

"The decree must be affirmed. Upon condemnation, the District Court had power and authority to have these devices sold or destroyed under conditions such as are here laid down. The claimant may have entered into a contract which he now regrets, but the terms of the consent decree are clear and unambiguous. He made the release of the devices by the agency the sole criterion. He agreed that the court could issue further orders. He cannot now claim that, if he had known the terms of release would be what they now turn out to be, he would never have made the bargain.

"The practice of medicine and chiropractic in California is regulated by the legislature and administrative boards of the state. There is no law, regulation or decision of that state which forbids the shipment of an Ultrasoniseur into its boundaries. It is a mooted question whether a chiropractor can use such a device, but it is one for the courts and agencies of California to regulate. The agency has no jurisdiction or authority to attempt to regulate the practice of medicine or chiropractic in that state.

"The trial court was led into passing on a matter of state law and administrative discretion of the legislature and the agencies of California. Therefore, the final judgment and decree is affirmed, but the court is constrained to eliminate from the findings and conclusions all references to the nature of chiropractic, ultrasonic therapy and the practice of medicine and of chiropractors in California and all other matters which are here disapproved. The findings relating to the consent decree and the agreement not to ship the machines without release by the administrative agencies and the agreement that the court should make further orders carrying out the original condemnation and sale are left standing.

"Remanded, affirming the final decree herein. The modifications of the findings and conclusions need not be physically made. The appeal is dismissed."

Following the above opinion, the case was remanded to the district court; and, on 11-27-56, pursuant to the order of the district court, the United States marshal destroyed the 47 devices which had been seized.

#### PRESENCE OF A HABIT-FORMING NARCOTIC WITHOUT WARNING STATEMENT

5327. Amobarbital sodium and phenobarbital sodium. (F. D. C. No. 39189. S. Nos. 17-585 M, 21-661 M, 21-678 M.)

INDICTMENT RETURNED: 2-18-57, E. Dist. Pa., against Milton A. Calesnick, t/a Addison Laboratories, Philadelphia, Pa.

ALLEGED VIOLATION: On 4-14-55, the defendant caused to be given to a firm engaged in the business of shipping drugs in interstate commerce an invoice containing a guaranty that the ampuls of *phenobarbital sodium* and *amobarbital sodium* covered by the invoice were not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act.

On 4-14-55, the defendant caused to be delivered to the holder of the guaranty, at Philadelphia, Pa., under the above invoice, ampuls of *phenobarbital sodium* which were adulterated and ampuls of *amobarbital sodium* which were adulterated and misbranded.

In addition, the defendant caused to be shipped, on 4-22-55, from Pennsylvania to Virginia a number of ampuls of *amobarbital sodium* which were adulterated and misbranded.

LABEL IN PART: (Ampuls) "Amobarbital Sodium 7½ gr. [or "3¾ gr."] Sterile-Intravenous" and "5 cc. Ampoule Sodium Phenobarbital Contains: 2 Grains-Dry Powder-Sterile-Intramuscular."

**RESULTS OF INVESTIGATION:** Examination of the *amobarbital sodium* showed that some ampuls contained more and some ampuls contained less than the labeled amount of amobarbital sodium. Examination of the *phenobarbital sodium* showed that it contained more than the labeled amount of that ingredient.

**CHARGE:** *Phenobarbital sodium*. 501 (b)—the article purported to be and was represented as "Sterile Phenobarbital Sodium," a drug the name of which is recognized in the United States Pharmacopeia, an official compendium; and its strength, when shipped, differed from the official standard since the average weight of the content of phenobarbital sodium per ampul failed to comply with the standard specified in the compendium.

*Amobarbital sodium*. 501 (b)—the article purported to be and was represented as "Amobarbital Sodium," a drug the name of which is recognized in the National Formulary, an official compendium, and its strength, when shipped, differed from the official standard since the average weight of the content of *Amobarbital Sodium* per ampul failed to comply with the standard specified in the compendium; and 502 (d)—the article contained amobarbital sodium, a chemical derivative of barbituric acid, which has been designated by regulations as habit forming; and the label of the article failed to bear the statement "Warning—May be habit forming."

**PLEA:** Guilty.

**DISPOSITION:** 6-17-57. Defendant fined \$2,000 and placed on probation for 3 years.

#### DRUG ACTIONABLE BECAUSE OF CONTAMINATION WITH FILTH

5328. Serutan. (F. D. C. No. 39807. S. Nos. 35-501 M, 35-504 M.)

**QUANTITY:** 24 doz. boxes, 9 oz. each, at Cincinnati, Ohio.

**SHIPPED:** Between 4-1-56 and 9-28-56, from Newark, N. J.

**LABELED:** 12-6-56, S. Dist. Ohio.

**CHARGE:** 501 (a) (2)—contained insects while held for sale.

**DISPOSITION:** 1-11-57. Default—destruction.

#### DRUGS ACTIONABLE BECAUSE OF DEVIATION FROM OFFICIAL OR OWN STANDARDS\*

5329. Digitalis tablets. (F. D. C. No. 40163. S. No. 35-064 M.)

**QUANTITY:** 1 drum containing 67,300 tablets at Cleveland, Ohio.

**SHIPPED:** 8-3-56, from New York, N. Y.

**LABEL IN PART:** (Drum) "Tablets Digitalis Leaves Private Formula #1078 U. S. P. 1½ gr. \* \* \* 17214 The Superior Pharmacal Co., Dayton, Ohio."

**RESULTS OF INVESTIGATION:** The article was shipped from New York, N. Y., as a bulk powder; and, after receipt in Dayton, Ohio, it was made into tablets by Superior Pharmacal Co. and shipped to Cleveland, Ohio. Examination showed that the tablets contained not more than 67.6 percent of the declared amount of digitalis, or 1.01 grains of U. S. P. digitalis per tablet. The United States Pharmacopeia provides that digitalis tablets contain the labeled amount of digitalis.

**LABELED:** 4-11-57, N. Dist. Ohio.

\*See also Nos. 5324, 5326, 5327, 5338, 5340.