

kept their compressed medicines were labelled "Tablets," yet his customers persisted in ordering his preparations as "Tabloids." He explained to them that "Tabloid" belonged to Burroughs, Wellcome and Co., but in 90 per cent. of the 800 doctors this produced no effect, they still continued to call his preparations "Tabloids."

MR. MICHAEL CARTEIGHE, Pharmaceutical Chemist, ex-President Pharmaceutical Society, said that misconception existed in the minds of medical men and the public with regard to the proprietary character of the trade mark "Tabloid." There was an increasingly large sale for "Tabloids."

MR. H. W. KILBY PEARS, Manufacturing Chemist, Hove, produced 400 orders from the public for his goods under the term "Tabloids."

Cross-examined, he stated that he had never publicly recognised the word "Tabloid" as a trade name. He was then confronted with an advertisement in which he offered a prize for suggestions for a coined word capable of registration, of which he instanced "Tabloid" as a good example. He manufactured tablets for sale by the trade at a profit of 250 per cent. The labels were usually imprinted with the chemist's name. He did not consider that profit was a considerable temptation to chemists to substitute such goods for those of firms of high reputation.

FRIDAY, NOVEMBER 27TH.

Mr. Neville and Mr. Walter having addressed the Court on behalf of Burroughs, Wellcome and Co. and Thompson and Capper respectively, Mr. Justice Byrne stated that he would reserve judgment.

#### JUDGMENT.

Mr. Justice Byrne delivered judgment on December 14th as follows:—I have to deal with an action to restrain passing-off goods not of the manufacture of the plaintiffs as or for their goods, and particularly from selling, or offering for sale, any such goods under the name "Tabloid" or "Tabloids," and from infringing the registered trade marks, and with a motion on the part of the defendants to expunge the trade marks in question from the Register.

It will be convenient to deal first with the motion.

On March 14th, 1884, the plaintiff firm registered the word "Tabloid." The question is whether or not the word "Tabloid" was a distinctive fancy word not in common use at the date of registration, namely, March 14th, 1884. It is important to keep the date in mind in considering the matter, and this was forcibly brought home to me in the present case by the fact that when the word "Tabloid" was first mentioned I quite thought it was a common dictionary word in the language long before 1884, but I am satisfied that this was really due to my acquaintance with

the word as used in connection with the compressed drugs of the particular shape described, which have become so well known since the year 1884. The words "table" and "tablet" were, of course, well known, and the latter, in reference to solid drugs, at least as early as the time of Lord Bacon. Mr. Wellcome invented the word "Tabloid." This word was certainly not in common use, for it was unknown before, and was used by his firm for the first time.

I come to the conclusion that in March, 1884, the word was not "really intelligibly describing the thing sold," which is the way in which Lord Lindley at page 607 of the report of the Bovril case puts the form of direction to the jury.

The motion must therefore be dismissed.

I now come to the other part of the case, and it is clearly proved that since the registration of the words "Tabloid" and "Tabloids" the plaintiffs have continuously and to an enormous extent advertised, sold, and denoted their goods in connection with the registered words. They deal only wholesale; that portion of the public to which they appeal directly is mainly composed of doctors, chemists, nurses—those concerned in the ordering, preparation, and administration of drugs; and it is to these that their advertisements, trade lists, and trade documents are directed. I had the evidence of a very representative body of medical men and chemists which convinces me that to these, who constitute that portion of the public who are primarily concerned in the matter, the words "Tabloid" and "Tabloids" mean and denote, and have always meant and denoted, the goods of the plaintiff firm.

Mr. Walter ingeniously suggested that they have sought to rob the English language by preventing its natural development in endeavouring to appropriate such a word as "tabloid," which he puts as being a natural development of the word "table" or "tablet"; but I think it is more correct to say that the plaintiffs have made a gift, such as it is, to the language, while reserving a special use of it to themselves. The trade lists employed in the drug trade are unanimous in their testimony, as well negative as positive, to the true meaning of the word as applied to compressed drugs.

I am satisfied, as a result of the evidence of the medical men and chemists who have given their testimony, that, speaking generally (though there are exceptions), to doctors who prescribe and use the word "Tabloids" the word means and intends the goods of the plaintiffs; to the chemists and others concerned in the drug trade who dispense and sell the drugs, the word has the same meaning. Sometimes doctors add to the word "Tabloids" the name of the firm or the letters "B. and W.," but this is by way of extra caution to ensure against the substitution of drugs of a less reliable or lower

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