

The "Tabloid" Case.

We desire to call the earnest attention of trained nurses to a most important action which has recently been tried before Mr. Justice Byrne in the High Court of Justice, namely, that of Burroughs, Wellcome and Co. *v.* Thompson and Capper.

At the present day, doctors and patients frequently trust their well-trained nurses to obtain for them all necessary drugs and dressings, and to have their prescriptions made up. Nurses, therefore, have naturally considerable latitude left to them in selecting the chemists, instrument makers, and so forth from whom they obtain such goods for their patients; and doubtless the majority of nurses have thought that one firm was as good as another. This case will come to them, therefore, as a most serious warning. They must remember that they are responsible to their doctors and patients that the drugs or goods they obtain are of precisely the quality and the character which the doctor has ordered. This action shows that they must take nothing on trust, but must demand that they are supplied with the identical drugs, or form of drugs, prescribed. They will observe that, in this case, it was proved that when "Tabloids" of Messrs. Burroughs and Wellcome were ordered, totally different preparations were palmed off upon the purchaser; and it has required a great action at law to prove the substitution.

Nothing could be more dangerous to the public; and Messrs. Burroughs, Wellcome and Co. have performed an incalculable service, therefore, in calling attention to the possibility of such practices. It only remains for nurses to take the important moral to heart, and never, under any pretext, to accept from any chemist any kind of preparation for their patients different from that which the doctor has ordered. We would go further, and express our deliberate conviction that, for her own protection, she should immediately report to the doctor and patient any attempt on the part of any chemist to induce the nurse to accept one preparation in place of the one actually ordered; and that she would be wise never, under any circumstances to make another purchase in such a shop. In view of the immense importance of this case, we give an abstracted report of the proceedings.

FRIDAY, NOVEMBER 20TH, 1903.

The question at issue was two-fold: first, had Thompson and Capper dispensed and sold goods not those of Burroughs, Wellcome and Co. in response to prescriptions and orders for "Tabloids"; and, secondly, was the trade mark "Tabloid" a good one, and therefore correctly on the Register of Trade Marks?

Mr. Neville explained that in 1884 Burroughs, Wellcome and Co. had a large business in compressed medicines, and desired to register a new

trade mark to distinguish them from all other preparations of that class. Mr. Wellcome coined the word "Tabloid," and his firm registered it in the classes for drugs and food-stuffs.

Burroughs, Wellcome and Co. soon acquired a wide renown amongst the medical profession for medicines issued under their marks, both in respect to the quality of their drugs and the accuracy of their doses. Medical men prescribed "Tabloids," relying on the accuracy and quality of Burroughs, Wellcome and Co.'s products in preference to the accuracy of the chance dispenser. They recognised that by ordering a particular "Tabloid" they were getting a known, and definite, and certain quantity of either one or more drugs.

The firm's preparations were of immense utility for travellers, and have been carried all over the world. They have been as far as anybody has been towards the North Pole, and were used by Sir H. M. Stanley, Emin Pasha, Nansen, by the Jackson-Harmsworth and other expeditions, and in all the great wars of modern times.

Since 1884, to the present time, on every single occasion when any commercial misuse of the trade mark was attempted, the plaintiffs immediately took steps. Only three cases of actual infringement had come to the firm's knowledge; actions were commenced, and in every one of these cases the defendants did not dispute the claim, and consented to an injunction.

Counsel went on to explain that there are an immense number of manufacturers and dealers in compressed medicines, and by not a single one is the description "Tabloid" used except in reference to the goods of the plaintiffs. "Tabloid" has been used as a trade mark for a variety of different things—for medicine cases and belts, and upon various articles other than the mere discs.

Summarising Burroughs, Wellcome and Co.'s case, he continued: "We rest our case both on the trade mark and on the trade name. We say that our trade mark is good. . . . Supposing 'Tabloid' is not a good trade mark, then we say, and are going to prove, that 'Tabloid' is and has been known for a great many years, as representing the manufacture of the plaintiffs, and if it had in the inception any meaning at all, which we deny, it has got a secondary meaning, and has been known by all the trade to mean Burroughs, Wellcome and Co.'s manufacture. If we prove that, we are entitled to succeed against the defendants, because we shall prove they supplied other goods in answer to a request for 'Tabloids.' There is a still further point that, supposing both those contentions fail, we still have a good case, because in instances where the order was for 'Tabloids, B. W. and Co.,' goods not of the plaintiffs' make were passed off to the customer."

The first witness called was—

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