

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

29251-29300

[Approved by the Acting Secretary of Agriculture, Washington, D. C., October 13, 1938]

29251. Alleged adulteration and misbranding of Cascarets. U. S. v. Sterling Products, Inc. Demurrer to amended information sustained. (F. & D. No. 33915. Sample Nos. 47050-A, 58005-A, 58006-A.)

On July 25, 1935, the United States attorney for the Northern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Sterling Products, Inc., Wheeling, W. Va., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about August 29, 1933, from the State of West Virginia into the State of Massachusetts of a quantity of Cascarets that were alleged to be adulterated and misbranded.

On May 4, 1937, the defendant filed a demurrer to the first count of the information and motions to strike certain allegations of the remaining counts. On October 22, 1937, an amended information was filed.

The amended information alleged that one lot of the article was adulterated in that its purity fell below the professed standard under which it was sold since the article was sold under the name of Cascarets, a name which signified that the active laxative ingredient of the article was obtained from the plant drug cascara sagrada; whereas the active laxative ingredient consisted in part of the drug phenolphthalein which is a synthetic coal-tar derivative and not the plant drug cascara sagrada.

This lot was alleged to be misbranded in that the statement on the box containing the article, "Cascarets * * * Candy," was false and misleading since it represented that the article was Cascarets, a name which signified that the active laxative ingredient of the article was obtained from the plant drug cascara sagrada and that the article was a candy, whereas, the active laxative ingredient of the article consisted in part of the drug phenolphthalein, and the article was not a candy.

The other lot was alleged to be misbranded in that the statement on the label, "Candy Cathartic Cascarets," was false and misleading since it represented that the article was Cascarets, a name conveying the impression that the article was essentially a preparation of cascara sagrada and was essentially candy; whereas it was not essentially a candy since it was essentially a preparation of phenolphthalein, a synthetic coal-tar derivative, which is not a preparation of cascara sagrada and which is a drug and not a candy.

On November 19, 1937, the defendant filed its demurrer to each count of the amended information, and on May 11, 1938, the court entered judgment dismissing the cause, having sustained the demurrer in the following opinion:

(BAKER, Judge): "In this case an information was filed at the June, 1935, term of court, in case known as Criminal No. A-3847. To that information a demurrer was filed and a motion was made to strike certain parts thereof. Later, a pleading styled 'Amended Information' was filed, and the defendant demurred to this amended information and each count thereof. This latter demurrer was fully argued by counsel for the Government and for the defendant, and both sides presented written briefs.

"Having fully considered this demurrer and the arguments and briefs thereon, I have come to the conclusion that the demurrer to the amended information and each count thereof should be sustained. It must be borne in mind that this is a criminal proceeding, and that this information is to be tested by the

strict rules applicable to any indictment or information. Having so considered the amended information, I feel that the demurrer to the first count should be sustained:

"(a) The count complains of only one profession under which the article of drug was sold, the profession that the article was sold under the name 'Cascarets.' The count calls this a profession of purity. This profession is not one of purity, but one of identity. Therefore, the count fails to allege any fact upon which to base its charge that the defendant professed a standard of purity and that the article in question fell below such standard. Hence, no charge of adulteration can be based upon this count.

"(b) The count is vague and indefinite in that it fails to disclose whether or not the name 'Cascarets' signifies that cascara sagrada is the only laxative ingredient, or whether it is merely a necessary laxative ingredient of Cascarets.

"(c) The count does not state sufficient facts to justify a verdict of guilty of adulteration within the meaning of section 8 of the Food and Drugs Act.

"The demurrer to the second count of the amended information should be sustained because:

"(a) The allegation in the last paragraph that Cascarets is a name which signifies that the active laxative ingredient of the article is obtained from the plant drug cascara sagrada and that said article was a candy, is in direct conflict with the other allegations of the count, since the count states that cascara sagrada is a drug and not a candy.

"(b) The count fails to disclose to whom the name 'Cascarets' signifies that the active laxative ingredient of the article is obtained from the plant drug cascara sagrada.

"(c) It fails to disclose whether or not it is intended to charge that cascara sagrada is the sole active laxative ingredient of Cascarets.

"(d) The count does not allege sufficient facts to sustain a conviction of a charge of misbranding within the meaning of the Food and Drugs Act.

"The demurrer to the third count of the amended information should be sustained for the reason that it is vague and indefinite in several respects, especially the following:

"(a) The phrase 'essentially candy' is vague and indefinite.

"(b) It does not charge to whom the impression that the article was essentially a preparation of cascara sagrada and was essentially candy, might be conveyed.

"(c) The count charges that the product proceeded against was 'essentially a preparation of phenolphthalein, which phrase is indefinite.

"For these reasons I am constrained to sustain the demurrer to the amended information and to each count thereof.

"It should be noted by counsel that I am not, at this time, passing upon the demurrer to the original information, nor upon the motion to strike certain parts of the same. These matters have never been argued, and I deem them of sufficient importance to ask counsel to submit arguments thereon fully before coming to any conclusion. If counsel for either side wish the court to consider these propositions, I will do so at the regular April, Wheeling term of this court.

"Counsel are directed to prepare a decree in accordance with this memorandum and submit it to the court."

M. L. WILSON, *Acting Secretary of Agriculture.*

29252. Alleged misbranding of pharmaceuticals. U. S. v. Eugene J. Fishgoll (Missouri Products Co.). Motion to dismiss sustained. (F. & D. No. 33963. Sample Nos. 61132-A, 61134-A, 61139-A, 61141-A, 61142-A.)

On April 22, 1935, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Eugene J. Fishgoll, trading as Missouri Products Co., at St. Louis, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act on or about May 21, 1934, from the State of Missouri into the State of Ohio, of quantities of cascara sagrada, spirits of ammonia, flaxseed meal, boric acid, and sulphur which were alleged to be misbranded.

The articles were alleged to be misbranded in that certain statements, namely "2 Fl. Oz.," borne on the labels of the cascara sagrada and the spirits of ammonia, "4 Oz." on the label of the flaxseed meal, and "16 Oz." on the labels of the boric acid and the sulphur were false and misleading since they represented that each of the bottles of cascara sagrada and spirits of ammonia