

case. I have the appellate opinion only. They are not readily available to us. But, I do not believe so.

Senator NELSON. But they were found liable in any event.

Dr. HEWSON. There were no cultures taken to establish that it was a resistant infection.

In the *Incollingo* case a pediatrician prescribed Chloromycetin for Mary Ann Incollingo on three occasions for infected throat and tonsils; a second physician renewed Mary Ann's prescription by telephone on at least two occasions, without seeing the patient, for minor respiratory complaints. The two cases differed in that the prescribing physician in the *Love* case testified that he had been misled by the Parke, Davis advertising and detailing, while the initial prescribing physician in the *Incollingo* case stated that he was fully aware of the dangers inherent in the use of Chloromycetin and was not misled by the Parke, Davis promotional methods.

Mr. GORDON. If I am not mistaken, in the *Love* case the court held that the vigorous promotional campaign by Parke, Davis Co. canceled out any written warning that the firm may have given. Is that correct?

Dr. HEWSON. That is correct. That case was remanded once, has been up on appeal again and Parke, Davis' promotional methods have held that company in for something, I think, in the neighborhood of a \$185,000 verdict. But it had been remanded for the second time to try the physician again. The two positions were not held to be mutually exclusive, and the doctor can be held negligent, also, despite the fact that Parke, Davis has already been deemed negligent for its promotional methods. In other words, he cannot hide behind the Parke, Davis promotional methods.

Mr. GORDON. Is it correct that the court held that proof of the sales of Chloromycetin expressed either in grams or dollars was relevant to show a motive or reason for the alleged promotion of the drug which is a definite issue in the case?

Dr. HEWSON. That is correct. That is an evidentiary problem—how relevant is the fact that they sold so much of the drug and so much of it was prescribed. It was held to be relevant in the sense that it might show a motivation or an intent to push the drug on the medical profession, to augment its sales.

Mr. GORDON. Thank you.

Dr. HEWSON. The renewing physician in *Incollingo* did testify that the drug company's promotional methods had misinformed him as to the proper use of the drug. In both cases the pharmacist who filled the prescription was exculpated. The rationale of those decisions, holding the prescribing physicians and the promoting drug company reprehensible, is not only acceptable but correct, in my opinion.

In *Incollingo* the alleged negligence of Parke, Davis & Co. was botomed on the theory that the company had in effect, by its overpromotion of Chloromycetin, set the standard for the medical profession for the use of that drug during the period from its first introduction on the market in 1948 until its prescription for the plaintiffs decedent in 1958, 1959, and 1960. Because of Parke, Davis advertising and detailing methods, it was argued, physicians had been misled into using the drug indiscriminately, in disregard of the potential toxic effects of the antibiotic, for conditions where drugs of lesser toxicity