the State of Tennessee, to Attica, in the State of Indiana, thirty tons of cotton seed meal, which article of food at Memphis, Tennessee, was adulterated.

The suit is brought upon information made by the United States District Attorney.

The defendants move to quash the information, upon the ground that the same violates that part of the Fifth Amendment of the Constitution of the United States, which provides that no person shall be held to answer for a capital or otherwise infamous crime, unless upon presentment or indictment of a grand jury.

The question presented is, whether or not the offense alleged to have been committed by the defendant is a capital or otherwise infamous crime?

It is, of course, not a capital crime, and if it is otherwise an infamous crime, the motion to quash must be allowed, since, under the authorities, it is well settled, that a prosecution can be maintained upon information made by the District Attorney for such a crime. *Ex parte Wilson*, 114 U. S., 417.

As I understand the authorities, they hold that any offense, the punishment for which may be imprisonment in the penitentiary, with or without hard labor, is an infamous crime. *Mackin v. U. S.*, 117 U. S., 348; *Parkinson v. U. S.*, 121 U. S., 281; *In re Claasen*, 140 U. S., 204.

On an examination of the Act under which this suit is instituted, I find that the punishment therefor is a fine not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense, not exceeding three hundred dollars, or by imprisonment not exceeding one year, or both, in the discretion of the Court.

Under the authorities above cited, it is held that a defendant can not be imprisoned in the penitentiary, unless the time for which he is sentenced shall be more than one year. Under the Act of June 30, 1906, the imprisonment can not exceed one year. Therefore, the Court has no power to sentence the defendant to imprisonment to the penitentiary because that would be in excess of the maximum time which the Court is authorized to imprison a party for such offense.

As I understand the authorities, they hold in substance that where the Court may imprison the accused for more than one year, the confinement must be in the penitentiary, and that fact, with or without labor, constitutes an infamous crime. Upon the other hand, where the period of imprisonment is for one year or less, the Court must imprison in a County Jail, and that would not be an infamous crime.

If the Court has the power to imprison for more than one year, the crime is infamous. If for a year or less, it is not infamous.

Under section 1022 of the Revised Statutes, it is provided that all crimes and offenses committed against the provisions of Ch. 7, entitled "Crimes," which are not infamous, may be prosecuted either by indictment or by information filed by the District Attorney.

It appearing from the foregoing that the crime for which the defendant is charged is not infamous, I am of the opinion that this suit can be maintained upon the information filed, and the motion to quash will be disallowed.

(Signed) McCALL, *Judge*.

On December 3, 1910, the defendant entered a plea of guilty to the above information and the court imposed a fine of \$25 and costs.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. HAYS,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *February 27, 1911.*

