

WITNESSES FOR THE DEFENCE.

MR. CHARLES KIRBY BRANSBY, manager of Thompson and Capper, Manchester, examined by Mr. Walter, stated that he had looked out some of the written orders from 80 to 100 customers for goods under the description of "Tabloids." He did not think any of these goods were the goods of Burroughs and Wellcome. Those were all within the last year or two. His firm purchased drugs from Burroughs and Wellcome in large bottles, and retailed them in small bottles of twenty-five and fifty, for convenience, with their label on them, "compressed tablets" of so-and-so, and their own name. Formerly, all the tablets they had were from Burroughs and Wellcome. About the months of August and September, 1902, they had in stock a large quantity of such goods, including Cascara and Potassium Chlorate. They had also some of Messrs. Allen and Hanburys' goods in as well. Those goods were put up for sale in the same small bottles containing similar numbers to those just described, and the same labels. Except when retailing the goods of Burroughs and Wellcome in their original parcels, he had never placed upon any goods in his shop the word "Tabloid." He knew that Burroughs and Wellcome claimed "Tabloid" as their trade mark, and most certainly his principals knew that too. He produced copies of prescriptions which he had received for "Tabloids" which were not Burroughs, Wellcome and Co.'s. They were for special homœopathic preparations. These were special preparations sold by his firm. They are flat discs or flat tablets. His goods were verbally ordered over the counter, frequently, as "Tabloids" or "tablets"; the public did not seem to make any distinction between the two.

Cross-examined by Mr. Neville: Thompson and Capper have about nine shops, very widely spread over the North, and well known, and do a very large business in all those places. He and his employers had always recognised "Tabloid" as the trade mark of the plaintiffs, and have always refrained from serving any other goods than Burroughs and Wellcome's under an order for "Tabloids," and were well aware that Burroughs and Wellcome were the makers of them.

There is confusion in the mind of the public between "Tabloid" and "Tablet." When "Tabloids" were ordered, his firm supplied Burroughs, Wellcome and Co.'s goods, in bottles labelled "Tablets" and with Thompson and Capper's name upon them. He could not quite see that such a course of trading by retail dealers is calculated to create confusion in the mind of the public.

A bottle of compressed goods purchased at his shop was handed to him, but he could not say whether they were Burroughs and Wellcome's "Tabloids" or somebody else's "Tablets." They were kept in the same case, but on different sides.

Asked how his assistants would be able to distinguish the goods, he replied that they could not tell from the look of the bottle, but he denied that the assistants would hand out "Tablets" instead of "Tabloids," except by accident.

MR. JOHN RYMER YOUNG, Chemist and Druggist, of Warrington, examined by Mr. Walter, stated that he was acquainted with Burroughs, Wellcome and Co.'s literature, and knew of their registered trade mark "Tabloid." Sometimes he had things ordered which Messrs. Burroughs and Wellcome did not list, or stock, or make, but they are things as to which he knew what the doctor meant, and he would dispense the article the doctor meant. He produced two prescriptions of the kind. The word "Tabloid" was used in both cases, but the goods there mentioned were not the goods of Messrs. Burroughs and Wellcome.

MR. CHARLES THURSTON HOLLAND, M.R.C.S., L.R.C.P., of Liverpool, examined by Mr. Walter, stated that he knew the word "Tabloid" referred absolutely to Burroughs, Wellcome and Co.'s goods. It was within the last two years that he knew for certain that they claimed to be entitled to use it as applying to their goods alone. It was his experience in regard to patients and the public that "Tabloid" is used as simply referring to the shape or form in which the drug or drugs are put up—almost without exception.

THURSDAY, NOVEMBER 26TH.

Similar evidence was given by seven medical and trade witnesses, all of whom, however, recognised that "Tabloid" was the trade mark of Burroughs, Wellcome and Co., although some of them had only learnt this of recent years. Of these witnesses, all were drawn from the Manchester district, except one chemist from Scarborough, and one from London. Most of the defendants' witnesses were homœopaths.

MR. JOHN BAIN, Pharmaceutical Chemist, Liverpool, gave evidence of mistakes made by the public. He stated that customers would ask for a bottle of "Tabloids," and without waiting for it to be handed to them, would take up a bottle of "Tablets," not prepared by Burroughs, Wellcome and Co., from the counter and put it in their pockets. In cross-examination, he recognised a bottle of his "Tablets" which had been purchased at his shop, and admitted that, placed side by side, they very closely resembled a package of Burroughs, Wellcome and Co., in shape of bottle, colour, and imprint on the label. He hastened to explain that he took exception to the packages resembling those of Burroughs, Wellcome and Co. so closely, and now ceases to stock these goods.

MR. R. HASSELWOOD JONES, Chemist, of Herne Hill, gave evidence that he formerly travelled in the drug trade, selling tablets. He called on 800 doctors four times in the course of the year, for three years. The bottles in which the medical men

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