

2356. Misbranding of Sev-A-Jay capsules, sodium amytal capsules, and seconal sodium capsules. U. S. v. Harry Cavassa (Peninsula Drug Co.). Motion for dismissal of information denied. Plea of not guilty; verdict of guilty. Fine, \$1,200. Judgment affirmed on appeal to circuit court of appeals. (F. D. C. No. 17867. Sample Nos. 73528-F, 29075-H, 29564-H, 29570-H, 29576-H, 29683-H.)

INFORMATION FILED: June 19, 1946, Northern District of California, against Harry Cavassa, trading as the Peninsula Drug Co., San Francisco, Calif.

INTERSTATE SHIPMENT: Between the approximate dates of October 27, 1943, and May 16, 1945, from Detroit, Mich., and Indianapolis, Ind., of 1 lot of *Sev-A-Jay capsules*, 1 lot of *sodium amytal capsules*, and 4 lots of *seconal sodium capsules*.

PRODUCT: The *Sev-A-Jay capsules*, *sodium amytal capsules*, and two lots of the *seconal sodium capsules* had been made for use exclusively by or on the prescription of a physician, and the labels bore the statement "Caution—To be used only by or on the prescription of a physician." As a result, the drugs were not required to comply with Section 502 (f) (1), which requires that adequate directions for use appear in the labeling.

LABEL, WHEN SHIPPED: "Sev-A-Jay * * * each capsule contains: Aloin $\frac{1}{8}$ gr. Apioi 5 Min. Ergot 4 grs."; "Pulvules Sodium Amytal 1 Gr. (0.065 Gm.)"; and "Pulvules Seconal Sodium $1\frac{1}{2}$ Grains (0.1 Gm.)."

NATURE OF CHARGE: *Sev-A-Jay capsules*, *sodium amytal capsules*, and two lots of *seconal sodium capsules*. On or about August 29, 1944, and March 16 and 29 and May 16, 1945, while the drugs were being held for sale after shipment in interstate commerce, the defendant caused them to be sold, delivering them to the purchasers in the bottles labeled as indicated above, without a physician's prescription. The sale of these drugs by the defendant caused the exemption to expire and resulted in the misbranding of the drugs in violation of Section 502 (f) (1), since the bottles bore no labeling containing directions for use.

Seconal sodium capsules (2 lots). On or about March 27 and April 13, 1945, the defendant caused to be repacked a number of the capsules into an envelope labeled "Seconal" and into an unlabeled vial and sold them without a prescription. The acts of the defendant resulted in the drug being misbranded in violation of Section 502 (f) (1), since the envelope and the vial bore no labeling containing directions for use; and, Section 502 (f) (2), since the envelope and vial bore no labeling containing warnings against use in those pathological conditions and by children where its use may be dangerous to health and against unsafe dosage and methods and duration of administration.

DISPOSITION: The defendant filed a motion to dismiss the information on the grounds (1) that the information did not state facts sufficient as a matter of law to constitute any offense against the laws of the United States; (2) that the court did not have jurisdiction of the subject matter involved; (3) that the acts of the defendant complained of were in local and intrastate commerce and not in interstate commerce; (4) that the defendant's acts were beyond the power of Congress to regulate and punish; (5) that the applicable provisions of the Food, Drug, and Cosmetic Act involved in each count were unconstitutional as beyond the scope and power of congressional legislation under the commerce clause of the Constitution.

On October 4, 1946, after argument of counsel, the court denied the motion to dismiss. On October 14, 1946, the defendant entered a plea of not guilty. The case came on for trial before the court without a jury, and after consideration of the evidence the court, on November 7, 1946, found the defendant guilty and imposed a fine of \$200 on each of the 6 counts of the information. Notice of appeal was thereafter filed on behalf of the defendant with the United States Circuit Court of Appeals for the Ninth Circuit. On February 4, 1948, a decision was handed down by that court, affirming the judgment of conviction on the authority of U. S. v. Sullivan, 68 S. Ct. 331.

2357. Misbranding of phenobarbital tablets. U. S. v. Reginald J. Price, manager of Shell Lake Drug Co. Plea of guilty. Defendant fined \$75, given sentence of 6 months in jail, which was suspended, and placed on probation for 1 year. (F. D. C. No. 23209. Sample Nos. 51712-H, 51807-H, 51818-H.)

INFORMATION FILED: June 26, 1947, Western District of Wisconsin, against Reginald J. Price, manager of the Shell Lake Drug Co., Shell Lake, Wis.

INTERSTATE SHIPMENT: On or about February 1, 1945, from St. Louis, Mo., to Shell Lake, Wis., of quantities of *phenobarbital tablets*.

LABEL, WHEN SHIPPED: "Tablets Phenobarbital U. S. P. XII $1\frac{1}{2}$ Grains."